

Draft standard on People-first PPP/Concession Model law
Public Consultation
Log of comments and observations (10 February 2022)

Art Smith.....	2
Thibaut Mourgues.....	2
Bruno de Cazalet.....	3
Don Wallace.....	16
Iryna Zapatrina.....	16
W.A. Timmermans.....	17
Lucie Berger.....	18
Italian PPP Unit.....	21
Christopher Clement-Davies.....	24
Chris Shugart.....	28
Russian Federation.....	30
Marc Frilet.....	35

Comment Submitter	Art Smith	E-mail	arthur.l.smith.consulting@gmail.com	Delegation / Organization	USA representative to the Bureau of the WP on PPPs	Date submission	09.02.2022
Draft version number	Line number	Comments			Proposed changes	Team Leader Response	
General Comments	The government of the United States has asked me to express its concern that the Draft Model Law deviates from standard World Bank terminology in certain respects. The U.S. believes that it is counterproductive to create alternative terminologies, and that the UN should seek to harmonize its language with that of the multilateral development community. I don't believe that the U.S. Mission will be submitting written remarks, since they have asked me to ensure that this message is delivered.						

Comment Submitter	Thibaut Mourgues	E-mail	tmourgues@4ipgroup.org	Delegation / Organization	4IP Group	Date submission	17.12.2021
Draft version number	Line number	Comments		Proposed changes		Team Leader Response	
Version							
General Comments							
Nov.2021	344	Role of regulatory bodies. The point is noted but it is not addressed in the document.		It is important that the PPP law clearly states the relationship with sector laws, in particular when a regulatory body exists. Any contradiction between PPP law and sector law should be avoided. There are 3 ways to do that: (1) state the priority of the PPP law, (2) the priority of the sector law, or (3) and this is the best option, establish coordination and harmonisation mechanism. The sector regulator should be involved in the preparation of the PPP contract in such a way that the PPP contract signature should be aligned with the delivery of the required licence. The regulator should also have			

			the same regulatory rights on the PPP partner than with other operators.	
--	--	--	--------------------------------------------------------------------------	--

Comment Submitter	Bruno de Cazalet	E-mail	cazaletconsult@gmail.com	Delegation / Organization	Member of the Business Advisory Board (BAB)	Date submission	04.01.2022
--------------------------	------------------	---------------	------------------------------------------------------------------------	----------------------------------	---------------------------------------------	------------------------	------------

Draft version number	Line number	Comments	Proposed changes	Team Leader Response
	General	<ul style="list-style-type: none"> • First of all, I confirm that the proposed Model law allows to draft good PPP laws and it is the reason why all members of our working group have approved the text before its submission to the Bureau. I have been in charge for EBRD since 2005 of the Assessment of the PPP/Concession legal framework of all the EBRD countries of operation (presently around 39) as team leader for GIDE on 5 occasions and as EBRD’ advisor for the last one in 2017-2018 awarded to the law firm CMS. I have used the same methodology to assess the draft Model Law which has proven to deserve a “Very High compliance” rate in comparison with UNCITRAL Legislative Guide on Privately Financed Infrastructures Projects’ Recommendations and best international practices (attached). This level of compliance based on the answers to 47 questions has only been achieved by two countries, Serbia and Mongolia, among all the EBRD countries of operation. • This result has been achieved after more than four years of <i>probono</i> involvement of the drafting team composed of internationally renowned PPP experts following as you may remember intense and tough discussions that myself and some other civil law specialists have had with our Chairman Christopher 		

	<p>and other members of the team, but always in a positive and balanced spirit.</p> <ul style="list-style-type: none"> • Like for all other UN model laws or other UN sensitive legal instruments the proposed text is a compromise between different cultures and in particular Civil law and Common law legal systems reached by the team of PPP experts from very different origins. • I can therefore perfectly understand that representatives from some countries may not be entirely satisfied by the drafting of the compromise solutions reached and consider that further elaborations might be required by the WP before approving the text at the next session in May 2022. • What is certain is that it is necessary for UNECE to propose to the World an enhanced people first approach for PPPs that overcomes some of the weaknesses in the way the traditional PPP model has been implemented these last thirty years as we have tried to do through the PfPPP model law. The adoption of the text should not be further postponed if we properly answer to the WP final requirements and if we are well prepared to defend the revised text at the next WP session even if it may thwart the interests of certain parties. • As required by the WP and in order to allow the approval process to proceed I have submitted to the Secretariat in the required form at the given official address my personal views as member of the initial drafting team and member of the Business Advisory Board on further possible elaborations on the three mentioned topics which are effectively key to the drafting of a People first PPP Model law (attached). For a better understanding of the proposed modification, you will find also attached a copy of the Model marked Law integrating the proposed changes 		
--	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--	--

¹ Types of comment: ge = general; te = technical; le = legal; ed = editorial

		as well as a note to the Bureau underlining the relationships between the three topics which I leave to your entire discretion to communicate or not to the Bureau or any person designed to review the result of the public consultation and to submit the consolidated version in April 2022 to the Committee on Innovation, Competitiveness and Public-Private Partnerships (CICPPP) for approval at its next session in May 2022.		
Nov.2021	9	Proposed change of title: Keep the original title of the draft law: “People-First PPP Model Law” and not People-First PPP/Concession Model Law, to avoid any confusion (Concession being considered as an integral part of PPP) or it should be specified: “PPP/(Concession and non -concession PPP)” It is either a standard for a PPP law or a model law. I suggest to keep “model law” and to delete the reference to “standard”	Title: “Draft People-First PPP Model Law”	
Nov.2021	66 to 73	The end of the first sentence is to be deleted as it is more a commentary than a legislative provision and it is not necessary. It brings confusion in an attempt to comply with UNCITRAL definition of PPP and to introduce two different form of PPP (concession and non-concession PPP). The following wording is TO BE DELETED: <i>“including those referred to or described as “concessions” or “user charge” projects, those referred to or described as “government pay” or “PFI”-type projects, other forms referred to by other labels or acronyms, and those that involve a transfer of demand risk to the private partner as well as those that do not.”</i> This wording mixes concession with other forms and other considerations which give an impression of unclear statement. It mixes criteria such as remuneration or transfer of risk and with various other legal forms which give an impression of unclear statement with respect to the scope of the law and the proposed approach. It is	Article 1. 2 - All PPPs. <i>“This law applies to all forms of PPP, as defined in this law. It applies to all PPP projects implemented in [host country] after the date this law comes into force, whether carried out at national, federal, sub-national, regional or municipal level (except only in so far as the PPP regulations specifically provide otherwise).”</i>	

		<p>enough to say that the Law applies to all PPP as defined in the Law.</p> <p>Enough to say that the Law applies to all PPP with the possibility to specify: “concessions and non-concession PPP”.</p> <p>“concessions” and non-concession PPP” are defined as the two forms of PPP within the new definition of PPP as per UNCITRAL PPP Model provisions.</p>		
Nov.2021	129 to 136	<p>The definition of PfPPP should not include part of the definition for PPP but refers to the definition of PPP and specify the specificity of this form of PPP.</p> <p>The fact that PPPs are contract delivery tools for public infrastructure provision involving initial private financing and that they include two types: “government-pay PPPs” which are primarily funded by taxpayers and “concessions” which are primarily funded by the users of the infrastructure should not be included as first it is not the proper place to deal with the definition of PPP and second, it is no longer in compliance with the new definition of PPP. (to be deleted)</p> <p>The fact that it is as an enhanced approach for PPPs that overcomes some of the weaknesses in the way the traditional PPP model has been implemented is a commentary rather than a definition. (to be deleted)</p> <p>This definition of PfPPP would also be along the line of the UNECE definition of PPPs from the 2008 Guidebook “On Promoting Good Governance in Public-Private Partnerships”: “PPP refer to ‘innovative methods used by the public sector to contract with the private sector, who bring their capital and their ability to deliver projects on time and to budget, while the public sector retains the responsibility to provide these services to the public in a way that benefits the public and delivers</p>	<p>Article 2. (q) <i>“People-first Public-private partnership” means a type of Public-Private Partnership (PPP) designed to implement the Sustainable Development Goals and thereby to be “fit for purpose”.</i></p>	

¹ Types of comment: ge = general; te = technical; le = legal; ed = editorial

		<p>sustainable development and an improvement in the quality of life’.”</p> <p>The proposed definition of PfPPP is consistent with this UNECE definition of PPP which was drafted at a time the concept of PfPPP was not existing and which is still up to date (it was quoted by Geoffrey in a recent presentation on “Guiding Principles on People-first PPPs for the UN SDGs”)</p>		
Nov.2021	159 to 165	<p>UNCITRAL PPP Model Provision definition for PPP to be adopted :</p> <p><i>“Model Provision 2. Definitions</i></p> <p><i>For the purpose of this law:</i></p> <p><i>(a) “Public-private partnership (PPP)” means an agreement between a contracting authority and a private entity for the implementation of a project, against payments by the contracting authority or the users of the facility, including both those projects that entail a transfer of the demand risk to the private partner (“concession PPPs”) and those other types of PPPs that do not entail such risk transfer (“non-concession PPPs”);</i></p> <p>The fact to adopt the same definition for PPP than UNCITRAL is necessary if we want to speak of the same thing and to differentiate UNECE PfPPP from regular PPP.</p> <p>There is no objection to maintain the reference to additional criteria listed under Article 4.3 of the draft Model Law as they are in the alignment of the UNCITRAL PPP Legislative Guide developments with respect to the characteristics of PPP and with the other provisions of the Model law itself.</p> <p>The UNCITRAL definition of PPP makes a clear distinction between concession and non-concession PPP based on</p>	<p>Article 2. (x) <i>“Public-private partnership” or “PPP” means an agreement between a contracting authority and a private entity for the implementation of a project, against payments by the contracting authority or the users of the facility, including both those projects that entail a transfer of the demand risk to the private partner (“concession PPPs”) and those other types of PPPs that do not entail such risk transfer (“non-concession PPPs”) meeting the criteria and requirements set out in article 4.3 ;”</i></p>	

¹ Types of comment: ge = general; te = technical; le = legal; ed = editorial

		<p>this market risk criteria which explain the reason concession may deserve a different treatment as a result of taking such market risks.</p> <p>The adoption of the UNCITRAL definition for PPP and consequently of this classification differentiating « concession » and « non-concession PPP » based on the sole criteria of transfer of demand risk and not the remuneration (like EU Directives which refer to operation risk, larger than demand risk).</p> <p>This alignment on the definition of PPPs in the Model law with the definitions of UNCITRAL oblige to take the market risk criteria rather than the remuneration criteria. As a matter of fact, in the real life it does not make much change as concessions are usually user paid and non-concession PPP government pay except with few exceptions (shadow tools).</p> <p>Definition of PPPs of UNECE from the 2008 Guidebook “On Promoting Good Governance In Public-Private Partnerships”:</p> <ul style="list-style-type: none"> • <i>“PPP refer to ‘innovative methods used by the public sector to contract with the private sector, who bring their capital and their ability to deliver projects on time and to budget, while the public sector retains the responsibility to provide these services to the public in a way that benefits the public and delivers sustainable development and an improvement in the quality of life’.”</i> <p>This last portion of the sentence is taken into account for the definition of PfPPP to underline its people first specificity.</p>		
Nov.2021	236 to 244	A clear simple provision stating that reference to PPP apply to both concession and non- concession PPP and that where concession is specifically mentioned it does not apply to non- concession PPP should replace the	Article 4.2 « PPP Main Characteristics. Reference to PPP in the draft Model Law apply to both concession and non- concession	

¹ Types of comment: ge = general; te = technical; le = legal; ed = editorial

	<p>following confusing provision of Article 4.2 which could be used to challenge the validity of a PPP agreement complying with the definition of PPP and the criteria of Article 4.3.</p> <p>4.2 « PPP Main Characteristics” <i>“A PPP project involves a contract structured around functional specifications and performance indicators, providing for a fair allocation or sharing of risks and rewards between the parties based on the common objective of best serving the public interest during the project life cycle. The private partner’s compensation is provided either by the contracting authority (often called ‘Public-Payment PPPs’) or by the end users (often called ‘Concessions’) or possibly through a combination of the two. The term of the project is established in such a way that the private partner may amortize applicable costs and make a reasonable profit. PPP projects may involve the creation of tangible or intangible assets that support the delivery of a Public Service.”</i></p> <p>This statement will ensure that a proper balanced approach is given to “user-pays” and “government-pays” models through the reference to concession and non-concession models PPP corresponding to “user-pays” and “government-pays” in common language and in practice with few exceptions.</p> <p>We have plenty of reference to concession in the draft Model Law which shows that the specificity of concessions had well been considered. The same is not true for non-concession PPP for which no specific clause is provided for. This is the reason why we have proposed an additional Article 11.9 t) dealing with the specificity of non- concession PPP and also for concession as far as they benefit partially from public funding or guarantees. (see below).</p>	<p><i>PPP and where concession is specifically mentioned it does not apply to non- concession PPP”.</i></p>	
--	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------	--

¹ Types of comment: ge = general; te = technical; le = legal; ed = editorial

Nov.2021	337	It is suggest to put the private finance reference between brackets as optional as despite the fact that the UNCITRAL PPP Legislative Guide (which is the successor to the Guide for Private Financing of Infrastructure Projects) it is recognized that <i>Affermage</i> /Lease contract which is a form of delegation of public service under the Civil Law system of Administrative law is to be subject to the same treatment than concessions (including by the EU Concession Directive) despite the absence of financing as a result of the fact that its remuneration is like concessions subject to the vagaries of the market.	Article 4.3 (e) <i>[Involve an element of private finance].</i>	
Nov.2021	606 to 607	Make an obligation in the case of Concessions, to pay a particular attention to the following (but without limiting their applicability to other types of PPP as well):	Article 11.9 (s) <i>In the case of Concessions, particular attention shall be paid to the following (but without limiting their applicability to other types of PPP as well):</i>	
Nov.2021	To be added after 634	In order to ensure a proper balanced approach to “user-pays” and “government-pays” models and to enhance the primary focus on the inclusion of the People-first PPP approaches and outcomes it is suggested to add a new paragraph t) to article 11.9 dealing with non-concession PPP and also with concessions benefiting from public financing/funding support or guarantee. This should be done in the same way specific requirements for concessions are dealt with under item s) of the same paragraph 9) of Article 11 to ensure a proper balanced treatment between concession and non-concession PPP. This new subparagraph t)	Article 11.9 (t) <i>In the case of non-Concessions PPP as well as for concession with public funding in the form of loan or equity, grant or subsidies or other public participation in the financing or the funding or of public guarantees or where contingent liabilities is to be supported by a public entity (the concerned PPP) , particular attention to be given to capital and operating costs, affordability, and long-term sustainability for the whole life of the contract period (including fiscal sustainability, budgetary implications and any public-sector contingent liabilities), and particular attention shall also be</i>	

	<p>underlies the subject matters for which particular attention shall be paid (but without limiting their applicability to other types of PPP as well).</p> <p>For these non-concession PPPs or concessions including some public funding or guarantee new People first additional oriented provisions should be added to enhance primary focus on the inclusion of the People-first PPP approaches and outcomes based on “Legislative Provisions for People-First Public-Private Partnerships” proposed by Motoko Aizawa on 6 August 2020 not yet incorporated.</p> <p>Non-concession PPPs deserve specific attention as they are depending on public funding which increase the required level of accountability of the decision makers both with respect to their financial sustainability along the entire life of the project and as far as economic, social or environmental impact are concerned. The same also apply for concessions as far as they benefit partially from public funding in the form of loan or equity, grant or subsidies or of public guarantees or where contingent liabilities are to be supported by a public entity. In all such cases of non-concession PPP and concession depending on public funding or guarantee (the concerned PPP), particular attention should be given to the proper treatment of SDG. As a result of such funding the government has good reasons and is in good position to impose the proper level of social, economic and environmental impact for such projects.</p>	<p><i>paid to the following (but without limiting their applicability to other types of PPP as well):</i></p> <p><i>i) Implementation of the people-first objective of PPPs.</i></p> <p><i>Concerned PPP projects shall demonstrate that they are structured and implemented to achieve the five ‘people-first’ outcomes specified in the Preamble. To this end, PPP project shall:</i></p> <ul style="list-style-type: none"> <i>- specifically recite the five outcomes as part of its objective;</i> <i>-in addition to other studies and assessments required during the project preparation stage, (a) assess with a particular attention its potential social, economic and environmental impact, and (b) its “value for people”.</i> <i>- include measures in its management plan to avoid, minimize, mitigate or compensate for the negative impacts and enhance the positive impacts, and to achieve the five outcomes, consistent with the findings of the social, environmental and economic impact assessment;</i> <p><i>ii) Local economic development and skills and technology transfer:</i></p> <p><i>Concerned PPP projects shall prefer local goods, services and labour, provided that the conditions of price, quality, delivery time and terms of payment are similar to those from non-national sources.</i></p> <p><i>Projects shall offer training programs designed to enable local participation in projects through a range of positions and skill levels. These local economic development initiatives shall pay particular attention to women’s employment and entrepreneurship and prioritize women-owned businesses in procurement. In addition, they shall promote opportunities for skills, know-how and technology transfers.</i></p> <p><i>As part of the project undertakings, concerned PPP project shall develop a community development agreement with the relevant communities, especially</i></p>	
--	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--

¹ Types of comment: ge = general; te = technical; le = legal; ed = editorial

			<p><i>those negatively affected by the project; alternatively, the project shall create a community development plan, and shall ensure through the PPP contract that benefits under such plan are legally enforceable by the relevant communities as third-party beneficiaries.</i></p> <p><i>iii) Social Impact Assessment: The social impacts of concerned PPP project shall be assessed in accordance with the relevant host country's law and the applicable international standards to be identified by the project. Such impact assessment process shall identify the project's potential negative impacts on people, such as impacts on workers, impacts from physical and economic displacement, impacts on community health, safety and security, impacts on indigenous peoples, and on cultural heritage, as applicable, and propose one or more management plans, which shall also include an emergency response plan to respond to disasters so as to avoid and minimize the disaster's impacts on people, the environment and the project assets. Such assessment shall be subject to the approval of the competent authority of [the host state].</i></p> <p><i>iv) Access and equity in public service infrastructure: Where the concerned PPP involves or relates to the provision by the private partner of services to the public, the project shall ensure safe and secure physical access to services by all stakeholders and members of the public expected to access such services, without discrimination, and making accommodations for the differentiated needs of stakeholder groups, and their ability to pay for services, including women, older persons, persons with disability, and those who are poor, marginalized or vulnerable. Discriminatory practices that negatively affect access to services by customers and members of the public, such as</i></p>	
--	--	--	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--

¹ Types of comment: ge = general; te = technical; le = legal; ed = editorial

			<p><i>redlining, are prohibited. PPP shall consider opportunities to reverse past inequities and discrimination in public service provision and avoid creating new vulnerable groups, using appropriate assessments, such as stakeholder identification and needs assessment and social impact assessment.</i></p> <p><i>iv) Environmental Impact Assessment: The environmental impacts of a concerned PPP project, including the climate change aspects, shall be assessed in accordance with the [host country's environmental law] and the applicable international environmental standards to be identified by the project. Such impact assessment process shall identify the project's potential negative impacts on air, land, soil, water, and biodiversity, and natural disaster risk, as applicable, and propose an environmental management plan, which shall also include an emergency response plan to respond to disasters so as to avoid and minimize the disaster's impacts on people, the environment and the project assets. Such assessment shall be subject to the approval of the competent authority of [the host state].</i></p> <p><i>Such special attention at the time of feasibility study shall be reflected at the time of contract award through prequalification requirements and bid notation.</i></p> <p><i>Compliance with these requirements should be monitored during the term of the contract to assess that the project under development is in line with these project's requirements and the terms of the contract.</i></p>	
Nov.2021	To be added after 727	As far as Stakeholder involvement is concerned People first additional oriented provisions could be added to enhance primary focus on the inclusion of the People-first PPP approaches and outcomes with further consideration of the involvement of stakeholders at all	<p>Article 12 .7. Stakeholder identification and needs assessment: During the PPP [preparation] [appraisal] stage, the appropriate line ministry / state agency shall carry out stakeholder identification and needs assessment, with a special</p>	

	<p>stages of the PPP development process based on the Legislative Provisions for People-First Public-Private Partnerships proposed by Motoko Aizawa on 6 August 2020 not yet incorporated. Such provisions can be added with or without brackets at the end of Article 12. “Appraisal and Approval Procedures” as new paragraphs 7,8 and 9.</p>	<p>focus on the poor, marginalized or vulnerable stakeholder groups, and those currently with no or insufficient or inadequate access to the proposed infrastructure service. Such assessment shall propose measures to reverse past inequity and exclusion of the relevant stakeholder groups, and to enhance equity and inclusion of all end-users of the public service. Such assessment may be carried out as part of the project’s social, environmental and economic impact assessment, or as a free-standing assessment to complement the former. Regardless of the modality of assessment, the PPP project shall monitor its implementation of the proposed measures, collect relevant data, and report on its implementation publicly.</p> <p>Article 12. 8. Stakeholder engagement: The PPP project shall regularly consult with stakeholders and the general public during all project phases, from planning, preparation, implementation to project closure, in order to receive feedback from the participants on project risks, impacts and opportunities. Such consultation may take the form of public hearings, community meetings, or targeted stakeholder group consultations, as appropriate, and as required by applicable law or the PPP regulations. During project operations, consultation shall take place in connection with new project activities or change in project circumstances, which could pose new risks and impacts on people. The consultation process shall be structured to enable a genuine dialogue on all issues of concern to participants, free of manipulation, interference, coercion or intimidation, and based on prior disclosure and dissemination of relevant, objective, meaningful and easily accessible information, which is in a culturally appropriate format and languages understandable to stakeholders. Additional measures shall be required to respond to the needs of vulnerable or marginalized stakeholder groups[,</p>	
--	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--

¹ Types of comment: ge = general; te = technical; le = legal; ed = editorial

			<p>and in the case of consultation indigenous peoples, the process of free, prior and informed consent[, as defined in the law of [the host state] [the PPP regulation] [a reference to international instrument] shall be required]. Key points raised by stakeholders shall be accurately recorded and responded to as appropriate.</p> <p>Article 12. 9. Stakeholder participation in assessment and monitoring: Stakeholders shall be invited to participate in the social, environmental and economic impact assessment and in the process of monitoring project performance on matters of direct concern to them.</p>	
Nov.2021	To be added after 820	<p>With respect to Unsolicited proposals under article 14, in order to enhance primary focus on the inclusion of the People-first PPP approaches and outcomes the Government shall establish stringent controls on the receipt, review and approval of unsolicited proposals in order to ensure proper competition, transparency, and opportunities for stakeholder engagement.</p> <p>This is particularly true for non-concession PPP to be funded by a public authority where the investment to satisfy a public need is proposed by a private initiator. Unsolicited proposal referring to projects which are not part of investment plans or of the contemplated ways to satisfy an acknowledged public need or to perform a public service may be excluded (draft provision 8(i))</p> <p>The system of control of unsolicited proposal shall in all cases align with the proposed provision added as paragraph 8 ii) to v) to Article 14 based on the Legislative Provisions for People-First Public-Private Partnerships proposed by Motoko Aizawa on 6 August 2020 not yet incorporated. Such provisions can be added with (optional) or without brackets.</p>	<p>Article 14. 8. Government shall establish stringent control of unsolicited proposals</p> <p>[(i)The contracting authority shall not proceed with an unsolicited proposal with respect to a non-concession PPP except if it can justify to the PPP Unit why it should consider an unsolicited proposal which was not part of its investment plans or of the contemplated ways to satisfy an acknowledged need or to perform a public service.]</p> <p>(ii) Unless it organizes a competitive procurement that is open to all potential bidders, the contracting authority invites competing proposals, and provides sufficient time for other potential bidders to develop their proposals.</p> <p>(iii) In the exceptional circumstances that an unsolicited proposal is not able to attract market interest and competition and is directly negotiated with the proponent, the contracting authority shall implement rigorous negotiation procedures that include certain key criteria including a value for people determination;</p> <p>(iv)The contracting authority shall not allow unsolicited proposal proponents to claim confidentiality on the basis of proprietary information or intellectual property without sufficient evidence to support such assertion; and</p>	

			(v)The contracting authority shall implement a high standard of disclosure, requiring disclosure of all relevant project information, including the fact that the proposal is unsolicited, and provide public notice [using the PPP disclosure platform described in __] that an unsolicited proposal has been received and is under review.	
Nov.2021				

Comment Submitter	Don Wallace	E-mail	Wallace@ili.org	Delegation / Organization	Professor of Law, Georgetown University, and Chairman, International law institute	Date submission	24.01.2022
--------------------------	-------------	---------------	------------------------------------------------------	----------------------------------	------------------------------------------------------------------------------------	------------------------	------------

Draft version number	Line number	Comments	Proposed changes	Team Leader Response
	General	The draft is excellent, the result of long deliberation, revision and refinement, by a group of highly experienced lawyers and developmental practitioners, Enough time has now been spent, the need for the Model, as we adjust to and emerge from Covid, and cope with climate change and the need to mobilize invest, is great. Let us finally conclude the project and move on.		

Comment Submitter	Iryna Zapatrina	E-mail	irina.zapatrina@gmail.com	Delegation / Organization	Chairman of the Board of Ukrainian PPP Centre, a member of the PPP Working Group	Date submission	25.01.2022
--------------------------	-----------------	---------------	--------------------------------------------------------------------------	----------------------------------	----------------------------------------------------------------------------------	------------------------	------------

Draft version number	Line number	Comments	Proposed changes	Team Leader Response
	General comments	In my opinion, today the text of the Model Law takes into account all the significant comments that were made during its consideration and revision. And it is very important to consider and approve this document as early as possible in order to be able to distribute it among legislators and public authorities of developing economies who are working to improve their PPP legislation in the face of serious global challenges (pandemic, political and social conflicts, climate change), complicating the achievement of Sustainable Development Goals		

Comment Submitter	W.A. Timmermans	E-mail	timmermans@tsibl.com	Delegation / Organization	Legal counsel and arbitrator Timmermans & Simons International Business Lawyers	Date submission	25.01.2022
--------------------------	-----------------	---------------	----------------------------------------------------------------	----------------------------------	---------------------------------------------------------------------------------------	------------------------	------------

Draft version number	Line number	Comments	Proposed changes	Team Leader Response
	General comments	I have gone through the latest version of the model law and although I was not in favour of keeping our draft up for yet another review I find that the latest draft has undergone some major improvements which have clearly contributed to a still better quality. I am sure further amendments will not result in a better text. Moreover, it will unnecessarily delay the publication of the Model Law which – in my view – has taken already too long. I think we now have reached the status of a perfect balance between the highest standards of quality and the time factor. Otherwise, we would risk to get stuck in the situation for which Montesquieu already warned: ‘Le mieux est l’ennemi du bien’ (often attributed to Voltaire).		

Comment Submitter	Lucie Berger	E-mail	Lucie.BERGER@eeas.europa.eu	Delegation / Organization	EU Delegation to the UN and other international organisations in Geneva	Date submission	02.02.2022
Draft version number	Line number	Comments				Team Leader Response	
	General comments	<p>UNECE draft Model Law in relation to 2014/23/EU and the EU public procurement Acquis</p> <p>Main overview One of the main concerns with regard to the proposed Draft standard on People-first PPP/Concession Model law refers to its scope, which goes beyond the concept of ‘concession’ as set out in Directive 2014/23/EU of the European Parliament and of the Council on the award of concession contracts. As stated in article 1.2 of the draft Model Law, it ‘(...) applies to all forms of PPP, as defined in this law, including those referred to or described as ‘concessions’ or ‘user charge’ projects, those referred to or described as ‘government pay’ or ‘PFI’- type projects, other forms referred to by other labels or acronyms, and those that involve a transfer of demand risk to the private partner as well as those that do not. (...)’ . Further, the ‘PPP regulations’ mentioned in Article 1.2 of the draft Model Law are different from the ‘Implementing regulations’ mentioned in Article 3.2 of the draft Model Law and from the ‘PPP Guidelines’ mentioned in the same Article 3.2 of the draft Model Law. Such non-concession PPPs could, in principle, fall under the remit of other EU public procurement Directives (for EU Member States but also for acceding/associated countries under their alignment/approximation obligations). There is a clear risk that this could create confusion (and conflict) in view of the sensitivity of the issue, even though the provisions of the respective Association Agreements are clear as to the alignment requirements. The presentation of the provisions in the form of a Model Law (instead of recommendations, for example) could increase the above-mentioned risk. Article 4.1 of the draft Model Law provides that any PPP project (as enumerated under Article 1.2) undertaken in the host country shall comply with all applicable requirements of the Model Law. Article 15.2 however states that “the public procurement laws and regulation in force in [host country] [shall/shall not] apply to the award of PPPs, except where and to the extent this law (or any subsequent law) specifically provides otherwise”. The above ambiguity would justify that the law in force in the country (Member State) should not apply to PPPs in the absence of uniformity between Article 1.2, 4.1 and 15.2 of the draft Model law. Moreover, Article 39 of the draft Model Law further assumes that all PPP contracts concluded before its effective entry into force will fall, retroactively, under the scope of monitoring and reporting obligations of the Model Law. Article 40.2 mandates that in case of conflicts arising between the Model law and that of the host country, the Model Law prevails. Article 41.3 ‘deadline for consequential revisions’ gives the</p>					

	<p>government the power to repeal or replace any prior laws that do not conform to the Model Law. This would in our view be incompatible with Directive 2014/23/EU.</p> <p>1.1 Sectoral Coverage</p> <p><u>Concessions Directive 2014/23/EU</u></p> <p>The Directive applies to both services and work concessions with a broad sectoral coverage. However, services concessions awarded to a contracting authority or to a contracting entity (per Article 7.1(a)) and services concessions awarded to an economic operator on the basis of an exclusive right granted in accordance with the TFEU (also Union acts establishing common rules related to activities found in Annex II) fall outside the scope of 2014/23/EU.</p> <p>Articles 10.5-7 also list specific exclusions in the field of defence and for national security reasons pertinent to the interest of Member States. Article 11 deals with specific exclusions in the field of electronic communications while Article 12 excludes the water sector in lieu of a provision allowing Member States to determine SGEIs in their territory.</p> <p><u>UNECE draft Model Law</u></p> <p>Article 6.1.2 does not explicitly mention a list of sectors excluded from the draft model law. Moreover, it does not provide for any definition of exclusive/special rights nor do any exemptions or derogations to the draft Model Law based on any such definitions.</p> <p>1.2 Definitions</p> <p>Value for money/value for people</p> <p><u>Concessions Directive 2014/23/EU</u></p> <p>In accordance with the EU procurement/concession directives, selection and award criteria (and specifications) must be linked to the subject-matter of the procurement/concession. The GPA (see Article X(9) on the evaluation criteria) includes an indicative list of evaluation criteria ('The evaluation criteria set out in the notice of intended procurement or tender documentation may include, among others, price and other cost factors, quality, technical merit, environmental characteristics and terms of delivery.').</p> <p><u>UNECE draft Model Law</u></p> <p>In the introductory text for Chapter IV of the draft Model Law, the 'value for people and society' is mentioned as a 'fundamental principle' for the procurement process. Further, the 'value for people and society' is defined as 'comprising the fundamental principle of "Value for Money" (economy and efficiency), alignment with the UN Sustainable Development Goals (SDG), and taking into account, in addition, the satisfaction of the users of the service during the project life cycle and the contribution of the project to economic development in accordance with the government's objectives'. Also, SDG requirements are included in the contractual terms set out under point xlix) of Article 24.1 of the draft Model Law.</p> <p>Sustainable development aspects seem to be covered in a fairly comprehensive (though generic) manner in the draft Model Law, which requires to take them into account in the preparation and in all phases of procurement and execution. The provisions are formulated in a fairly generic manner with reference to incorporating requirements related to SDGs. EU legislation does not have any specific references to the inclusion of why there are SDGs.</p>	
--	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--

¹ Types of comment: ge = general; te = technical; le = legal; ed = editorial

	<p>The concessions directive provides that the requirements in the tender documents are linked with the subject-matter of the concession. Nothing similar is taken into account in the draft Model Law. In order to ensure consistency with EU law; it would be important to ensure that any reference to alignment with SDGs is clearly linked to and focus on the subject matter of the Contract. The GPA may provide some inspiration in this sense).</p> <p>1.3 Concessions <u>Concessions Directive 2014/23/EU</u> The difference between works/services concessions is defined under Article 5.1(a) (b) including the assumption that the concessionaire assumes operating risk and no guarantee of recouping profits.</p> <p><u>UNECE draft Model Law</u> Article 30.4 of the draft Model Law seems to put in question the transfer of operating risks to the concessionaire. Article 33.3 of the draft Model Law lets private partners define ‘permitted security’ or the right to grant/create any form of security interest over its assets/rights/investments dealing with the PPP project. Also no strict definition of a concession other than Article 2 (xvii) as ‘funded by users of the infrastructure.’</p> <p>1.4 Equal treatment/non-discrimination/Transparency Various provisions of the draft Model Law raise questions as to the respect of the principles of transparency, equal treatment and non-discrimination (with regard to the provisions of the EU concession directive, which could affect the effective participation of economic operators from the EU). In particular:</p> <ul style="list-style-type: none"> • Unsolicited proposals – The initiation of PPPs by a ‘private initiator’/‘unsolicited proposals’ (Article 11.2 of the draft Model Law – see also Articles 14, 15.1 and 21 of the draft Model law) poses questions of transparency/equal treatment between economic operators which are fundamental principles of EU law. This could also be the case for GPA-covered procurement with regard to Article XIII GPA setting out the cases where limited tendering is allowed. • Closed tenders – The provision on ‘closed tenders’ in article 16.2 of the draft Model Law does not seem to be in line with article 31.4 of the EU concessions directive on exceptions from the publication of concession notices. • Direct Negotiations – Article 22.1 of the draft Model Law, and in particular points b) and c) thereof, provide for more possibilities for exceptions from the tendering procedure than the EU Concessions Directive (the exceptions set in article 31.4). • Contract modifications – Unlike the Concessions directive (article 43(4) and (5)), substantial modifications of concessions could be allowed, even without a new tender procedure, subject to the approval by a competent body designated for this purpose(Article 25.2(a) and (b) of the draft Model Law. <p>1.5 Types of publication notices <u>Concessions Directive 2014/23/EU</u></p>	
--	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--

¹ Types of comment: ge = general; te = technical; le = legal; ed = editorial

		<p>As a general rule, contracting authorities are required to publish contract notices, and exceptions are allowed only in specific circumstances (e.g., existence of an exclusive right or IP right). Contract award notices need to be published no later than 48 days after award. In both cases, publication is ensured at EU level (in the Official Journal of the EU) and is based on standard forms (Article 33 of Concessions Directive). <u>UNECE draft Model Law</u> As opposed to the Directive, the Model law provides for eventual publication of the contract award on the contracting authority website (article 20.3). There are discrepancies between the requirements of article 10.4 of the draft Model Law and article 40 of the EU concessions directive on the provision of information to candidates and tenderers. In particular, unlike the Concessions Directive and the provisions of article XVI of the GPA on Transparency of Procurement Information, the Model law does not allow for the possibility of the economic operators to receive upon request, information of the characteristics and relative advantages of the tender selected.</p> <p>1.6 Duration <u>Concessions Directive 2014/23/EU</u> Duration of a concession shall be limited and estimated based on works/services requested. In case of concessions exceeding 5 years, a maximum duration shall be calculated as the time that the concessionaire could be expected to recoup the investment together with a return on investment. <u>UNECE draft Model Law</u> Under Article 8.1.2 minimum or maximum terms both undefined. Terms may also be extended in exceptional circumstances, but no maximum duration is provided for. In addition, Article 8.4 further permits the extension of asset ownership by a private party indefinitely beyond term limits of agreement.</p> <p>1.7 Thresholds <u>Concessions Directive 2014/23/EU</u> EUR 5 382 000 based on turnover of concessionaire over duration net of VAT. <u>UNECE draft Model Law</u> Article 4 (3) '[insert minimum value]' pursuant to relevant methodology although unclear as to what. This may imply that concessions below the EU threshold are to be covered.</p> <p>1.8 Further points and discrepancies</p> <ul style="list-style-type: none"> • Article 2(xvii): It is not clear what is meant in practice by the reference to the PPP being 'designed to implement the Sustainable Development Goals'. • Article 16.10 of the draft Model Law could be considered as going beyond the negotiations limits set in article 37.6 of the EU concessions directive. 	
--	--	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--

Comment Submitter	Italian PPP Unit	E-mail	c.clement-davies@virginmedia.com	Delegation / Organization	Italian Government - Presidency of the Council of Ministers -	Date submission	08.02.2022
--------------------------	------------------	---------------	----------------------------------------------------------------------------------------	----------------------------------	---------------------------------------------------------------	------------------------	------------

				Department for the planning and coordination of economic policy		
Draft version number	Line number	Comments	Proposed changes	Team Leader Response		
1	Article 2 “Key Terms and Definitions” (xxix) “Sustainable Development Goals”	In order to better implement “The 2030 Agenda for Sustainable Development” in particular “Our shared principles and commitments”	“Sustainable Development Goals” or “SDGs” means those goals and objectives for sustainable economic, and social and environmental development for the general good adopted and published by the United Nations in the general assembly resolution 70/1 “transforming our world: the 2030 agenda for sustainable development” (A/RES/70/1), united nations, 2015, and in the context of this law specifically refers to those goals and objectives related to PPPs (including the People- first PPP principles) set out therein. In particular, sustainable economic, social and environmental development implies the defeat of poverty in all its forms and dimensions, the fight against inequalities, the protection of the planet, the creation of lasting economic growth, open to all and sustainable and the promotion of social inclusion as linked and interdependent elements.			
2	Article 2 “Key Terms and Definitions” (xxi) “Private Partner”	In order to better implement “The 2030 Agenda for Sustainable Development” – in particular Means of implementation n. 41	“Private partner” means any legal entity or person [(including where applicable a public entity acting as a commercial entity] retained by the contracting authority to implement a PPP project under a PPP contract, including also - where the subject of the contract allows it – micro enterprises, civil society organizations and nonprofit and philanthropic organizations.			
3	Article 15.5 Procedures for Selection of Private Partner - Pre-	In order to better implement “The 2030 Agenda for Sustainable Development” – Goal 8 “Promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all”	Relevant experience and track-record, technical and professional proficiency and capabilities, financial and human resources, appropriate (dedicated) managerial and organizational capacity and skills covering the full range of relevant PPP tasks (including environmental responsibilities), ethical standards, legal capacity and			

¹ Types of comment: ge = general; te = technical; le = legal; ed = editorial

	Qualification / Selection		standing, solvency, structure of consortium, relative consortium strengths, sustainable Governance pursuing one or more of the following objectives: i) enhancement of people, encouraging constant development of skills and professionalism and recognition of the individual contribution to the success of the organization, ensuring full gender equality; ii) people wellbeing with work and family life balance policies and welfare initiatives, iii) sensitivity to the social context, with participation in welfare, cultural and sporting initiatives; iv) support internal technological development, research and innovation; v) reduction of environmental impacts	
4	Article 15.5 Procedures for Selection of Private Partner – Tender Evaluation and Contract Award	In order to better implement “The 2030 Agenda for Sustainable Development” – Goal 9 “Build Resilient infrastructure, promote inclusive and sustainable industrialization and foster innovation”	Tender Evaluation and Contract Award: value propositions, technical quality (including soundness and innovativeness) of proposal, quality of services and measures to ensure their continuity, operational feasibility, relevant environmental and socioeconomic criteria (also with reference to the ability of the project to generate inclusive and sustainable urbanization and a human settlement that is participatory, integrated and sustainable and to the experience gained in the previous implementation of reliable, sustainable and resilient projects that generate inclusive and sustainable urbanization and a human settlement that is participatory, integrated and sustainable); risk allocation, pricing terms (including the value of the proposed tolls, and tariffs, fees or contracting authority payments, as the case may be, evaluated on an appropriate basis), other commercial terms, costs (whether capital or operational), the nature and extent of any public sector support sort, qualifications to terms and conditions of contract, structure and quality of management team, strengths of financial plan and availability of committed finance; together with such other matters as may be specified in the PPP regulations from time to time. The tender criteria and evaluation methodology shall be clear, transparent, non-discriminatory, reasonably appropriate for each PPP and consistent with the criteria applied and conclusions reached in appraising and approving the PPP project	

¹ Types of comment: ge = general; te = technical; le = legal; ed = editorial

			pursuant to Article 12 (as reflected in its implementation resolution).	
--	--	--	-------------------------------------------------------------------------	--

Comment Submitter	Christopher Clement-Davies	E-mail	christopher@clement-davies.com	Delegation / Organization	Christopher Clement-Davies	Date submission	07.02.2022
--------------------------	----------------------------	---------------	------------------------------------------------------------------------------------	----------------------------------	----------------------------	------------------------	------------

Draft version number	Line number	Comments	Proposed changes	Team Leader Response
1	General Comment		<p>The draft is now in extremely good shape, after several years of hard work, analysis and discussion by a range of eminent experts in this field. It has been through many iterations. It now reflects a broad and balanced consensus amongst those experts. It is very much in line with the requirements formally articulated for it on behalf of the UNECE Working Party on PPPs last year. I would strongly counsel against making further substantive changes to it, or the process may become never ending! It is time to wrap it up.</p> <p>No model document is ever quite perfect; new improvements and refinements can always be thought of and made. We must not let 'the best become the enemy of the</p>	

			<p>good'. There will be scope for further amendments in future anyway. New versions can always be produced in time, but this should be as a result of clear necessity, consensus and market reactions to the document as it stands (as with the UNCITRAL forms). This should not stand in the way of its formal adoption by the Working Party now as a UN Standard, which it already fully deserves to be. I have suggested a very few final drafting changes below (and in a separate mrk-up), to clear up some small wording 'glitches' and anomalies. I will leave these to the discretion of the draftsmen.</p>	
2	83	<p>Definition of "Economic and Financial Viability". This still does not work in drafting terms and is not consistent with the way the expression is used in the document</p>	<p>The term does not need to be defined. The different meanings of the expression are sufficiently clear in context.</p>	
3	96	<p>No need for the square brackets around 'feasibility study'. The usually approach reflected in PPP regulations these days is to call the initial studies accompanying the PPP identification and preliminary assessment process a 'pre-feasibility study', and the detailed report that then sets out its full definition a 'feasibility study'.</p>	<p>Remove square brackets and consider adding a reference to 'pre-feasibility study' in the article dealing with project identification and identification report.</p>	
4	115	<p>Definition of Inter-Ministerial Committee. Given that a few contributing experts had reservations about the way the expression 'Inter-ministerial committee' is used in the document, it might make sense to use instead the expression 'approving body', and say in the</p>		

		definition that this may include an Inter-Ministerial Committee or equivalent body if the host country so decides.		
5	176	Definition of PPP Unit. There were also some reservations in discussion about the extent of the powers allocated to the PPP Unit in the document, as it was thought that this often went beyond the role typically prescribed for such a body, which is essentially supportive and advisory.	The solution to this is to square-bracket those powers and responsibilities, and make it clear in the Commentary that these need to be thought about and decided on by the host country in each case. An example of this would be the definition of 'Tender Committee', where the words 'the PPP Unit and...' could be square-bracketed.	
6	199	Tender Committee definition	See previous comment. The PPP Unit would not usually take the lead in setting up the Committee. The Contracting Authority would, but perhaps with the Unit's help/ oversight. Reverse the order in which they appear, and square-bracket the reference to the PPP Unit.	
7	269 (Art 4.3(e))	PPPs do not always need to involve an element of private finance (at least in theory)	Add the words '(where required)' at the end of this reference	
8	309-318	The second sentence of this paragraph refers to the possibility of extending the duration of the contract term in exceptional circumstances outside the terms of the contract. This is only likely to be the case where local law so permits, perhaps with a body of well-defined case law or legal rules to regulate the right (as in France)	Add the words 'where permitted by applicable law'. The financial model referred to here should also be the one reflected in the PPP contract (rather than the Contracting Authority's model used for award purposes),	

9	355-378 (last para of 'placeholder' introducing Chapter II)	The cross-references are not quite accurate, as the matters referred to are not actually provided for in this Chapter. Please adjust the drafting.	Tidy references and relevant wording.	
10	381 (Art. 9.1)	See comments about Inter-Ministerial Committee under definitions above	See comments above	
11	619-20 (Art. 11.9(b))	The drafting should reflect the reality that most countries will continue applying a 'VfM' test to their PPPs, in addition to a 'Value for People' one, as the former focuses on cost and financing structure, whereas the latter is directed essentially at the wider purpose and characteristics of a PPP	Add a reference to 'value for money' after the reference to 'value for people'.	
12	678 et seq (Art. 11.9(s))	The last 3 or 4 sub-clauses here refer to matters which are just as relevant to government-pay as user-pay PPPs. (It also makes sense in drafting terms to shorten this paragraph).	Delete these references, as they are not applicable primarily to concessions.	
13	679 (Art. 11.10)	As mentioned above, I think it would be helpful to widen the reference to approval powers to allow for a higher-level approval body as well as the PPP Unit	Refer also to Approval Body (or InterMinisterial Committee) here. (The same comment applies to other similar provisions dealing with approvals).	
14	721 (Art 12.2)	See preceding comment	See preceding comment	
15	848 (Art 14.4)	The drafting could be tidied up slightly to make it clear that the Contracting Authority may still take responsibility for the detailed preparation work of a USP	Tighten drafting	
16	871 (Art 14.5)	Private Initiators must know that their legitimate IP rights will be respected and protected. This is fundamental. (See UNCITRAL clauses)	Changed the word 'consider' to 'respect'. This is consistent with UNCITRAL	
17	958 (Art 16.2)	Consider including definitions of open and closed tenders from earlier draft, since the expressions are used in the text	Consider adding definitions	
18	1301 (Art 21.6)	Another very common form of incentive for USPs is to waive certain bidding conditions which would not make much sense in the case of a Private Initiator	Add new sub-para to allow for this	
19	1545 (Article 25)	Please delete the words 'in the circumstances referred to in Article 24'. Article 24 does not and should not permit or prohibit anything. It is illustrative and empowering.	Delete words in square brackets, which do not make sense legally and give the	

			wrong impression of Article 24's meaning and effect.	
20	1834 et seq (Art 32)	The drafting needs to make it clear that these provisions can apply to any type of PPP, where public service contracts are involved.	Widen drafting slightly	
21	General drafting	Some of the introductory sentences to some of the Articles appear a little strange and unhelpful, as they appear in only a few-not all-Articles, and do not always say something informative or even accurate. They are generally more suited to the Commentary than the text.	Re-consider these introductory remarks.	

Comment Submitter	Chris Shugart	E-mail	chris@shgrt.com	Delegation / Organization	Consultant/Advisor	Date submission	08.02.2022
Draft version number	Line number	Comments	Proposed changes	Team Leader Response			
1	General comment	This draft is in nearly final shape. I see no areas where major changes are needed. Any suggested revisions are minor, straightforward, and can be made quickly. There is no need for any further lengthy reviews.					
2	259	Some countries have defined PPPs in this way, but requiring that a PPP must “involve an element of private finance” would probably exclude Design-Build-Operate (DBO) arrangements, which have most of the characteristics of private-financed PPPs, except for the private financing. (I say “probably” because it might be possible to construe “element of private finance” sufficiently broadly to capture DBOs.)	Put Article 4, paragraph 3, sub-paragraph (e) in square brackets, highlighting that the reader has the option of including it or not.				
3	1083–1087	The provision neglects to say that in the first stage of the two-stage procurement procedure, bidders must not submit a complete proposal – in particular, they must not give a proposal of <i>price</i> (or functionally similar value). This is crucial to the soundness of the two-stage procedure. Otherwise, the procedure is more conducive to manipulation to select a pre-favoured bidder. Article 48 of the UNCITRAL Model Law on Public Procurement, the precedent behind this provision, states that in the first stage the proposal is “without a tender price”, and in the second stage, bidders present “final tenders with prices”.	In Article 19, paragraph 8, sub-paragraph (a), add a final sentence as follows: “The initial proposal and comments shall not include the proposed price or any other proposed value or values that will be evaluated in the second-stage of the tender evaluation process				

		For the model PPP law, “price” needs to be expanded to include values that are used like price in the quantitative evaluation of the PPP tender.	using the quantitative evaluation criteria.”	
4	1714–1790	<p>Art. 32 should not apply exclusively to Concession style PPPs.</p> <p><i>First</i>, to the extent that a Public-Payment style PPP involves a public service, some or all of the three classic principles (in para. 1, sub-para. (a)) will apply.</p> <p>(Note that some countries sometimes use government-pay PPPs to directly deliver public services; these PPPs are in all respects like concessions, except that the government pays the private partner.)</p> <p><i>Second</i>, many of the provisions of Art. 32 should apply to <i>all</i> PPPs. E.g. in sub-para. (b), <i>any</i> PPP contract should be designed so as to make the PPP viable. And in sub-para. (e)(i), the details of asset transfer should be specified in <i>any</i> type of PPP contract (where relevant).</p> <p>Yet because Art. 32 is specified as applying solely to Concessions, it might be thought that these provisions do not apply to Public-Payment style PPPs.</p> <p>It is true that para. 4 of Art. 34 (lines 1850–1861) repeats the three classic principles and applies them to all PPPs involving public services, but why is the text in Art. 34 much more abbreviated than the text in Art. 32? Does that signal a difference in approach for Concessions as opposed to non-Concession PPPs? It should not. All of this will be unnecessarily confusing to many readers.</p>	<p>— Change the headings and text so that the provisions of Art. 32 do not apply only to Concession style PPPs.</p> <p>— In paragraph 1, replace “Concessions” in the heading with “PPPs”. And begin the text of sub-para. (a) with: “With respect to Concession style PPPs and, as relevant, to Public-Payment style PPPs involving public services, equality of treatment for the users [... <i>etc.</i>]”.</p> <p>— The drafting should make it clear that sub-paragraphs (b)–(e) apply to all PPPs, as relevant.</p>	
5	1745–1753	<p>The start of Art. 32, para. 1, sub-para. (b) correctly speaks of how the contract should be “designed” (i.e. the set-up of the PPP at its start). But sub-para. (b)(i) says that tariffs and charges should be “adjusted” to enable the private partner’s performance of its obligations. Given the language in lines 1748–1749, it is reasonable to assume that this means adjusting tariffs so that the project is financially viable, including an appropriate rate of return for the private partner.</p> <p>But nothing is said about the efficiency of the private partner. Should tariffs be adjusted from time to time to compensate for the private partner’s inefficiency or mistakes? This provision could be invoked by a poorly performing private partner as justification for government or user support (essentially, to bail it out).</p> <p>In addition, the provision may give the impression (perhaps not intended) that <i>ad hoc</i> adjustments are to be carried out to achieve these ends. But not all PPPs use ongoing regulation by a discretionary</p>	<p>Art. 32, para. 1, sub-para. (b)(i) should be changed to read as follows:</p> <p>“The PPP contract [should][shall?] include principles and mechanisms for setting, calculating, and/or adjusting tariffs and charges payable under the contract so as to enable a reasonably efficient private partner to perform its obligations and deliver any public services over the life of the project.”</p>	

		regulatory body. What is important is how the contract is designed at the start (and in any amendments).		
--	--	----------------------------------------------------------------------------------------------------------	--	--

Comment Submitter	Russian Federation	E-mail	DukarevAA@economy.gov.ru	Delegation / Organization	Department of Multilateral Economic Cooperation and Special Projects Ministry of Economic Development of the Russian Federation	Date submission	10.02.2022
--------------------------	--------------------	---------------	------------------------------------------------------------------------	----------------------------------	------------------------------------------------------------------------------------------------------------------------------------	------------------------	------------

Draft version number	Line number	Comments	Proposed changes	Team Leader Response
1	129-136	<p>Article 2 para (xvii) defines «People-first Public-private partnership» both as «a type of Public-Private Partnership (PPP) designed to implement the Sustainable Development Goals and thereby to be “fit for purpose”» and «an enhanced approach for PPPs that overcomes some of the weaknesses in the way the traditional PPP model has been implemented».</p> <p>We believe that the current definition may cause ambiguous interpretation of «People-first PPPs» including when it comes to government support for People-first PPP projects.</p> <p>See also comment N 10.</p>	<p>We propose to formulate a clearer definition of «People-first PPPs» in Article 2 para (xvii).</p> <p>To this end, we believe that «People-first PPPs» should be considered as a specific PPP model designed to implement SDGs rather than an independent type of PPP along with «government-pay PPPs» and «concessions».</p>	
2	274-275	<p>Article 6 establishes the open-ended list of applicable sectors for People-first PPPs that is inappropriate due to sectoral legislative restrictions.</p>	<p>Since sectoral legislation (e.g. housing legislation) may contain restrictions according to which the conclusion of contracts is not allowed we believe that</p>	

			<p>the Model law should establish the closed list of applicable sectors for People-first PPP.</p> <p>We suggest including following sectors in the list: transport, power generation, public utilities, healthcare, education, culture, sport, tourism, waste management, agriculture, industrial production, IT.</p>	
3	283-285	<p>According to Article 7, the contracting authority may represent more than one public authority, but the implementation of such provision involves addressing range of issues.</p>	<p>Based on legal practice in Russia, we believe that the introduction of the provision requires due consideration of the following issues:</p> <ol style="list-style-type: none"> 1) the distinction of public authorities' rights of property for the infrastructure facility; 2) the distinction of budgetary obligations relating to implementation and termination of contract; 3) the procedure for cooperation between public authorities in case of unsolicited proposal review. 	
4	289-291	<p>We believe that the draft Model law should establish an exhaustive list of criteria to determine the term of contract.</p>	<p>We propose to establish the following criteria to</p>	

			<p>determine the term of contract:</p> <p>1) the period of construction and (or) rehabilitation of the infrastructure facility;</p> <p>2) the payback period of investments in construction and (or) rehabilitation of the infrastructure facility;</p> <p>3) the deadline for the private partner to generate the gross income.</p>	
5	998-999	Taking into account the provisions of Chapter IV according to which PPP tendering procedures shall be designed to promote principles of transparency we assume that electronic tender procedures will contribute to improving the transparency of comprehensive People-first PPP system information.	We consider it relevant to provide the possibility to conduct tender procedures in electronic form in Chapter IV.	
6	1207-1218	Article 21 para 6 provides for offering any appropriate incentive, benefit, or compensation to the private initiator participating in any tender proceedings for the PPP project.	We believe that the draft Model law should also provide for offering reasonable compensation to those private investors which participated in pre-tender initial procedures (as described in Articles 11-12) but did not win a bid.	
7	1216-1218	According to Article 21 , in case of private initiator participation in tender the evaluation score of the private initiator may be adjusted.	We propose to establish that tender documentation must not contain provisions that create preferential conditions for any of bidders in order to ensure tender procedures	

			compliance with competition principles.	
8	1292-1433	Article 24 para 1 contains a wide range of terms in PPP contracts.	<p>We suggest separating the terms of a PPP contract as stipulated in Article 24 para 1 of the draft Model Law for substantial terms and optional terms.</p> <p>The terms set out in sections (iii.), (iv.), (viii.), (ix.), (xiii.), (xiv.), (xxiii.), (xxiv.), (xxviii.), (xlix.) and (li.) of Article 24 para 1 of draft Model Law can be included in the substantial terms of a PPP contract.</p>	
9	1444-1448	<p>The draft Model law contains generally accepted safeguards for lenders (e.g. direct agreement, right to replace a private partner).</p> <p>One more safeguard that is worth adding is offering lenders the right to agree with or block amendments to the PPP contract or its termination.</p>	<p>We propose to amend Article 25 para 2 in the following manner:</p> <p><i>«The parties may amend or vary any terms of the PPP contract or terminate it by mutual agreement at any time, but always subject to its provisions and with the consent of the lender(s)».</i></p>	
10	1691-1713	<p>Article 31 does not provide for special forms and means of government support for People-first PPP projects.</p> <p>See also comment N 1.</p>	<p>We propose to define special forms and means of government support for People-first PPP projects, and (or) to establish the preferential right to receive government support for People-first PPP projects from general list of forms</p>	

			and means of government support.	
11	1916-1925	Article 36 provides for various dispute resolution mechanisms but is silent about dispute resolution through state courts.	<p>Since a dispute may arise out of a public legal relationship, it may be required to be heard by a competent state court at the location of the respondent.</p> <p>In this regard, we suggest integrating into Article 36 para 1 the following text: <i>«This article is without prejudice to any provisions under Applicable law with regard to the use of specific dispute resolution mechanisms, including state courts or any other, which are not referred to in this article».</i></p>	
12	1926-1928	Article 36 para 7 on «Waiver of Sovereign Immunity» regulates it as follows: <i>«The contracting authority shall not to be entitled to any state or sovereign immunity in relation to any differences or disputes under any such contract or document which it has properly agreed to waive thereunder».</i>	<p>We believe that criteria for waiver of immunity referred to in Article 36 should be specified.</p> <p>We suggest establishing two criteria: (1) general criterion according to which a state enjoys immunity when it exercises its sovereign authority in PPPs (<i>jure imperii</i>); (2) special (additional) criterion, which is applied to disputes without distinction between acts of a state done <i>jure gestionis</i> and those done</p>	

			<p>jure imperii in PPPs. The grounds for such disputes may be explicitly provided for in the draft Model Law. They may include disputes arising under a PPP contract with respect to following acts of a state (as «contracting authority»): (a) the exercise of the right of interference; (b) providing budgetary investments; (c) monitoring the compliance of private (foreign) investment with PPP legislation and the achievement of SDGs.</p>	
--	--	--	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--

Comment Submitter	Marc Frilet	E-mail	marc@frilet.com	Delegation / Organization	General Secretary International Center of Excellence PPP Policies Laws and Institutions	Date submission	10.02.2022
Draft version number	Line number	Comments		Proposed changes Proposed changes (no change in the substance) Scope of changes: Addition, deletion, reorganisation and division of the draft in two documents: - Framework Law (Fr Law) - Annex to the Framework Law: Implementing provision (Impl Prov)		Team Leader Response	
1		<p>General</p> <p>Background and involvement of the Specialized Centre of Excellence PPP Policies, Laws, and Institutions (ICE) in the model law making process</p>					

	<p>This draft document submitted to Public Consultation is the final step of the most ambitious program designed by UNECE aiming at developing a Concession/PPP Model Law for use in most countries and sectors irrespective of their Institutional and legal framework.</p> <p>It is the answer of a request of many countries concerned by the poor track record of PPP in numerous situations to adopt laws, regulations and develop contract provisions taking into account in an inclusive manner the key issues, preventing or impairing the development of sustainable PPP contracts and setting the conditions to resolve them.</p> <p>This program was fully in line with the Addis Ababa Action Agenda (AAAA) and the request or expectations of leading international organizations such as UNCITRAL, World Bank and others IFI's, International Bar Association (IBA), OECD, G 20, GIH, International contractors associations and various institutions in many countries.</p> <p>It was clear at the time that it was urgent to clarify the meaning of PPP, identifying much better its two distinctive main family and to aggregate lessons learned permitting to identify situation where in a particular situation PPP deserved to be promoted and implemented.</p> <p>By reference to the above the objective of the UNECE program was mainly to identify how PPP should be planned, prepared, developed and implemented to meet the Sustainable Development Goals. Those type of PPP, innovative in many respects due to the priority for each public service project to satisfy the people needs throughout the project life cycle while meeting the government requirements of global planning for delivery of public infrastructure services ,are referred to as People first PPP (PfPPP)</p> <p>To this end, in addition to its general program, UNECE promoted the creation of several specialized Centre of Excellence. All of</p>		
--	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--	--

¹ Types of comment: ge = general; te = technical; le = legal; ed = editorial

	<p>them are sectors specific with the exception of (ICE) which is specializing on “chapeau issues” ie the design of Pf PPP “Policies Laws and Institutions” valid for all sectors.</p> <p>The development of the Concession/ PPP Model Law program by UNECE started by the organization of a Project Team (to which ICE did not participate) for producing an initial draft submitted to UNECE Bureau in November 2019. This initial draft was submitted to Public Consultation for comments and proposals.</p> <p>ICE has part of its inclusive work program identifying issues, aggregating knowledge, organizing conferences masterclasses and workshops and producing best practice documents, template and standards on the condition of success of PPP meeting the SDGs (referred to as PfPPP) made detailed public comments on this initial draft on January 2020. Those comments acknowledge the merits of the draft and at the same time identify loopholes by reference to the latest development of Pf PPP conditions of success (comprising inter alia several important standards best practices and templates endorsed by UNECE). The CEI expert team proposed in the same public consultation document the related comprehensive list of improvements to be made.</p> <p>By November 2020 most revisions and improvements proposed where under discussion and not yet incorporated in the draft model law.</p> <p>This was acknowledged by the UNECE Bureau which required the CEI to draft a Phase II inclusive Concession/ PPP model law and deliver this document by July 2021(with particular emphasize on the UNECE PfPPP guiding principles, Pf PPP scope and definition, compliance with SDG’s including development on the condition of success of Concession users fees leading altogether to a balanced approach between the two PfPPP families PPP)</p> <p>ICE gathered more of twenty lead international experts from ten countries which delivered an interim report in March 2021 and</p>		
--	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--	--

¹ Types of comment: ge = general; te = technical; le = legal; ed = editorial

	<p>the complete revised draft of UNECE PPP/Concession Model Law on July 23rd 2021</p> <p>(not including the revision of the structure and simplification of the provisions found in the lengthy initial draft law)</p> <p>The Bureau appointed a panel to review this improved draft and to take into account the comments by some Bureau members together with the detailed answers of the CEI for the organization and content of the final draft-</p> <p>The panel did an excellent review of the Phase II improved draft and proposed a long draft having the merits to include all key ingredients for a UNECE Concession PfPPP model law. however due to time and other constraints the panel did not produce the final simple and user friendly UNECE Pf PPP draft model law which in the experience of the ICE PfPPP expert team is essential to have this model law seriously considered and make a large impact (specifically in low and middle income countries).</p> <p>Further recommendations were made by the ICE expert team and some bureau members for drafting the final UNECE model law indicating that the time was no more to review the substance and that the work for delivering the final draft should essentially focus on reviewed organisation of some chapters and articles of the Law , on refining and render consistent several of its provisions , and reducing the length of the document by dividing it into two parts to be approved at the same time by the Member State namely:</p> <ul style="list-style-type: none"> - Part I Framework Concession/PPP Model Law - Part II Annex: Implementing Provisions of the Law. <p>The PPP Bureau acknowledged that the draft was not ready for endorsement by UNECE member state and , and decided to have a maximum input for drafting the final Concession Pf PPP model by submitting the draft reviewed by the panel to the public consultation process.</p>		
--	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--	--

¹ Types of comment: ge = general; te = technical; le = legal; ed = editorial

	<p>This sensible approach permitted ICE to set up a work stream for proposing a complete final revision of this long draft deserving refinement reorganization and simplification, all fully in line with all the comments and advanced work done in the last 3 years by ICE under UNECE umbrella. The agenda included proposals for a division of the draft law into two interrelated documents and precise indication of the rationale to improve, the related changes and most of their detailed wording.</p> <p>The comments and proposals below are the result of exchanges including UNECE Member States and International Legal profession and the Leading International Association of contractors, all supported by an international documentation and research Centre focusing on Public Infrastructure, Public Service Delegation, Concession/PPP and Mining. This has been rendered possible thanks to the involvement of two PHD academics specializing in the matter.</p> <p>The end result is a model law made in two parts; the first one addressing all core issues for any type of Pf PPP, much shorter, user friendly and not reserved to the legal community, the second one developing the implementing provisions already existing in the draft submitted to public consultation.</p> <p>To the extent necessary the ICE experts having participated to the drafting of international regulations and to standard international contracts of similar nature are ready to contribute to the finalisation of the draft by exchanging on the references for underlying comments and proposed changes stored in the Infrastructure Concession and PPP international Research and Documentation Centre to which they have a privileged access.</p> <p>They are also ready to share their views and proposals with any Pf PPP expert proposed by the UNECE Secretariat.</p> <p>ICE estimates that the following comprehensive comments and proposals should easily permit to draft a final UNECE Concession PfPPP model law heart fully endorsed by member's state, and</p>		
--	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--	--

¹ Types of comment: ge = general; te = technical; le = legal; ed = editorial

		making an important and positive impact in member states, within less than 2 month if a proper work stream is organized.		
2	96-98	In all PPP projects, “prefeasibility report” leading to a clear authorisation for the contracting authority to start the procurement phase is necessary.	Delete and replace by the following: “Prefeasibility Report” means the report prepared by the Contracting Authority to be submitted to the Interministerial Committee for authorising the Contracting Authority to initiate the procurement phase	
3	104		Add the following definition: “Implementing Provision” means the provision included in the annex to the Model Law under the title: “Model law Implementing Provisions”	
4	105		Delete and replace by the following: “Implementing Government Regulations” means the government regulations applicable to the planning, preparation, selection, appraisal, procurement and all implementation of PPP (and other related matter) made pursuant to Article 3 from time to time and having a bidding legal effect	
5	150-151	PPP Project lasting often for decades it is essential that , the parties spend time before contract signature to agree on the key economic financial and commercial element which will form the essence of their agreement and an important point of reference during the life of the project	Add. “Project Business Case” means the economic and financial project summary recording the agreement of the parties on key factors, references and indicators for the whole project duration, including capital, operational and financial costs and project income stream together with a fair	

			<i>return of equity and being part of an annex to the contract and subject to regular updating</i>	
6	165-166	Lessons learned indicate that many PPP Project derail early in the operation phase due to a wrong assessment of the reason for selecting PPP over other delivery method for Public Infrastructure services. The objective comparison for a same project between the basket of criteria for selecting the PPP route over other modern delivery methods (such as design and build DB or design build operate DBO) inter alia for their fiscal consequences is an essential feature of PfPPP (for which UNECE has produced an inclusive Pf PPP Evaluation methodology recently endorsed by UNECE members state)	<u>Add.</u> <i>“Public Sector Comparator” (PSC) means the analytic tool made of a series of key indicators and criteria taking into account the overall economic and social objectives of development of the country and SDGs, including future fiscal liability and externalities aiming at assessing whether it is in the general public interest to initiate and develop an infrastructure Public Service project under one of a PfPPP delivery form or other types of public procurement forms involving private participation in public infrastructure service projects</i>	
7	79-80		<u>Delete after the word “obligations”</u>	
8	91-95		<u>Delete and include in Impl Prov</u>	
9	109-110		<u>Delete and include in Impl Prov</u>	
10	115-117		<u>Delete and include in Impl Prov</u>	
11	118-122		<u>Delete and include in Impl Prov</u>	
12	123-125		<u>Delete and include in Impl Prov</u>	
13	129-136		<u>Add at the end</u> “as further defined under Article 4”	
14	159-165		<u>Delete</u> since the substance is now part of Article 4	

15	174-176		Delete the words « with the power to issue”	
16	195		Add the following definition: “ This Law ” means both the first part of the Law: General Provisions and its annex: implementing Provisions	
17	210		Delete and replace by the following title: “ Article 3. PPP Implementing Government Regulations and Guidelines “	
18	236-244	Taking into account the current confusion in many circles (including substantial differences between different department of IFI’S) on the meaning and role of PPP it is essential that the subject matter of the law and key characteristics are expressed in a simple and intelligible manner and in line with lessons learned and progress made in this matter internationally when the objective is to develop PPP meeting the SDG’s. This has been outlined in a set of set of UNECE guiding principles endorsed by the member states and one of the main purpose of the UNECE PPP Centre of Excellence program ending up altogether with the innovative concept of People-first PPP and its main ingredients.	Delete this provision since the substance is now integrated in Article 4	
19	245-261		Delete	
20	263-268	It is important to clarify in the tender documents that the public authority has full authority to develop the project and entre into the PPP contract to avoid misunderstanding at later stage.	Delete and replace as follows:	

			<i>“Any public authority being vested with the authority and duty to provide public services in sectors in which PPP are not prohibited and to enter into contract with private sector for delivering in part or in totality such public service shall justify in the tender document its legal right to develop, procure and implement projects involving assets and/or services of the kind comprised in PPPs, in sectors in which PPPs are permitted under Article 6 below, and to enter into contracts with private sector persons in connection therewith.”</i>	
21	275	This relate to the effective use of PSC and or similar comprehensive evaluation criteria	<u>Add.</u> <i>“provided that the choice of PfPPP delivery form over other forms of private participation in infrastructure projects is duly justified in accordance with the conditions and procedures described in This Law”</i>	
22	287		<u>Add.</u> <i>« subject to any relevant conditions of This Law and implementing regulations”</i>	
23	304		Delete the words <i>“but in contravention of the PPP contract”</i>	
24	312		<u>Add to the title:</u> “For planning and development”	

25	313	<p>Lesson learned indicate many unrealistic views about PPP and especially about PfPPP . The framework law should also play a simple educative role for all, including private sector and legal profession often not used to organize and negotiate a real “partnership” contract for delivering public services .The main driver for People-first PPP and resilient project meeting the SDGs is not so much the lack of public but an inclusion of the project in the government overall infrastructure planning for public infrastructure where several tools for Well Prepared Projects such as PIFRAM or GLOPRAM are helpful to design and implement resilient PfPPP.</p>	<p><u>Add the following</u> (subject to review for consistency with following paragraph) <i>“People-first PPP are an innovative delivery form of global and inclusive contract for long-term participation of the private sector in the delivery of an infrastructure Public Services intended to meet public interest for a long-term period for the project duration. Many underlying conditions deriving from traditional procurement for construction of a public infrastructure or Public Service delivery by the private sector and related contract conditions are applicable to them.</i></p> <p><i>In addition, several specific features and conditions aiming at organizing a long-term balance between the stakeholders interests to be part of durable PfPPP contract (including social and economic objectives of the government as developed in This Law) must govern the planning and development of PfPPP projects.</i></p> <p><i>Due to the decisive role that PfPPPs may play in bridging the public infrastructure service gap in close alignment with the SDGs, PfPPP planning and development should be integrated within a National Public Infrastructure Plan under its public infrastructure division. This plan should include a fiscal transparency process and provide a quantitative assessment of the off-balance sheet sovereign debt resulting from private financing of the project, including contingent liabilities.</i></p> <p><i>The goal is to allocate the most appropriate form for delivery of public infrastructure projects in an orderly and coordinated manner to meet the</i></p>	
----	-----	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--

¹ Types of comment: ge = general; te = technical; le = legal; ed = editorial

			<i>Government's and Contracting Authority's objectives (essentially the choice between the following contract forms all involving private participation in public infrastructure projects: Remeasurement, Design and Build, Design Build Operate, Turnkey, EPCM, Public- Payment PfPPP, Concessions PfPPP).</i>	
26	313-344		<u>Rewrite and simplify</u> to make it consistent with the previous paragraph	
27	358-359		<u>Delete title and replace by the following:</u> <i>"PPP Institutional Framework"</i>	
28	360	It is essential to ensure that the modern requirement for integrity and transparency are expressed clearly. The proposed provisions are already endorsed by Member States as part of the Standards of Zero Tolerance to Corruption in Procurement PPP.	<u>Add.</u> <i>« To ensure full compliance with the integrity and transparency requirements, the activities of project preparation and of procurement shall not be carried out directly or indirectly by the same Competent Body or group of individuals. The activities of assistance, control and regulation shall always remain distinct from activities of preparation, procurement or implementation of a PfPPP project.</i> <i>Integrity and transparency in the process shall be guaranteed by appropriate anti-corruption measures avoiding the risk of conflicts of interest including an integrity charter to be developed in the Implementing Regulations in accordance with the UNECE standard "Zero Tolerance to Corruption in Procurement PPP"</i>	

29	361		<u>Add.</u> “Article 9. 1. PPP Interministerial committee”	
30	361-386	<p>It is important to give to the Committee to which the Central PPP Unit report, the final authority to approve the development of PPP project at each of its of its 3 main stages</p>	<p><u>Delete and replace by the following:</u></p> <p><i>“It is established a PfPPP Interministerial Committee, as part of the Government Body, in charge of designing and approving as appropriate the country National Economic and Social Development Plan or similar types of government long-term planning for public infrastructure. This committee is vested with the authority to promote and monitor the activities of the Central PPP Unit, to approve the creation of Sectorial PPP Units and to evaluate and approve at different stages the development of PfPPP projects and in particular :</i></p> <ol style="list-style-type: none"> <i>1) For the inclusion in an official list of projects to be developed under any PfPPP delivery form;</i> <i>2) For authorizing the Contracting Authority to initiate the PfPPP procurement stage;</i> <i>3) For authorizing, the signature of a PfPPP contract.</i> 	

			<i>The Committee shall also be responsible for establishing institutional mechanisms to coordinate the activities of the public authorities responsible for issuing approvals, licenses, permits or authorizations required for the implementation of PfPPPs in accordance applicable law on the construction and operation of public infrastructure. Provision for any such mechanisms shall be developed in the Implementing Regulations. »</i>	
31	389		<u>Add.</u> Article 9. 2. Creation of a central PPP Unit	
32	389-390	The rationale for creation of a Central PPP Unit and main roles deserve to be clearly expressed.	<u>Delete and replace by the following:</u> <i>“General. A Central PfPPP Unit is created as an expert and independent body for gathering all relevant information on the PfPPP potential to bridge the public infrastructure service gap and implement the SDGs in accordance with the government’s vision for an integrated approach on Public Service organization and its development within a responsible budgetary discipline.</i> <i>Its main role is to promote PfPPP amongst stakeholders and more specifically to assist both the Interministerial Committee and the Contracting Authorities for the development and implementation of a portfolio of sustainable PfPPP contracts. “</i>	

33	407	It is important in practice for the PPP Unit to identify in advance the most common issues likely to impair the development of PPP in particular situation by reference to International Best practices, benchmarks documents, norms, etc..	<u>Add.</u> <i>"Identify the most common issues preventing the development of PfPPP projects or derailing them inter alia by reference to an indicative list of most common issues and gates to be taken into account in most PfPPP projects for project preparation and development as published from time to time by international organisations including UNECE"</i>	
34	410		<u>Add.</u> <i>« Organize the information system referred to under Article 10"</i>	
35	411-415		<u>Delete and include in Impl Prov</u>	
36	418-453		<u>Delete and include in Impl Prov</u>	
37	456	Sectorial PPP Unit need to be established often within the main line ministries (such as power, water, transports, health...) When a line ministry is considering a PfPPP program often for several projects over some years this focal point permits to gain experience and facilitate the relationship between stakeholders including PPP Unit and Interministerial Committee.	<u>Add.</u> « Article 9.3 Sectorial PfPPP Unit <i>Any Competent Body vested with the responsibility to deliver a Public Service in a particular sector and intending to develop PfPPP programs may propose the creation of a sectorial PfPPP Unit in its sector.</i> <i>The role of this PfPPP Unit shall be to adapt the PfPPP requirements and framework provided by This Law, its Implementing Regulations and Guidelines, as further developed by the Central PfPPP Unit, to the particulars and existing practices of the sector.</i> <i>The proposal to create a sectorial PfPPP Unit shall include an organization working</i>	

			<p><i>in a transparent and efficient manner in close contact with the Central PfPPP Unit. The authorization to create a sector-specific PfPPP Unit shall be granted by the Interministerial Committee.</i></p> <p><i>The sectorial PPP Unit functions and responsibilities may include the following:</i></p> <p><i>a) Gathering and disseminating all relevant information on PfPPP in its sector, in close contact with the Central PfPPP Units and the PfPPP Interministerial Committee;</i></p> <p><i>b) Contributing to project preparation and project development in its sector by assisting a Contracting Authority for any phase of PfPPP initiation, development and implementation in accordance with the requirements of This Law »</i></p>	
38	474		After the word « authority » <u>add</u> “with the support of Sectorial PPP Unit while created	
39	496		Delete and replace the title by the following: “ Initiation and List of approved projects ”	
40	500-501		Delete and replace by the following : “Any proposed PfPPP shall be initiated by the Contracting Authority except in the case of unsolicited proposals, as provided for under Article 14 hereafter”	
41	507		After « <i>procuring</i> » <u>add the word</u> « <i>global</i> ”	
42	505	In practice , Project teams are often understaffed and do not enjoy the necessary resources and capacity	<p><u>Consider the following addition in Impl Prov</u></p> <p>« <i>The project team should become familiar with:</i></p>	

			<p>a) <i>The content of This Law, its Implementing Regulations and Guidelines;</i></p> <p>b) <i>The role of information and assistance of the Central PfPPP Unit;</i></p> <p>c) <i>The current status of the investment and business climate in the country for attracting private investors, contractors and operators in a common venture for a long-term involvement in a PfPPP project and of any precedent on issues and solutions in this matter;</i></p> <p>d) <i>The PfPPP role among the various public infrastructure services delivery forms and the conditions to select PfPPP over other public procurement forms, inter alia through the use of the PSC tool taking into account the investment and business climate allowing to attract jointly private investors, contractors and operators in a long PfPPP venture;</i></p> <p>e) <i>Best practices on complex infrastructure projects evaluation as published from time to time under the auspices of international institutions and to the PfPPP Evaluation Methodology proposed by UNECE.</i></p> <p><i>The primary objective of the team shall be to promote PfPPP as an innovative and supplementary tool at the disposal of the Contracting Authority to optimize the delivery of Public Services aligned with the SDGs with maximum positive externalities and minimum impact on public debt, government guarantees and/or on risks of contingent liability during the project life cycle.</i></p>	
--	--	--	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--

¹ Types of comment: ge = general; te = technical; le = legal; ed = editorial

			<i>With the support of the PfPPP project team and of the Central PfPPP Unit, the Contracting Authority shall identify the list of the main practical issues to address at this conceptual stage and establish clear objectives and process to develop a blueprint of PfPPP project in an orderly and coordinated manner with other public infrastructure and Public Service projects.”</i>	
43	514-529		<u>Delete</u>	
44	531		After the word « report » <u>add the following</u> : “for approval by the Interministerial Committee”	
45	532	An important condition of resilient PPP Projects involving often the delivery of essential public services for many years is to organise a comprehensive initial stakeholder consultation and develop reliable prefeasibility studies	<u>Add the following paragraph</u> : <i>An Initial stakeholder consultation resulting from a stakeholder engagement plan for all stakeholders directly and indirectly affected by/and/or interested in a project and public consultation in compliance with international best practices with due regards to affected communities</i>	

			<i>Prima facie appetite and affordability, taking into account socio-economic situations and future scenarios on economic situations and living conditions. - Scope of the infrastructure services to be improved or created: The scope and quality of the service shall focus on the main functionalities and based on various technological and socio- economic scenarios likely to take place during the intended project life cycle. The main conditions for public acceptance must be evaluated in a conservative manner, with a priority for accessibility of the service to local communities and disadvantaged people”</i>	
46	540		<u>Add after the word « procurement”</u> “by reference to an appropriate Public service comparator”	
47	544		<u>Delete the words « if any”</u>	
48	550	Clarity the general role and content of the project identification report.	<u>Add.</u> “Issuance of the PPP project identification report: <i>When the PPP route (either “Public-Payment PPP” or “Concessions PPP”) is prima facie considered by the Contracting Authority as the best delivery option based on a set of pre-appraisal indicators and tools such as Public Sector Comparator (PSC) and UNECE Evaluation Methodology, the Contracting Authority shall summarize all aspects of the intended project into a PPP identification report in accordance with the format proposed by the Central PPP Unit. “</i>	

49	552			After « review » <u>delete the word</u> “and approval”
50	556			<u>Add.</u> <i>“the review made by the PPP Unit shall be presented to the Interministerial Committee for approval”</i>
51	557		This “chapeau” on the preparation phase and overall content of the prefeasibility report and its condition of approval, is in practice important to avoid the confusion between prefeasibility and feasibility. Detailed technical specifications should not be part of a preparation phase of a PfPPP project or even procurement phase . Otherwise the successful bidder will not use its best skill and technics in a competitive manner for designing, building, and operating the infrastructure of facility.	<u>Add.</u> <i>“Preparation phase</i> <i>This phase includes initial work of documenting, describing and specifying the project and setting out the main functional characteristics of the infrastructure and related Public Service to be delivered permitting to form an adequate basis for proposals by bidders or a private initiator for financing, designing, building or rehabilitating and operating the infrastructure service for the project life cycle and for the procedures hereunder in order to be authorized to enter into the procurement phase.</i>

			<p><i>For this purpose, and in accordance with the clearance given by the Interministerial Committee approving the PfPPP Project Identification Report, including any conditions or recommendations, the Contracting Authority shall prepare and submit to the Interministerial Committee with the support of its dedicated PfPPP project team, an inclusive Prefeasibility Report covering all main issues and material elements focusing on functionalities and possible options to be considered by bidders”</i></p>	
52	557		<p><u>Add the title :</u>” Content of the prefeasibility report”</p>	
53	562-563		<p><u>Delete and replace by the following:</u></p> <p><i>“General. The Prefeasibility Report shall include the following, as further specified from time to time in the Implementing Regulations”</i></p>	
54	557	<p>An important provision for PPP projects designed to meet the SDGs (ie: PfPPP)</p>	<p><u>Add.</u></p> <p><i>“A comprehensive stakeholders’ consultation including vulnerable groups on the need of improved or new Public Service in accordance with international best practices and UNECE recommendations. The consultation process shall be structured to enable a genuine dialogue to take place concerning all significant issues of concern to stakeholders, and available remedies to be pursued, and to allow suggestions from</i></p>	

			<p><i>third parties for improving the PfPPP to be put forward. Key points raised by stakeholders shall be accurately recorded and responded to as appropriate;”</i></p> <p><i>“The extent and urgency of the need and demand for the PfPPP and the level of priority of the intended People-first PPP projects compared with other Public Service projects including programming and optimizing the contribution of the project to positive externalities and economic development including the benefit of programming the project for its contribution to positive externalities and economic development »</i></p> <p><i>“The PfPPP’s alignment with the Government’s wider sector objectives, plans and strategies for infrastructure and economic development”</i></p>	
55	572	A	<p>n important provision for PPP projects designed to meet the SDGs (ie: PfPPP)</p> <p><u>Add.</u></p> <p><i>“An overall scope of the Public Service to be provided, with options relating to technologies, adaptability and affordability;</i></p> <p><i>Identification and mapping of the main issues (both local and deriving from market sounding) together with process and options to resolve them by reference to precedents, best practices, standards and PfPPP appraisal indicators including UNECE publications focusing on PfPPP issues and solutions;</i></p>	

			<i>A lay out of the infrastructure to be built or rehabilitated and its mains functions for delivering Public Service in a sustainable manner, including key performance indicators; “</i>	
56	579	Reference to such a template is important to structure the main rights and obligation, to limit uncertainties and save time and transaction costs	<u>Add.</u> <i>“The draft tender documents including a template of PfPPP contract conditions proposing balanced clauses in accordance with international best practices and forms for the type of PfPPP selected »</i>	
57	579		<u>Delete the words</u> <i>“if practicable at this stage”</i>	
58	585-586		<u>Delete</u>	
59	606-607		<u>Delete and replace by the following subtitle:</u> <i>“Additional items for essential Public Services to be delivered under Concession PfPPPs”</i>	
60	635		<u>Add the following article and title:</u> <i>“Prefeasibility and Registration on the PfPPP List of Authorized Projects “</i>	
61	635-658		<u>Delete</u>	
62	659	It is important to outline with sufficient details the best practices on main criteria for evaluation and to provide clear rules for its approval and publication	<u>Add.</u> <i>“Prefeasibility evaluation</i> <i>The evaluation of the Prefeasibility Report shall be carried out by the Interministerial Committee with the support of the Central PfPPP Unit, in accordance with international best practices, including the</i>	

			<p><i>UNECE Evaluation Methodology endorsed by UNECE Member States. This shall comprise:</i></p> <p><i>a) Generally, the extent to which the PfPPP is expected to meet the purposes and objectives set out for it in the documents drawn up as part of its identification and preparation;</i></p> <p><i>b) A summary of the material conclusions reached about the PfPPP identifying the key criteria applied in reaching them, including the anticipated socio-economic and public-service net benefits (including the inclusivity and accessibility thereof) and the extent to which the PfPPP is expected to satisfy and advance the People-first PPP Principles, the public benefits or goods expected to result therefrom;</i></p> <p><i>c) The cost-effectiveness, acceptability and affordability of the PfPPP for both users (including vulnerable groups), on the one hand, and the host country from a budgeting/fiscal and sustainable debt perspective, on the other;</i></p> <p><i>d) The quantitative assessment of the off-balance sheet sovereign debt which may be implied by the private financing of the project, including the related contingent liabilities;</i></p> <p><i>e) The anticipated (approximate) amount and nature of any public funding or other public support (such as guarantees) expected to be used;</i></p> <p><i>f) The appropriateness of the PfPPP's proposed (preliminary) risk-allocation and incentive profile;</i></p>	
--	--	--	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--

¹ Types of comment: ge = general; te = technical; le = legal; ed = editorial

			<p><i>g) The procedures to be used for selection of the private partner and their anticipated timing;</i></p> <p><i>Any other key items for the appraisal by the Interministerial Committee, including annexes, as appropriate.</i></p> <p><i>Prefeasibility approval and Registration on a PfPPP List.</i></p> <p><i>When the Prefeasibility Report has been duly appraised by the Interministerial Committee with the support of the Central PfPPP Unit and when in the opinion of the Interministerial Committee the PfPPP project deserves to be implemented under a PPP form, the Interministerial Committee shall include the project on the published list of projects to be developed under a PfPPP delivery form”</i></p>	
63	663-718		<u>Delete</u>	
64	729-732		<p><u>Delete and replace by the following:</u></p> <p><i>“The Interministerial Committee shall issue for each project, at the time of inscription on the list of approved PfPPP projects, an Implementation Resolution as further specified in the Implementing Regulations as further described in the Implementing Provisions »</i></p>	
65	733-761		<u>Delete and include in Impl prov</u>	
66	814		<u>Replace the word “PPP Unit” by the words “Interministerial Committee”</u>	
67	817		<u>Replace the word “PPP Unit” by “Interministerial Committee”</u>	

68	820		Delete the words “where required”	
69	821		Delete the title of the Chapter and replace by the following: “Chapter IV. Procurement Phase”	
70	838-957	<p>Procurement of People-first PPP, both for Public Payment PPP and Concession PPP, has given rise to different approaches and experiences around the World with mixed results so far.</p> <p>The situation is somewhat similar of the international construction contract for public infrastructure twenty-five years ago, having triggered many exchanges inter alia between HOP of IFI’s and selected private institutions leading to a comprehensive UNCITRAL Program to which CEI experts have participated relating to UNCITRAL Model Law on Public Procurement.</p> <p>The recently published UNCITRAL Legislative guide on Public Private Partnership to which CEI experts have also participated contains useful consideration for PPP procurement.</p> <p>Finally yet importantly, the UNECE Standards on Zero Tolerance Approach to Corruption in PPP</p>	<p>Delete and replace by the following: <i>“General. People-first PPP projects involve a high degree of complexity for the bidders to prepare and submit responsive proposals triggering very substantial bidding costs by comparison with other forms of procurement for public infrastructure services since the private partner is requested in addition to:</i></p> <ol style="list-style-type: none"> 1) <i>Design and build or rehabilitate a public infrastructure having the capacity to provide an optimized Public Service during the project life cycle;</i> 2) <i>Finance all investments and operation costs with long-term recovery (subject to satisfactory delivery of the service) during the project life cycle.</i> <p><i>It is therefore essential to limit the number of suppliers, contractors and investors from which to request proposals without departing from the free competition principles. To meet those requirements, the procurement of PjPPP projects shall be developed in two phases:</i></p>	

	<p>Procurement endorsed by member states for which CEI experts played a leading role contains an introduction on public contracts outlining the main PPP distinctive characteristics and the related procurement challenges that PPP have to face in several situations at various stages of procurement.</p> <p>Those inputs and the practical experience of CEI experts converge for proposing a reorganisation of the set of clauses of the draft and to include them in a robust structure addressing the various stage of the general procurement process and outlining recommended procurement route for various PPP families and subfamilies.</p> <p>For instance, a transparent and efficient Procurement process must be in most cases substantively different for Public Payment PPP and Concession PPP due to the different nature of obligations undertaken by the private party. (Ex; a Public Payment PPP Project for a public building and related facility management does not need the same preparation requirements, process and relationship during the procurement phase than a Concession PPP for a green field, water, production, and distribution project.)</p> <p>The proposed structure as simple and clear as possible develops in a natural order the various phases of procurement of any for PPP project including the main procedural steps and the condition for their successful implementation and control selecting the successful bidder.</p>	<p><i>1) A pre-selection phase;</i> <i>2) A selection phase.</i></p> <p><i>Pre-selection phase.</i></p> <p><i>1. General.</i></p> <p><i>The Contracting Authority shall engage in pre-selection proceedings with a view to identify bidders (including consortia under the conditions set forth under Article 16.4) that are suitably qualified to implement the envisaged project.</i></p> <p><i>The objective of the pre-selection is to advertise the project to the largest number of potential bidders, provide the information necessary to allow them to evaluate the reliability and quality of the preparation of the project, identify the criteria for pre- selection and if interested, allow potential bidders to submit qualifying documentation with the objective of being pre-selected for participating to the procurement phase.</i></p> <p><i>For this purpose, the Contracting Authority may organize informational sessions and other pre-bid announcements to provide potential bidders with general information on the bidding opportunity.</i></p> <p><i>2. Invitation to participate to the pre-selection.</i></p> <p><i>The invitation to participate in the pre-selection proceedings shall be simple and accurate, including a term sheet containing main information relating to the project in line with the approved Prefeasibility Report and the Interministerial Committee requirements if any. It shall allow responsive potential bidders to understand the functional specifications that are required by the project as well as all</i></p>	
--	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--

¹ Types of comment: ge = general; te = technical; le = legal; ed = editorial

		<p>As many laws of this nature The law should play a minimum educative role. some of our proposed changes, which amount essentially to the reinsertion of some provisions of the phase II draft, are to a large addressing this matter.</p> <p>Some part of the proposed provisions for framework law could become part of the Annex Implementing Provisions.</p>	<p><i>pertinent information on the process, conditions and criteria for pre-selection.</i></p> <p><i>The invitation shall include:</i></p> <ul style="list-style-type: none"> <i>a) An introduction on the objective of the Contracting Authority in developing Public Services, and the rationale for developing the particular project under a PfPPP delivery form with the government support;</i> <i>b) A general description of the infrastructure or facility to be built or rehabilitated, the availability of land and other easements, the Public Service to be delivered, as appropriate;</i> <i>c) An indication of other essential elements of the project, focusing on the functionalities of the Public Service, and the expected role of the private partner in delivering the service (either only to the Contracting Authority under a Public Payment PfPPP delivery form) or directly to the end users paying for the service (under the Concession PfPPP delivery form);</i> <i>d) Preliminary information on financial arrangement potential, including guarantees and budgetary constraints;</i> <i>e) Key head of terms envisaged of the PfPPP contract;</i> <i>f) The manner and place for the solicitation of the pre-selection documents and for the submission of applications for pre-selection, including deadline for the submission, expressed as a</i> 	
--	--	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--

¹ Types of comment: ge = general; te = technical; le = legal; ed = editorial

			<p><i>specific date and time, allowing sufficient time for bidders to prepare and submit their applications.</i></p> <p>3. Eligible participants. <i>Participants can in principle be any persons with legal capacity (whether domestic or foreign) under applicable law, including companies, partnerships and natural persons, or combinations or consortia of such persons, but subject always to any relevant restrictions under This Law or the PfPPP Implementing Regulations as to such participation.</i></p> <p>4. Pre-selection criteria. <i>The pre-selection documents shall include at least the following information:</i></p> <p>a) <i>The pre-selection criteria that interested bidders must meet as the Contracting Authority considers appropriate and relevant for the particular contract. This should include:</i></p> <p><i>-The professional, technical and environmental qualifications and competence, financial resources, equipment and other physical facilities, managerial capability, reliability, experience and personnel as necessary to carry out all the phases of the project, including design, construction, operation and maintenance meeting the full range of the relevant PfPPP objective for delivering a Public Service adapted to the needs of the people and the society, including environmental responsibility and ethical standards;</i></p>	
--	--	--	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--

¹ Types of comment: ge = general; te = technical; le = legal; ed = editorial

			<p>- Ability to manage the financial aspects of the project and capability to sustain its financing requirements;</p> <p>- Ethical and other standards, including reference to international standards and in particular the Zero Tolerance Approach to Corruption in PPP Procurement published by UNECE;</p> <p>- The legal capacity to enter into the PPP contract;</p> <p><u>Consider to include the following in Impl Prov.</u></p> <p>- Evidence that the bidder:</p> <p>1° Is not insolvent, in receivership, bankrupt or being wound up, its affairs are not being administered by a court or a judicial officer that their business activities have not been suspended and they are not the subject of legal proceedings for any of the foregoing;</p> <p>2° Has confirmed its obligations to pay taxes and social security contributions;</p> <p>3° Has not, and its directors or officers have not, been convicted of any criminal offence related to their professional conduct or the making of false statements or misrepresentations as to their qualifications to enter into a procurement contract within a period of two years preceding the commencement of the contract award proceedings, or have not been otherwise disqualified pursuant to administrative suspension or debarment proceedings.</p> <p>b) Whether the Contracting Authority intends to request only a limited number of pre- selected bidders that best meet the pre-selection criteria specified in the</p>	
--	--	--	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--

			<p><i>pre-selection documents to submit proposals upon completion of the preselection proceedings. If so, the maximum number of pre-selected bidders from which the proposals will be requested and the manner in which the selection of that number will be carried out. In establishing the maximum number, the Contracting Authority shall bear in mind the need to ensure effective competition;</i></p> <p><i>c) The pre-selection criteria shall indicate that the project shall be aligned with the SDGs, by reference to international best practices and the UNECE standard for PfPPP Evaluation Methodology.</i></p> <p>5. Participation of consortia <i>The Contracting Authority, when first inviting the participation of bidders in the selection proceedings, shall allow them to form bidding consortia. The information required from members of bidding consortia to demonstrate their qualifications shall relate to the consortium as a whole as well as to its individual participants.</i></p> <p><i>Each member of a consortium may participate, either directly or indirectly, in only one consortium at a time. A violation of this rule shall cause the disqualification of the consortium and of the individual members.</i></p>	
--	--	--	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--

¹ Types of comment: ge = general; te = technical; le = legal; ed = editorial

			<p><i>When considering the qualifications of bidding consortia, the contracting authority shall consider the capabilities of each of the consortium members and assess whether the combined qualifications of the consortium members are adequate to meet the needs of all phases of the project.</i></p> <p>6. Decision on pre-selection.</p> <p><i>1. The Contracting Authority shall make a decision with respect to the qualifications of each bidder that has submitted an application for pre-selection. In reaching that decision, the Contracting Authority shall apply only the criteria, requirements and procedures that are set forth in the pre-selection documents.</i></p> <p><i>2. Where the Contracting Authority has indicated in the pre-selection documents that it reserved the right to request proposals only from a limited number of bidders that best meet the pre-selection criteria, the Contracting Authority shall rate the bidders on the basis of the criteria applied to assess their qualifications and draw up the list of bidders that will be invited to submit proposals upon completion of the preselection proceedings up to the maximum number specified in the pre-selection documents but at least three, if possible. In drawing up the list, the Contracting Authority shall apply only criteria and the manner of rating that are set forth in the pre-selection documents.</i></p> <p><i>3. For Concession PfPPPs, the number of pre-selected bidders should be comprised in a range of three to five.</i></p>	
--	--	--	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--

¹ Types of comment: ge = general; te = technical; le = legal; ed = editorial

			<p>Selection phase</p> <p>I. Procedure for Requesting Proposals</p> <p>Choice of Tender Structure - General.</p> <p><i>The tender structure shall be adapted to the type of the PfPPP project under consideration, in line with the conclusion of the Prefeasibility Report and the Interministerial Committee's decision to proceed to the procurement phase.</i></p> <p><i>Save as otherwise provided under Article 17.1.3 for closed tender and exceptional procedure or under Article 22 for direct negotiation, the Contracting Authority should adopt one of the following tender structures (or a mix of them if justified and in an orderly manner) as further specified in the Implementing Provisions or in the general procurement regulations consistent with This Law:</i></p> <p>A. Two-Stage Procurement</p> <p><u><i>Two-stage procurement is particularly suitable when :</i></u></p> <ol style="list-style-type: none"> <i>1) The project is non-standard or non-repetitive;</i> <i>2) The Public Authority is not able or not interested in defining the technical specifications;</i> <i>3) Several technical options are possible to meet the functional specifications during the project life cycle, both in terms of design and construction or rehabilitation of the infrastructure and for the maintenance and operation of the service under a global contract and where;</i> <i>4) The Contracting Authority has concluded that discussions with</i> 	
--	--	--	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--

¹ Types of comment: ge = general; te = technical; le = legal; ed = editorial

			<p><i>bidders are needed to refine aspects of the description of the project of the procurement and to formulate them with the requisite detail, in order to obtain the most satisfactory solution for developing a public infrastructure service aligned with SDGs.</i></p> <p><i>Two-stage procurement should be considered as a default option, typically for Public- Payment PPP relating to the construction or rehabilitation of a public building, support of a Public Service, including maintenance and operation of the building by the private partner during the project life cycle.</i></p> <p><i>Preliminary stage (optional):</i> <i>- A pre-bid conference with all pre-selected bidders;</i> <i>- Review and clarification of the bidding documents;</i> <i>- Fine tuning the draft request for proposals;</i> <i>- Request to confirm the intention to bid, including possibly a bid bond.</i></p> <p><i>First stage:</i> <i>The Contracting Authority shall issue an initial request calling upon the bidders to submit their initial proposals and comments relating to project design, performance indicators, financing requirements and other relevant characteristics of PjPPP taking into account the main contractual terms proposed by the Contracting Authority.</i> <i>In most situations, the bidders should be invited to submit their initial proposals in two envelopes:</i></p>	
--	--	--	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--

¹ Types of comment: ge = general; te = technical; le = legal; ed = editorial

			<ul style="list-style-type: none"> - One envelope for technical and commercial proposal; - One envelope for financial proposal. <p><i>In such a case, the initial evaluation is limited to the technical and commercial proposal for which a scoring system must be indicated in the request for proposal. After evaluation of the information contained in the first envelope only, the bidder having reached the minimum score indicated in the request proposal shall be retained and its financial envelope opened.</i></p> <p><i>For those bidders or otherwise if the two-envelope system is not used, discussions and dialogues will include both technical and financial aspects of the proposal.</i></p> <p><i>The Contracting Authority may convene meetings and hold discussions or dialogue with bidders whose initial proposals have not been formally and properly rejected as non-responsive or unacceptable. Discussions may concern any aspect of the initial request for proposals or of the initial proposals and accompanying documents submitted by the bidders.</i></p> <p><i>Following examination of the proposals received, the Contracting Authority may review and, as appropriate, revise the initial request for proposals by deleting, adding to or modifying some aspect of the initial project descriptions, performance indicators, financing requirements or other characteristics of the PPP, including the contractual terms but only under the conditions set forth in Article 18.3.</i></p> <p><i>Second stage.</i></p>	
--	--	--	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--

¹ Types of comment: ge = general; te = technical; le = legal; ed = editorial

			<p><i>The Contracting Authority shall invite the bidders to submit final proposals with respect to a single set of project objectives and requirements including key performance indicators and contractual terms in accordance with the tender procedure. Those objectives and requirements should focus on functional specifications (and not on technical specifications which will be developed with the successful bidder during the technical design phase in accordance with contract conditions).</i></p> <p><i>The Contracting Authority shall rank all responsive proposals on the basis of the evaluation criteria set out in the tender documents and invite the bidder that has attained the highest rating for fine tuning the agreement on the terms of the PfPPP contract. This fine tuning cannot permit to reopen negotiations on any of the main contractual terms and conditions, included in the revised request for proposals.</i></p> <p><i>If it becomes apparent to the Contracting Authority that the negotiations with the bidder invited will not result in a contract, including all financial arrangements and guarantees within a period ranging from three to six months, the Contracting Authority shall inform the bidder of termination of the negotiations without any kind of indemnification. The Contracting Authority may then invite for negotiations the other bidders in the order of their ranking until it arrives at a PfPPP contract or rejects all remaining proposals. The Contracting Authority shall not resume negotiations with a bidder with which</i></p>	
--	--	--	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--

¹ Types of comment: ge = general; te = technical; le = legal; ed = editorial

			<p><i>negotiations have been terminated pursuant to this paragraph.</i></p> <p>B. Competitive Dialogue</p> <p><u><i>Competitive dialogue is particularly suitable when :</i></u></p> <ol style="list-style-type: none"> <i>1) The project is of a very complex nature with several technical and where financial options and interfaces are to be evaluated in an inclusive manner;</i> <i>2) When the Contracting authority estimates that it is not feasible for it to formulate a detailed description of the proposed PfPPP functionalities and its basic requirements needed for the purposes of an open public tender in accordance herewith, and it assesses that dialogue with bidders is needed to achieve the most satisfactory solution to its procurement needs.</i> <p><i>Competitive dialogue could be considered as a default option, typically for Public-Payment PfPPP for complex facilities, including design, build or rehabilitation and maintenance and operation of facilities by the private partner during the project life cycle.</i></p> <p>First Stage.</p> <p><i>On the basis of the initial tender invitation, each bidder submits a global, technical, operational and financial offer (best initial offer – BIO).</i></p>	
--	--	--	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--

¹ Types of comment: ge = general; te = technical; le = legal; ed = editorial

			<p>Second Stage.</p> <p>a) <i>The Contracting Authority shall invite each bidder that presented a responsive proposal in accordance with the initial tender invitation (subject to any applicable maximum) to participate in the dialogue. The Contracting Authority shall ensure that a sufficient number of bidders, and if possible, not less than three, is invited to participate in order to ensure effective competition.</i></p> <p>b) <i>The dialogue shall be conducted concurrently and in strict confidence in accordance with the provisions of Article 17.1.d by the Tender Committee set up by the Contracting Authority.</i></p> <p>c) <i>All participants to the dialogue, including consultants and experts, shall endorse a Competitive Dialogue Charter, in line with international best practices, including provisions for:</i></p> <ul style="list-style-type: none"> - <i>Strict compliance with confidentiality, transparency and equality of treatment;</i> - <i>Dialogue structured for facilitating simple assessment and comparison;</i> - <i>Clear time table;</i> <p>d) <i>The Contracting Authority shall clearly identify those aspects of the PfPPP and the tender documents and process that are to be the subject of the dialogue;</i></p>	
--	--	--	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--

¹ Types of comment: ge = general; te = technical; le = legal; ed = editorial

			<p>e) During the course of the dialogue, the Contracting Authority shall not modify any material aspect of the proposed PfPPP, any pre-qualification or evaluation criteria, any minimum requirements, any element of the description of the PfPPP contained in the request for proposals, or any term or condition of the procurement process that is not itself subject to the dialogue;</p> <p>f) The Contracting Authority shall not be authorized to cherry pick between proprietary or confidential technical economic and financial solutions coming from different bidders;</p> <p>g) Any requirements, guidelines, documents, clarifications or other information generated during the dialogue that is communicated by the Contracting Authority to a bidder shall be communicated at the same time on an equal basis to all other bidders, save only to the extent it contains information which is exclusive to the relevant bidder and its disclosure would breach any applicable confidentiality restrictions;</p> <p>h) Following the dialogue, the Contracting Authority shall request all bidders who have not withdrawn from the process to present their best and final offers (BAFO) with respect to all aspects of their proposals. The request shall be in writing and shall specify the manner, place and deadline for presenting best and final offers. No negotiations shall take place between the Contracting Authority and the bidders with respect to their best and final offers;</p> <p>i) The winning bidder shall be selected from amongst the best and final offers submitted in accordance with this</p>	
--	--	--	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--

¹ Types of comment: ge = general; te = technical; le = legal; ed = editorial

			<p><i>procedure, on the basis of the offer that best meets the needs of the Contracting Authority as determined in accordance with the applicable tender evaluation and selection criteria set out in the tender documents.</i></p> <p>C. Competitive negotiation.</p> <p><u><i>Competitive negotiation is particularly suitable in the following cases:</i></u></p> <ol style="list-style-type: none"> <i>1) Complex infrastructure or utility which is a basis for an essential Public Service paid by the end users;</i> <i>2) When the main objective is to obtain the best guarantee that the successful bidder will meet the initial Public Service requirements and able to optimize and adapt its in line with public interest and SDGs during the project's lifecycle.</i> <p><i>Competitive negotiation should be considered as a default option typically for Concession PPP for delivery by the private partner of essential Public Service to the end users.</i></p> <p>First stage</p> <p><i>Objectives: fine tuning service scope, economic conditions and adaptability to the needs and affordability during project life cycle.</i></p> <ol style="list-style-type: none"> <i>a) All bidders submit a global, technical, financial and operational offer;</i> 	
--	--	--	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--

¹ Types of comment: ge = general; te = technical; le = legal; ed = editorial

			<p>b) <i>A complete bid evaluation is made leading to a ranking;</i> c) <i>One to three bidders maximum are invited to proceed for contract negotiation.</i></p> <p>Second Stage</p> <p>a) <i>One preferred bidder only is invited to final negotiations under preset negotiations boundaries and timetable with ethical and confidentiality guarantees similar to the ones applicable to competitive dialogue;</i> b) <i>If negotiation fails, possible negotiation with second ranking best bidder as for competitive dialogue.</i></p> <p>II. Confidentiality and Record.</p> <p>A. Confidentiality.</p> <p><i>The Contracting Authority and the Tender Committee shall treat all proposals submitted in tender procedures conducted in accordance with This Law in such a manner as to avoid the unnecessary disclosure of their content to competing bidders or to any other person not authorized to have access to this type of information. Any discussions, communications and negotiations between the Contracting Authority and/or the Tender Committee and a bidder shall be confidential (subject as aforesaid). Unless required by law or by a court order, during any such tender procedures no party</i></p>	
--	--	--	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--

¹ Types of comment: ge = general; te = technical; le = legal; ed = editorial

			<p><i>thereto shall disclose to any other person any technical, price or other confidential information in relation to such discussions, communications and negotiations without the consent of the other party.</i></p> <p>B. Records.</p> <p><i>The Contracting Authority shall keep an appropriate record of information pertaining to the selection and award proceedings for the PfPPP in accordance with the requirements of the PfPPP regulations.</i></p> <p>III. Closed Tenders and Exceptional Procedures.</p> <p>A. Closed Tenders.</p> <p><i>A closed tender may only be used in exceptional cases of national defence or national security, or such other exceptional circumstances as may be provided for herein, where the use of an open public tender could reasonably be expected to give rise to serious concerns about state secrets, government confidentiality and/or other demonstrable adverse consequences for the national interest and therefore the feasibility of the processes involved.</i></p> <p><i>Competition under Closed Tenders.</i></p> <p><i>Where a closed tender is used, the Contracting Authority shall nevertheless take all reasonable steps to structure and organise it in a way which fosters genuine competition and shall invite offers from as many different sources as is practicable in the circumstances.</i></p>	
--	--	--	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--

¹ Types of comment: ge = general; te = technical; le = legal; ed = editorial

			<p>B. Exceptional Procedures. <i>The tender documents may contain specific provisions modifying aspects of the tender procedure otherwise applicable in specific circumstances, such as:</i></p> <p>(a) <i>Where only a single bidder prequalifies or submits a compliant expression of interest or bid (e.g., by allowing the Contracting Authority to re-tender the PPP or alternatively proceed with it on the basis of direct negotiations where it is satisfied that the process has already been sufficiently competitive), or;</i></p> <p>(b) <i>Qualifying or restricting the right and ability of different bidders to combine together during the tender process for the purposes of submitting a joint bid. The PfPPP Regulations may also provide specifically for situations of this kind.</i></p>	
71	963		<p><u>Add.</u></p> <p><i>“(a) An introduction on the objectives of the Contracting Authority showing their alignment with the government’s objective on the need of a new or improved delivery of Public Services for the project under consideration and on the main steps taken and conclusions reached for developing the project under a PfPPP delivery form with</i></p>	

¹ Types of comment: ge = general; te = technical; le = legal; ed = editorial

			<i>reasonable chances to attract responsive bidders”</i>	
72	982		<p><u>Add the following paragraph:</u></p> <ul style="list-style-type: none"> • <i>“The tender documentation shall provide as necessary for the organisation of transparent communication processes and methods with bidders, allowing as required for (inter alia) conferences, meetings and procedures for written communication, provision of comments on and proposed amendments to the tender documents (including the draft PfPPP contract), discussions of and modifications to technical requirements and specifications, discussion of risk allocation and commercial terms, clarification of financing proposals and other matters;</i> • <i>The tender documents may require the provision of tender security, such as bid bonds, by the bidders, in an amount and on terms which are reasonable in the circumstances. In that event, the tender documents shall precisely specify the circumstances in which any such tender security may be forfeited by bidders. A bidder shall not forfeit its bid security in any circumstances other than those specified;</i> 	

			<p><i>The Contracting Authority shall provide a set of the request for proposals and related documents to each bidder (or pre-qualified bidder, as the case may be) invited in accordance with This Law to submit proposals for the PfPPP that pays the price, if any, charged for those documents. The request for proposals shall contain all such information as may be required by Article 17.1 and the PfPPP regulations to enable bidders to submit responsive proposals for the PfPPP in accordance with the tender procedures and requirements by the deadline for submission of the same.”</i></p>	
73	993-997		<p><u>Delete and replace by the following :</u></p> <p><i>“- Compliance with the fundamental principles of procurement and equality of treatment: to this effect, the Contracting Authority shall not modify the objectives and global description of the project and its main functionalities in any material aspects, (including prequalification, evaluation criteria and minimum requirements);</i></p> <p><i>- Any substantive amendments within those limits shall be submitted to the Central PPP Unit for non-objection, which shall be granted within thirty days. In the absence of response, the non-objection should be deemed to have been granted. Otherwise, the Contracting Authority shall comply with any recommendations of the Central PfPPP Unit. Thereafter, the revised request for proposals shall be communicated to all bidders.</i></p> <p><i>The deadline for the submission of proposals shall be prolonged as necessary</i></p>	

			<p><i>to allow time for any such amendments and any responses to them. The Contracting Authority shall indicate in its record of the selection proceedings to be kept pursuant to This Law the justification for any such revision or amendment. »</i></p>	
74	999		<p><u>Delete the words</u> : “after PPP Unit” and <u>replace as follows</u>: <i>“...which shall make all comments from the submission of the complete set of documents within thirty days. In the absence of comments, the tender documents are deemed to be approved.”</i></p>	
75	1001-1007		<p><u>Delete and replace as follows</u>:</p> <p><i>“The Contracting Authority shall form a Tender Committee, fully independent from the PfPPP project team and as the case may be of the Sectorial PfPPP Unit having participated to the project preparation. The Tender Committee should comprise to the extent necessary outside consultants and experts. Any such consultants and experts should be engaged with due regards to international best practices relating to their qualification and independence (and in particular with the recommendation described in the UNECE Standard on a Zero Tolerance Approach to Corruption in PPP Procurement and to the UNECE additional recommendation for best practices in the involvement of reliable and independent experts to develop People-first public-private partnership projects).</i></p>	

			<i>For the purposes of conducting the PfPPP tender, evaluating tender bids and proposals, communicating with bidders and determining the preferred or winning bidder, the composition, powers and procedures of the Tender Committee shall be determined in accordance with the provisions of the law (including a mechanism for addressing any conflicts of interest of its members) as further developed in the UNECE standards for a Zero Tolerance Approach to Corruption in PPP Procurement and in the Implementing Regulations »</i>	
76	1021-1148		<u>Delete</u> (the substance of those provisions are now taken into account under the reorganization of the Model Law plan under Article 15,16 and 17)	
77	1156		<u>Delete</u> “fourteen days” and <u>replace</u> by “thirty days”	
78	1164		<u>Add.</u> <i>“The entry into force of the PPP contract shall not take place before thirty days from the latest of the following dates, inter alia er to permit effective remedy of protest in case of misprocurement:</i> <ul style="list-style-type: none"> - <i>Non-objection to the contract by the Interministerial Committee;</i> - <i>Signature of the contract;</i> - <i>Publication of the contract award, including due notice to all bidders »</i> 	
79	1282-1285		<u>Delete and replace by the following:</u> “Interlocutory measures and remedies for misprocurement: <i>The PfPPP Regulations shall aim to ensure that the detailed procedures drawn up under This Law, shall provide for sufficient time, following the taking of key decisions</i>	

			<p><i>or the issue of key approvals or resolutions thereunder, to allow for the interim or interlocutory measures and steps to be taken and remedies effectively enforced.</i></p> <p><i>In case of misprocurement protest by aggrieved bidders having been informed of the signature of a PfPPP contract in accordance with Article 20, the bidder may lodge a protest with the Summary Judge. In case of gross misprocurement, the Summary Judge shall be entitled to cancel or suspend the contract subject to appeal. Any protest made by the aggrieved bidder beyond thirty days shall not permit to cancel or suspend the contract. “</i></p>	
80	1287-1291		<p>Delete and replace by the following:</p> <p><i>“The private partner’s obligation to finance, create or rehabilitate a public infrastructure and to contribute to the operation of the relevant Public Service (that the Contracting Authority must organise in accordance with its statutory powers and with the government’s vision and programs aligned with the SDGs and people’s requirements for the project life cycle), triggers several special rights and obligations not applicable in most contracts between private parties. Many of such PfPPP special rights and obligations are common for Public-Payment PfPPP and Concession PfPPP. However, due to the direct relationship between the private partner and the end users, Concession PfPPP must be governed by an additional set of specific contractual and legal conditions. “</i></p>	

¹ Types of comment: ge = general; te = technical; le = legal; ed = editorial

81	1293-1296		<p><u>Delete and replace as the following:</u></p> <p>“General.</p> <p><i>PfPPP contracts shall be consistent with the tender documents for the relevant PfPPP. In accordance with Article 18, they shall include the key terms of contract conditions in line with international best practices, recommended clauses and templates published in some countries or by international organisations, including UNECE for Concession PfPPP. Their main terms and conditions shall be implemented and interpreted in the light of the underlying governing legal principles, provided for in applicable law and its Implementing Regulations. “</i></p>	
82	1297-1438	<p>General comments on main terms and conditions of PPP contracts:</p> <p>Due to their global nature, including a large freedom of the successful bidder, having to finance the project, to design and build a public infrastructure or facility with a very long-term horizon and based on a satisfactory delivery of service of public interest, PPP contracts are global and composite contractual relationship developed in distinct but interrelated phases with a duty of both partners to behave really as partners based on common objectives.</p> <p>Lessons learned indicate that the organisation and contents of sustainable Pf PPP Contracts need to be governed by a set of specific provisions addressing clearly different stages while including sets of common clauses in order to best avoid friction and disputes leading to projects in distress</p>	<p>Delete and replace as follows;</p> <p>A Headings and outline content of key contract clauses for PfPPP</p> <p>Sustainable PfPPP contracts should in particular include the following:”</p> <p>1). Key Clauses common to all PfPPP</p> <p><i>Without changing the substance of existing clauses (line 1297 to 1433) but merging or refining them as appropriate distinguish between those clauses the ones which are critical in practice for both families of Pf PPP from the ones less critical .After rearranging the order an adding some clauses by reference inter alia to the UNECE recommended clause list and to the Phase II draft keep the most critical only in the FR Law (more or less</i></p>	

	<p>A lot of progress has been made in this respect, aggregating lessons learned in the last twenty years taking into account numerous PPP contracts having faced similar issues irrespective of sectors and countries. The situation now for PPP is similar to the one of international construction contracts for public infrastructure twenty-five years ago when International Standards Conditions for different type of contracts form emerged (which include now Design and Build.)</p> <p>The same international standardization process for PPP contracts is now well advanced.</p> <p>For public payment PPP, international DB and DBO are a good basis to which set of specific clauses need to be added to take into account the obligation of the private party to finance and to operate the infrastructure or facility and to meet performance levels throughout the project life cycle which is a condition to recover its investment and make profit.</p> <p>For Concession/PPP, there is a fresh international reference made by the recommended list of clauses and guiding principles for Concession PfPPP developed by UNECE and now endorsed by UNECE Member States.</p> <p>Taking into account the above, it is proposed to reorganize Article 24 in two sub articles (1) limiting in the Framework Law a list of most important key headings and their outline content common to both</p>	<p><i>20) and include the others in the Impl Prov .</i></p>	
--	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------	--

¹ Types of comment: ge = general; te = technical; le = legal; ed = editorial

	<p>Public Payment PPP and Concession PPP (around 20 headings and (2) addressing in addition the most important key headings and their outline content specific to most Concession PPP (around 10 headings). The remaining headings (less important) (1) common to all PfPPP and (2) specific to most concession PfPPP should be included in the annex “Implementing provisions.”</p> <p>This exercise, which is critical for any non-lawyer reader according to the tests we have made, amounts to rearranging the current provisions of article 24 (line 1297 to line 1433) and of article 32 (line 1716 to 1790) in a simple, logic and user friendly manner and revisiting the whole as appropriate taking into account model law phase II. This exercise is greatly facilitated when using as reference the recommended list of list of Clauses and Guiding Principles for Concession PfPPP already endorsed by the UNECE member states: (which, by construction, includes both clauses common to all Pf PPP and additional clauses for concession PfPPP)</p> <p>For information the list is as follows :</p> <p>1) Preliminary provisions</p> <ul style="list-style-type: none"> - Definitions - Language of contract - Contract documents: order of precedence - Duration - Purpose - General description of the construction 		
--	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--	--

¹ Types of comment: ge = general; te = technical; le = legal; ed = editorial

	<p>2) General obligation of the concessionaire:</p> <ul style="list-style-type: none"> - International Best practices, Standards and norms - Origin of supplies and materials - Environmental and social management plan <p>3) General obligation of the contracting authority:</p> <ul style="list-style-type: none"> - Supply of documents - Transfer of land - Authorisation and permits - Assistance with local regulations <p>4) Construction Design and execution studies:</p> <ul style="list-style-type: none"> - Sufficiency of information - Design and development <p>Construction phase :</p> <ul style="list-style-type: none"> - Planning - Monitoring - Acceptance and commissioning - Defect liability <p>5) Operation of the Public service:</p> <ul style="list-style-type: none"> - General requirements for the operation of the public service - Performance parameters - Liquidated damages - Maintenance and renewal obligations - Reporting <p>6) Economic and financial provisions:</p> <ul style="list-style-type: none"> - General - Tariffs - Change in economic conditions - Force majeure - Tax and custom regime <p>7) Miscellaneous:</p>		
--	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--	--

¹ Types of comment: ge = general; te = technical; le = legal; ed = editorial

		<ul style="list-style-type: none"> - Personal performance - Substitution - Subcontracting - Staff - Environment - Community relationships - Corporate responsibility - Third party liability - Insurances - Guarantees - Confidentiality and disclosure - Patents and licences <p>8) Termination:</p> <ul style="list-style-type: none"> - General - Assets transfer - Early termination <p>9) Dispute avoidance and dispute resolution:</p> <ul style="list-style-type: none"> - Partnering - Mediation - Dispute boards - Arbitration - Applicable law 		
83	1438	<p>Taking into account the particular nature of the Concession PfPPP, yet unknown in many countries, it is important to clarify in the Framework Law (or in the Implementing Provisions), the fundamental</p>	<p><i>1. Additional clauses more specific to Concession PfPPP</i></p> <p><i>Without changing the substance of existing clauses (found mostly in line 1722 to line 1790)</i></p> <p><i>Rearrange their order and refine and merge them as appropriate and add some key clauses by reference inter alia to the UNECE list of recommended clauses and</i></p>	

¹ Types of comment: ge = general; te = technical; le = legal; ed = editorial

		<p>differences between Public Payment PPP and Concession PPP.</p>	<p><i>to the Phase II draft. Then keep the most critical only in the FR Law (more or less 10 to include in second part of article 24) and include the others in the Impl Prov .</i></p> <p>Consider which part from below deserves to be part of FR Law and which part in Impl Prov)</p> <p><i>In Concession PfPPP like in Public-Payment PfPPP, the private partner finance, design, build, or rehabilitate a public infrastructure and participates to the delivery of a Public Service.</i></p> <p><i>The participation of the private partner to the public service in Public-Payment PfPPP is generally limited to a part of the Public Service to be delivered by the Contracting Authority, to the final beneficiaries. In most cases, the private partner's scope does not go beyond maintenance and facility management and/or output/capacity/delivery for the building, public works and/or facility created or rehabilitated. The Contracting Authority compensates directly the private partner for its investment, operation and maintenance activities upon satisfactory delivery of the service during the project life cycle.</i></p> <p><i>By contrast, the role of the private partner in Concession PfPPP is much broader since its main obligation is to deliver a full Public Service directly to the end users on behalf of the Contracting Authority. The private partner recovers its investments, operation and other costs, including a</i></p>	
--	--	-------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--

¹ Types of comment: ge = general; te = technical; le = legal; ed = editorial

			<p><i>profit element, entirely or mostly from the fees paid by the end users. As such, the private partner relationships with end users for delivery of satisfactory Public Service with the support of the Contracting Authority for the project life cycle becomes a central element to be considered and addressed by both parties in an equitable and sustainable manner taking into account a web of relationships with stakeholders and public authorities.</i></p> <p><i>Sustainable Concession PfPPP must be based on as a series of contractual clauses and underlying legal requirements aiming at maintaining a fair equilibrium during the whole project life cycle between respective rights and obligations of the parties in line with international best practice</i></p> <p><i>The following headings and outline content of clauses be part of most Concession PfPPP contracts.</i></p> <p><i>Whereas.</i></p> <p><i>Since the level of demand and affordability to pay for the service by the end users is a major consideration at the core of all Concession contracts, the whereas should refer to a robust process of consultation with stakeholders and different categories of future users of the service, both for its scope and affordability, leading to joint expectations of the parties on the amount of the income stream during the project life cycle. The whereas should also refer to the provisional amount of costs of any kind (including target profit margin) during the</i></p>	
--	--	--	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--

¹ Types of comment: ge = general; te = technical; le = legal; ed = editorial

			<p><i>project life cycle to be integrated into the Economic and Financial Business Case which represents one the cornerstones of the agreement between the parties.</i></p> <p><i>In most cases, the whereas should acknowledge that both parties intend to deliver a Public Service remaining adapted to the needs and affordability of the end users during the project life cycle, and that it is not realistic to envisage in the contract all situations which could occur. Consequently, they have organized their contractual relationship with a view of facilitating improvements and adaptation of the Public Service when justified, without deteriorating the economic and financial viability of the venture.</i></p>	
84	1444-1487	<p>Authorized amendments to PfPPP contract must be well defined and always remain consistent with core principle of Public Procurement</p>	<p><u>Delete and replace by the following:</u></p> <p><i>Amendments of Contract.</i></p> <p><i>The amendment shall not introduce conditions which, had they been part of the initial contract award procedure for the PPP, would have allowed for the admission of bidders other than those initially selected or for the acceptance of a proposal other than that originally accepted or would have attracted additional participants in the contract award procedure.</i></p> <p><i>Any amendment or modification (other than one already provided for in the contract) which would materially alter any of the fundamental or essential elements or aspects or its terms and conditions, shall require the approval or endorsement of the</i></p>	

			<p><i>Interministerial Committee before such amendment or modification becomes effective. Such approval or endorsement may be subject to further specific conditions.</i></p>	
85	1495-1531	<p>Early termination compensation for PfPPP contract must include special provision inter alia to take care of the fact that in case of early termination for any cause (including default of the private partner), the infrastructure of facility which do not belong to the private partner will continue to be used by the public partner. The economic and financial equilibrium which underlined PfPPP Project for the project lifecycle trigger special compensation rights.</p>	<p><u>Delete and replace by the following:</u></p> <p><i>Early Termination Compensation.</i> <i>Where the PPP contract so provides, and/or when underlined government regulations contain special provision in this matter, either party shall be entitled to compensation from the other upon its early termination for any reason, in an amount and on a basis calculated in accordance with the terms of the contract and/or underlined government regulations subject to the provisions of This Law</i> <i>Due consideration shall be given by the parties concluding a PfPPP contract to the following principles upon which any such compensation should be calculated, which may include or take account of (by way of illustration and without any double-counting) any of the following:</i></p> <ul style="list-style-type: none"> <i>(a) The non-amortized value of any assets transferred to the Contracting Authority;</i> <i>(b) Appropriate compensation for the returns expected by equity investors over the term of the agreement;</i> <i>(c) Compensation for costs and losses suffered by either party as a result of early termination, including lost profits;</i> <i>(d) The amount of any outstanding liabilities of either party at the time of its termination.</i> 	

			<p><i>The parties to the PfPPP contract shall be entitled to agree such terms for the payment of such compensation as seem to them most appropriate in all the circumstances, and which are consistent with This Law applicable law and any relevant constraints of government regulations, such as the need to avoid unjust or undue enrichment or any disproportionate penalties for breach of contract.</i></p> <p>4. Other Termination Steps</p> <p><i>The PfPPP contract may provide, as appropriate, for any of the following upon or following its termination or expiry subject to applicable provisions of thi slaw</i></p> <p><i>(a) Mechanisms and procedures for the transfer of assets to the Contracting Authority;</i></p> <p><i>(b) The compensation to which the private partner may be entitled in respect of assets transferred to the Contracting Authority or to a new private partner or purchased by the Contracting Authority;</i></p> <p><i>(c) The transfer of technology required for the operation and maintenance of the PfPPP;</i></p> <p><i>(d) The training of the Contracting Authority's personnel or of a successor private partner in the operation and maintenance of the P PfPPP;</i></p> <p><i>(e) The provision, by the private partner, of continuing support services and resources, including the supply of spare parts, if required, for a reasonable period after the transfer of the PfPPP to the Contracting Authority or to a successor private partner;</i></p>	
--	--	--	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--

¹ Types of comment: ge = general; te = technical; le = legal; ed = editorial

			<i>(f) Mechanisms and procedures for the decommissioning of the PfPPP, including the preparation of a decommissioning plan, the parties' respective obligations for carrying it out and their financial obligations in that respect.</i>	
86	1589		<u>Starts the sentence by the following words:</u> <i>"For concession PPP"</i>	
87	1591		<u>Starts the sentence by the following words:</u> <i>'For Public Payment PPP'</i>	
88	1714-1790		<u>Delete</u> (the substance of those provisions are now part of Article 24 under the heading "Additional list of terms and conditions for Concession PPP")	
89	1877-1883		<u>Delete and replace by the following:</u> <i>"The PfPPP contract shall be governed by the law of the country where the infrastructure is located and service delivered.</i> <i>The clause may provide that in the absence of authoritative references in local law or case law in specific matters, reference could be made to equity or to internationally recognized best practices as published from time to time by relevant international and neutral institutions such as UNCITRAL and UNECE. "</i>	
90	1884		<u>Replace the title by the following:</u> <i>"Dispute avoidance and alternative dispute resolution"</i>	
91	1885-1915		<u>Delete and replace by the following:</u> <i>"General.</i> <i>The incomplete nature of most PfPPP contracts, which cannot set in stone all</i>	

	<p>Dispute avoidance and amicable settlement; It is important to give substance to the real nature of PPP which involve obligation for the parties to behave as honest partners and not focusing primarily to self-interest but on thy interest of the end users of the service (ie The UNECE People first concept). Lessons learned in this smatter around the world deserve to become part of the law.</p>	<p><i>detailed specifications for the provision of a Public Service during the project life cycle necessitates to include a set of provisions allowing the parties to “agree to agree” by reference to common objectives principles, and documents (including the Economic and Financial Business Case). It is important to foster a real partnering process and model dispute avoidance or alternative dispute resolution mechanisms. For this purpose, the parties should consider adopting the following:</i></p> <p>a)Partnering. <i>The parties should agree on a minimum organizational partnering structure and process to ensure the smooth, long-term development of their relationship. The partnership should be developed along the following lines:</i></p> <ul style="list-style-type: none"> - <i>Partners meeting organized on a regular basis for instance each quarter;</i> - <i>Party to the partnering meeting composed of several individuals from each side having an important role in relation to the construction and delivery of the service (technical, commercial financial) ;</i> - <i>Simple partnership by-laws for efficient partners meetings based on a consensus decision making process ;</i> - <i>Duty to disclose any potential issues at partner meetings</i> - <i>For complex projects, consider a facilitator;</i> - <i>Duty to disclose and discuss any cause of dispute during partners meeting before any other steps toward dispute resolution;</i> <p>b) Dispute Board.</p>	
--	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--

¹ Types of comment: ge = general; te = technical; le = legal; ed = editorial

			<p><i>Dispute boards are generally composed of senior and authoritative experts selected by the parties and which meet with the parties at regular intervals from signature of the contract even in absence of disputes.</i></p> <p><i>The boards should operate under the rules of a well-respected international organisation.</i></p> <p><i>Several natures of boards are possible depending of their role in the dispute from mere advice to adjudication.</i></p> <p><i>For Concession PfPPP, despite avoidance board is generally recommended, preferably composed of three experts up to the closing of the commissioning phase and transformed into a single-person board during the operation phase.</i></p> <p><i>One board member should have a prone experience in delivery of essential Public Services.</i></p> <p>c) Mediation.</p> <p><i>As an alternative to dispute board and for less complex PfPPPs, a structured mediation process should be considered. The clause could provide for mandatory mediation before referring the matter to arbitration. The clause should provide for a structured mediation by a mediation board with more or less the same qualification as the ones proposed for dispute board. It should organize a simple mediation process with limited role of due process.</i></p>	
92	1916-1928		<p><u>Delete and replace by the following:</u></p> <p><i>“The clause should provide that dispute which have not been settled</i></p>	

¹ Types of comment: ge = general; te = technical; le = legal; ed = editorial

		Arbitration should be a last resort with guarantees of efficiency and enforcement inducing the parties to settle amicably the dispute.	<i>through dispute board or mediation under dispute board or mediation proceedings shall be finally settled by three arbitrators appointed in accordance with the rules of arbitration provided by an authoritative international organization.”</i>	
--	--	----------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--

¹ Types of comment: ge = general; te = technical; le = legal; ed = editorial