

# UNECE Project Team on Model Law for PPP/Concessions<sup>1</sup>

## Team meeting and discussion and action items

Thursday 14th September, Conference call session 15:00-16:00 CET

Participants	
<b>Attendees</b>	Christopher Clement-Davies (Team Leader), Amer Al Adhadh, Saidi Amiri, Wilfried Bassale, Ekaterina Bepalova, Shaimerden Chikanayev, Anthony Coumidis, Predrag Cvetkovic, Bruno Decazalet, Alexander Dolgov, Bill Halkias, Carla Hancock, Rufin Serge Wilfrid Itoba, Tomasz Jedwabny, Daler Jumaev, Vicky Kefalas, Vladimir Kilinkarov, Pedro Lacasa, Tham Lai Leng, David Joachim Lubbertus van Ee, Veronica Lupu, Svetlana Maslova, Ian McGrath, Jörg Nowak, Rafael Pérez Feito, Manuel Protásio, George Smyrnioudis, Marius van Aardt, Marianne Viola
<b>Invited</b>	See Appendix A
<b>Apologies</b>	Lars Wellejus, Irina Zapatrina
<b>UNECE Secretariat</b>	Tony Bonnici, Claudio Meza, Scott Walchak

This was the inaugural meeting/telephone conference of the UNECE Project Team on Model Law for PPP/Concessions (the “Team”). The UNECE representatives welcomed the participants and thanked them for taking part. It was noted that around 50 professionals and experts had volunteered to be members of the Team from around the world (see Appendix A), which represented a high and encouraging level of interest and enthusiasm. Some eminent lawyers in this field had put their names forward, but also other professionals with valuable relevant expertise and experience. There was every reason to expect that its work would be productive and fruitful. The plan would be to hold calls of this kind every month or two, as the tasks envisaged required, dividing the detailed work involved amongst different work streams or sub-teams as appropriate.

An outline was given of the role of the Team within the wider framework of UNECE’s PPP program and standards development efforts. The Team’s proposed role is to develop standards and documents in the legal field, as part of UNECE’s work in providing recommendations and guidance for governments on structuring and implementing PPPs, in furtherance of the United Nations Sustainable Development Goals (“SDGs”, which can be found here: <https://sustainabledevelopment.un.org/sdgs>). The SDGs and UNECE aim to promote “People First” PPPs. Members of the Team were therefore asked to familiarise themselves with the SDGs at the outset, if they had not already done so, in particular Goal no. 17 (which specifically mentions PPPs), and to start thinking about ways in which they could most appropriately be addressed by and factored into the Team’s work. This could be the subject of another conference call at an early stage of the Team’s endeavours.

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<sup>1</sup> Note by the secretariat: normative work of this topic is under consideration by the member States and is expected to be endorsed at the forthcoming session of the Working Party on PPPs (Geneva, 21-22 November)

It was explained that, potentially, a very wide range of subjects could be covered by the Team, as PPPs touch on so many legal issues and themes. It was noted that it would be important to focus on one or two specific areas at a time, which seemed to the participants to be significant and worthwhile, and which could drive its efforts forward. The Team discussed the first task, which would be to agree on what those areas should be. It was pointed out that the UNECE Secretariat could not simply legislate (as it were) for any subject it desired. It had to build consensus amongst member governments, and take account of any preferences or objections that were put forward by them in relation to the concepts proposed.

The original proposal for the work of the team was discussed, which was the development and drafting of a Model Law for PPP/Concessions. The Team Leader explained the background to this, saying that many emerging market governments were currently drawing up and enacting legislation of this kind, and that, over the past 20 years or so, the scene had shifted from one where helpful legislation of this kind was relatively rare, to one where some very impressive examples had been put in place. The Team Leader stated that he thought it would therefore be both feasible and constructive to draw up a model law of this kind, taking account of recent international best practice in this field, and that it could be done relatively quickly and easily. This model law would, in effect, constitute an amalgamation of typical provisions found in laws of this kind, which could provide governments with helpful guidance as to what such laws looked like, together with explanatory notes describing the clauses, and the issues typically encountered as they are drawn up. It would not be a standard form law which governments could simply reproduce and implement. It would always need to be adapted to the circumstances, needs and traditions of a particular country. But it was explained that it would represent useful guidance and insight, an example of evidence-based, international best practice in the PPP field. It was also noted by the UN Secretariat that some doubt had been expressed by member states about whether this was achievable and/or appropriate. The Secretariat was therefore very keen to hear the views of the Team about the proposal, and whether or not it was supportive.

The participants on the call were therefore asked whether they thought the concept of a Model Law for PPP/Concessions would be an appropriate starting point for their work. Many participants expressed the view that it would. No-one taking part in the call disagreed. It was agreed that it was desirable to keep any work products 'short and simple'. It was noted that it should be possible to do so with a Model Law for PPP/Concessions.

One participant asked whether it would also be helpful to draw up a model project agreement for PPP projects. The Team Leader explained that this, too, has been proposed when the Team was first being put together, but that he had thought it advisable to focus initially on just one task, and the most straightforward one. Concession agreements were longer and more complex documents than concessions laws, and more variable in their contents from one sector, one project and one legal system to another. The Team Leader noted that he would be very much in favour of attempting to do this in time, and making it a central part of the Team's work, but felt that a decision should be made about the Model Law for PPP/Concessions first, and (if it was affirmative) progress made with that document beforehand.

Other points made during the discussion included the following:

- A model law would not need to be sector specific. In theory, it could extend to any sector. There was no need to exclude any sector in principle at the outset, even 'socially sensitive' ones such as education and health, although doubt was often expressed about whether PPP laws should cover oil and gas, since the extractive industries tended not to involve public services directly.
- It might be helpful to produce a risk matrix in parallel with a model law, since governments often underestimate certain key risks when introducing PPPs for the first time. A model risk matrix could help mitigate this danger. This suggestion was welcomed.

- Several participants had worked on the CIS Model Concessions Law, which is widely thought to be a first-rate document of its kind. It was noted that it could be used as a valuable precedent for the present (proposed) exercise, but the latter would differ from it in certain respects. The CIS Model law was designed for the jurisdictions of the CIS States, and is not yet available in an official translation into English. (It has also not yet been formally adopted by any of those jurisdictions). It was noted that a UNECE PPP document would have more of a 'global' remit, and would be drawn up in English.
- The suggestion was also made that the Team might prepare a model PPP policy statement as well as a model law. Several sub-teams within the UNECE PPP grouping were working on policy documents and sector-specific standards. This suggestion was also welcomed, and would be kept under review.
- Attention was also drawn to the on-going work of UNCITRAL on its legislative guide for privately-financed infrastructure, and the associated model clauses (which were drawn up about 15 years ago). This was currently being up-dated, and would represent a very helpful parallel exercise. Several members of the Team were also involved in that effort.
- The Team Leader explained that, for drafting purposes, once the priority tasks of the Team had been agreed, it was probable that smaller sub-teams would be created, which would then report back to the wider team. This was likely to make the work involved more manageable and efficient.

The Team Leader agreed to circulate the Project Proposal he had prepared for the Model Law for PPP/Concessions, for members of the Team to review and comment on. This is now attached to these minutes as Appendix B. Any comments or suggestions would be very helpful and gratefully received.

The next call/ meeting would focus on 2 areas: (a) further feedback on the contents of Appendix B and the proposal that the Team should work on a Model Law for PPP/Concessions; and (b) review of the SDGs referred to above.

It was confirmed that as much notice of the timing of the next call would be given to members of the Team as possible.

## Appendix A. Members of the Team

Title	First name	Last name
Mr.	Amer	Al Adhadh
Mr.	Saidi	Amiri
Mr.	Wilfried	Bassale
Ms.	Ekaterina	Bespalova
Mr.	Patrick	Blanchard
Mr.	Tomas	Brizuela
Ms.	Raushana	Chaltabayeva
Mr.	Shaimerden	Chikanayev
Mr.	Rubayet	Choudhury
Mr.	Christopher	Clement-Davies
Mr.	Anthony	Coumidis
Mr.	Predrag	Cvetkovic
Mr.	Bruno	Decazalet
Mr.	Alexander	Dolgov
Mr.	Daniel	Escauriza
Mr.	Emiliano R.	Fernández
Mr.	Marc	Fornacciari
Mr.	Dominique	Gatel
Mr.	Richard	Ginks
Ms.	Marta Viviana	Granada Fleitas
Mr.	Bill	Halkias
Mr.	Sulaiman	Hallal
Ms.	Carla	Hancock
Ms.	Louise	Huson
Mr.	Rufin Serge Wilfrid	Itoba
Mr.	Tomasz	Jedwabny
Mr.	Daler	Jumaev
Ms.	Vicky	Kefalas
Mr.	Vladimir	Kilinkarov
Mr.	Pedro	Lacasa
Ms.	Tham	Lai Leng
Mr.	Shijian	Liu
Mr.	David Joachim	Lubbertus van Ee
Ms.	Veronica	Lupu
Mr.	Atef	Majdoub
Ms.	Svetlana	Maslova
Mr.	Ian	McGrath
Mr.	Sreejith	Narayanan
Mr.	Jörg	Nowak
Mr.	Rafael	Pérez Feito
Mr.	Manuel	Protásio
Ms.	Olga	Revzina
Mr.	Peter	Rowen
Mr.	George	Smyrnioudis
Ms.	Irina Viktorovna	Taranova
Mr.	Wim	Timmermans
Mr.	Marius	van Aardt
Ms.	Marianne	Viola
Mr.	Lars	Wellejus
Mr.	Parwana	Zahib-Majed
Ms.	Irina	Zapatrina
Mr.	Alexei	Zverev