

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

## Team meeting, discussion and action items

Thursday 16th November, 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, Ian McGrath, Jörg Nowak, Rafael Pérez Feito, Manuel Protásio, George Smyrnioudis, Marius van Aardt, Marianne Viola, Shijian Liu, George Smyrnioudis, Wim Timmermans, Lars Wellejus, Parwana Zahib-Majed
<b>Invited</b>	See Appendix A
<b>Apologies</b>	Tham Lai Leng, Svetlana Maslova
<b>UNECE Secretariat</b>	Claudio Meza, Scott Walchak

This was the second meeting/telephone conference of the UNECE Project Team on Model Law for PPP/Concessions (the “Team”). Mr. Claudio Meza and Mr. Scott Walchak welcomed the participants to the call on behalf of the UNECE PPP Group, and thanked them for participating.. Reference was made to the forthcoming sessions of the Working Party on PPPs scheduled for the following week in Geneva.

Mr. Clement-Davies as Team Leader asked if there were any comments on the minutes of the previous meeting. There were none, and so these were deemed approved.

There was a brief discussion of the Sustainable Development Goals (“SDGs”) set out on the UN website, which members of the Team had been asked to consider for the purposes of this meeting. It was explained that they would need to be specifically cross-referenced in the work of the Team going forward. Eventually, we would need to produce summaries of the work carried out, which could discuss its relevance to the SDGs and the part it could play in promoting and advancing them. It was mentioned that at least 50% of the SDGs were thought to touch on PPPs one way or another, most obviously Goals 16 and 17. In bringing out their relevance as we proceed, it will not be necessary to identify many formal connections with them, but a clear sense of how the model law we are planning to draft could facilitate or impinge on them would be important. Work currently being carried out on behalf of the UN today needed to be couched in the context of furthering the SDGs.

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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 noted the need to be clear and consistent from the outset in our use of defined terms in the project. For example, it was asked whether a distinction was being made between ‘concessions’ and ‘PPPs’, as some jurisdictions maintain a formal one? The Team Leader acknowledged this, and said that-perhaps somewhat under the influence of English law jurisprudence-he did not generally regard it as helpful to try to make a clear-cut distinction between them, as the two were often treated as interchangeable and in any event always overlapped. The Team Leader noted this was true of most of the legislation he had worked on in this field and that the terms do not have established meanings in English case law, where they are treated more so as market concepts rather than legal terms. He noted in his experience, most legal systems displayed a similar flexibility, although in some countries (in particular, China) a distinction between them was becoming an important institutional dynamic. French law, on the other hand, treated the two in very distinct ways, and this approach has now found its way into EU legislation. It was mentioned that, in Poland, there are two different legal acts which turn on the distinction between the two. It was noted that the Project Proposal as it stood seemed to be limited to Concessions in that defined sense, and one or two members had read it in that way. The Team Leader said that it was not yet clear how this subject would eventually be handled in the documents to be drafted by the Team, but it would certainly be important to give it proper thought and discussion as the detailed work proceeded.

The Secretariat mentioned that this showed how the work of the Team would comprise a mixture of both practitioners’ experience and thinking at a more theoretical level. It would be important for us to be aware of and to identify current market trends and best practice developments around the world. Where different approaches were thought to be equally valid in different jurisdictions we should be ready to note and discuss this, at least in an explanatory way. The Team Leader offered to modify the Project Proposal to address this issue more explicitly. This was felt to be a helpful suggestion. A slightly modified draft of the Project Proposal is attached to these minutes as Appendix B.

The Secretariat was asked how long it was expected to take to obtain formal approval of the Project Proposal, allowing the detailed work to proceed, and what procedures were involved? The Secretariat explained that the finalised Project Proposal would need to be approved by the Working Party.

The team discussed circulating a slightly modified Project Proposal to the Team for its final confirmation. Once that confirmation had been obtained, the appropriate sub-groups could be formed and work could start.

It was asked how the sub-groups were likely to be structured. The Team Leader said that that was still under consideration, but that there were likely to be two or three-dealing with (respectively) the drafting of the Model Law itself, the Model Policy Paper (if we prepare one) and a risk matrix. It was noted that, eventually, the Team may also need to prepare accompanying guidance and explanatory notes. The Team Leader noted that it would make sense to divide up the members of the Team according to their particular interests and expertise, so that the most efficient progress could be made. In any event, all work products of the sub-groups would be circulated to the wider Team for its review and input as they were being finalised, with a view to making maximum use of all the Team’s capabilities.

The date of the next meeting was discussed. There being no further business, the meeting was concluded.

Time engaged: 1 hour.

## 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
Prof	Don	Wallace
Mr.	Lars	Wellejus
Mr.	Parwana	Zahib-Majed
Ms.	Irina	Zapatrina
Mr.	Alexei	Zverev

## Appendix B

# Project Proposal

## Model Concessions/PPP Law

### 1. Project Purpose

The purpose of the project is to draw up and draft a standard model concessions/PPP law (“Model Concessions Law<sup>2</sup>”). New concessions laws have been enacted by many countries in the past 25 years, but vary widely in quality and content. Some of the more recent ones are very well structured and thought-through. Others, particularly less recent ones, are more deficient. Many countries are now introducing laws of this kind, as part of the process of launching new PPP programmes. This is therefore an opportune time to draw up a standard model form law of this kind, taking into account the most helpful, respected, tried-and-tested precedents in existence.

The Model Concessions Law would be available for governments to draw on as they prepare (or revise) their own laws of this kind, providing both conceptual and structural guidance and precedent provisions. Its function would be to serve as a source of guidance and example, not as a ready-made, ‘off-the-shelf’ piece of legislation. It would need to be adapted as appropriate to each jurisdiction. In this way, it will provide invaluable assistance to countries embarking on PPP programmes for the first time, as well as those looking to improve existing frameworks, and will represent an up-to-date, first-rate standard of PPP legislation of this type. It will stand as a major contribution to the contemporary corpus of publicly available materials and guidance notes on this subject.

### 2. Project Scope

The project will focus on the drafting of a coherent, wide-ranging, Model Concessions Law. Various publications in the past (e.g. the UNCITRAL guides) have provided guidance as to the areas such laws should address, the advantages and pitfalls of different types of clause, and the issues affecting them. However, a systematic review of existing approaches and proven precedents, compiled and reflected in a single model concessions law, has not been undertaken outside the CIS countries (where a new ‘CIS Model Law’ of this kind has recently been developed) . Nor have any efforts to date focused on furthering the UN Sustainable Development Goals. The aim of the project would therefore be to draw up the provisions themselves, setting out a reasonably complete set of precedent clauses and a supporting implementation commentary, based on a compilation and synthesis of empirical evidence, and focused on the achievement of the UN Sustainable Development Goals.

### 3. Project Deliverables

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<sup>2 2</sup> Note that the term “concessions law” in this document is used in the broadest sense, to cover all types of PPPs and concessions. It is simply being called a “Concessions Law” in the interests of brevity and simplicity, and because that is how documents of this type are so often referred to in different jurisdictions. Many countries now make a formal distinction between “concessions” and “PPPs”, building on the French example and defining the former as involving direct user charges and the latter as involving a government revenue stream. This distinction is also now reflected in some areas of EU legislation. However, it is thought that many more countries do not make a formal distinction of this kind, and still treat the two as essentially interchangeable terms. This project proposal does the same. As the work of the Group progresses, we will need to consider and decide how the distinction is addressed and reflected in the documents we produce.

The project will involve a review, compilation and harmonisation of highly-regarded, well-drafted and structured, proven concessions laws currently in existence, based on best practices and other experience-based insights into how a concessions law should be constructed and drafted. The main deliverable will be a new Model Concessions Law based on these precedents, together with a relatively short commentary summarising and explaining the scope and operation of its provisions and how they will further the UN Sustainable Development Goals. It will be a comprehensive, fully-drafted document. It is anticipated that it will cover the main areas typically addressed by laws of this kind, including, among other elements: key definitions; applicable sectors for PPPs (and any exclusions); available PPP structures; identification of granting authorities; power and authority of granting authorities; administrative coordination; applicable budgetary mechanisms (if any); applicable regulatory provisions; procurement procedures; review and appeal mechanisms; risk allocation and government support; potential content of concession agreements; finance and security; step-in rights; available dispute-resolution mechanisms; inter-relationship with other laws; supporting regulations. It will focus on those established principles, provisions and precedents, which are considered to be of most practical use as a source of guidance to governments, however, rather than attempting to cover every single clause that might be included in a concessions law.

**Methodology:** The project team will discuss and agree on the library of leading precedents and other reference materials and empirical evidence, the structure and scope of the proposed new model law, its optimum length and scope of contents, and the working processes and timetable for finalising it. We will draw up and agree a set of heads of terms covering the main provisions. The clauses themselves will then be drafted and circulated to the team members and other key stakeholders for comment. Guidance notes to the provisions will also be discussed and agreed.

The work of the Group is also now likely to include a model risk matrix for PPPs and perhaps a model Policy Paper. Policy Papers explaining and promoting PPPs are often drawn up and formally adopted by governments these days as part of the process of enacting new Concessions Laws, with the help and advice of specialist outside consultants. If the Group takes the view, as its work progresses, that either or both these documents would be helpful additions, they can be prepared in parallel with the Model Concessions Law.

## 4. Geographical Focus

The focus is global. Care will be taken to ensure that it is also specifically relevant and applicable to the countries of operation of any IFIs specifically supporting the exercise.

## 5. Indicative Timetable

It is anticipated that the project will take up to a year to complete. A more detailed timetable can be drawn up as work gets underway.