

# UNECE Project Team on Model Law for PPP/Concessions

## Team meeting, discussion and action items

Tuesday 30<sup>th</sup> January 2018, Conference call session 15:00-16:00 CET

Participants	
<b>Attendees</b>	Christopher Clement-Davies (Team Leader), Amer Al Adhadh, Wilfried Bassale, Ekaterina Bepalova, Bruno Decazalet, Louise Huson, Vladimir Kilinkarov, George Smyrnioudis, Marianne Viola, Lars Wellejus
<b>Invited</b>	See Appendix A
<b>Apologies</b>	Rubayet Choudhury, Predrag Cvetkovic, Tomasz Jedwabny, Shijian Liu, David Joachim Lubbertus van Ee, Ian McGrath, Parwana Zahib-Majed
<b>UNECE Secretariat</b>	Claudio Meza, Scott Walchak

This was the third meeting/telephone conference of the UNECE Project Team on Model Law for PPP/Concessions (the “Team”). The Team Leader and the UN Secretariat welcomed the participants to the call on behalf of the UNECE PPP Group and thanked them for participating.

Mr. Clement-Davies as Team Leader asked if there were any comments on the minutes of the previous meeting, and specifically on the revised draft of the Project Proposal circulated with them. There were none, and so these were both deemed approved.

The Team Leader asked whether anything further remained to be done to obtain formal approval by the United Nations of the Project Proposal. The UN Secretariat provided further clarification of this question. The Project Proposal itself does not actually need formal approval. The creation of the Group and its remit had been noted and accepted by the UN’s PPP Working Group at its last session in Geneva in November, with a ‘favourable recommendation’ that it go forward. That was sufficient for procedural purposes.

The Team Leader inquired how long the approval process took and whether it should be included in the project timeline. The Secretariat noted it was now up to the Team to define its own detailed workload, internal organisation and timeline for completing the work (a more global project timeline had already been summarised in the Project Proposal). The Secretariat noted that the next formal approval in the 7 step process to member state adoption would be in relation to the Team’s eventual work product, and the draft would go through various reviews and edits before a final draft is ready for presentation to the member states. For example, once the work product had been prepared and completed by the Team, it would need to be submitted for public review and comment and input from various stakeholders. The team should be aware that potentially extensive comments and revisions occur. This revision and finalization process can sometimes take several months or longer depending on the acceptability and quality of work and input received. As a result, when the Team produced its drafting timeline, it may refer to this at the end, but it is not necessary to schedule a specific time-period, as it is a dynamic and flexible process that is administered by the Secretariat after the team has submitted its draft. The Team Leader agreed to prepare and circulate a draft timeline for discussion by the Team.

The Team then discussed the collection of precedents. The Team Leader asked members to circulate any precedents for concessions/PPP laws that they felt we should keep in mind and draw on as empirical evidence. We would then discuss them and identify leading precedents. The CIS Model Law, and the laws from Lithuania, Mongolia, Armenia and perhaps Georgia, were all suggested. It was suggested that, in doing so, we should also take into account the latest EBRD survey of concessions/PPP laws published on its web-site. The Team Leader also agreed to discuss this with Alexei Zverev, who heads up the EBRD's work in this area. It was suggested that around 10 or 15 precedents could be sufficient for purposes of carrying out the work.

Scott Walchak reminded the Team of the importance of taking a truly global approach to this exercise, and of building a firm consensus behind the selection of leading precedents, which was more likely to win the widespread support of Member States. We should look at both civil and common law jurisdictions. It should also be borne in mind that we are attempting to draw up a model which can actually be used by any government in need of new laws of this kind; many of which are now in emerging market jurisdictions which tend to have legal systems closer to the civil law system.

Scott Walchak, on behalf of the UN Secretariat, mentioned the importance of considering the practical, contextual application of the new Model Law. We would not be drawing up a perfect model, based on every conceivable provision that can be found in different jurisdictions, but a practical template, rooted in actual experience, which could be constructively used by governments. The Group should consider drawing up detailed guidance notes to accompany the Model Law explaining how its provisions worked in practice. The Team Leader agreed with the need to keep the empirical and practical context firmly in mind but noted that the team was not tasked with preparing extensive guidance notes. Noting that a considerable amount of guidance on the subject has already been published in the past—including by UNIDO, UNCITRAL and others (UNCITRAL is currently updating its work in this area) and these documents tended to be lengthy and time-consuming to prepare. The guidance notes would therefore be relatively brief, and provide summary explanations of the provisions.

The Team then discussed the structure of the sub-groups. The Team Leader explained that he had 3 in mind at the moment: (a) a drafting group; (b) a commercial issues group; and (c) a wider group to review the work of the first two (essentially, the whole Team). The UN Secretariat confirmed that this would be acceptable as many teams created a smaller, core drafting group and then a larger, reviewing and commenting group to progress the draft. The team discussed a drafting sub-group that would be responsible for drawing up the provisions of the Model Law itself. The commercial sub-group would focus on ancillary issues and tasks, and along with the wider group would consider, review and approve the various drafts. The UN Secretariat confirmed that a team may change or re-define its working structure as needed over time. This proposed structure was then taken as agreed by the participants on the call. The Team Leader asked for volunteers for each sub-group, by e-mail to the UN Secretariat.

The team discussed whether a policy paper should be produced on Concession Law. It was explained by the UN Secretariat that this would go beyond the scope of the work contemplated in the Project Proposal; however a brief discussion of policy issues in the introduction of the Model Law would be acceptable. The date of the next meeting was discussed. It was agreed that it would be in about a month's time. There being no further business, the discussion 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