

# UNECE Project Team on Model Law for PPP/Concessions

## Team meeting, discussion and action items

Thursday 28<sup>th</sup> June 2018, Conference call session 15:00-16:00 CET

Participants	
<b>Attendees</b>	Christopher Clement-Davies (Team Leader), Bruno de Cazalet, Alexander Dolgov, Louise Huson, Svetlana Maslova, Manuel Protásio, Wim Timmermans, Parwana Zahib-Majed
<b>Invited</b>	See Appendix A
<b>Apologies</b>	Predrag Cvetkovic, Thomas Hamerl, Vladimir Kilinkarov, Rafael Pérez Feito, George Smyrnioudis, David Joachim Lubbertus van Ee,
<b>UNECE Secretariat</b>	Claudio Meza, Scott Walchak

The UN Secretariat and Team Leader welcomed the participants on the call, and asked if there were any comments on the minutes of the previous meeting. One member helpfully asked whether anyone had approached the CLDP within the US Department of Commerce about participation in the Group? This consists of a team of (largely 'in-house') lawyers who specialize in advising governments on the drafting of challenging new laws. The Team Leader said that they had not yet been approached but thought it would be worth contacting them to see if they were interested in participating. The Group agreed to do this. There were no other comments on the minutes.

The Group then discussed the compilation of the library of precedent PPP/ Concessions laws. This was now largely complete. In addition to the 15-20 examples of laws of this kind already included from civil law (and FSU) countries, some examples of legislation from common law countries had been added. It was well understood that there were many fewer of these in existence, as it is not generally thought necessary in common law countries to have legislation of this kind in place, at least of a wide-ranging or comprehensive scope; where PPP legislation is required, it tends to be very specific, brought in to address narrow, jurisdiction-specific issues. Nevertheless, the Group's remit is a truly global one, and account should be taken where appropriate of common law legislation as well. The Team Leader again invited all members of the Group to send through any further precedents that they thought we should be considering, but only truly outstanding ones. Once the library was complete, we would plan to add an electronic link to it in the UNECE's website, so that anyone interested would be able to explore the precedents as they wished.

One member (Louise Huson from DLA) kindly offered to use her firm's offices in Latin America and the USA to send further examples of PPP laws from these jurisdictions, as previous minutes had indicated that the Group was somewhat under-represented in those countries. This was gratefully welcomed, with the proviso that we are only asking for first-rate precedents.

Bruno de Cazalet then gave a very clear and helpful summary of the latest EBRD assessment of PPP/ Concessions legislation in its countries of operation. This is an invaluable, comprehensive and meticulous survey of laws of this kind in place in (or absent from) the Bank's operational jurisdictions, carried out every few years, and led by Alexei Zverev, with the involvement of Bruno de Cazalet. The

latest survey had been carried out principally by CMS, led by Thomas Hamerl and Marija Musec (who are now members of the Group). Its findings had been presented by the Bank at its offices just after the Group's last conference call and would soon be published. They would represent an extremely helpful source of data and opinions for our own work.

M. de Cazalet explained that, in 'compliance' terms, the PPP laws in place in most of the EBRD's countries of operation now scored fairly highly. Mongolia was still thought to have the pre-eminent one, but several other jurisdictions (including Serbia, Lithuania and Morocco) also have impressive examples. The critical legal provisions dealing with selection of private partners and the project agreement tend to be in good shape across these jurisdictions, although there is further room for improvement in some cases. The continuing areas of concern with these laws tend to centre around aspects of implementation and practice. Arrangements for project selection and preparation, government support and even security are not always as far advanced as one might wish. The 'effectiveness' criteria built into the survey therefore tend to score much less highly. Bruno again paid tribute to the quality of the CIS Model Law (which is not covered in the survey, since it is not an item of legislation). The Team Leader thanked M. de Cazalet very much for his presentation and promised to have the presentation slides circulated to the Group after the call.

The Team leader then explained that work would soon start on the Heads of Terms for the Model Law, which would be produced by the drafting sub-group (see minutes of the last call on this subject). There was a further brief discussion of the formation of the sub-group. The Team Leader reminded the Group that he was trying to limit it to about 10-12 members. Any more risked impeding efficiency and progress. Ten members had already joined (listed in Appendix C), all of them with voluminous experience of working in this area. He again stressed that we would be delighted and honoured to include anyone else who was keen to participate, but did request that members please only put themselves forward if they had real depth of experience in drafting laws of this kind. Applications should please be accompanied by CVs bringing out their relevant experience. He also emphasized, though (as he has done repeatedly in the past) that no members of the wider Group should feel 'left out' in any sense at all if they were not part of the drafting sub-group. All draft documents would be circulated to the wider group for review and comment before they were finalized. Everyone would be given an opportunity to comment on any aspect of the Group's work.

The next meeting of the Group was expected to be scheduled for the end of September.

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	de Cazalet
Ms.	Natalia	Diatlova
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
Mr.	Thomas	Hamerl
Ms.	Carla	Hancock
Ms.	Louise	Huson
Mr.	Rufin Serge Wilfrid	Itoba
Mr.	Tomasz	Jedwabny
Mr.	Daler	Jumaev
Ms.	Vicky	Kefalas
Mr.	Vladimir	Kilinkarov
Ms.	Tham	Lai Leng
Mr.	Shijian	Liu
Ms.	Veronica	Lupu
Mr.	Atef	Majdoub
Ms.	Svetlana	Maslova
Mr.	Ian	McGrath
Ms.	Marija	Musec
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
Mr.	David Joachim Lubbertus	van Ee
Ms.	Marianne	Viola
Prof	Don	Wallace
Mr.	Lars	Wellejus
Mr.	Parwana	Zahib-Majed
Ms.	Irina	Zapatrina
Mr.	Alexei	Zverev

## Appendix B. Library of PPP/Concessions law precedents

1. Mongolia
2. Serbia
3. CIS Model Law
4. Egypt
5. Croatia
6. Lithuania
7. Georgia
8. Belarus
9. Lebanon
10. Tunisia
11. Jordan
12. Kyrgyz Republic
13. Cambodia
14. Greece
15. Latvia

## Appendix C. Drafting sub-group members

1. Christopher Clement-Davies
2. Alexei Zverev
3. Bruno de Cazalet
4. Alexander Dolgov
5. Olga Revzina
6. Irina Zapatrina
7. Wim Timmermans
8. Richard Ginks
9. Vladimir Kilinkarov/ Ian McGrath
10. Professor Don Wallace