



**The UNECE Team of Specialists in PPP
UNCITRAL infrastructure development:
possible future work in PPP/PFIP
UNOG, Geneva, 5-6 February 2013**

Caroline Nicholas
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Context

UNCITRAL mandate

to harmonize the law of international trade

- Recognising link between international trade and development
- Legal certainty as pre-requisite for international trade and investment
- UN Rule of Law activities



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PP and PFIP texts from UNCITRAL

- From Working Group – “procurement and infrastructure development”
- UNCITRAL Model Law on Procurement (2011)
- Guide to Enactment (2012)
- Model Legislative Provisions on PFIP (2003)
- Legislative Guide on PFIP (2000)
- Model Law on Procurement of Goods, Construction and Services (1994)



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Other PPP legal texts – international

- OECD Basic Elements
- EBRD Core Principles
- UNIDO's Guidelines for BOTs
- EU Resolution on PPPs, PP and Concessions
- Proposal for a EU Directive on the award of concession contracts



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Other PPP guidance

- UNECE Readiness Assessment Tool
- EC's "Interpretative Communication"
- EPEC "Guide to Guidance"
- EC's "Green Paper" on PPPs etc
- MDB Procurement and PPP Transactions
Guidance
- etc



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Result

- Fragmentation
- No baseline accepted international practice
- Some States have relevant law (may/may not be “PPP Law”)
- Need for harmonization (NOT unification)
- Should international community be looking to develop a Model Law on PPP?



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What should be in a Model Law in PPP context?

- Template for *national* legislation
- Framework law, ie
- Essential principles and procedures – needs
 - Legal support – eg regulations, SBDs
 - Supporting institutional infrastructure
 - eg PPA, PPP Unit; guidance
 - Key role for capacity-building – eg UNECE
 - Supporting administrative infrastructure
 - Appropriate laws (eg those that will interact – eg insolvency, secured transactions)



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Why UNCITRAL?

Legislative mandate +

- Its working methods
- Negotiations through intergovernmental meetings
- All regions/countries share experience
- IGOs/international NGOs provide their expertise
- Not designed by or for any one region

Texts therefore suitable for all regions

Reflects international best practice and takes account of other donor activities/international texts

ML as a tool to communicate between users



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Proposals for PPP future work in UNCITRAL (1)

- Consolidate the PFIPs texts
 - eg into a Model Law + Guide
- To include Model Legislative Provisions, Recommendations and guidance in the Legislative Guide
- Consider scope of PFIPs texts
 - PPP cf PFIP – definitions?
 - Concessions etc without infrastructure development – services
 - Natural resource concessions
 - Other methods for service provision – divestment/privatisation



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Proposals for PPP future work in UNCITRAL (2)

- Update the PFIPs texts - recent developments
- Some key issues
 - Selection of the private partner – adapting RfP with dialogue – harmonizing PP/PPP procurement methods?
 - Procedural issues – authorizations, prescribed procedures
 - Applying governance standards in ML on PP to PPP, to comply with UN Convention Against Corruption
 - Review and sanctions – procedural breaches
 - Unsolicited proposals
 - Ability to amend contracts



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Proposals for PPP future work in UNCITRAL (2)

Objectives

- Strategic approach to infrastructure development
 - Spectrum of PP to privatization via PPP
- Common key principle – addressing public interest
 - Broadly expressed as value for money in PP
 - Other government objectives – accommodated in ML on PP
- Balancing public interest and private sector needs
 - Vital to ensure success



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Proposals for PPP future work in UNCITRAL (3)

Next steps

- Preparation of a Colloquium – Vienna, 2-3 May 2013
- Colloquium to make proposals to Commission, Vienna, mid-late July 2013
- Commission may give mandate
 - Eg to develop a Model Law
- Commission – UNCITRAL member states and observers come to consensus on future activities of UNCITRAL (many proposals)
- UNCITRAL legislative activities + coordination and cooperation with other bodies – UNECE, WHO, OECD, EBRD etc



The UNCITRAL Model Law on PP

For more information

UNCITRAL Website:

http://www.uncitral.org/uncitral/en/commission/working_groups/1/Procurement.html

http://www.uncitral.org/uncitral/uncitral_texts/procurement_infrastructure.html

Contact:

– UNCITRAL: caroline.nicholas@uncitral.org

THANK YOU

