



Fifth international PPP Forum
Side Event of 26 April, 9 a.m.

International Centre of Excellence
“Policies, Laws and Institutions”

Impact of the International Centre “Policies, Laws and Institutions” for
attracting private sector into sustainable and resilient PfPPP projects



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Marc FRILET is a Managing Partner of the Paris law firm Frilet - Société d'Avocats created after his departure from the Francis Lefebvre (CMS network) where he was partner and head of the construction infrastructure and projects division.



His international 35 year professional focused on construction, infrastructure, concessions/ PPP and mining projects in France, French overseas territories and more than 20 countries often as lead advisor for landmark international projects with a strong involvement in Africa. He is the main author of several international standards, conditions of construction contracts, procurement and PPP regulations. He has created an International Research and Documentation Centre "Infrastructure, Concessions, PPPs and Mines", due to open in 2021.

Marc is active in French and international associations of lawyers and industry and teaches construction and Concession/PPP laws at the University of Paris Pantheon Sorbonne and Stuttgart and mining laws at the French "Ecole des mines." Since 2015, Marc is the General Secretary of PPP International Centre of Excellence Policies, laws and Institutions addressing the main practical issues impairing the development of PPP meeting the SDG's in less developed countries.

Genesis of The International Specialized Centre PPP Policies Laws and Institutions

Two leading organization of international lawyers (IFEJI) and of Contractors (CICA) joined their forces 20 ,years ago to participate to the development of international best practices, regulations and contracts in the public infrastructure sector.

Growing concern on the poor track record of many PPP.

Active participation for development of a PPP enabling framework:

- With Several international working groups and conferences ex World Bank, UNCITRAL,OECD,IBA...
- Through the Involvement in the UNECE PPP programs from the origin

At the invitation of UNECE CICA and IFEJI, with the support of French government, created in 2015 the Centre of Excellence focusing on common issues impairing the development of PPP around the world and specializing in the design of Policies Laws and Institutions.

The MOU between UNECE and the Center describes in detail the methodology for impactful outcomes.

- Collecting and sorting out of empirical evidence from around the world in an agile and professional manner including creation of a documentation and research Centre .
- Several steps for synthesis then drafting by experienced professionals adhering to a strict code of conduct

Five years of intense activities

The initial task of identifying Core issues in the field impairing the design and development of most PPP projects irrespective of countries and sector was accomplished early.

20 to 30 Core issues for projects in low and middle income countries (depending of the PPP contract form; either government pay PPP or Concession PPP) have been identified and widely debated internationally

Several well known international PPP experts gathered by the Centre have actively contributed to the UNECE substantive production and programs and participated to many conferences around the world.

At the invitation of the Centre Geoffrey Hamilton participates regularly to landmark conferences and meetings organized with the support of Centre around the world ex: Brazil, Africa, Paris...

The Centre program for addressing the core issues and proposing practical conditions of success for sustainable PPP meeting the SDG's irrespective of countries and sectors and publishing or disseminating the same in various formats **is nearly completed. For the Centre It is the essence of People first PPP**

The next stage is to organize a wide program of dissemination and exchanges including the drafting of an inclusive set of interrelated documents governing Pf PPP Policies Laws and Institution in a user friendly manner

Impact of Center publications for attracting private sector in PfPPP Projects

We propose to day is to dive in the real world of PPP with reference to 4 very practical documents drafted by core teams of international experts gathered by the Centre and endorsed by the member States namely:

1 Standards on a Zero Tolerance Approach to Corruption in PPP Procurement :

https://unece.org/DAM/ceci/ppp/Standards/ECE_CECI_WP_PPP_2017_04-en.pdf

2 Public-Private Partnerships: Project Planning and Prioritization: (endorsement subject to finetuning)

https://unece.org/fileadmin/DAM/ceci/documents/2018/PPP/WP/ECE_CECI_WP_PPP_2018_INF.4.pdf

3 Involving reliable and independent experts to develop Pf PPP projects in low and middle-income countries:

http://staging2.unece.org.net4all.ch/fileadmin/DAM/ceci/documents/2018/PPP/WP/ECE_CECI_WP_PPP_2018_10-en.pdf

4 Concession for essential public services meeting the SDG's List of clauses and Guiding Principles

https://unece.org/fileadmin/DAM/ceci/documents/2018/PPP/Forum/Documents/ECE_CECI_WP_PPP_2017_INF.3._

They have all been designed to be essential “building blocks” of an inclusive enabling institutional, regulatory and contractual framework to unlock pipeline of People, first PPP in low and middle income countries

Roger FILZELSON is a former Managing Director of the Confederation of International Contractors' Association (CICA) and former Delegate General of the French International Contractors' Association (SEFI) since January 1, 2018 CICA Special Advisor.



From 1978 to 2003, he worked as head of structured finance. He was head of structured finance in Vinci Concessions, GTM, Dumez and SAE (Société Auxiliaire d'Entreprises-Merging in Eiffage in 1992). Since 2003, he has been the Managing Director of Association of French International Contractors.

He got his master degree from Faculté de Paris II – Assas in management in 1969. Then in 1970, he got PH. D Certificates in management from University Paris IX – Dauphine. In the same year, he studied economic and finances in Institut d'Etudes Politique – Paris. In 1978 he received specialized training in finance in Institut Supérieur des Sciences Economiques et Commerciales – ESSE Group. He has good command in English and Spanish.

He has published Co-Development view point on economic and financial prospect in *Revue de droit des affaires internationales* in 1999. In 2000, his article *Analysis and risks sharing: Key Factor for success In Public Private Partnership* was published by Presses de l'Ecole National des Ponts et Chaussées. In 2002, *IC White Book on BOT/PPP* was published when he was head of Working Group of The European International Contractors. After that, he also published *Risks assessment In Public Private Partnership* Accomex n° - 50, *Global Assessment of Partnership contracts and New Partnership contracts*.

One observation: a growing infrastructure deficit of all kinds, tangible and intangible.

This deficit is amplified by the need to strongly respond to the ecological and climate transition.

An investment estimate of up to USD 7 tn / year by 2030, or 7.9% of worldwide GDP¹. Such a percentage is beyond the possibility of Low and Middle Income Countries (LMICs).

A twofold observation justifying the revision and deepening of the Model Law by the integration of clauses permitting infrastructure privately finance;

- A contribution from private funding for the achievement of the desired level of public service infrastructure, which has been declining steadily for 10 years:

- Evolution of private financing since 2010²
 - 2010 USD 156,2 bn;
 - 2020 USD 80,0 bn.
- An alarming level of financing based on the concessional model
 - 2010 USD 55,0 bn;
 - 2019 USD 30,0 bn.

It is imperative to significantly reverse this trend and establish an environment favorable to private financing by enhancing a regulatory and contractual framework facilitating the implementation of the two families of Public Private Partnerships (PPP).

To this end, CICA contributed to the creation of the International Center of Excellence "Policies, Laws and Institutions" to promote the concept of People First PPP under the aegis of UNECE.

Within this framework, "Zero Tolerance Corruption Standards - ZTC" was adopted, authorizing a fair competition, free of corruption, thanks in particular to the key points which are:

- Compliance with laws and code of ethics;
- Avoidance of conflict of interests;
- Disclosure of information;
- Standardization of Tender Notice;
- Bidding documents ;
- Dialogue-based PPP Procurement.

Primah Atugonza KYAMBADDE is a Legal Counsel with the Projects Team at the African Legal Support Facility.



As a legal counsel in the Projects team, Primah is directly involved in advising African Governments in complex commercial contracts in the ALSF's operational sectors of Public Private Partnerships, Sovereign Debt and Power.

Primah's role involves assessing requests received from African Governments and conducting due diligences to assess the readiness of a project for legal support from the ALSF.

Primah also works with both international and local counsel to deliver approved projects. Primah previously practiced in the private sector in the project finance team of a leading law firm in Uganda for several years.

Primah holds an LLM from Harvard Law School and has been called to the New York State Bar. She also holds a Bachelor of Laws Degree from Makerere University and a Post Graduate Diploma from the Law Development Centre.

Overview of the Status of PfPPP in Africa

- 2019: Private investment commitments (PSC) to PPPs at USD 97 billion across 409 projects in 62 countries.
- 2020: Private investment commitments at USD 21.9 billion across 128 projects being a decline of 56%
- Private sector investor commitments in SSA at approximately USD 1.8 Bn in both H1 of 2019 and H1 of 2020 due to DFI support
- Africa's infrastructure financing needs at up to USD170 billion a year by 2025, with an estimated financing gap of up to of USD 68 to USD108 billion a year;
- Majority investment in SSA (83% in 2019) is from DFIs. Need for optimal finance mix including domestic private sector, DFIs and FDI.
- Low PSC due to unfavourable frameworks such as restricted currency repatriation.
- In order to achieve optimal finance mix, need for progressive project structures (PfPPPs), stronger frameworks and institutions, better prepared, procured and managed projects,
- Need for developed financial markets across the region to allow for cross listings

Role of PfPPP and UNECE

VfP

- VfP is an improved version of VfM as end objective is higher quality services for the public
- In order to achieve VfP- need a blend of incentives to optimize returns for economic,
- Impact Investors more interested in holistic approach-not just bankable but 'investible'

On Corruption

- AfDB estimates that USD 148 bn is lost to corruption in Africa every year
- UNECE provides the guide to stronger legislative and institutional framework for PPP ecosystem. ALSF at fore front of regulatory and institutional reform

On standardization

- UNECE Proposed List of Clauses currently providing guidance to toolkits provided by ALSF
- Partnering, Dispute Boards, Mediation employed by ALSF in capacity building to African Governments

Project Planning & Experts

- 85% of African countries have PPP laws. Stand alone PPP laws have not guaranteed PPP projects on the continent
- ALSF engaged in hiring experts to provide legal, technical and financial support to review and implement the laws

Vincent PIRON is the founder and president of PIRON Consulting SA.

He graduated from Ecole Polytechnique and Ecole Nationale des Ponts et Chaussées(1971-1973). Vincent Piron began his career in airport business (airport concession and new airport development) in Gabon (1973-1976) and then in France in the Transport Ministry (1976-1981).



He worked for the Transport and Construction Ministry (1982-1986) for the transport system general layout of the Greater Lyon area and started the construction of motorways and metro line extension. Then he was appointed as project manager in charge of the Greater Cairo Metro construction (1986-1991) for a consortium of private companies. He joined the private group VINCI Concessions as Strategy and Investment Director for transport infrastructure development and privatization (urban schemes, motorways, bridges, airports, metros, tramways).

In 2010 Mr. Piron created his own consultancy company in transport economics, economics of PPP and Urbanism. He worked for the project Grand Paris Metro Express (€ 30 billion project) on the economic profitability evaluation. He worked with World Bank and other MDBs for designing a software called SOURCE for supporting governments in the process of developing infrastructure projects. He worked also with IMF on the fiscal sustainability of projects. He developed a specific model called GLOPRAM (Global Project Assessment Model) for budgetary impact evaluation of projects. This model is a tool for supporting decision makers to select the best type of contracts (PPP or other types).

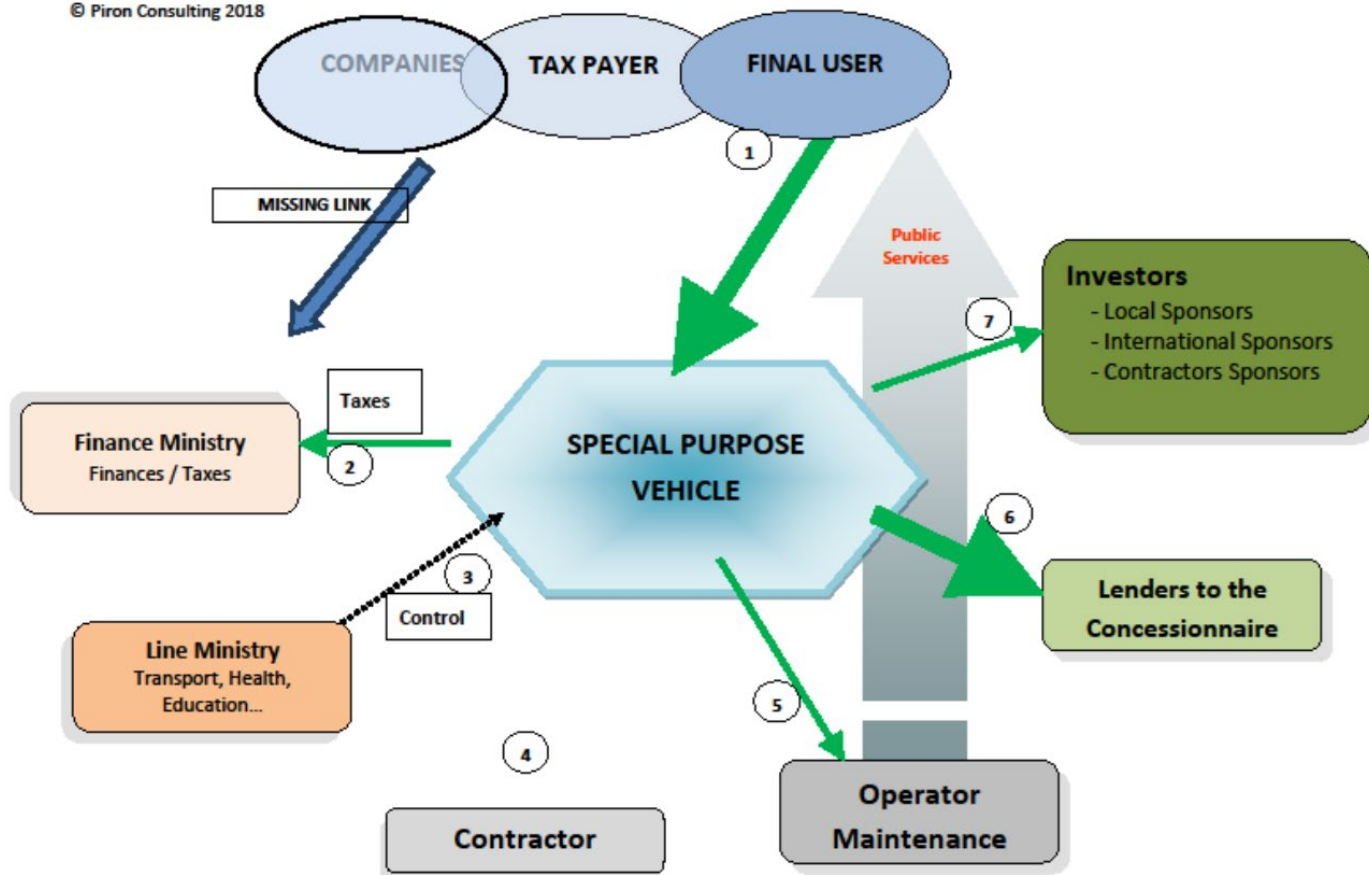
He is co- team leader of PPP expertise for FIEC (European Contracting industry Federation) and has published many studies on efficiency of PPPs and transport economy.

Project development process

- Cost Benefit Analysis (economic aspects)
- Social aspects (job creation, capacity building, women and children protection,..)
- Environmental impacts during work period, during operation
- Impact on GDP (Keynesian effect short term) and structural effect (long term)
- Funding decision and Financing structure
- Global budgetary assessment (expenditures and fiscal revenues)
- Possibilities to use the SOURCE software and PFRAM software
- Planning and prioritization (to be finalized with the Missing Link Methodology and GLOPRAM model)

User funded contract : CONCESSION : OPERATION PHASE

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Global Project Assessment Model

Create sub-model representing the main items of the CBA

- Create sub-model representing the main social effects (welfare)
- Create sub-model describing the investment cost allocation : local workers, local equity, foreign part, local taxes, social charges,...
- Create sub-model presenting the GDP and the Welfare created by the project
- Apply a financial model to determine the conditions required by various contractual solutions : work contract, User paid PPP, Tax paid PPP,...
- Calculate the project budgetary impact (subsidies and fiscal revenues)
- Determine the optimal funding (taxes or fees or a combination of both)
- Check the fiscal sustainability of the optimum result.

Fred EINBINDER is a Franco-American Attorney, Professor and Consultant.

Executive MBA from HEC (1991); J.D. U. of Illinois (1976). B.A. Bradley U. (1973). Diploma from the Institute of Comparative law, U. of Paris 2 (1981). Certificates from the Hague Academy of International Law (1977, 1980).



Fred Einbinder has 28 years of experience as in-house counsel for major French infrastructure companies: SPIE (1985-1991) Department Head, VINCI (1991-1998) Director, International legal Affairs, ALSTOM (1998-2012) General Counsel and Company Secretary.

Negotiated major international contracts.

Management of worldwide legal team of 225 lawyers. Established unit and indirectly supervised 300 contract managers. Responsible for the management of major disputes. Management of worldwide corruption investigations and EU competition proceedings. • Supervision of Chief Compliance Officer and team. Drafted and implemented Code of Ethics Alert Procedure with ultimate responsibility for handling complaints.

45 years experience teaching US and International Business, Comparative and International law and Disaster Management

Speaker in seminars and conferences, including IBA, ABA, UNECE, Sciences Po, etc.

Many publications.

Reference: Proposed list of clauses and guiding principles for Concessions PfPPP meeting the SDG's

Clause 5 - PURPOSE

- The need to be precise but flexible
- Recount the genesis and project development goals
- Interdisciplinary approach (engineers, lawyers, designers, civil servants) must take the time necessary to define project in Annexes

Problem Areas: permits, design, performance and parameters

Clause 12 - PERMITS

- The **N°1** most difficult issue in construction and operation.
- Focus on establishing clear procedures that can work in reality
- Specify which, whom and when

Clause 15 - DESIGN

- As with permits - set out procedures for approval allowing flexibility

Clause 21 - PERFORMANCE PARAMETERS

- Relate to Purpose clause – spell out precisely to facilitate guarantees
- Favor precise and specific realistic liquidated damages

Public interest and unforeseen changes

Clause 20 - CONTINUITY PROJECTS are in the Public Interest

- The « show must go on » with compensation to Contractor if appropriate

Clauses 27 and 29 - UNFORESEEN CHANGES IN THE PROJECT'S DEVELOPMENT

- Major Economic Upheaval
- Force Majeure
- Avoid drafting in complexity (especially in common law contracts)
- Establish clear procedures and guidelines for compensation and how financed (contingencies provision)

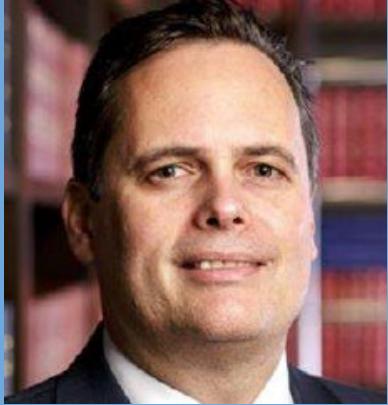
Júlio César BUENO is a partner at Pinheiro Neto Advogados, Brazil, since 2001.

He has national and international experience focusing on the practice of construction law and engineering contracts - especially the use of FIDIC standard forms-, project finance and public procurement, as well as arbitration and mediation proceedings and dispute boards.

He represents some of the largest organisations in global infrastructure and construction projects in Brazil, the rest of Latin America and Africa. He assists clients across the entire project spectrum, including gas facilities, power plants, wind farms, steel manufacturing facilities, copper mining facilities, coal mining facilities and ports.

He is the president of the Brazilian Society Construction Law, and past president of Region 2 of the Dispute Resolution Board Foundation, and an officer of the International Bar Association's International Construction Project Committee. He is also a fellow of the Chartered Institute of Arbitrators and the International Academy of Construction Lawyers, the legal director of the Brazilian Association of Consulting Engineers (ABCE), and a coordinator of the Brazilian Arbitration Committee's Construction Group.

He holds a masters' degree from the University of Cambridge (LLM, 1995), and a doctorate from the University of Sao Paulo School (PhD, 2001). He is a founder fellow of the International Academy of Construction Lawyers and officer of the Latin American & Caribbean User's Council for the London Court of International Arbitration.



Real and comprehensive risk analysis

PfPPP: Project Planning and Prioritization

- Importance of core principles for preparation and award of any project involving private participation in PfPPP have been addressed
- Well-known international public procurement principles deriving from authoritative organisations and leading states, such as UNCITRAL, UNECE, World Bank, EU, etc
- Best practices deriving from those regulations proposes series of criteria for evaluating projects
- Unfortunately, Latin American governments tend to overlook these platforms of international public procurement principles
- The power of inertia and the force of the local administrative laws
- Concern with local audit courts principles and guidelines

Real and comprehensive risk analysis

PfPPP: Project Planning and Prioritization

“2. The total cost of the construction

214. ...

...

(iv). The costs of risks”

- Efficiency of private enterprise compared with public bodies, and considerations relating to budgetary constraints and delays in the public funding
- Public project owners used to have large technical comparable with those of a large private company and will be able to effective. Due to budgetary planning, this scenario has changed dramatically in the past decades in Latin America

UNECE Standard on a Zero Tolerance Approach to Corruption in PfPPP - UN Agenda for Sustainable Development through effective 'People-First Public Private Partnerships'

- The core principles underlying the procurement of 'traditional' public contracts are also applicable to PPP contract procurement
- Competitive bidding, and a need for transparency and non-discrimination are key
- UNCITRAL Model Law on Public Procurement provides that a well-designed procurement to promote integrity, fairness and confidence in the process by stakeholders, and (f) achieves transparency in the process
- Latin America experience- Brazil's specially - in recent years since *Lava Jato / Car Wash* operation to be considered