UNECE MASTERCLASS

Understanding and Leveraging the UNECE PPPs for the SDGs approach through Standards, Tools and Guides for Sustainable Infrastructures

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PRESENTATION

Marc FRILET
General Secretary
Specialized Center of Excellence
Concession/PPP Policies, Laws, Institutions

Chair of the Legislative Frameworks Chapter
WAPPP | World Association of PPP Units & Professionals
THE GLOBAL AND INCLUSIVE UNECE CONCESSION/PPP PACKAGE
as visualized by the Specialized Center of Excellence Concession/PPP Policies, Laws, Institutions

STANDARD ON CONCESSION/PPP FRAMEWORK LAW

PPPs AND INFRASTRUCTURE EVALUATION AND RATING SYSTEMS (PIERS)

ZERO TOLERANCE APPROACH TO CORRUPTION IN PROCUREMENT
PROJECT PLANNING AND PRIORITIZATION
RECOMMENDED CLAUSES IN CONCESSION CONTRACTS
INVOVING RELIABLE & INDEPENDENT EXPERTS

Drafting: UNECE Project Teams & Expert Groups
comprising core experts from the UNECE specialized Centre of Excellence

Among sources: UNCITRAL, World Bank, CICA, IFElJ, International Bar Association...
PRIVATE PARTICIPATION IN PUBLIC INFRASTRUCTURE AND SCOPE FOR PfPPP

**Public Procurement for Infrastructure**
(Full payment upon completion)

- **Traditional Contracting**
  - Remeasurement
  - Lump Sum
- **Other Delivery Method**
  - Design Build
  - Turnkey (EPC)

**Scope for People-first PPP Projects (PfPPP)**
(Project company obligation and source of income)

- **Design** (based on functional specifications)
  - Finance, Build or Rehabilitate
    - **Government-pay PPP**
      - Operate the infrastructure without delivering public service to end users
      - Payment by public authority for operating the infrastructure
    - **Concession PPP**
      - Operate infrastructure and deliver a full public service to the end users
      - Payment entirely or mainly by the end users

**Privatization (Divestiture)**

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*Dividing line between public and private assets (ref.: Eurostat)*
Privately Financed Infrastructure and Public Services

Two Models with Common Economic & Public Service Requirements
- Government-pay PPP
- Non-Concession PPP
- Concession PPP
- User-pay PPP

References PfPPP Definition
- UNECE Framework Law Art. 2 (XVIII) and Art. 4.2 and 4.3
- PfPPP Evaluation Methodology (PIERS)
- Inclusive PfPPP Definition

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<table>
<thead>
<tr>
<th>FAMILIES OF PPP</th>
<th>FEATURES</th>
<th>OPERATION</th>
<th>COMPENSATION</th>
<th>DURATION</th>
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<tbody>
<tr>
<td>PFI PPP FAMILY</td>
<td>Design (based on functional specifications)</td>
<td>Operate the infrastructure without delivering the public service to the end users</td>
<td>Compensated entirely by the public authority when service is rendered</td>
<td>Contract duration limited to the project cycle (amortization of assets, profit margin and financial recovery)</td>
</tr>
<tr>
<td>CONCESSIONS PPP FAMILY</td>
<td>Build or rehabilitate</td>
<td>Operate infrastructure in charge of delivering full public service to the end users</td>
<td>Compensated entirely or mainly by the end users paying for the service</td>
<td></td>
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</table>
A physical infrastructure which is the support of a public service designed, financed, built or rehabilitated and operated by a commercial company selected by way of competitive bidding and operating the service in accordance with the provisions of a contract, entered into with the public authority in charge of delivering such a service.

The contract, based on functional specifications and performance criteria, provides for a compensation of the company by the public authority or by the end users (or a combination of both). The service is rendered for a time period calculated in such a way that the company may amortize all costs and make a reasonable profit.

At the expiry of the term, the infrastructure is transferred in good operating conditions to the public authority, generally without compensation unless, such a compensation is provided in the contract.

Ref.: UNECE Inclusive Definition of PfPPP (Evaluation Methodology Standard - PIERS).
NUMBER AND INVESTMENT VALUE FOR EACH PPP FAMILY

NO OFFICIAL DATA, ESTIMATES FROM THE SPECIALIZED CENTRE OF EXCELLENCE EXPERT TEAMS

PPP: Number of Concession-PPP and PFI-PPP in operation

2000 projects

PPP: Investment value of Concession-PPP and PFI-PPP

€200 billions

€1000 billions
### 1. PPP PREPARATION: PROCEDURAL STEPS PREPARATION

<table>
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<tr>
<th>Planning and prioritization</th>
<th>Socio-economic order of magnitude</th>
<th>Prefeasibility</th>
<th>Inclusive eco-fin. scenario</th>
<th>Decision to tender</th>
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### 2. PPP PROCUREMENT: PROCEDURAL STEPS

<table>
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<tr>
<th>Pre-selection Pre-qualification</th>
<th>RFP Outcome oriented</th>
<th>Primary evaluation</th>
<th>Global evaluation and possible dialogue</th>
<th>Contract award</th>
</tr>
</thead>
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### 3. PPP CONTRACT CONDITIONS

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<th>Construction conditions</th>
<th>Reference business case</th>
<th>Public service scope and operation</th>
<th>Adaptation of service to the needs</th>
<th>Partnering ADR</th>
</tr>
</thead>
</table>

Source: CICA IFEJI PPP WG (tested in several workshops with over 30 countries represented)
4. PPP LEGAL PRINCIPLES GOVERNING PUBLIC CONTRACT

- Due process, fair trial and arbitration
- Public service priority
- Sovereign rights of the Public Authority
- Special rights of project company
- Outside regulation

5. LEGAL FRAMEWORK: INVESTMENT CLIMATE

- Economic Equilibrium
- Expropriation and security of tenure
- Granting of permits and authorizations
- Tax and custom status
- Stability of regulations

6. INSTITUTIONAL FRAMEWORK (SOVEREIGN AND SUB SOVEREIGN)

- Governance Integrity Efficiency
- Planning and prioritization authority
- Evaluation and selection authorities
- Monitoring authorities
- Choice of outside advisers

Source: CICA IFEJI PPP WG (tested in several workshop with over 30 countries represented)
INSTITUTIONAL ORGANIZATION & DISTRIBUTION OF ROLES
BEST PRACTICES AND RECOMMENDATIONS IN THE UNECE FRAMEWORK LAW

CONSTITUTION

- General Laws
- Special Laws

PARLIAMENT

- Laws
- Concession/ PPP Law

GOVERNMENT

- Enabling Regulation
- Enabling Regulation Concession/ PPP

SUB-NATIONAL INSTITUTIONS

- Implementing Rules & Procedures

- Interministerial Committee
  - PPP Unit
  - Contracting Authority

- Function & Responsibility
- Capacity/ Structure

1- Identification of projects
2- Preparation of projects
3- Selection of private partner
4- Project implementation
PLANNING AND PREPARATION OF PfPPP PROJECTS
BEST PRACTICES AND RECOMMENDATIONS IN THE UNECE FRAMEWORK LAW

State:
- Constitution
- Laws
- Implementing Regulations

PPP Interministerial Committee (or similar body)

PPP Unit

Contracting Authority
Creation of Concession / PPP project team
Initial core team (conceptualization)
Operational team (feasibility studies)
Operational team (competition & selection)
Start of Public Procurement Phase

KEY RECOMMENDATION
Laws and Regulation aligned with the UNECE Framework Law

Stage I Initiation of PfPPP projects
Flow of information on implementation of the law, public policies and planning
Development of streams of information adapted to the circumstances
Research PfPPP projects & Report
Prefeasibility Report

Stage II Preparation of PfPPP projects
Control and if OK, Clearance for next stage
Advice on Clearance or No go

Stage III Procurement of PfPPP projects
Control and if OK, Authorization to publish the procurement notice
Advice on Clearance or No go

- Pre-selection or pre-qualification
- Choice of selection mode
- Organization of procedures
- Drafting of the bidding documents
1. How to protect against changing economic and financial conditions?
2. Can we expect a fair outcome in the event of early termination?
3. How can we adapt to citizens' changing needs in a fair and balanced way?
4. What guarantees are there to protect investments?
5. Can we expect a fair process for preventing and resolving disputes?
Prerequisite: spend time to reach a deep consensus on the common objectives of the venture and clear expectations on its economic and financial viability; in a nutshell a real Partnership venture.

**Article 24 - Main terms and conditions of PPP contracts**

Need of recitals identifying the key premises upon which the parties are entering into the PPP contract.

**Article 32 - Protection of Public Service and Contract Equilibrium**

The project’s economic and financial assumptions, and its investment and service provision requirements, as reflected in the PPP contract should be designed in such a way as to make the PPP project practically, economically and financially viable (including an appropriate return for the private partner) more particularly for Concessions.

Tariffs and Charges: the PPP contract should include principles and mechanisms for setting, calculating, and/or adjusting tariffs and charges payable under the contract so as to enable a reasonably efficient partner to perform its obligations and deliver the public service over the life of the contract.

For implementation in a balanced manner avoiding complex negotiations, Ref: UNECE recommended contract clauses for Concession contracts.
CAN WE EXPECT A FAIR OUTCOME IN THE EVENT OF EARLY TERMINATION?

Article 25 - Termination compensation

Where the PPP contract so provides either party shall be entitled to compensation from the other for early termination for any reason in an amount and a basis calculated in accordance with its terms and applicable law. Due considerations shall be given by the parties concluding a PPP contract to the principles upon which any such compensation should be calculated such a fair and non amortized value of any asset transferred to the contracting authority.

Compensation for costs and losses suffered by either party a result of early termination including loss of profit.

For implementation in a balanced manner avoiding complex negotiations, Ref: UNECE recommended contract clauses for Concession contracts.
Article 32 - Adaptability

The private partner may be given certain obligations in the contract to change and adapt the public service as necessary in response to changing public needs during the term of the project and/or make proposals for the same to the contracting authority for its consideration. The terms of the contract may entitle the contracting authorities, when public interest justifies it to impose such changes and adaptation unilaterally, but subject to the economic equilibrium safeguards and mechanisms and other relevant conditions set out in the contract's terms (such as extensions of deadlines and/or increase in tariffs) and/or otherwise provided by applicable law.

*For implementation in a balanced manner avoiding complex negotiations, Ref: UNECE recommended contract clauses for Concession contracts.*
WHAT GUARANTEES ARE THERE TO PROTECT INVESTMENTS?

**Article 30.3 - Not undue interference**

The contracting authority shall not take any steps or measures which would have the effect of unduly interfering with, obstructing or prejudicing the partner freedom to control and manage the assets and activities comprised in the PPP project and to exercise its rights and perform its obligations thereunder, including its rights to receive and enjoy the revenues and returns on investment properly received therefrom save only as permitted by the express terms of the PPP contract and /or Applicable law.

*For implementation in a balanced manner avoiding complex negotiations, Ref: UNECE recommended contract clauses for Concession contracts.*
CAN WE EXPECT A FAIR PROCESS FOR PREVENTING AND RESOLVING DISPUTES?

Article 36 - Dispute prevention and alternative dispute resolution

The law organizes genuine partnership relationships and a scaled dispute avoidance and dispute resolution mechanism, in four steps:

- **Partnership**: the parties meet regularly in a structured manner to exchange views in order to provide for the harmonious development of the project

- **Dispute avoidance/resolution board (DRB)**: a panel of three competent personalities monitors the project's development from its origin, regularly inviting the parties to take part, and generally acting as a mediator

- **Mediation (mostly organized when DRB is not in place and when a dispute has crystallized)**: The mediator or a mediation board helps to overcome information asymmetries, optimize agreements, manage psychological barriers to negotiation, as well as the emotional and relational aspects that must be preserved in long-term business relationships

- **Arbitration**: when amicable settlement fails, the matter is submitted to arbitration in accordance with accepted international arbitration procedures

*For implementation in a balanced manner avoiding complex negotiations, Ref: UNECE recommended contract clauses for Concession contracts.*
Thank you.

Marc FRILET
General Secretary
UNECE Specialized Center of Excellence Concession/PPP Policies, Laws, Institutions

email: marc@pfpppcoe.com / marc@frilet.com
phone number: +33608544810
www.unece.org/ppp/icoe/centres / www.wappp.org