



# UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW (UNCITRAL)

## UNCITRAL Executive Report:

### **International Colloquium - *Privately Financed Infrastructure: Legal Framework and Technical Assistance***

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With the co-sponsorship and organizational assistance of the [Public-Private Infrastructure Advisory Facility \(PPIAF\)](#), a multi-donor technical assistance facility aimed at helping developing countries improve the quality of their infrastructure through private sector involvement, UNCITRAL held a Colloquium under the title "Privately Financed Infrastructure: Legal Framework and Technical Assistance" from 2 to 4 July 2001 in Vienna. The results of the Colloquium are summarized in a note by the Secretariat ([A/CN.9/488](#)). The proceedings of the Colloquium will be published by the United Nations.

The Colloquium was aimed at presenting best legislative and regulatory practices, as well as at assessing the needs of recipient countries for assistance in establishing a legislative and regulatory framework for public-private partnerships. Participants were also invited to make recommendations on the desirability and, especially, the feasibility of a model law or model legislative provisions in that area.

There were more than 70 registered participants at the Colloquium, including Government officials, bankers and private sector lawyers from more than 20 States, and representatives of organizations of the United Nations system (United Nations Economic Commission for Europe and United Nations Industrial Development Organization), of multilateral financial institutions (such as the African Development Bank, the European Bank for Reconstruction and Development, the International Finance Corporation and the World Bank), of intergovernmental organizations (such as the European Commission and the International Development Law Institute) and non-governmental organizations (such as the European Lawyers Union, the *Fédération Internationale des Ingénieurs-Conseils* (FIDIC), the *Forum Européen des Entreprises Générales*, the Panamerican Surety Association (PASA) and the International Surety Association). The participants represented a broad range of practical experience and the perspectives of different legal systems.

The first day of the Colloquium was devoted to exploring manners in which international organizations can best assist countries in implementing domestic policies for private infrastructure investment. The types of assistance that international organizations currently provided or envisaged to provide to countries wishing to use private finance to implement their infrastructure were presented in a detailed fashion.

The second day was devoted to the presentation of the legal framework and the specific experience in selected countries, including Argentina, Brazil, Croatia, France, Hungary, the Philippines, Uganda, the United Kingdom and the United States of America.

The third and final day was devoted to exploring the views of the private sector, both from financial institution and contractors and infrastructure operators, as well as to a final debate on how to disseminate knowledge about the [\*UNCITRAL Legislative Guide on Privately Financed Infrastructure Projects\*](#) and the desirability and feasibility of preparing a model law on selected issues dealt with in the *Guide*.

There was general agreement that an adequate legal background was essential to the availability of private investment for infrastructure projects. A general view of participants was that the *Legislative Guide* was a valuable product to assist domestic legislators in establishing a legislative framework favourable to privately financed infrastructure projects and that efforts should be made to ensure its wide dissemination. It was recognized that the *Guide* could serve well not only as an instrument for drafting new legislation but also as a checklist to establish the adequacy and effectiveness of legislation already in force.

Experience cited by participants suggested that the main factors constraining the availability and development of privately financed infrastructure were the following: poor policies and inadequate regulations, both at a legislative and at an administrative level, this leading to high contracting and bidding costs; poor bankability of projects; lack of effectiveness of contracts; institutional weakness and lack of coordination at the government and administrative level; lack of project management skills at government side; lack of competition and transparency of selection procedures; weakness of domestic markets and of participation of local business.

Speakers and participants also highlighted a number of factors capable of fostering the interest of the private sector in public infrastructure. Those factors included the following: strong political will and leadership; clear and permissive legal framework; sound coordinating bodies within the public administration; clarity as to the priorities and objectives to be achieved through involvement of the private sector.

Financial and non-financial assistance devices that might be provided to host countries were also discussed, such as co-financing of project development; advisory services; identifying guidelines and standard procedures; technical assistance for specific infrastructure projects; investment promotion; strengthening and expansion of guarantees; helping drafting new legislation or amending existing

legislation; drafting model concession agreements; advisory services to improve efficiency of relevant government agencies and to increase transparency in public procurement; training in legal matters and in business skills and infrastructure sector reform.

The Colloquium strongly recommended that the relevant international intergovernmental and non-governmental organizations, as well as multilateral financial institutions, devise joint strategies to promote best practices in the area of privately financed infrastructure projects. The Colloquium also strongly recommended that those organizations give special attention to the need for ensuring consistency of approach in their activities and avoiding unnecessary duplication of efforts.

The Commission took note with appreciation of the results of the Colloquium and expressed its gratitude to the Public-Private Infrastructure Advisory Facility (PPIAF) for its financial and organizational support. The Commission also expressed its appreciation to the various international intergovernmental and non-governmental organizations represented and to the speakers at the Colloquium.

The Commission also took note of the arguments mentioned in the Colloquium both in favour and against the preparation of a model law on privately financed infrastructure projects. After considering the various views, the Commission agreed that a working group should be entrusted with the task of drafting core model legislative provisions in the field of privately financed infrastructure projects. As to the possible contents of such model provisions, a proposal was that the project should focus on the phase of the selection of the concessionaire. It was agreed that a preliminary session of such working group should be devoted to identifying the specific issues on which model legislative provisions, possibly to become an addendum to the *Legislative Guide*, could be formulated.