

PPP Day 19 November 2013 - Law Justice and Development Week 2013

Full Description

Session 1: PPP with Small Private Operators: Regulating the Public Service by Local Authorities

Whilst the involvement of local authorities and local operators is key to the development of essential services, Small Private Operators tend to be excluded from the usual PPP market. This session, involving partners from developing countries, members of the French Conseil d'Etat and development institutions focused on the distribution of practical knowledge in this context, aiming at achieving effective inclusion of Small Private Operators.

Panelists:

- [Kodjo Nabola-bounou Enoumodji, Head of the Environmental Division, City of Lomé, Togo](#)
- [Ira Feldman, President and Senior Counsel, Greentrack](#)
- [Cameron Prell, Senior Counsel, McGuireWoods LLP](#)
- [José Helton Nogueira Diefenthaler Júnior, Judge, São Paulo State Court of Justice, Brazil](#)
- [Mailys Lange, Conseil d'Etat, France](#)

Session 2: Updating the UNCITRAL PFIPs Legislative Guide and Recommendations: Towards a Model Law on PPPs?

Session led by UNCITRAL

Given that the UNCITRAL PFIPs Legislative Guide had been issued some years ago and new (legislative) approaches to and types of PPP have been developed in the meantime, this session – with participation of experts from international organizations, the private sector and government officials – discussed the key features of the UNCITRAL Legislative Guide and recommendations/provisions on PFIP as well as whether the development of a generic Model Law on PPPs would be desirable.

Panelists:

- [Michel Nussbaumer, Chief Counsel, European Bank for Reconstruction and Development](#)
- [Michael Fruhmman, Head of Unit in the Federal Chancellery, Republic of Austria](#)
- [Bernard Male Nyembo, Consultant in Banking, Infrastructure, Energy, and Food Security](#)
- [Tore Wiwen-Nillson, Independent Arbitrator and Nuclear Energy Advisor](#)
- [Marc Frilet, Managing Partner, Frilet-Société d'Avocats](#)
- [Vijay Tata, Chief Counsel, Finance, Private Sector, and Infrastructure, Legal Vice Presidency, The World Bank](#)
- [Caroline Nicholas, Senior Legal Officer, United Nations Commission for International Trade Law](#)

Session 3 : The Use of Dispute Boards in PPP Transactions

PPPs being complex projects, in addition to the conventional construction and operational commercial and political disputes that arise, there is often an asymmetry of capacity and knowledge between the public and private parties, which can give rise to conflicts. In response to this challenge, the use of Dispute Boards is considered. This session brought together international experts in dispute boards – and representatives from

the World Bank Group – to share their experiences and shed light on how Dispute Boards can make PPP projects more sustainable. Guest speakers included Dr Cyril Chern, Giovanni Difolco and Kurt Dettman, all world renowned experts in this area.

Panelists:

- [Dr. Cyril Chern, Secretary of the Dispute Board Federation \(DBF\) and Barrister, Crown Office Chambers, London](#) "[Dispute Board Foundation: Dispute Boards in Practice](#)" ([link to presentation slides](#))
- [Giovanni Di Folco](#), President and Senior Partner of Techno Engineering and Associates, Doha and Bucharest ([link to video](#))
- [Kurt Dettman, President-Elect of Region 1 of the Dispute Resolution Board Foundation \(DRBF\) and Principal, Constructive Dispute Resolutions, Hingham, Massachusetts](#) "[Dispute Resolution Board Foundation: Dispute Boards and Public Private Partnerships](#)" ([link to video and presentation slides](#))
- [Panelist Discussion - Q & A Roundtable](#) ([link to video of Q & A session](#))

Chair:

- [Mark Moseley](#), Lead Counsel, World Bank Global Center for Infrastructure Finance, Singapore
- [Patricia Sulser](#), Chief Counsel, Legal – Global Infrastructure, International Finance Corporation

Biographies

Kodjo Nabola-bounou Enoumodji

Mr. Enoumodji is head of the Environmental Division of the city of Lomé (Togo). He is the coordinator of a very important component of the PEUL (Projet Environnement Urbain de Lomé), dedicated to the reorganisation of the solid waste management sector through public-private partnerships concluded with small private operators. Kodjo Nabola-bounou Enoumodji is one of the key actors in the implementation of the urban development strategy of the area of Lomé.

Ira Feldman

Mr. Feldman is a US-based sustainability leader with an interdisciplinary skill set and a global reach. He has 25 years experience as an attorney and management consultant focusing on environmental regulatory innovation, strategic environmental management, sustainable business practices and corporate social responsibility. Ira is a recognized leader in the development of corporate voluntary excellence programs, environmental performance tools and strategies, and international standards. His recent work also explores the use of Public-Private Partnerships (PPP) to advance sustainable development.

Cameron Prell

Mr. Prell is the co-chair of the McGuireWoods Water Industry Team and its Cleantech Capital Group. He currently serves as vice-chair of the American Bar Association's Energy and Environmental Markets and Finance Committee and the International Law Section's International Environmental Law Committee. Cameron specializes in regulatory and transactional matters related to national and international energy, sustainable development, and natural resource project development and financing.

José Helton Nogueira Diefenthäler Júnior

Mr. Nogueira is a Justice of the São Paulo State Court of Justice. Member of the Budget, Planning and Financial Commission of the SCSP (2012). He holds a Bachelor's degree in Law from the Law College of the University of São Paulo (1982) and holds a Master degree in Philosophy of Law and the State from the Pontifical Catholic University. He is Professor of Philosophy of Law at the Braz Cubas University.

Mailys Lange

Mrs. Lange is a member of the Conseil d'Etat, the French highest court of appeal for judicial review and adjudication of all cases involving public agencies. She is specialized in tax and economic litigations, including cases raising issues of energy, competition and banking supervision law. Before joining the Conseil d'Etat, she has worked in the Office of the Chief Economist of the European Bank for Reconstruction and Development.

Michel Nussbaumer

Mr. Nussbaumer is Chief Counsel at the European Bank for Reconstruction and Development. Before becoming Team Leader of the Legal Transition and Knowledge Management team, Michel worked for almost three years as counsel in the banking operations section, where he was responsible for legal aspects of various investments of the Bank, with a particular focus on SME financing. Michel has practiced as a commercial lawyer in Geneva, Moscow, and London, and acted as Swiss correspondent for various legal publications. He has published a number of articles on Swiss and Russian legal issues.

Michael Fruhmann

Dr. Fruhmann is Head of Unit in the Federal Chancellery, Republic of Austria, responsible among other things for representing Austria before the European Commission on matters of public procurement and concessions.

Bernard Male Nyembo

Mr. Nyembo is a versatile risk taker with a long international experience: 18 years in banking, and 10 years in the energy, commodities trading, and humanitarian sectors. Currently Bernard is Project Director of a team launching a bank in the Democratic Republic of Congo. He is also a consultant on PPPs relating to trade, banking and finance, food security, and energy and infrastructure. Bernard is a member of the UNCITRAL/UNECE Team of Specialists in PPPs.

Tore Wiwen-Nilsson

Mr. Wiwen-Nilsson is an independent arbitrator and an advisor on nuclear energy law. He was formerly a partner of Mannheimer Zetterlöf Advokatbyrå, later Mannheimer Swartling Advokatbyrå, where he advised on construction projects, foreign direct investment, industrial alliances, cross border licensing and technology transfers, acquisitions, and project finance. He was also General Counsel at Asea-Atom AB, a nuclear reactor designer and supplier of nuclear power plants and nuclear fuel. Mr. Wiwen-Nilsson has held various assignments with UNCITRAL.

Marc Frilet

Mr. Frilet is the managing partner of the Paris law firm Frilet-Société d'Avocats, a boutique law firm specialized in large construction, infrastructure, and mining projects in France and internationally, with a particular focus on developing countries, particularly in Africa. Mr. Frilet is regularly involved in contract administration claims and alternative dispute resolution in construction and PPP contracts. He is often retained by country governments and multilaterals to advise in the drafting of laws and regulations.

Vijay Tata

Mr. Tata is Chief Counsel of the Finance, Private Sector, and Infrastructure practice group in The World Bank's Legal Vice Presidency. His practice group provides legal advisory services to support the modernization of legal and regulatory frameworks and institutions for financial and private sector development. Before joining the Bank in September 2004, he practiced in the area of international business transactions for over 20 years. He was a partner in the corporate foreign sovereign governments in connection with privatizations, debt offerings, debt restructurings and other transactions in the international capital markets.

Caroline Nicholas

Mrs. Nicholas is a lawyer with the International Trade Law Division of the United Nations Office of Legal Affairs (the Secretariat of UNCITRAL). Previously, she served as the Secretary to the UNCITRAL Working Group on Procurement, which adopted a Model Law on Public Procurement in 2011 and a Guide to its Enactment in 2012. Mrs. Nicholas is now leading UNCITRAL's work on PPPs.

Dr. Cyril Chern

Dr. Chern is the Secretary of the Dispute Board Federation (DBF) in Geneva, and is also a Barrister in Crown Office Chambers in London as well as a trained Structural Engineer and a Chartered Architect. He was one of the first dual-qualified individuals to become involved in the use of Public-Private Partnerships (PPP) as a way forward in the development of major infrastructure projects worldwide. His specialism is the use of Dispute Boards in PPPs and has written 6 books on legal issues regarding construction and infrastructure development, including Chern on Dispute Boards (3rd Edition Wiley Publishing 2014) as well as his newest work - Public Private Partnerships – Practise & Procedure (Informa Publishing, Autumn 2014).

Kurt Dettman

Mr. Dettman is the President-Elect of the Region 1 (USA and Canada) of the Dispute Resolution Board Foundation (DRBF), and is also the Principal of Constructive Dispute Resolutions, an ADR practice specializing in all aspects of dispute avoidance and resolution in the construction industry. He has written extensively about Dispute Resolution Boards, and conducts training on Dispute Board practice and administration. Kurt is on the DRBF's President's List, and co-chairs the DRBF Transportation and Energy Committees.

Giovanni Di Folco

Mr. Di Folco is the Senior Partner of Techno Engineering & Associates, an international consulting firm specializing in claims and dispute resolution internationally. He is a civil engineer with more than 25 years' experience of managing multi-disciplinary civil engineering projects around the world. Mr. Di Falco also has extensive experience in project and contract management, contract administration, and claims preparation and defence in international arbitrations and adjudications.

Mark Moseley

Mr. Moseley is Lead Counsel at the World Bank Center for Infrastructure Finance in Singapore. His work is primarily focused on public-private partnership transactions and the legal and regulatory arrangements for such transactions, particularly in the energy sector. He is a Core Team Member of the World Bank's Global Expert Team for Public-Private Partnerships. Mark is also the Task Team Leader for the Public-Private Partnerships Infrastructure Resource Center (PPPLRC) Website Project (www.worldbank.org/ppp).

Patricia Sulser

Mrs. Sulser is the Chief Counsel for the Legal – Global Infrastructure unit of the International Finance Corporation in Washington. She handles complex infrastructure financing (debt and equity) on a global basis. Patricia is also a certified mediator and has served on the Investment Climate Department's Alternative Dispute Resolutions (ADR) Product Advisory Board.

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