



UNECE Paris based Global Centre of Excellence on Law Policy and Institutions hosted a high level NDRC Delegation from China to review partnerships and cooperation on PPP for SDGs.

Paris July 21-22 2016

Mr Zhifeng Zhang, Deputy Director General of NDRC, led a high level delegation from China to pursue initial contacts with Geoffrey Hamilton Head of the UNECE PPP ICoE and Marc Frilet, Representative of the Paris based Centre of Excellence on 'Policies, Laws and Institutions'. Marc Frilet who had participated in June to the Qingdao International PPP Forum, invited the Chinese Delegation to come to Paris after a planned visit to Vienna, with UNCITRAL Mrs Caroline Nicolas, Senior Legal Officer International trade Law Division. Several important were reached during this meeting in Vienna. (see Annex 1).

The Chinese Delegation's objective was to engage in a thorough review of various legal and institutional models of "partnerships" between the public and private sector, and gain a better perspective on how and why these models developed over two centuries, in France and in other jurisdictions based on French and Napoleonic institutional and legal tradition.

The French Center of Excellence proposed a comprehensive agenda (Annex 2) and invited over the two-day meeting, a number of private sector experts with public sector expertise, as well as senior representatives of the French Government. **Mrs Agnès Rometet-Espagne**, Plenipotentiary Ministry and Executive Director Business and International Economy of the Ministry of Foreign Affairs and International Development, welcomed all participants and reaffirmed the French Government's unconditional support of the UNECE initiative and subsequent creation of the French CoE and its role. The Centre is expected to play a significant role in fostering development and cooperation between France and China.

The Vice Bâtonnier of Paris (Head of the Paris Bar), **Mrs Dominique Attias** welcomed the delegation and proposed that the Chinese Delegation participate to the very prestigious "Rentrée du Barreau de Paris" on November 26th 2016.

Mrs Charlotte Ivern representing the French Ministry of Foreign Affairs and International Development, **Mrs Anne Durez** Senior Counsel at TOTAL and IFEJI Board Member and **Mr Vincent Piron** representing CICA as the official sponsors of the French ICoE also welcomed all participants to this meeting. **Mrs Corinne Namblard**, Senior PPP Expert representing the UNECE PPP ICoE and Liaison Officer between the UNECE and the French Centre, reminded all that a "consultation" format had been suggested for this meeting, allowing for an open exchange on complex legal issues and sharing of experiences.

The program was built around bilateral exchanges and Q/A post presentations:

Presentation from the Center of Excellence included experts advising public and private sector on designing regulations and advising on projects with French and International experience in

LDC's and emerging economies all related to the ETIC-PPP expert group which is an international grouping of experts gathered by the Centre of Excellence (**Marc Frilet**, Managing Partner Frilet- société d'avocats, Head of the management committee of Gcila and Vice-chair of the French Institute of International Legal Experts (IFEJI) , **Mrs Doris Chevalier** former Executive Bouygues, Vinci and Alstom and former Senior Advisor at the French PPP Unit MAPPP, on Concessions & PFIs. **Mr Jim Perry**, Founding Partner of PS Consulting, Former General Counsel of EuroDisney Paris, FIDIC expert and former President of the Dispute Resolution Board Foundation. **Mr Dominique Gatel** from Veolia Water, Council Member of the International Water Association IWA, on Urban Water and Sewage issues. **Mr Fred Einbinder** Former General Counsel at Alstom, professor at ESSEC and the American University in Paris. **Mr Guillaume Sauvaget** former General Counsel at Colas for Central Europe.

The Experts presented and discussed various partnership models under the French and Napoleonic civil law jurisdictions where currently over 10,000 concessions and other PPPs are in operation. All illustrative were carefully selected taking into account the Chinese expectations. Benchmarks including recent developments of PPPs in other countries or regions such as UK PFIs, were also discussed and the interactive exchanges (and cross-fertilization) were particularly fruitful.

An earlier meeting with the French Treasury and "PPP Unit" renamed FININFRA had taken place the day before and the Chinese Delegation had the benefit of a comprehensive presentation of the new European Directives on Concessions and PPP and expected impact on how future partnerships schemes would be implemented in France.

Finally, **Mr Vincent Piron**, Chair of ETIC-PPP and ETIC-PPP international expert gave a presentation of the SIF-IISS Data platform recently launched with the full backing of the World Bank Group, Regional Development Banks, MDBs and two DFIs from emerging countries (South-Africa and Brazil) which will allow when fully operational, to generate pipelines of "Well Prepared Projects" (WPP) meeting some very solid technical criteria all vetted by public and private sector experts. The IISS platform should be a formidable tool for Public Sector capacity building. **Mrs Corinne Namblard** shared with the attendees, the input the UNECE is providing in further developing "UN SDGs" criteria with a special focus on PPP for SDGs with the objective to see the IISS tool and platform, generate pipelines of projects "big & small" & "UN SDGs compliant". This latter label would complement the initial "Well Prepared Project" label. More than 3,000 consultations have already been conducted with experts, enterprises and institutions representing public and private sector. Currently the IISS platform offers more than 30 templates applicable to 30 types of infrastructures of different nature, demonstrating the formidable potential of this innovative tool. (capacity building and empirical and interactive data base).

The dynamics and quality of exchanges over the two days, also provided new insights on:

- Common issues surrounding the implementation or the impairment of PPPs in China as well as in France and similar jurisdictions (in Africa and Latin America)

- The potential impact of the UN 2030 SDGs Agenda on the development of a new generation in LDCs of “sustainable” infrastructure concessions and other ‘People First PPPs’ for essential public services.

The final session identified various themes for an **Immediate Cooperation & Action Plan between NDRC and the French Centre as well as future programs of common interest which could be developed between the China PPP Centre of Excellence and the French Centre of Excellence dedicated to PPP Policies, Laws and Institutions.**

To foster such cooperation, it was agreed to:

- Consider research in common on several topics including among others 1/ identifying objective selection criteria between Concessions & PPPs or PFIs, 2/ Understanding the benefits of Alternative Dispute Resolution in addition to Arbitration, 3/ International Benchmarking of institutional set up and practical procedure conductive to the preparation, the development, and the monitoring of PPP projects at local and national level, including the possible role and positioning of PPP Units 4/ Identifying key selection criteria for experts and consultants. Those themes should be developed in appropriate terms of reference and funded as Research.
- Consider programmes aiming at formulating a comprehensive set of best practices and possibly standards based on practical examples and empirical evidence where the French Napoleonic civil law countries are the main reservoir of practice, on core issues internationally recognized as essential for the development of pipelines of concessions and PPPs in the essential Public Service sector (People First PPP).

All attendees also identified opportunities in ensuring exchanges of Interns and Experts between the China PPP Centre and the French Centre of Excellence on ‘Policies, Laws and Institutions’, which the UNECE PPP ICoE will be very supportive of.

Mr Zhang concluded his remarks saying that he would be sharing with his colleagues, back in China, all these findings and that he would support such cooperation between the French and China Centres of Excellence whilst recognizing the contribution and continuing support of the UNECE PPP ICoE.

All participants thanked Mr Xin Wang who translated so well from French & English to Chinese and reversewhich helped immensely, considering the complexity of the legal and technical issues which were debated.

Corinne Namblard

Senior PPP Expert

Paris, August 22nd 2016

Annex 1

Conclusions of the UNCITRAL International Trade Law Division

(Meeting with the Chinese delegation, July 19th 2016)

- 1- To frame a national law on PPP, the first consideration is which types of project are to be covered (concession, PFI, etc) – many procedures may be common to both, but some specific provision is also needed to accommodate user-pays, government-pays, type of service provision, delegation of risk to private party, etc.
- 2- A national law is intended to be a framework law, with the essential principles and procedures to enable PPP projects of the types desired. Delegated legislation, regulations, rules, guidance will be needed to add in more detail, to allow for the special provisions necessary for some project types and sectors.
- 3- A second key element to ensure successful PPPs is to ensure a good institutional structure, including a PPPs unit, whose functions include: drafting detailed rules/guidance, policy advice, overseeing projects and pipelines. How to locate the PPPs unit and give it appropriate authority and reporting lines is critical.
- 4- There is no universal definition of PPPs nor a clean border between public procurement and PPPs, as definitions vary. It is less important to identify conceptual issues in the abstract than to make sure that all project types are clearly covered by a PPP or procurement law, as appropriate.
- 5- The main objective of a PPP is the project outcome – i.e delivery of services and associated infrastructure – and projects should be first assessed on the basis of the need for the services concerned. The financial issues are important but secondary.
- 6- A decision on how to implement an infrastructure plan – through procurement and PPPs – is for the government to take. Modern public procurement procedures allow private sector input into design and some element of risk allocation to the private party, so it is no longer necessary to have a PPP simply to enable these elements. A PPPs Unit should consider a pipeline of projects, also bearing in mind the financial and fiscal impact of all projects, whether they are to be public procurement projects or PPPs.

Annex 2

I.F.E.J.I

Institut Français d'Experts
Juridiques Internationaux



**FRENCH UNECE INTERNATIONAL CENTRE OF
EXCELLENCE**

**CONCESSIONS AND PPP “POLICIES, LAWS AND
INSTITUTIONS”**

**PROGRAMME FOR THE CHINESE GOVERNMENTAL NATIONAL
DEVELOPMENT AND REFORM COMMISSION DELEGATION**

THURSDAY 21ST AND FRIDAY 22ND OF JULY 2016

Venue: Paris Bar, Maison du Barreau,

2 rue de Harlay

Gaston Monnerville room, 75001 PARIS

Thursday, 21st of July 2016 (Room Gaston Monnerville)

8:30 – 9:00	WELCOME COFFEE AND DRINKS	
9:00 – 9:30	Welcome speeches	<ul style="list-style-type: none"> - Corinne NAMBLARD¹, Senior expert on concession PPP for UNECE, Geneva UNECE - Marc FRILET², Co-promoter of the International French Center of Excellence concessions and PPP “Policies, Laws, and Institutions” in France - Anne DUREZ³, IFEJI board member and treasurer - Vincent PIRON⁴, CICA representative and ETIC-PPP Chairman - Agnès ROMATET-ESPAGNE, Plenipotentiary Minister, Ministry of Foreign Affairs (FRANCE)
9:30 – 10:00	Global presentation on Concessions and PPP history, scope, size, present practice and issues : The Chinese experience in Concessions and PPP	<ul style="list-style-type: none"> - Chinese delegation
10:00 – 10:30	Global presentation on Concessions and PPP history, scope, size, present practice and issues : The French and Napoleonic civil law countries experience in Concessions and PPP	French International Centre of Excellence for Concession and PPP <ul style="list-style-type: none"> - Marc FRILET
COFFEE BREAK		
10:45 – 11:30	Exchanging on common issues and sharing experience	<ul style="list-style-type: none"> - French and Chinese delegation
11:30 – 12:30	Focus on the three main categories of PPP in France and in Napoleonic civil law countries, including procurement issues : <ul style="list-style-type: none"> - PFI - Concessions 	ETIC-PPP <ul style="list-style-type: none"> - Doris CHEVALIER⁵ - Marc FRILET

	- Institutional PPP	- Vincent PIRON
12:30 – 14:00 LUNCH BREAK		
2:00 – 2:30	Planning and prioritization of projects (Emphasize on urban planning)	ETIC-PPP - Vincent PIRON
2:30 – 3:00	Lessons learned on Integrity and Transparency in Concessions and PPP	ETIC-PPP - Fred EINBINDER ⁶ - Corinne NAMBLARD - Doris CHEVALIER
3:00 – 3:45	Dispute avoidance and Alternative Dispute Resolution (ADR) in Concessions and PPP	ETIC-PPP - Jim PERRY ⁷ - Marc FRILET
3:45 - 4:00	COFFEE BREAK	
4:00 – 6:00	<p>Case studies and lessons learned of interest for China for people first Concessions and PPP</p> <p><u>FRANCE</u></p> <ul style="list-style-type: none"> - Toll bridge - Toll Urban tunnel - City : Electric car free service - Large multipurpose sport stadium - Urban water and sewage <p><u>AFRICA:</u></p> <ul style="list-style-type: none"> - Toll Highway - Urban multipurpose railway - International multipurpose port - Regional power line corridor <p><u>OTHER COUNTRIES:</u></p> <ul style="list-style-type: none"> - Airports - Power generation - Treatment of dangerous waste - Toll Highway 	ETIC-PPP, associated experts and Industry practitioners <ul style="list-style-type: none"> - Roger FISZELSON⁸ - Vincent PIRON - Corinne NAMBLARD - Jim PERRY - Marc FRILET - Yves LAFARGUE⁹ - Doris CHEVALIER - Guillaume SAUVAGET¹⁰ - Dominique GATEL¹¹ <p><i><u>It is proposed that some of those cases will be based on an oral presentation and other cases will be presented under written documents.</u></i></p>

Friday, 22nd of July 2016 (Room Gaston Monnerville)

9 :00 -10 :45	Exchanges on lessons learned from case studies	
10 :45 – 11 :00	COFFEE BREAK	
11 :00 – 11 :30	How to design efficient framework laws and related standards documents : lessons learned in less developed countries and emerging economies	UNECE - Corinne NAMBLARD
11 :30 – 12 :00	The need of standard form of contract for Concessions and PPP: work in progress internationally , current program and next deliverable of the international Center of Excellence in France	ETIC- PPP - Marc FRILET
12 : 00 - 12 :30	The need of innovative global matrix for bankable Concession and PPP projects: Work in progress in the international community : From the ISS platform, the GIH matrix to the International Center of Excellence in France work in progress	ETIC-PPP - Vincent PIRON - Corinne NAMBLARD - Roger FISZELSON
Conclusion	How to develop synergy between China and the French International Centre of Excellence for developing pipelines of “People First PPP” in China and around the world.	- French and Chinese delegation

ETIC-PPP EXPERTS, IFEJI AND ASSOCIATED EXPERTS, AND INDUSTRY PRACTITIONNERS

- 1. Corinne NAMBLARD**, former adviser to South Australian government infrastructure, former CEO of the GALAXY INFRASTRUCTURE private equity fund, Senior expert on Concessions PPP for UNECE, Geneva, ETIC-PPP Expert.
- 2. Marc FRILET**, Vice-president of the French Institute of International Legal Experts (IFEJI), Promoter of the French International Centre of Excellence, Managing Partner at Frilet Société d'Avocats – Paris, Head of management committee at Gcila, Board member of ETIC-PPP, Visiting Professor International Investment Laws: Paris-Descartes University, Senior international lecturer and trainer on Concessions and PPP, ETIC-PPP Expert and board member.
- 3. Anne DUREZ**, Senior Legal Counsel for TOTAL, former Chair Corporate Counsel Committee for Inter Pacific Bar Association, Non Executive Director and Board Member of Inter Pacific Bar Association, IFEJI Treasurer and board member.
- 4. Vincent PIRON**, former Head of strategy for Vinci Concession, former chief engineer of Rhone Alpes Region in France, President of Piron Consulting, Expert and President of ETIC-PPP.
- 5. Doris CHEVALIER**, former finance Director at BOUYGUES Construction, former finance Director at VINCI , for Head of development at South France Motorway public company, Senior advisor at the French PPP Unit of the Ministry of Finance (MAPPP), board member of several concession projects , former Head of Project Finance at ALSTOM Transport, ETIC-PPP Expert.
- 6. Fred EINBINDER**, retired General Counsel of ALSTOM, University Professor at the American University in Paris, Teacher in comparative and international law at Paris 11, ESSEC and HEAD, ETIC-PPP Expert.
- 7. Jim PERRY**, former General Counsel of EuroDisneyland, former Deputy Manager of BOUYGUES Bâtiment, Expert and certified lecturer and trainer for FIDIC International experts, former President of the Dispute Resolution Board Foundation (DRBF) for Europe and developing countries, Partner at PS Consulting, ETIC-PPP Expert.
- 8. Roger FISZELSON**, former Senior finance analyst at VINCI, General Manager of the Confederation of International Contractors' Associations (CICA).

9. Yves LAFARGUE, Senior International economist and Logistic Expert, former Advisor to the President of the BOLLORE Group, Senior International expert for evaluation of complex project with a global approach, President of COFINTER, Senior Lecturer and trainer on Concessions and PPP, ETIC-PPP Expert.

10. Guillaume SAUVAGET, former General Counsel and Insurance Manager for Central Europe at COLAS, former General Counsel and Insurance Manager at ONDEO INDUSTRIAL SOLUTIONS (SUEZ Group), former Vice General Counsel at BOUYGUES – International Building Division, Associate at SHEARMAN & STERLING, Partner at PS Consulting, Incoming ETIC-PPP Expert.

11. Dominique GATEL, former Chairman of the Working Group on Risk Management with EUREAU (the European Federation of Water & Waste water service operators), former Deputy Technical Manager of VEOLIA WATER, Member of the PPP Business Advisory Board of the United Nations Economic Commission for Europe and co-chair of the UNECE Project Team on PPPs in Water and Sanitation, Strategic Council Member of the International Water Association (IWA).