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**Preparatory work on updating the UNCITRAL Model Law
on Public Procurement and related texts**

Note by the Secretariat

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I. Introduction

1. At its fifty-eighth session, in 2025, the Commission considered a proposal recommending that it mandate a Working Group to develop updates to the UNCITRAL Model Law on Public Procurement (MLPP) and related texts (A/CN.9/1230). With respect to topics potentially deserving attention as part of the update, suspension and debarment, as well as recent developments in the area of e-procurement, were considered relevant and timely (A/80/17, para. 217). On the other hand, doubts were expressed about extending the scope of the procurement cycle covered in the MLPP to the planning phase, and it was generally felt that embarking on work to update the MLPP in order to support the “greening” of public procurement was not desirable (A/80/17, paras. 217-218).
2. Following its deliberations, the Commission requested the secretariat to conduct preparatory work, in coordination with relevant international organizations, such as the World Trade Organization (WTO), the Organisation for Economic Co-operation and Development (OECD) and the World Bank, to refine the scope of possible work on updating the MLPP and related texts to reflect recent developments, which would not include issues of climate change mitigation, adaptation and resilience, and to report back to the Commission at its next session (A/80/17, para. 219).
3. Consistent with that request, this note provides a report on the preparatory work conducted by the secretariat to refine the scope of work for updating the MLPP and related texts. Chapter II provides background on the preparatory work. Chapter III presents a list of topics which could fall within the scope of the update, together with brief explanations. Chapter IV offers possible ways forward for consideration by the Commission.

II. Background on the preparatory work

4. At the outset, the Commission may wish to recall the following suite of public procurement texts:

(a) UNCITRAL Model Law on Public Procurement (2011),¹ which contains procedures and principles aimed at achieving value for money and avoiding abuses in the procurement process. It promotes objectivity, fairness, participation, competition and integrity towards these goals, as well as transparency, and replaced the 1994 UNCITRAL Model Law on Procurement of Goods, Construction and Services (the 1994 Model Law);

(b) Guide to Enactment of the UNCITRAL Model Law on Public Procurement (2012) (GTE),² which explains the objectives of the MLPP and how the provisions in the MLPP are designed to achieve those objectives, and enhances the MLPP’s effectiveness as a tool for modernizing and reforming procurement systems, particularly where there is limited familiarity with the procurement procedures the MLPP contains;

(c) The Guidance on procurement regulations to be promulgated in accordance with article 4 of the UNCITRAL Model Law on Public Procurement (2013) (the Guidance),³ which consolidates all provisions of the MLPP and the GTE that

¹ UNCITRAL Model Law on Public Procurement (2011), <https://uncitral.un.org/sites/default/files/media-documents/uncitral/en/2011-model-law-on-public-procurement-e.pdf>.

² Guide to Enactment of the UNCITRAL Model Law on Public Procurement (2012), <https://uncitral.un.org/sites/default/files/media-documents/uncitral/en/guide-enactment-model-law-public-procurement-e.pdf>.

³ Guidance on procurement regulations to be promulgated in accordance with article 4 of the UNCITRAL Model Law on Public Procurement (2013),

highlight the main issues that should be considered for procurement regulations in order to fulfil the MLPP's objectives and to implement its provisions. Consistent with the scope of the MLPP and the GTE, the Guidance does not address issues of procurement planning and contract management other than those directly relevant to the pertinent provisions of the MLPP; and

(d) The Glossary of procurement-related terms used in the 2011 UNCITRAL Model Law on Public Procurement (2013) (the Glossary),⁴ which provides definitions or descriptions of key terms used in the MLPP, as well as references to other terms in use in other international instruments regulating procurement.

5. Building on the discussions at the fifty-eighth session of the Commission, the secretariat conducted research on public procurement topics and issues: (a) prominently featured in academic writings or in recent reforms at national or regional levels, including those in other areas of commercial law having an impact on procurement; (b) discussed in global forums active in public procurement and at organizations referred to in paragraph 2; and (c) raised during recent technical assistance and cooperation activities led or undertaken by the secretariat.

6. To prepare this note, the secretariat drafted an informal document, which referred to the suite of public procurement texts and contained a list of possible topics to be considered. Consultations based on that informal document took place with a group of experts, including representatives of organizations. The secretariat received written inputs from experts and held meetings with them. Chapter III incorporates those inputs.

7. As a general matter, there was support for retaining the key procedures and principles as contained in the MLPP. There was no suggestion to reopen those procedures and principles.

8. Inputs suggested that updates to the MLPP and related texts should be grounded in the practice of States which have legislation based on or influenced by the MLPP, and of States which would be the primary users of the updates, in particular developing and least developed States and States with economies in transition. In addition, it was observed that updates to the MLPP and related texts should consider the reality of procurement in those States, while building on innovative and successful practices witnessed in other States with well-developed procurement legislation.

9. Active engagement of relevant organizations identified in paragraph 2 above may be facilitated through a formalized process (e.g. a working group or an intergovernmental expert group meeting). This would ensure consistency and coherence in international trade law as well as consistency in terminology, including with respect to possible updates to the Glossary.

III. Scope of possible updates

10. This chapter presents a list of topics that could fall within the scope of the update. Some of the topics were included in the informal document circulated by the secretariat and others were identified by experts or other organizations. At the end of each section, relevant parts of the MLPP and related texts, which could be updated, are identified along with suggestions for the possible update.

<https://uncitral.un.org/sites/default/files/media-documents/uncitral/en/guidance-on-procurement-regulations-e.pdf>.

⁴ Glossary of procurement-related terms used in the 2011 UNCITRAL Model Law on Public Procurement (2013), <https://uncitral.un.org/sites/default/files/media-documents/uncitral/en/glossary-e.pdf>.

A. E-procurement and digital transformation

11. When the MLPP was last updated in 2011, a key aim was to enable the use of information technology (IT) systems in public procurement.⁵ Several provisions were added to the MLPP to harness the potential of e-procurement as a tool to promote public procurement policy objectives and a section dedicated to specific issues arising in the implementation and use of e-procurement was added to the GTE. Those additions had been received positively by States and procurement experts, as it provided them with guidance on how to harness the benefits of IT systems in the tendering process. Since that last update, there have been further significant developments, including with respect to e-procurement and the ongoing digital transformation of public procurement, as well as the increasing use of artificial intelligence (AI) tools in public procurement.

12. A key innovation is the global movement toward open contracting and the increasing use of digital platforms that facilitate standardized publication, interoperability and re-use of procurement information. Digital platforms also play an important role in improving the contract planning and contract administration phases (see section G below). The importance of ensuring that procurement systems can generate and maintain reliable data identifiers and enabling the tracking of information disclosed throughout the procurement process was highlighted. Multiple categories of users, including procuring entities, suppliers and the public, now rely on procurement data for a range of purposes, from monitoring supplier performance to supporting accountability.

13. Modern e-procurement platforms are evolving into integrated systems through which data inputs from users are automatically captured and consolidated into the official procurement record, without additional manual processing. Data analytics tools and integrated platforms are being increasingly used to support policy goals such as anti-corruption and anti-money laundering. For example, bidders' beneficial ownership information is collected and, in some cases, published.

14. *Use of platforms and systems to improve efficiency:* It was suggested that the MLPP and GTE could place greater emphasis on the strategic use of such platforms and systems, including how notice provisions can be leveraged to promote transparency, efficiency and sound decision-making, and encouraging temporary experiments and open systems, to avoid procuring entities being locked-in with costly and siloed systems. The relevance of the use of the Open Contracting Data Standard was highlighted.⁶

15. *Digitalization and use of data:* It was indicated that digitalization of public procurement and the use of data are critical for promoting the objectives of the MLPP (e.g. competition, integrity, transparency). IT systems, for instance, may be used to combat corruption in public procurement (see para. 21 below).

16. *Impact of innovative technologies on legal concepts and practices:* In light of innovative technologies used in procurement and their impact on key general features, it might be useful to update some aspects of chapter I (General provisions) of the MLPP (e.g. manner for presenting submissions; communication; language; estimation of the value; confidentiality; documentary and data record) to ensure that the provisions reflect broadly the possible use of digital tools. Similarly, some aspects of chapters II and III may be revised to accommodate the broad use of digital platforms and how concepts such as "sealed envelope" in article 40 would function in a digital setting. The GTE and Guidance would also need to be revised to reflect recent practices.

⁵ See [A/CN.9/WG.I/WP.31 - Recent developments in the area of public procurement - issues arising from the increased use of electronic communications in public procurement](#).

⁶ See <https://www.open-contracting.org/>.

17. *Use and procurement of AI tools*: Input was received with respect to both the use and procurement of AI tools. First, caution was expressed regarding the use of AI tools in public procurement (e.g. for solicitation and notices, presentation of tenders and evaluation of tenders, automated decision making in lieu of discretion), due in part to the limited experience thus far. It was suggested that minimum requirements and safeguards could be elaborated in the GTE to inform States of those challenges (disclosures, record-keeping aspects, audits for bias in AI decision-making). Second, it was noted that it may be difficult to frame already at this stage rules for the procurement of AI tools, with inappropriate specifications, integration failures, and poor outcomes being often witnessed.⁷ It was also questioned whether this aspect was relevant for developing and least developed States (see para. 8 above). Concerns were expressed that updates to the MLPP would be based on an assumption that digitalization had reached high levels and that sophisticated digital systems were available or in operation.

18. The need to ensure consistency with UNCITRAL texts on electronic commerce was also emphasized – thus not to create new rules specific to digital procurement. The Commission may wish to take note of the following UNCITRAL texts on electronic commerce, which were adopted after 2011 and are particularly relevant for issues covered in this section: the UNCITRAL Model Law on the Use and Cross-border Recognition of Identity Management and Trust Services (2022) and the UNCITRAL Model Law on Automated Contracting (2024).

Possible updates: Drawing on other UNCITRAL texts as appropriate, various aspects related to e-procurement and the digital transformation could be updated or otherwise addressed, such as:

- MLPP, chapter I (General provisions), especially on issues such as manner for presenting submissions, communication, language, estimation of the value, confidentiality and documentary and data record;
- Chapter II (Methods of procurement and their conditions for use; solicitation and notices of the procurement), for example use of request for proposal with dialogue in article 30, for the purpose of procuring digital solutions, should not lock the procuring entity into the use of a digital solution;
- Chapters III (Open tendering) and VII (Framework agreements) to accommodate, for instance, the broad use of digital platforms, delete reference to paper form (e.g. in article 40) and clarify how concepts such as “sealed envelope” in article 40 would function in a digital setting; and
- E-procurement sections of the GTE to reflect recent developments such as AI tools (e.g. Part I, A.4 (The potential of electronic procurement (e-procurement) as a tool to promote public procurement policy objectives in the context of the Model Law) and C.3 (Specific issues arising in the implementation and use of e-procurement)).

This topic is relevant to anti-corruption and transparency aspects, suppliers’ lists or certification schemes and framework agreements (see sections B, C and D below).

B. Exclusion and debarment mechanisms; anti-corruption and transparency aspects

19. Administrative suspension and debarment are touched upon in article 9(2)(f) of the MLPP in the context of the qualifications of suppliers and contractors in the circumstances of the particular procurement, while exclusion of a supplier or contractor from the procurement proceedings due to the conduct of a supplier or a

⁷ See from OCP, *Buying AI* (2025).

contractor is addressed in article 21 of the MLPP.⁸ The GTE provides additional information on the context in which both articles may come into play.⁹ As regards eligibility of suppliers or contractors from a general standpoint, paragraphs 1 and 2 of article 8 of the MLPP set out the exceptional conditions under which the procuring entity may limit the participation of certain categories of suppliers or contractors in procurement proceedings, with paragraphs 3 to 5 providing procedural safeguards.

20. It was observed by experts that public procurement legislation in various legal systems strengthened the powers of procuring entities or central authorities to disqualify or exclude suppliers, with the private sector also being requested to monitor compliance and able to request judicial review of disqualification or exclusion decisions and their suspension. Possible updates to the MLPP, the GTE and the Glossary could expand treatment of suspension, debarment and exclusion and address the following aspects:

- (a) The broad use of centralized debarment registers, sometimes supported by specialized review services both in procuring entities and in the private sector, and on cross-border recognition of debarment decisions (multilateral development banks (MDBs) generally recognize debarment decisions made by other MDBs, and some jurisdictions provide for consultation of MDB debarment registers);¹⁰
- (b) Interconnection between debarment registers and other registers (tax, ultimate beneficiary ownership);
- (c) Expanded grounds for debarment and exclusion (e.g. national security risks, modern slavery, environmental misconduct, competition law-related infringements, non-performance aspects);
- (d) The importance of publication of debarment and exclusion decisions and their justification, subject to applicable confidentiality and data-protection safeguards;
- (e) Procedural guarantees, including access to administrative or judicial review, with some systems permitting interim relief (e.g. suspension of inclusion on a debarment list during a standstill period);
- (f) The distinction between mandatory and discretionary exclusion regimes, including the need for proportionality and clear guidance on affiliates, subcontractors or successor entities; and
- (g) The possibility for debarred bidders to be readmitted or not excluded in the first place through corrective measures or programs (e.g. self-cleaning).

21. This topic is relevant to work by the United Nations Office on Drugs and Crime (UNODC) on the implementation of article 9 of the United Nations Convention against Corruption (UNCAC), with respect to, for instance, the growing use of IT and data to combat corruption in public procurement.¹¹ In December 2025, UNODC finalized the Non-Binding Guidelines on the Adoption and Use of Technologies to

⁸ The MLPP refers, in the context of qualifications of suppliers and contractors, to suppliers or contractors having not been disqualified pursuant to administrative suspension or debarment proceedings (MLPP, art. 9.2(f)). It also contains an article addressing exclusion of a supplier or contractor from the procurement on the grounds of inducements from the supplier or contractor, an unfair competitive advantage or conflicts of interest (ibid., art. 21).

⁹ GTE, Part I, para. 69; Part II, art. 9, para. 9 and art. 21, para. 10.

¹⁰ See generally World Bank, *Global Suspension & Debarment Directory 2025: Mapping Exclusion Systems Around the World* (2nd ed.), <https://www.worldbank.org/content/dam/documents/sanctions/other-documents/2025/dec/Global%20SD%20Directory%20v05.pdf>.

¹¹ Resolution 10/9 adopted by the Conference of the States Parties to the United Nations Convention against Corruption at its tenth session on promoting transparency and integrity in public procurement in support of the 2030 Agenda for Sustainable Development.

Combat Corruption in Public Procurement,¹² which draws heavily on the MLPP and the GTE. Any future guidance may need to consider the interaction between technology, due process, transparency, and cross-border cooperation in debarment.

Possible updates: Update and expand article 8 to reflect and clarify eligibility requirements with respect to exclusion and debarment, and safeguards thereto. Consider the possibility of merging articles 9 and 21, to reflect recent developments with respect to exclusion and debarment mechanisms, in particular the role of central authorities and the use of debarment registries, as well as online tools.

This topic is relevant to the digital transformation of procurement and to suppliers' lists or certification schemes (see sections A and C).

C. Suppliers' lists or certification schemes

22. The topic of suppliers' lists had previously been considered in connection with framework agreements (see chapter VII of the MLPP and accompanying commentary)¹³ and when the revision to the 1994 Model Law commenced.¹⁴

23. The use of suppliers lists or certification schemes (i.e. pre-approving suppliers or contractors deemed low-risk, compliant and reputable) is a common practice in many jurisdictions. It is permitted under article IX:7 of the WTO Agreement on Government Procurement (GPA),¹⁵ subject to conditions and safeguards. They can cover a wide variety of structured, technology-enabled approaches. Modern practice increasingly relies on unified digital supplier registries that integrate registration, eligibility verification and due-diligence functions into a single system. Such registries aim to streamline procurement, enhance integrity and support cross-entity information-sharing, thereby expanding the traditional concept of suppliers' lists into a more comprehensive supplier-management tool.

24. Examples were provided, where suppliers may apply to join a qualified list at any time, subject to proportionate conditions of participation designed to ensure technical, financial and legal capacity. These examples typically allow for removal where exclusion grounds arise, as well as readmission after "self-cleaning," thus embedding lifecycle oversight into the suppliers' lists mechanism. Some systems also contemplate fees linked to successful contract awards, though such fee-based structures carry risks of commercialisation or "pay-to-play" dynamics, which also arise in the context of framework agreements (see section D below), if not carefully regulated.

25. It was suggested that the MLPP and the GTE should cover suppliers' lists and certification schemes. Greater clarity on permissible models, necessary safeguards and the relationship between digital registries and procurement processes would help jurisdictions implement such tools in ways that support efficiency, transparency and fair competition.

26. On the one hand, it was cautioned that suppliers' lists and certification schemes could restrict competition if they impose entry barriers, rely on subjective criteria, or make participation unduly burdensome. Certification systems in particular may raise concerns where they favour domestic providers or fail to recognise foreign

¹² Available at

https://track.unodc.org/uploads/documents/UNCAC/COSP/session11/concepts/Guidelines_on_the_adoption_and_use_of_tech_to_combat_corruption_in_public_procurement.pdf.

¹³ GTE, para. 3 under chapter VII ("Suppliers' lists are not provided for in the Model Law because UNCITRAL considers that the very flexible provisions on framework agreements set out in chapter VII of the Model Law allow for the benefits of suppliers' lists to be achieved, without running the elevated risks to transparency and competition that suppliers' lists are considered to raise.")

¹⁴ See A/CN.9/WG.I/WP.32, paras. 5-22. See also deliberations of Working Group I (Public Procurement) at its sixth session on this topic, A/CN.9/568, paras. 55-67.

¹⁵ Available at https://www.wto.org/english/tratop_e/gproc_e/gp_gpa_e.htm.

certificates. To mitigate such risks, procurement regimes should ensure objective, transparent criteria; open and continuous access for new suppliers; recognition of equivalent foreign certifications; and safeguards against discriminatory effects.

27. On the other hand, it was pointed out that structured suppliers' lists—when equipped with these safeguards—can enhance traceability, accountability and risk management compared with informal or opaque practices sometimes used for direct or accelerated procurement. Certain digital tools commonly used in practice, such as e-catalogues with continuously updated offerings, function in ways more akin to suppliers' lists than to other procurement mechanisms and therefore merit greater treatment in the MLPP and GTE.

Possible updates: Cover suppliers' lists and certification schemes in the MLPP and the GTE.

This topic is relevant to e-procurement and digital transformation and exclusion and debarment mechanisms (see sections A and B above).

D. Framework agreements

28. Framework agreement practices have evolved significantly since 2011, with more States using such arrangements, enabled by digital tools. Since then, the World Bank issued, in 2021, useful guidance on setting up and operating framework agreements.¹⁶

29. Framework agreements, absent safeguards, could be exploited for commercial gains by the private sector, decreasing the benefits that they are supposed to bring (e.g. efficiency, transparency, cost-savings, enhancing micro, small and medium-sized enterprises (MSMEs) participation).¹⁷ This may involve the following issues:

- (a) Procuring entities effectively allowing private sector operators to set up and run framework agreements on their behalf for profit, whilst contracting authorities retain legal responsibility for them;
- (b) The development of multi-supplier frameworks run by centralised purchasing bodies that allow hundreds or thousands of suppliers to join the framework without being subject to rigorous selection or award criteria (and where key terms, in particular pricing, is left to the call-off stage);
- (c) The emerging phenomenon of “parallel frameworks” leading to duplication and “framework shopping” within a notional “framework market”;
- (d) Centralised purchasing framework agreement providers competing against each other to attract user procuring entities and suppliers; and
- (e) The charging of exorbitant fees to suppliers to supply under frameworks in the name of “operational costs” of managing the framework.

30. Some of those issues are indirectly addressed in the Guidance¹⁸ and the GTE.¹⁹ It was suggested that the GTE could usefully expand on those issues or guidance provided in the related texts to address concerns and include recent practices regarding the setting-up and operation of framework agreements.

¹⁶ Lal, Shanker. *Guidebook for Setting-up and Operating Framework Agreements*. Washington, D.C.: World Bank Group. <http://documents.worldbank.org/curated/en/958921624026529503> (available in English and French).

¹⁷ For a detailed list of potential benefits, see para. 4 of Chapter VII of the GTE.

¹⁸ See Guidance, section E “Issues of outsourcing and centralized purchasing.”

¹⁹ See para. 6 of the GTE under chapter VII.

Possible updates: Expand the GTE on the risks associated with the exploitation of framework agreements for commercial gains.

This topic is relevant to e-procurement and digital transformation and suppliers' lists and certification schemes (see sections A and C above).

E. Use of non-price criteria for strategic procurement purposes

31. Use of non-price criteria is permitted by article 11(3) of the MLPP, under conditions set forth in article 11(4) and (5). The GTE clarifies that use of non-price criteria may allow States to pursue their socio-economic policies (e.g. procuring from and supporting domestic MSMEs).²⁰

32. Except in limited cases (e.g. low-value procurement), price alone is generally not sufficient to ensure optimal outcomes for procuring entities. The shift is particularly important for innovation, technology-intensive solutions, and complex services, where lowest-price tendering often fails to provide long-term public value. International trade agreements, including the WTO GPA, acknowledge that multiple criteria may be used (for GPA, see articles X:9 for evaluation criteria and XV:5 for awarding of contracts). At the same time, non-price criteria cannot entirely replace price considerations in most procurement systems. It was said that the concept of value for money assessment provided flexibility to accommodate those approaches and that such flexibility could be clarified and expanded in the GTE.

33. Non-price criteria are being increasingly deployed to achieve strategic objectives, such as:

- (a) Supporting domestic MSMEs;
- (b) Achieving social value;
- (c) Promoting sustainability, life-cycle considerations, and environmental performance (e.g. by using ecolabels);²¹
- (d) Improving workforce quality, training, or local employment;
- (e) Enjoining compliance by contractors and suppliers as well as their subcontractors as regards environmental, social and governance matters; and
- (f) Incentivizing quality, reliability, and supplier capability beyond basic compliance.

34. It was suggested that guidance provided in the GTE on formulating and applying non-price criteria²² could be developed further to take into account significant developments in this area, with requirements of legality, objectivity, transparency, and proportionality being critically important. This guidance could help States incorporate socio-economic goals within procurement systems yet with an objective and consistent approach.

²⁰ See paras. 26-31 of the GTE under chapter I.

²¹ The secretariat did not include the issue of sustainable procurement in its request for input due to the scope of the request for preparatory work by the Commission not including issues of climate change mitigation, adaptation and resilience (see paras. 1-2 above). Input was received that sustainable procurement is a cross-cutting issue linked to the concept of "value for money" and the use of non-price criteria, as well as to the growing importance of performance monitoring and contract management in public procurement (see section G below). The Commission may wish to clarify if sustainability aspects, in connection with the "value for money" test, non-price criteria and contract management, should be included within the scope of the update.

²² See in particular paragraph 14 of the commentary to article 11.

35. It was, however, viewed that attempts to draw a detailed list of non-price criteria in the updated MLPP would be challenging, if not impossible, for the following reasons:

- (a) Criteria evolve rapidly with societal expectations (e.g. sustainable procurement, digital inclusion, cybersecurity requirements);
- (b) A static list may become outdated, reducing the MLPP's universality; and
- (c) States with different legal systems or level of development may not easily converge on a uniform set of criteria.

Possible updates: Revise and expand article 11 to clarify the methodology for multiple award criteria and revise the related content in the GTE, in particular with respect to the value for money test. Following the structure of article 24(4), provide the procuring entity with authority to impose some level of requirements with respect to environmental, social, and governance (ESG) aspects from suppliers and subcontractors and include relevant examples in the GTE (e.g. ecolabels).

This topic is related to potentially expanding coverage to the procurement planning phase and facilitating MSME participation in public procurement (see sections G and H below).

F. Use of alternative dispute resolution in procurement

1. Use of alternative dispute resolution in challenge proceedings

36. The GTE acknowledges that the MLPP does not deal with the possibility of using arbitration in challenge proceedings, as arbitration was rarely used in that context and given the nature of challenge proceedings.²³ The use of arbitration or other forms of alternative dispute resolution (ADR) in pre-award review or challenge proceedings remains exceptional across jurisdictions, although the use of ADR may be mandated or enabled by relevant provisions in the applicable foreign investment framework (such as a claimant challenging a procurement decision in an investor-State dispute settlement proceeding based on, for instance, a pre-establishment protection in an investment treaty). With respect to mediation, reluctance by public authorities to their use was noted, which was not specific to procurement (e.g. discussions could provide opportunity for malfeasance; public authorities were hesitant to compromise on some points; and mediation is supposed to be confidential, which may not be in line with the MLPP's achieving transparency objective in the Preamble).

37. In most jurisdictions, review of procurement decisions is generally treated as a matter of public law, closely linked to administrative or constitutional principles that require disputes to be resolved by an adjudicatory body vested with public authority. For this reason, procurement challenges are typically channelled through specialised administrative review bodies or through the courts, and the experience of members of the arbitral tribunal or mediators in bid challenges may be lacking. However, article 66 of the MLPP on the application for reconsideration by the procuring entity may entail or could provide a mechanism to introduce the use of mediation.

38. Challenge procedures are commonly regulated by strict statutory deadlines, often requiring claims to be filed within short timeframes of a few days. This presupposes the availability of formal procedural powers—such as the authority to suspend procurement, to compel information disclosure from the procuring entity or other bidders, or to issue binding decisions—all of which are difficult to replicate within ADR frameworks.

39. It was suggested that additional feedback from jurisdictions with experience in the use of ADR in the context of bid challenges would be useful to assess whether the

²³ See para. 17 under chapter VIII.

MLPP could be updated with new provisions. This topic is also linked to UNCITRAL texts on dispute resolution and investor-State dispute settlement (see para. 36 above).

Possible updates: Consider updating chapter VIII (challenge proceedings) to reflect the possible use of ADR in challenge proceedings, subject to conditions and safeguards and taking into consideration specificities of public procurement and further input.

Guidance found in UNCITRAL texts on public-private partnerships as regards settlement of disputes and texts on investor-State dispute settlement reform should be considered, with consistency between instruments being ensured.

2. Alternative dispute resolution and contract management

40. The MLPP does not cover the contract management phase. As part of possible updates listed in this note, it is suggested that the MLPP should cover the contract administration phase (see section G below), which would necessarily include the use of ADR for contractual disputes. Indeed, the GTE states that arbitration may be relevant to resolve disputes during the contract management phase of the procurement cycle.²⁴ The use of ADR in post-award contract administration is well established and, in many jurisdictions, actively encouraged. In the performance phase of public contracts, particularly in construction and infrastructure, ADR has become an integral part of managing disputes.²⁵ Arbitration clauses are routinely included, mediation is often used to resolve issues before they escalate, and mechanisms such as dispute avoidance or dispute adjudication boards are widely employed to keep complex projects on track.²⁶

41. In many States, ADR may become a key component of the strategy of a procuring entity regarding contract performance and risk management. For this reason, many States allow or even promote ADR for issues or disputes arising in the contract management phase. This is also reflected in assessment frameworks such as the Methodology for Assessing Procurement Systems (MAPS),²⁷ which recognise ADR as an appropriate method of resolving contractual disputes.²⁸

42. Some legal systems still impose conditions on the use of ADR in public contracts, such as statutory requirements for arbitration clauses or limits on the authority of public entities to enter into arbitration agreements. Some jurisdictions have found that using arbitration in public procurement may speed up resolution as compared to using courts, while others prioritise mediation to encourage negotiated outcomes while retaining public-law oversight for questions of legality.²⁹ Across these varied experiences, ADR has been most effective when integrated into broader contract management strategies aimed at preventing escalation and maintaining project continuity. Those considerations may serve as a basis for tailoring legislative provisions facilitating the use of ADR in procurement contractual disputes.

43. UNCITRAL texts on arbitration and mediation, as well as investor-State dispute settlement, may be relevant. The understanding of the secretariat, subject to the Commission's consideration, is that special procedural rules would not need to be

²⁴ See para. 17 under chapter VIII.

²⁵ On the use of adjudication in construction contracts, see also the discussions in UNCITRAL regarding the topic of technology-related dispute resolution and adjudication at its fifty-fifth session (A/77/17, paras. 223-225).

²⁶ These mechanisms are also described in chapter VII of the UNCITRAL Legislative Guide on Public-Private Partnerships.

²⁷ <https://www.mapsinitiative.org/en/about.html>.

²⁸ See Sub-indicator 1(i) – Contract management.

²⁹ See for example India, Guidelines for Arbitration and Mediation in Contracts of Domestic Public Procurement, 2024.

designed, but a provision or guidance on recourse to ADR in the context of contract administration, should this phase be covered (see section G below).

Possible updates: Subject to extending the MLPP's coverage to contract administration (see section G below), such coverage could include dispute prevention tools and mechanisms to resort to ADR for contractual disputes.

Guidance found in UNCITRAL texts on public-private partnerships as regards settlement of disputes should be considered, with consistency between instruments being ensured.

G. Broadening the Model Law's coverage of the procurement cycle

44. The MLPP, which focuses on the tendering process and contract formation, generally does not cover the planning phase or the contract administration phase, as well as contract termination procedures.³⁰ It was suggested that the MLPP should cover procurement planning, administration and termination phases, in order to enhance efficiency in public procurement spending at a time of diminishing public budgets, facilitated by the use of digital tools.

1. Planning phase

45. The MLPP encourages procuring entities to have a forward-looking approach by publishing information on forthcoming procurement opportunities (see article 6). In addition, paragraphs 82-85 of Part one of the GTE briefly discuss procurement planning and contract management aspects, including termination.

46. Inclusion of the preliminary stages, particularly market engagement outside formal procurement procedures, would help procuring entities better understand supply markets, refine technical specifications and identify appropriate procurement strategies. Structured preliminary market engagement supported by safeguards may ensure that suppliers are not given undue advantage and that competition is not distorted. Expanding the MLPP to cover these elements was seen as consistent with international practices and as a means to support broader objectives, including maximizing efficiency in public spending, strengthening integrity and transparency, mitigating corruption risks, and facilitating the participation of MSMEs (see section H below).

47. It was suggested that article 6 of the MLPP could be expanded, or complemented by a dedicated new section, to cover procurement planning, preliminary steps and structured market engagement. It was emphasised that the usefulness of optional tools such as planned procurement notices, pipeline notices, and preliminary market engagement notices lies in their ability to allow suppliers—particularly MSMEs—to prepare for future opportunities while maintaining flexibility for procuring entities. It was also considered that covering the contract planning phase could improve the procurement of innovative solutions³¹ by tailoring the procurement method to such solutions, while safeguarding the objective of achieving transparency.³²

2. Contract administration

48. The MLPP generally does not touch contract administration issues, with the exception that article 10(5)(b) encourages the use of standardized trade terms and standardized conditions, where available, in formulating the terms and conditions of the procurement and the procurement contract or framework agreement. The importance of extending guidance to the contract administration phase, including

³⁰ GTE, Part I, para. 82.

³¹ In the MLPP, the request for proposals with dialogue is specifically designed for innovative sectors (see article 30(2)(b) of the MLPP).

³² See also Monteiro, B., A. Hlacs and P. Boéchat (2024), "Public procurement for public sector innovation: Facilitating innovators' access to innovation procurement", *OECD Working Papers on Public Governance*, No. 80, OECD Publishing, Paris, <https://doi.org/10.1787/9aad76b7-en>.

contract performance monitoring, performance audits, digital performance certification systems, contract modification under defined circumstances, and contract termination was emphasised, as all of these aspects would help align the MLPP with the full procurement lifecycle applicable to procuring entities and promote value for money. It was suggested to include provisions on contract performance, such as the identification of key performance indicators, annual or periodic performance assessments, and publication of information on supplier under performance or breach, to support informed decision making in future procurements. The need for basic guidance on contract modifications, recognizing common international approaches that distinguish between permissible and impermissible changes and seek to prevent modifications being used to circumvent procurement obligations was also emphasised. The relevance of guidance found in UNCITRAL texts on public-private partnerships was acknowledged.³³ Consideration may also be given to mechanisms aimed at salvaging contracts in situations of contractor insolvency or underperformance. Such mechanisms may include amicable contractual solutions, for example permitting the engagement of specialized subcontractors—whether through tripartite arrangements or direct-payment mechanisms—to ensure completion of the remaining contractual obligations.³⁴

49. In addition, it was suggested to include core provisions on contract termination, covering grounds for termination, procedural safeguards such as prior notice and opportunities for representation, and clarification of termination consequences—measures seen as essential to sound contract administration and to maintaining fairness and competition in procurement systems. It was emphasized that defining a harmonized legal regime would be difficult considering the differences in the legal framework applicable to procurement contracts in various jurisdictions and that it would be more realistic to identify common features and principles at a general level. This topic is linked to the use of ADR in public procurement (see section F above).

Possible updates: Add new chapters to the MLPP regarding the planning phase (building on article 6 MLPP), contract administration phase and contract termination procedures (such additions would need to be consistent with UNCITRAL texts on public-private partnerships) and make corresponding changes in the Preamble and in article 1 of the MLPP.

This issue is linked to e-procurement and digital transformation, exclusion and debarment mechanisms, anti-corruption and transparency aspects, suppliers' lists or certification schemes, framework agreements, use of non-price criteria for strategic procurement purposes and the use of ADR in public procurement (see sections A, B, C, D and F above) and facilitating MSMEs participation in public procurement (see section H below).

H. Facilitating MSMEs participation in public procurement

50. The GTE refers to MSMEs, for instance, in the context of socio-economic policies and e-procurement.³⁵ The topic of facilitating MSMEs' participation in

³³ PPP Model Legislative Provisions 33, 44 and 45 (regarding contract administration); and 50-53 (regarding contract termination).

³⁴ See PPP Model Legislative Provisions 46 regarding takeover of an infrastructure project by the contracting authority) and 47 (regarding substitution of the private partner).

³⁵ See, e.g., GTE, Part I, paras. 12-14 (regarding SMEs and socio-economic policies) and 100-101 (regarding SMEs and e-procurement); see also Guidance on Procurement Regulations, art. 8, para. 2 and art. 39, para. 2 (both of which refer to SMEs in the context of socio-economic policies). The GTE and Guidance on Procurement Regulations use the term small- and medium-sized enterprises (SMEs), whereas this note uses MSMEs, in line with UNCITRAL's more recent work in this area. See, e.g., <https://uncitral.un.org/en/texts/msmes>.

public procurement has received significant attention in international forums³⁶ since the adoption of the MLPP in 2011. The MAPS main module, for example, refers to aspects such as access to information, and ways to promote MSMEs participation in procurement (see sub-indicator 10(b)). A suite of UNCITRAL texts covers MSMEs, while part five of the Legislative Guide on Insolvency Law covers specifically micro- and small enterprises (MSEs).

51. The most significant obstacles faced by MSMEs are not primarily procurement-law issues, but structural problems such as: (a) lack of access to finance; (b) limited awareness of opportunities or difficulty engaging with government buyers; (c) inadequate capacity or familiarity with public sector processes, and (d) limited resources to sustain lengthy tender procedures or late payments by procuring entities after the award.

52. Procurement rules may offer tools such as lot division, which is already envisaged in article 13 of the MLPP, and experts confirmed that that tool was efficient in ensuring that the resulting lot size is “adequate” to enable MSMEs’ participation and in reducing administrative requirements. These interventions alone cannot solve deeper market barriers. Possible solutions, such as appointing persons to assist MSMEs in the bidding process, are costly or may raise competition issues. General outreach efforts in the context of supply chain management at the planning phase, if such phase was to be covered in the updated MLPP, would be relevant to this issue. In general, questions were raised about whether procurement law or procurement regulation would be the best way to address these issues.

53. In addition to those concerns, the lack of available empiric evidence regarding MSMEs’ access to public procurement was mentioned. It was also pointed out that, as MSMEs and MSEs were not the same, it might be necessary to consider whether any focus to facilitate participation should be on MSMEs, MSEs or both.

54. Doubts were expressed as to how the topic could be dealt with in the MLPP. It was suggested that the topic may merit more robust treatment in the GTE, as a policy-orientation that could be supported through other legal instruments than public procurement legislation.

Possible updates: Adding further MSMEs-enabling articles to the MLPP does not seem to be the preferred approach.

Subject to extending the MLPP’s coverage to the contract planning phase (see section G above), expanding existing guidance in the GTE regarding MSMEs’ participation in public procurement may be preferable.

Clarify if MSMEs are the intended targets for this topic or if MSEs are more relevant.

This topic is relevant to the use of non-price criteria for strategic procurement and to the public procurement planning phase (see sections E and G above).

I. Other issues for consideration

³⁶ See, e.g., WTO, Report of the Committee on Government Procurement on Best Practices for Promoting and Facilitating the Participation of SMEs in Government Procurement, GPA/CD/6 (9 Oct. 2024), <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/PLURI/GPACD/6.pdf&Open=True>; World Bank, Public-Private Partnership Resource Center, Promotion of SMEs/Local Content in Public Procurement Laws and Regulations, <https://ppp.worldbank.org/promotion-smes-local-content-public-procurement-laws-and-regulation>; OECD, SMEs in Public Procurement: Practices and Strategies for Shared Benefits, OECD Public Governance Reviews (2018), https://www.oecd.org/en/publications/smes-in-public-procurement_9789264307476-en.html; ILO, Promoting public procurement for micro-small and medium-sized enterprises’ growth and transition to formality: Lessons learned from Chile and the Republic of Korea (2025), https://www.ilo.org/sites/default/files/2025-07/Promoting%20public%20procurement%20report-ENG_web.pdf.

55. The following two additional issues were identified for consideration.

56. *Community engagement in public procurement:*³⁷ There are two aspects to this topic. On the one hand, it relates to community oversight of public procurement, with the objective of enhancing transparency through additional disclosures, red-flags, and complaint and redress mechanisms, enabled by digital tools, and facilitating community involvement. On the other hand, it relates to using communities as suppliers or as *maitre d'ouvrage*, which has been developed by the World Bank and in some countries in East Africa and Latin America.³⁸ Possible treatment of this issue would involve various other topics, including the use of non-price criteria, procurement planning and contract administration (see sections E and G above).

57. *Professionalization of procurement staff:* A provision could be added on the professionalization of procurement staff, including minimum competency standards for managing high-value and complex procurement, together with corresponding updates to the GTE.³⁹ Article 26 of the MLPP (code of conduct) and paragraphs 66-81 of Part one of the GTE, as well as the procedures contained in chapter V of the MLPP, would be relevant to consider in connection with this issue.

58. The Commission may wish to consider whether these topics could be included within the scope of work, for further consideration and development.

IV. Way forward

59. In light of the possible topics and the suggested updates to the MLPP and related texts, the Commission may wish to consider mandating a working group to carry out the updates.

60. In so doing, the Commission may wish to narrow down the topics on which to focus or to request the working group to consider all such topics and to report with concrete recommendations. The former approach would make it possible for a working group to finalize the work within a fixed period of time, whereas the latter approach could take longer but result in a more comprehensive update to the MLPP and related texts. To support the working group, the secretariat may be requested to undertake further preparatory work involving experts and representatives of international organizations (see para. 9 above), which would aim to ensure that the updated texts reflect recent practices while remaining an appropriate tool for all States in formulating a modern procurement law. If such an option would be preferred, the Commission may wish to allocate one of the 2027 spring sessions to the working group to enable the secretariat to undertake further preparatory work in the meantime.

61. Alternatively, the Commission could request the secretariat to take up this work, in consultation with experts and in coordination with representatives of international organizations, and to prepare concrete updates to the texts, with the possibility for the Commission to consider those updates at its next session and, if necessary, to mandate a working group at that stage to review and further prepare them.

³⁷ This topic was listed in the matters being possibly relevant to the update of the 1994 Model Law (see paras. 62-68 of A/CN.9/WG.I/WP.32), with a focus on contract implementation.

³⁸ Kenya's Public Procurement and Asset Disposal Regulations, 2020, specifically regulations 108-112; Rwanda's 2020 Ministerial Order N° 002/20/10/TC of 19/05/202 Establishing Regulations on Public Procurement (articles 57-58); Botswana Public Procurement Regulations 2023, Reg. 29.

³⁹ See also OECD (2023), "Professionalising the public procurement workforce: A review of current initiatives and challenges", *OECD Public Governance Policy Papers*, No. 26, OECD Publishing, Paris, <https://doi.org/10.1787/e2eda150-en>.