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Revised Guide to Enactment to accompany the UNCITRAL Model Law on Public Procurement*

Note by the Secretariat

Addendum

This addendum sets out a proposal for the Guide text to accompany the preamble and an introduction to Chapter I of the UNCITRAL Model Law on Public Procurement.

* This document was submitted less than ten weeks before the opening of the session because of the need to complete intersessional informal consultations on the relevant provisions of the draft revised Guide to Enactment.



GUIDE TO ENACTMENT OF THE UNCITRAL MODEL LAW ON PUBLIC PROCUREMENT

Preamble to the Model Law

1. The reason for including in the Model Law a statement of objectives is to provide guidance in the interpretation and application of the Model Law. Such a statement of objectives does not itself create substantive rights or obligations for procuring entities or for suppliers or contractors. It is recommended that, in States in which it is not the practice to include preambles, the statement of objectives should be incorporated in the body of the provisions of the Law.

2. The effective implementation of the objectives can only take effect through cohesive and coherent procedures based on the underlying principles, and where compliance with them is evaluated and, as necessary, enforced. With the procedures prescribed in the Model Law incorporated in its national legislation, an enacting State will create an environment in which the public is better assured that the government purchaser will spend public funds with responsibility and accountability, and thus will obtain value for money. It will also be the environment in which parties offering to sell to the Government are confident of receiving fair treatment and that abuse is addressed. The six elements of the Preamble are considered separately below.

1. Maximizing economy and efficiency in procurement

3. “Economy” in procurement means an optimal relationship between the price paid and other factors, which include the quality of the subject matter of the procurement, and presupposes that the public purchaser’s needs are in fact met. “Efficiency” in procurement means that relationship between, the transaction costs and administrative time of each procurement and its value are proportionate. “Efficiency” also includes the notion that the costs of the procurement system as a whole are also proportionate to the value of all procurement conducted through that system. These concepts may be referred to differently in other systems (“economy” often being termed “value for money” or “best value”).

4. As regards economy, the Model Law allows the procuring entity the flexibility to determine what will constitute value for money in each procurement and how to conduct the procurement in a way that will achieve it. Specifically, the procuring entity has a broad discretion to decide what to purchase, and discretion in determining what will be considered responsive to the procuring entity’s needs (article 10 [\[**hyperlink**\]](#)), who can participate and on what terms (articles 9, 18 and 49 [\[**hyperlinks**\]](#)) and the criteria that will be applied in selecting the winning submission (article 11 [\[**hyperlink**\]](#)).

5. Article 11 [\[**hyperlink**\]](#) also allows the procuring entity to include in the evaluation criteria that will determine the winning supplier a broad range of elements relating to the subject-matter of the procurement, including price, life-cycle costs and quality considerations. Subject-matter-related criteria may also include disposal (sale or decommissioning) costs. Evaluation criteria can also include socio-economic criteria, which themselves may include the social and

environmental impact of procurement. See, further, section ** in the General Remarks, and the commentary to article 11 [\[**hyperlinks**\]](#), which emphasizes that all evaluation criteria are subject to prior disclosure in the solicitation documents. The procuring entity also has the discretion to decide which relative weights to assign to the elements included in its evaluation criteria, again subject to prior disclosure of those weights.

6. In addition, the Model Law contains a range of procurement methods that have been designed to suit the variety of public procurement. The situations envisaged include normal circumstances not involving special needs, in which open tendering is mandated (see article 28 and Chapter III [\[**hyperlinks**\]](#)); simple and low-value procurement using restricted tendering under articles 29 and 45 [\[**hyperlinks**\]](#), request for quotations under articles 29 and 46, electronic reverse auctions under articles 31 and Chapter VI [\[**hyperlinks**\]](#); and repeated or indefinite procurement under framework agreements in article 32 and Chapter VII [\[**hyperlinks**\]](#). Also provided for are complex procurement under articles 29, 30, 45 and 47-50 [\[**hyperlinks**\]](#), and urgent/emergency procurement under articles 30 and 51-52 [\[**hyperlinks**\]](#). The procuring entity has the discretion to select from the methods available for the circumstances concerned the method that it considers will allow economy or value for money to be maximized. The commentary to articles 27 and 28 [\[**hyperlinks**\]](#) discuss the exercise of this discretion, notably in that where more than one procurement method may be available in the circumstances, the procuring entity must seek to maximise competition in choosing the method to be used.

7. This discretion is circumscribed in that the procuring entity must subsequently follow the prescribed rules and procedures in implementing the decisions taken, so as to avoid abuse and to ensure that the procedures operate as intended to allow value for money to be achieved, and to avoid abuse and corruption, as further explained in section ** above [\[**hyperlinks**\]](#). A key additional feature in this regard is the Model Law's rigorous transparency mechanism that, among other things, allows the oversight of the decisions concerned. The flexibility offered by the Model Law and the use of discretion as outlined above presuppose a certain level of skills and experience on the part of the individuals conducting the procurement concerned. The sections of this Guide discussing choice of procurement method and solicitation under Chapter II [\[**hyperlinks**\]](#) will assist those engaged in designing and implementing the procurement system in deciding whether some elements of flexibility as described above should be restricted through more detailed regulation and guidance (for example, while capacity-building takes place).

8. As regards efficiency, the Model Law provides flexible procedures to ensure that the administrative time and costs of conducting each procurement are proportionate to the value of that procurement. For example, and as noted in section ** of the General Remarks [\[**hyperlink**\]](#), it provides procedures for low-value or simple procurement and for repeated or indefinite procurement through restricted tendering, request-for-quotations, electronic reverse auctions and framework agreements. These methods are procedurally simpler and may be quicker to operate than other methods, particularly when operated electronically, than open tendering (the default method under the Model Law, as explained in the commentary to articles 27 and 28 [\[**hyperlinks**\]](#)). The benefits of electronic procurement are

also discussed in section ** of the General Remarks [\[**hyperlink**\]](#). However, because these alternative methods may be considered less transparent and less competitive in some respects than open tendering, their use is restricted to the circumstances set out in articles 29, 31 and 32 [\[**hyperlinks**\]](#) (and must be justified in the record of the procurement proceedings concerned). Guidance on the use of these methods is found in the commentary to each method [\[**hyperlinks**\]](#)).

9. The Model Law mandates open solicitation as a general rule (the elements of open solicitation, and the reasons for mandating it, are explained in the commentary to Part II of Chapter II [\[**hyperlink**\]](#)). Direct solicitation, which involves inviting a limited number of suppliers to participate, imposes a lesser administrative burden, and is a feature of several procurement methods (restricted tendering, request-for-quotations, competitive negotiations and single-source procurement) by virtue of article 34 [\[**hyperlinks**\]](#). Direct solicitation is also available in request-for-proposals proceedings, but only where restricting solicitation is justified in addition to the use of the method itself (see article 35(2), and the guidance to request-for-proposals proceedings [\[**hyperlinks**\]](#)).

10. The Model Law also provides tools designed to facilitate the oversight of the procurement process, which can also allow efficiency (e.g. the cost-to-value ratio of each procurement) to be assessed. The main such tool is the record of each procurement process required by article 25 [\[**hyperlink**\]](#). Where the records are maintained electronically, evaluating the performance of the procurement system as a whole also becomes possible, as discussed in section ** of the General Remarks [\[**hyperlink**\]](#). The proceedings and results of any debriefing and of any challenges under Chapter VIII [\[**hyperlinks**\]](#), which should and must be included in the record respectively, can support such evaluations.

2. Fostering and encouraging participation in procurement proceedings by suppliers and contractors regardless of nationality, and thereby promoting international trade

11. As an instrument designed to support and promote international trade, the default rule under the Model Law is that procurement is “open” to all potential suppliers irrespective of nationality. There are limited circumstances in which international participation can be restricted (directly or indirectly), which are set out in articles 8-11 of the Model Law. The effect of these provisions is that, and as section ** of the General Remarks explains [\[**hyperlink**\]](#), there can be no restrictions on participation based on nationality unless such restrictions have been designed within the limited constraints available under the Model Law. The relevant provisions are an ability to declare the procurement to be domestic-only (see article 8 [\[**hyperlink**\]](#)), and the ability to include in the qualification requirements, description or evaluation criteria restrictions on overseas participants or disfavour overseas suppliers directly or indirectly (articles 9-11 [\[**hyperlinks**\]](#)). All such restrictions may be included only to the extent that the procurement regulations or other laws in the enacting State so permit. As the above commentary also notes, enacting States will need to take into account any relevant international trade obligations regarding international participation in their procurement, if they wish to implement these restrictions into their domestic legislation.

12. International participation is encouraged through the default requirement for international advertisement in all procurement proceedings, with limited exceptions, so that foreign suppliers can become aware of procurement opportunities. International advertisement and exceptions to the default rule are discussed in the commentary to Part II of Chapter II [\[**hyperlink**\]](#).

13. Broad participation in procurement proceedings is a pre-requisite for effective competition (and so supports the attainment of value for money). Consequently, the Model Law's provisions are also based on the notion that the procurement is open to all potential suppliers unless they are found not to be qualified (under articles 9 and 18 [\[**hyperlinks**\]](#)). A key feature of qualification requirements under these articles is that they must be appropriate and relevant in the circumstances of the procurement, so as to prevent the unfair exclusion of suppliers. The other permissible exception to the principle of open participation is where the circumstances of the procurement justify restricting participation (as explained regarding open and direct solicitation in paragraph [** above \[**hyperlinks**\]](#), and in Part II of Chapter II [\[**hyperlink**\]](#), and, as regards competitive pre-selection, in the commentary to article 49).

14. The principle of public and unrestricted participation is implemented in the Model Law in that direct solicitation (other than in competitive negotiations and single-source procurement) does not mean that the procuring entity may simply select its favoured suppliers and invite them to participate. The Model Law requires all suppliers in the market concerned to be invited to participate in restricted tendering proceedings under article 34(1)(a) [\[**hyperlink**\]](#) and in request-for-proposals proceedings under article 35(2)(a) [\[**hyperlink**\]](#). Where the procuring entity is granted the discretion to set a limit on the number of participants, in restricted tendering proceedings under article 34(1)(b) [\[**hyperlink**\]](#) and in request-for-proposals proceedings under article 35(2)(b) [\[**hyperlink**\]](#), the number must be set and the participants chosen in a non-discriminatory manner. Finally, in request-for-quotations proceedings under article 34(2) [\[**hyperlink**\]](#), at least three suppliers must be invited to participate. These requirements are discussed in detail in the commentary in the introduction to Chapter IV [\[**hyperlink**\]](#). During the procurement procedure, participating suppliers have a right to present submissions, and for those submissions to be examined and evaluated, as further explained in the commentary to articles 9, 18 and the procedures for each method under Chapters III-VII [\[**hyperlinks**\]](#).

15. The Model Law also encourages the participation of suppliers by requiring the terms of the procurement to be determined and publicised at the outset and, to the extent feasible, to be objective (see, further, the remaining discussion of the elements of the Preamble, below).

3. Promoting competition among suppliers and contractors for the supply of the subject matter of the procurement

16. Competition in procurement means that all potential suppliers engage in a rigorous contest for the opportunity to sell to the government, or that a sufficient number of suppliers present submissions to ensure that there is such a contest. In this regard, competition is the antithesis of collusion — where suppliers agree not to compete against each other.

17. The choice of procurement method is required to be taken with a view to “maximising competition” in the circumstances of the procurement (article 28 [\[**hyperlink**\]](#)). In practical terms, this requirement means, and as the preceding section explained, permitting broad participation so as to create the conditions in which competition can take place. There are also express requirements to have sufficient participants to ensure effective competition in electronic reverse auctions (article 31(1)(b) [\[**hyperlink**\]](#)), restricted tendering (article 34(1)(b) [\[**hyperlink**\]](#)), competitive negotiations (34(3) [\[**hyperlink**\]](#)) and request for proposals with dialogue (article 49(3)(b) [\[**hyperlink**\]](#)), because, in those methods, the procuring entity can limit the numbers of participating suppliers. In certain circumstances, such as the procurement of highly complex items, however, competition is best assured by limiting the number of participants. This apparently paradoxical situation arises where the costs of participating in the procedure are high — unless the suppliers assess their chances of winning the ultimate contract as reasonable, they will be unwilling to participate at all. These matters and ways of ensuring effective competition in markets with relatively few players are explained in more detail in the commentary to article 47 (request-for-proposals without negotiation [\[**hyperlink**\]](#)) and to the procurement methods in Chapter V [\[**hyperlink**\]](#).

18. Although there are few explicit references to the notion of competition in the text of the Model Law — the promotion of competition is an implicit feature of the text — the above measures create the conditions for effective competition. Suppliers will compete in fact where they are confident that they have all necessary information to allow them to submit their best offers, and where they are confident that their submissions will be objectively assessed. The Model Law’s measures to instil “integrity, fairness and public confidence in the system”, and to require “fair, equal and equitable treatment” (objectivity) and “Transparency” (see the following sections) are therefore examples of mutually supporting obligations.

19. Although some procurement markets will comprise many potential suppliers, procurement of larger and more complex items and services will normally take place in a more limited market with fewer players, often known to each other. Oligopolies can be created where there are repeated procurements or long-term procurements in markets without many potential suppliers. Such market-places involve a higher risk of collusion. Measures in the Model Law to address this risk include broadening the market by advertising internationally, allowing foreign participants to participate, and scaling the Government’s purchases to avoid excessively consolidating or concentrating the market concerned: the benefits of economies of scale can be outweighed by disadvantages of large-scale contracting, as further explained in the introduction to Chapter VII [\[**hyperlink**\]](#). While procurement laws and regulations can impose obligations to advertise and conduct open procurement on procuring entities, considering the macroeconomic effects of Government purchasing will need to be undertaken at a central level. Enacting States may wish to monitor the extent of real competition in public procurement through both procurement and competition agencies (see, also, section ** of the General Remarks, on institutional support for the Model Law [\[**hyperlink**\]](#)).

4. Providing for the fair, equal and equitable treatment of all suppliers and contractors

20. The concept of fair, equal and equitable treatment of suppliers under the Model Law involves non-discrimination and objectivity in taking procurement decisions that affect them. The Model Law includes several provisions implementing these principles, which are designed to ensure that all participants are aware of the rules governing procurement in the system concerned and have an equal opportunity to enforce them. They include the requirement for open participation in procurement, with limited exceptions, as described in section **2** [above](#). Open participation is supported by additional requirements in article 9 [that](#) qualification criteria are appropriate and relevant to the procurement at hand, and those in article 10 [requiring](#) descriptions of what is to be procured to be objective, clear and complete, to use standard terms where possible and to avoid trademarks, etc. Along with the safeguards requiring the evaluation criteria under article 11 [to](#) relate to the subject-matter of the procurement, these provisions are aimed at ensuring that suppliers compete on an equal footing. Article 7 [on](#) the rules of communication is designed not to allow suppliers to be excluded from the procurement process through discriminatory application of rules on the form or means of communication. The procedures under the Model Law are also designed to ensure equality and fairness. There are rules addressing the clarification of information submitted (article 16 [\),](#) rules to ensure that requirements for tender securities are objective (article 17 [\),](#) procedures to identify abnormally low tenders, which cannot otherwise be rejected as such (article 20 [\),](#) rules stating that late tenders must be rejected (article 40 [\),](#) and that the award of contract is to be made only on basis of pre-disclosed criteria (articles 11 and 22 [\),](#) applied in procedural articles in Chapters III-VII [\),](#) to either the lowest-priced tender or the most advantageous tender. At that stage, the contract must be awarded to the winning supplier unless that supplier is determined to be unqualified, has submitted an abnormally low tender or the procurement is cancelled (articles 19, 22 and 43 [\). Finally,](#) all potential suppliers can challenge the procuring entity's decisions under Chapter VIII [\),](#) including a decision to exclude them from the procurement.

5. Promoting the integrity of, and fairness and public confidence in, the procurement process

21. Integrity in procurement involves both the avoidance of corruption and abuse and the notion of personnel involved in procurement applying the rules of the Model Law and, in so doing, acting ethically and fairly, avoiding conflicts of interest. It requires the procurement system to be devoid of institutionalised discrimination or bias against any particular group, as the rules on participation set out above reflect, and that the application of the Model Law's provisions by the procuring entity does not give results contrary to the its objectives

22. The Model Law's procedures to ensure objectivity, and fair and equal treatment, are also designed to promote integrity. They are supported by express requirements for a code of conduct to address conflict of interest (article 26 [\),](#) implementing the requirement in the Convention against

Corruption for a system to address declarations of interest of personnel in procurement [\[**hyperlink**\]](#); rules providing for the mandatory exclusion of a supplier where there is an attempt to bribe a procurement official, or where a supplier has an unfair competitive advantage or a conflict of interest (article 21 [\[**hyperlink**\]](#)); provisions ensuring the protection of confidential information (article 24 [\[**hyperlink**\]](#)); the requirement for all decisions in the procurement process to be recorded in the record of the process (article 25 [\[**hyperlink**\]](#)); rules on disclosure of information from the record to participants and (ex post facto) publicly (article 25 [\[**hyperlink**\]](#), subject to confidentiality, and as further discussed in the section on “Transparency” below), the challenge mechanism that is open to all suppliers, with public notifications (in Chapter VIII [\[**hyperlink**\]](#)).

23. In addition, the institutional measures described in section [**](#) of the General Remarks above [\[**hyperlink**\]](#) are designed to ensure the appropriate separation of responsibilities and appropriate conduct on the part of agencies and officials. Applicable requirements of other branches of law in the enacting State should be made clear to procuring entities so as to avoid inconsistent development within the system.

24. Finally, the oversight mechanisms to oversee the discretion inherent in the system (as described in the section on “Economy and efficiency” above) will support integrity, particularly where they are accompanied by public reporting of relevant findings.

25. Integrity may be further enhanced by linking the code of conduct referred to above with applicable general standards of conduct for civil servants and any further provisions addressing integrity and prevention of corruption in other national laws and regulations. Public confidence will also be enhanced where enforcement of the rules is clearly visible, and transgressions appropriately punished.

6. Achieving transparency in the procedures relating to procurement

26. Transparency in procurement involves five main elements: the public disclosure of the rules that apply in the procurement process; the publication of procurement opportunities; the prior determination and publication of what is to be procured and how offers are to be considered; the visible conduct of procurement according to the prescribed rules and procedures; and the existence of a system to monitor that these rules are being followed (and to enforce officials to follow them if necessary).

27. As noted in the section on “Economy and Efficiency” above, the use of discretion under the Model Law involves a balance that allows the procuring entity to identify what to procure and how best to conduct the procurement. Transparency is a tool that allows this exercise of discretion to be monitored and, where necessary, challenged; it is considered a key element of a procurement system that is designed, in part, to limit the discretion of officials, and to promote accountability for the decisions and actions taken. It is thus a critical support for integrity in procurement and for public confidence in the system, as well as a tool to facilitate the evaluation of the procurement system and individual procurement proceedings against their objectives.

28. Transparency measures therefore feature throughout the Model Law. They include requirements that all legal texts regulating procurement should be made

promptly and publicly available (article 5^{[[hyperlink]]}), non-discriminatory methods of communication (article 7^{[[hyperlink]]}), the determination of evaluation criteria at the outset of the procurement and their publication in the solicitation documents (article 11^{[[hyperlink]]}), the wide publication of invitations to participate and all conditions of participation (e.g. in articles 39, 45, 47, 48, 49^{[[hyperlink]]}), in an appropriate language (article 13^{[[hyperlink]]}), the publication of the deadline for presentation of submissions (article 14^{[[hyperlink]]}), the disclosure to all participants of significant further information provided during the procurement to any one participant (article 15^{[[hyperlink]]}), the public notice of any cancellation of the procurement, the regulated manner of entry into force of the procurement contract, including a “standstill” period (article 22^{[[hyperlink]]}), and the publication of contract award notices (article 23^{[[hyperlink]]}). Further, certain information regarding the conduct of a particular procurement must be made publicly available ex post facto, and participants are entitled to further information, all of which must be included in a record of the procurement (article 25^{[[hyperlink]]}). These provisions can also promote traceability of the procuring entity’s decisions, a key function. For example, a divergence from the rules may be apparent from examining the records of meetings, further underscoring the benefits of electronic data maintenance in procurement, as discussed in Section ** of the General Remarks^{[[hyperlink]]}.

29. The Model Law also contains prescribed and publicly available procedures for each procurement method (in Chapters III-VII^{[[hyperlinks]]}) including, in tendering proceedings, an opening of tenders in the presence of suppliers or contractors submitting them (article 42^{[[hyperlink]]}). Transparency also allows compliance with these procedures to be assessed, including through the public opening of tenders, the publication of award notices (article 23^{[[hyperlink]]}) and internally by examining on the contents of the mandatory record of the procurement under article 25^{[[hyperlink]]}.

CHAPTER I. GENERAL PROVISIONS

A. Introduction

Executive Summary

30. The Commentary to Chapter I of the Model Law discusses the manner in which the Model Law implements the general principles upon which it is based (as to which, see the commentary to the Preamble in Section ** above^{[[hyperlink]]}).

31. The first parts of the Chapter (articles 1-6) provide the framework for the procurement system envisaged in the Model Law, regulating its scope, general features, and the interaction of the Model Law and an enacting State’s international and any federal obligations. It requires the issue of procurement regulations by an body identified in the law (to support the implementation of the Model Law in the enacting State concerned) and it requires that the legal framework (the law, procurement regulations and other legal texts) be published (articles 4 and 5). The

final article in the Chapter (article 26) requires the issue and disclosure of a Code of Conduct for procurement officials.

32. The remainder of the Chapter (articles 7-25) sets out the general principles that apply to each procurement procedure carried out under the Model Law. The articles are presented to follow the chronological order of a typical procurement procedure as closely as is feasible in a text that addresses a variety of such procedures. As noted above [cross-reference to final section of General Remarks describing Chapter I [\[**hyperlink**\]](#)], these articles require all terms and conditions of the procedure to be both determined prior to the commencement of the procedure and disclosed at the outset. These terms and conditions include a description of what is to be procured and who can participate, and a statement of how communications during the procurement procedure will be made; they regulate what information is to be communicated and the manner in which responsive submissions and the winning supplier will be determined; they also regulate any exclusion of a supplier on the grounds of corruption, any rejection of abnormally low submissions and any cancellation of the procurement; and how the procurement contract comes into force (articles 7-22). Article 23 requires the award of the contract (with limited exceptions) to be publicised; article 24 addresses the confidentiality of information communicated during the procurement process. Article 25 also links the procurement process with the administrative requirement for a documentary record of the procedure, which allows effective oversight of the procedure and of the performance of the system as a whole. Article 25 also contains provisions requiring the disclosure of many parts of that record to participants and more limited elements to the general public, subject to any necessary confidentiality restrictions.

33. These provisions, taken together, are designed to ensure that the rules under which procurement under a Model Law-based domestic law will take place are clear and available to all participants and to the general public. They are therefore a key element of transparency, and also help to promote public confidence and integrity in the system

Enactment: Policy considerations

34. The policy considerations arising in connection with each article are discussed in the commentary to each article in the Chapter. In this section, certain policy issues that arise more generally in the Chapter are considered, and the interaction of a procurement law based on the Model Law with other laws in the enacting State concerned.

35. Recalling that the Chapter regulates the general legal framework for the procurement system envisaged under the Model Law, as described in the preceding section, the main objective is to ensure a level and competitive playing field for each procurement procedure, supporting wide market access and encouraging participation in the process through rigorous requirements for objectivity and transparency. The procedures concerned also facilitate the accountability of procurement officials, by providing a clear statement of the main rules that govern their duties (noting, however, that a major decision in the procurement process — the choice of procurement method and manner of solicitation — is addressed in

Chapter II, so that the provisions immediately precede the procedures for each procurement method).

36. The nature of this general legal framework is such that there are fewer options for enacting States than are found in subsequent Chapters of the Model Law. As a result, and in order to ensure that the law is of sufficient breadth and rigour, enacting States are encouraged to enact the Chapter in full, subject to any changes necessary to ensure a coherent body of law in the State concerned, and assuming the issue of procurement regulations required by article 4 ([**hyperlink**](#)).

37. As regards interaction with other domestic law, Article 2 contains minimum definitions that UNCITRAL recommends for the proper functioning of a procurement law. Enacting States may wish to adapt the number and style of definitions to ensure consistency with their general body of law and the State's approach to legal drafting. Guidance on the scope of individual elements of the suggested definitions is set out under the commentary to article 2 below ([**hyperlink**](#)). Where the tradition in an enacting State would indicate a more thorough set of definitions, enacting States may wish to draw upon the Glossary published by UNCITRAL ([**hyperlink**](#)).

38. The Model Law also uses terminology that may not be the norm in all enacting States: for example, the terms relating to types of insolvency in article 9 ([**hyperlink**](#)) may not be those used in their insolvency laws. Here, the Model Law draws on the terminology used in the UNCITRAL texts on insolvency, such as the Legislative Guide on Insolvency Law and the Model Law on Cross-Border Insolvency, which include explanations of the proceedings involved ([**hyperlinks**](#)). The Model Law also presumes that the scope of classified information (referred to in, for example, articles [** \[**hyperlinks**\]](#)) is clear, as further explained in the commentary to article 2 ([**hyperlink**](#)).

39. Certain provisions contained in Chapter I are intended to operate in conjunction with other laws in the enacting State. The Model Law therefore presumes that such laws are in force or will be enacted in the State concerned in conjunction with its procurement law. If this approach is not possible in the enacting State, the procurement law should address the issues concerned. In addition to the assumption of general authority allowing the State to act as a contracting party, the main other laws that are referred to in Chapter I are summarized in the following paragraphs.

40. First, the provisions in article 7 allowing for all means of communication, including electronic ("e-") communications, in the procurement process assume that the enacting State has effective legislation to allow for e-commerce. As commentary on e-procurement in Section [** above \[**hyperlink**\]](#) and on article 7 below ([**hyperlink**](#)) explain, the UNCITRAL texts on e-commerce provide the necessary legal recognition for e-communications and are a readily available tool to facilitate e-procurement which, as noted the commentary referred to above, has significant potential to support and enhance the achievement of the objectives of the Model Law.

41. Secondly, the provisions in articles 8-11 that permit the enacting State to use its procurement system to pursue socio-economic goals, as explained in Section [** of the general commentary above \[**hyperlink**\]](#) and in the commentary to those articles below ([**hyperlinks**](#)), permit only those socio-economic policy goals

that are set out in other laws or the procurement regulations to be accommodated through procurement. Article 11 also cross-refers to a margin of preference that can be applied when evaluating submissions [\[**hyperlink**\]](#), which must similarly be authorized in other laws or the procurement regulations.

42. Thirdly, article 17 on tender securities cross-refers to any law that may require the non-acceptance of a security issued outside the enacting State. More generally, the form and means of issue of tender securities may also be subject to other laws in the enacting State.

43. Fourthly, in some States, the norms applicable to civil servants will require the procuring entity to substantiate decisions taken in the procurement process by reference to the reasons and circumstances and legal justifications. Article 25 on the procurement record [\[**hyperlink**\]](#) lists the decisions concerned (cross-referring to the articles requiring those decisions) and can serve as a checklist to ensure that the appropriate requirements are reflected in relevant domestic enactments as necessary.

44. As regards the domestic implications of international agreements and obligations of an enacting State, Article 3 is designed to allow the procurement law to take due account of those agreements and obligations, as explained in the commentary in Section [** above \(\[**hyperlink**\]\)](#) and to that article below [\(\[**hyperlink**\]\)](#).

Issues regarding implementation and use

45. The main requirements for effective implementation and use of the Model Law, in addition to the issue of complementary laws as described in the preceding section, are the issue of regulations to complete the legal framework, and the provision of adequate administrative and institutional support for the Model Law, as explained in Sections [** of the general commentary above \(\[**hyperlinks**\]\)](#).

46. The issue of regulations is discussed in detail in the commentary to article 4 below [\[**hyperlink**\]](#), and Section [** of the general commentary above \[**hyperlink**\]](#), and Annex [** \[**hyperlink**\]](#), which highlight (inter alia) the main issues that should be considered for regulation.

47. The administrative support envisaged for the Model Law is discussed in Section [** above](#). Among other things, it envisages the sharing of information and other coordination between the public procurement agency or other body described in described in Section [** above \[**hyperlink**\]](#) and other relevant bodies addressing competition and corruption and sanctions for breaches of laws and procedures. Regulations or legal authority may be required to allow for this sharing of information between agencies. The provisions in Chapter I that raise such issues of coordination and information-sharing include Article 21 on exclusions for attempted inducement, conflicts of interest and unfair competitive advantage, article 24 on confidentiality and article 25 on the requirements for and the disclosure of parts of the procurement record [\[**hyperlinks**\]](#). Coordination with other bodies may also be appropriate — for example, to ensure that the code of conduct required under article 26 [\[**hyperlink**\]](#) functions appropriately with general rules governing the conduct of civil servants in the enacting State.

48. The discussion of the institutional support for the Model Law in Section ** of the general commentary above [\[**hyperlink**\]](#) notes that such support includes the issue of rules and guidance for the users of the Model Law, to be issued by a public procurement agency or other central body (and to be supported by training).

49. More generally, and as noted in the preceding Section, the definitions in article 2 are not intended to provide an exhaustive list of procurement-related terms. For this reason, UNCITRAL has issued a glossary on its website [\[**hyperlink**\]](#). The public procurement agency or other body may be required to adapt the glossary to local circumstances and ensure its wide dissemination.

50. As noted in Section ** of the general commentary above, the Model Law is intended to be of general application to all public procurement in an enacting State. Consequently, there is no general threshold for the application of the Model Law. However, Chapter I does refer to thresholds below which certain requirements of the Model Law are relaxed. Article 22(3)(b) exempts low-value procurement from the mandatory application of a standstill period [\[**hyperlink**\]](#) and article 23(2) exempts such procurement from the requirement for public notice of the award of the procurement contract award [\[**hyperlink**\]](#). (Chapter II also contains an upper threshold for the use of the request-for-quotations procurement method under article 29(2) [\[**hyperlink**\]](#).)

51. It is not possible for the Model Law to set out a single threshold for low-value procurement that will be appropriate for all enacting States, and the appropriate thresholds for each State may change with inflation and as other economic circumstances also change. The thresholds referred to above are therefore to be set out in the procurement regulations.

52. The duties of the public procurement agency or other body that issues the procurement regulations and other rules or guidance should include a consideration of the appropriate value or values for all such thresholds. The notion of low-value procurement under the Model Law is a versatile one, comprising the thresholds above, and other references to low-value procurement without explicit thresholds, such as the exemption of low-value procurement from international advertisement of the invitation in pre-qualification proceedings under article 18(2) and in open tendering proceedings under article 33(4) (which is based the procuring entity's assessment of likely international interest in the procurement, as explained in the commentary to those articles [\[**hyperlinks**\]](#)). (In addition, one of the grounds justifying the use of direct solicitation and one type of restricted tendering is that the time and cost required to examine and evaluate a large number of submissions would be disproportionate to the value of the subject matter of the procurement, but without any explicit threshold.) The public procurement agency or other body should consider consistency in approach to what is considered "low-value" procurement: whether one threshold should be applied for the required "low-value procurement" thresholds (including the upper limit for the use of request-for-quotations procedures), whether that value should apply to other designations of "low-value procurement", or whether circumstances indicate that different thresholds are appropriate.

The nature of a chapter containing the general principles governing a procurement system is such that many issues of implementation and use arise in the context of each such general principle. Regulators and those providing guidance on the

administrative and institutional support for the Model Law may wish to consider the above issues in the light of the commentary on the articles governing the main steps in the procurement procedure (articles 7-25 [****hyperlinks****]).
