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RESPONSIBLE BUSINESS CONDUCT AND INFRASTRUCTURE

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1. This paper summarises experiences with responsible business conduct (RBC) in the infrastructure sectors in recent years, with a main emphasis on projects in the developing countries of Africa, Asia and Latin America. A main source of information has been a paper first tabled by the International Business Leaders' Forum at an OECD Expert Meeting on International Investor Participation in Infrastructure on 3 March 2006.

2. The paper has four main sections. Section I outlines some of the general and conceptual considerations that need to be taken into account. Section II presents some of the main challenges that infrastructure providers have had to overcome, and provides a few case examples from developing countries. Section III provides examples of successful corporate engagement in developing countries and their wider societal effects. Section IV proposes a number of general lessons to decision makers in companies and host and home country authorities.

I. Responsible business conduct, developing countries and infrastructure

3. Private sector involvement in the infrastructure of developing countries has been operationally challenging and politically contentious. On the one hand, private infrastructure providers have complained of low profitability and in recent years scaled back their activities outside the most highly developed economies. On the other hand, a number of companies have been accused of wilful misconduct, or of neglecting to take into account essential social, economic and environmental factors.

4. The nature of infrastructure in the developing world makes the whole concept of responsible business conduct a highly complex one. There is an evolving consensus that many of the big developmental issues are interlocked. Efforts to address the quality of governance, the fight against corruption, legal and contractual frameworks, poverty reduction and sustainable development need to be considered as parts of one overall challenge. Much attention has focused on human rights issues ("rights-based development"), and is backed by similar developments on the public sector side and in civil society which increasingly claim a "right" to demand that projects are conducted in a certain way.

5. The pervasive shortage of basic infrastructure in poor countries has a couple of important implications. First, insofar as a shortage in itself constitutes a human rights issue corporate intervention to boost supply can be construed as "responsible" or, at least, supportive of sustainable development. Research by international financial institutions indicates that the opening of infrastructure activities to private investors in the recent past mostly resulted in a greater service coverage.

6. Second, the corporate sector taken as a whole is not just an infrastructure provider; many of its activities are preconditioned on an adequate infrastructure. As emphasised by the Policy Framework for Investment, the ability to mobilise investment and maximise its developmental impact is closely linked with the provisioning of essential infrastructure services.

7. Third, the counterfactual scenario to private involvement is a continued reliance on publicly-provided infrastructure services. As public infrastructure providers in many countries are thought to be burdened with inefficiencies and opaque governance practices, and have in many cases overseen a gradual decline in the quality of their assets, the *status quo* is mostly not a preferable option.

8. Conversely, the outcome of a number of projects involving private participation in infrastructure (PPI) has fallen short of public expectations in the host countries – sometimes amid considerable acrimony. This does not necessarily imply a business conduct issue: most PPI projects involve public and private participation, and the users of infrastructure services state their expectations in terms of the outcome of projects rather than the behaviour of individual investors. The implication is that RBC is in practice often engulfed in the greater issue of the project partners' joint responsibility. Private infrastructure providers have argued that some of the most highly publicised cases of public protests, including against the agreed tariffs of privatised infrastructure activities, amounted to the shifting of political risk unto the commercial operator.

9. That said, regardless of the quality of host country governance private infrastructure providers need to treat consumers, stakeholders and the public sector itself in accordance with generally accepted standards of corporate behaviour. The challenges range from issues entirely under the control of corporate decision makers (e.g. integrity in their dealing with public authorities; supply chain management) to areas of joint responsibility where companies will wish to assure themselves that their actions are not the bone of contention in the case of public controversy (e.g. pricing; expropriation and resettlement). These challenges are dealt with in the following section.

II. Challenges and risks

10. Companies engaged in infrastructure projects face a range of operational challenges that are extremely complex and which, if not managed effectively, can disrupt or even completely derail operations. Moreover, in many cases criticism levied at enterprises relate less to their operations than to the fact that they continue to operate in certain political environments. For example, companies may invest in areas of conflict that pose security threats to property and personnel; operate in countries where freedom of information and expression are denied to citizens; or pay taxes to corrupt and undemocratic government institutions.[1]

11. The focus of the present paper is on the operations of international investors in infrastructure. The question of whether a country's political environment and governance can be so weak that a responsible investor would stay away is pertinent, but it tends to envelop corporate responsibility in a greater issue of economic boycott. It should nevertheless be recognised that a heightened awareness of this issue, combined with civil society activism, in many of the international infrastructure operators' home countries tends to compound the operational challenges and pose increased reputational risks for companies. Many of these issues are reflected by OECD's *Risk Awareness Tool for Multinational Enterprises in Weak Governance Zones*.

a) The integrity of awards procedures

12. In countries with weak or non-transparent public governance, infrastructure providers are sometimes accused of having obtained their market access – especially in the case of concessions – by illicit or unethical means. To some extent this may reflect a general disillusionment in the host societies, but recent studies and anecdotal evidence have identified a number of cases in which infrastructure contracts have been granted in a criticisable manner.

13. The preferable method for privatising infrastructure or granting concessions almost always involves competitive bidding. A transparency awards procedure based on objective bidding criteria gives rise to much fewer concerns about irregular practices than privately negotiated agreements. However, this

1. *Human rights: Is it any of your business?* Amnesty International and IBLF, 2000. www.iblf.org/resources/general.jsp?id=81.

does not imply that infrastructure tenders have always been uncontroversial. Several examples of rigged bidding and collusive behaviour, including in some of the world's most advanced economies, were documented in recent work by the OECD Competition Committee. Such practices may or may not be unlawful, but they tend to deprive the winning company of its "license to operate" in the eyes of the general public.

14. Another practice that has been disputed from an ethical perspective is the "low-balling" of bids by infrastructure providers. In doing so companies price themselves into the market, relying either on regulatory capture or a subsequent ability to renegotiate contracts to render the undertaking profitable. Such practices usually anger the end-consumers as they tend to be seen as tantamount to cheating or "going back on one's word".[2] A recent comprehensive study of Latin American experiences concluded that the percentage of infrastructure concessions that are renegotiated greatly exceeds what would be expected in the case of *bona fide* bidding. An illustrative example from this study is provided in Box 1.

Box 1. Water services in Buenos Aires

In May 1999 the province of Buenos Aires (Argentina) used competitive bidding to award a concession for the private provision of water services. Of the seven firms that pre-qualified for the operation, four submitted bids. The award criterion was the highest (lump-sum) transfer fee to the government of the province. The concession contract also required the concessionaire to invest US$500 million in improvements and service extensions in the first five years of the concession. The winning bidder was the foreign owned water company Azurix, which offered US$227 million for the right to provide water services in three zones of the province. The other firms bid US$15 million, US$10 million and US$8 million to provide the same service.

The provincial government awarded the concession to the highest bidder, even though concerns about the viability of the bid were aired at the time. Problems began shortly afterward, when Azurix sought to renegotiate the contract. Among other conflicts, the company and the government accused each other of non-compliance with agreed-upon terms. The government did not concede to a renegotiation and, as a result, in 2002 the company abandoned the concession and the government reassumed responsibility for providing water services. The case was left in the hands of the courts, with Azurix seeking to secure compensation for its cost and investments.

Source: Guasch, J.L. (2004), "Granting and Renegotiating Infrastructure Concessions: Doing It Right", World Bank Institute Development Studies.

2. From a corporate perspective a mitigating factor arises where governments withhold information (e.g. about the state of incumbent networks) prior to the bidding. If only the successful bidder will gain access to full information, an optimal strategy may be to lower one's bid in order to ascend to this privileged position.

15. Clear-cut corporate responsibility issues arise in the case of corrupt practices. Bribing public officials is a crime in virtually every country, and international investors based in the OECD area further have to take into account the legislation in their home countries. The OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions was the first binding international instrument dedicated to imposing criminal penalties on those bribing foreign officials to obtain business deals. Among the non-binding corporate responsibility instruments, the OECD Guidelines for Multinational Enterprises provides detailed recommendations on practices to combat bribery, including of foreign public officials and in a number of other contexts (Chapter VI of the Guidelines).[3]

16. The problem of corruption is rarely limited to any part of the economy, but special vigilance may nevertheless be called for in the infrastructure sector. Owing to the scale of infrastructure projects relative to most other public procurement in developing countries, the economic incentives to solicit and offer bribes are strong. Moreover, virtually all natural monopolies and concessions have the potential to serve as a source of rents and patronage throughout their lifetime.

17. From an overall corporate sector perspective, combating bribery makes good business sense. Operating in a country where corruption is rife leads to added costs for companies, and greater uncertainty in the decision-making processes on which companies depend.[4] However, individual companies have nevertheless reportedly relied on bribery to win infrastructure contracts, whether through pro-active initiatives on their part or because they operated in environments where corrupt practices were the norm.

18. The judicial action undertaken by home country authorities in OECD countries is monitored by the OECD Working Group on Bribery in International Business Transactions. Legal proceedings are ongoing against international infrastructure providers in several countries, but relatively few of them have yet reached conclusion or are fully documented in the public domain. However, a recent stocktaking by the Working Group provides information on judicial decisions and enforcement action regarding overseas bribery by US-based companies. Several of the cases on record relate to infrastructure – and others to the closely related energy sector. One of the more widely publicised cases relates to the admission of a US defence and telecommunication company of funnelling more than US$2 million into the election campaign of the President of Benin. The company has pleaded guilty to violating the US Foreign Corrupt Practices Act and assisting in the filing of a false tax return.

19. Host country authorities and courts have also been increasingly active. In fact, another widely watched corruption case in an African country was resolved purely by national courts (see Box 2). In Latin America, the Mexican authorities have barred a French company from seeking new business with state bodies in the country for two years in connection with a 2001 corruption case. The contention is that the company bribed, via an intermediary, officials in a state-owned electricity operator to secure contracts for the acquisition of transformers and switches. The ban order has since been suspended by a Mexican court pending further proceedings. In a number of other OECD countries cases related to alleged bribery by infrastructure operators are, according to publicly available sources, still ongoing in the courts.

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3. The special theme of the *2003 Annual Report on the OECD Guidelines for Multinational Enterprises* was "Enhancing the Role of Business in the Fight against Corruption".

4. *Business and human rights: A geography of corporate risk.*

Box 2. The Lesotho Highlands Water Project (LHWP)

LHWP was embarked upon in 1986 by the governments of Lesotho and South Africa. Five major dams, 200 kilometres of tunnels and a hydroelectricity station are to be completed by 2020. The US$8 billion project is to control and exploit the flow of the Senqu River, provide water for Gauteng province and generate electricity for Lesotho.

In 1993, an audit of revealed substantial administrative irregularities in Lesotho Highlands Development Authority (LHDA), one of the project's two oversight bodies. This gave rise to an inquiry into the conduct of its chief executive officer, M.E. Sole. By 1996 Mr. Sole had been dismissed from the LHDA.

In 1999 bank records were delivered to the Lesotho government, indicating that Mr. Sole had received large sums of money through middlemen or intermediaries from companies and consortia that had been awarded contracts in the LHWP. The government proceeded to prosecute not only Mr. Sole, but also many of the corporations and intermediaries. In 2001, Mr. Sole was found guilty of 16 counts of bribery and sentenced to 18 years in prison (reduced to 15 years on appeal).

The Canadian engineering company Acres International had been involved in two contracts within the LHWP, and was the first company to be tried in connection with the payments to Mr. Sole. Acres agreed that it had made payments to a middleman. However, the company argued that such payments were made pursuant to a 'representation agreement' it had made for services rendered by him to the company in his capacity as its representative. In the absence of evidence of any services performed by the middleman, the court found Acres guilty of bribery and sentenced it to a fine of US$2.5 million.

Following the trial of Acres, the German engineering company Lahmeyer International faced similar charges. The facts of the case were different, but Lahmeyer had used the same middleman as Acres, and in this case too the court found the representation agreement between company and middleman insubstantial.

A South African intermediary charged with bribery has since pleaded guilty. Legal proceedings against other international infrastructure providers are still ongoing.

Source: Transparency International, 2005 Global Corruption Report.

b) Supply chains and the construction of infrastructure

20. A specific set of issues may arise from greenfield investment (as opposed to privatisation and/or mergers and acquisition) in infrastructure in developing countries. First and foremost, the construction of infrastructure tends to involve large engineering works which, in many developing countries, are fraught with occupational health and safety problems. Some of the main problem areas include avoidable work accidents due to insufficient security measures;[5] work-related illnesses such as tuberculosis, asbestosis and

5. The construction sector as a whole accounts for 7% of worldwide employment but 30-40% of all fatal accidents – most of which in developing countries (IWBWW, 2004, *Improving Working and Living Conditions in Construction*).

silicosis; and communicable diseases such as HIV/AIDS connected with the "remote community" nature of many large-scale construction sites.

21. Managing supply chain issues and, in particular, ensuring that suppliers and subcontractors operate in a manner consistent with the contractor's ethical commitments is a challenge for all enterprises. In the infrastructure sector it mainly surfaces in the construction phases where a large number of local companies, including small and medium-sized enterprises, are involved. In developing countries, SMEs in the construction sector have a reputation for failing to accept internationally agreed standards of behaviour, including regarding child labour, job protection, collective bargaining and many of the aforementioned safety problems. International investors in infrastructure will want to assure themselves that they do not become implicated in such practices by association.

c) Human rights and affected communities

22. In infrastructure projects in developing countries, human rights, environmental issues and the plight of affected communities tend to be inexorably linked. Amid generally weak political and regulatory structures large-scale projects are too often embarked upon without prior consultations with those likely to be most directly affected. Given the scale of many infrastructure projects, two of the main sources of impacts on local communities are resettlement programmes (e.g. in the context of hydroelectric projects) and longer-term health and safety problems. A third area of concern is environmental impact, although it must be recognised that within developing countries themselves, especially the poorest ones, these mostly gain prominence when occurring in tandem with human rights problems.

23. Some of the most widely publicised cases of this kind of controversy are found among large-scale projects with major consequences for the local areas in which they are located, including effects on livelihoods, resettlement programmes and environmental impact. In practice the issue often arises in the context of power generation (notably hydro-electric power) in developing and emerging economies. The Ilisu dam in Turkey, the Narmada dams in India and the Three Gorges Dam in China are but a few high profile examples, in each case involving claims that local residents have not be sufficiently consulted and have been either forcefully replaced without adequate compensation or have been left to cope with the degradation of their living environment in consequence of the project. Another example, from the Philippines, is found in Box 3.

24. Infrastructure projects with human rights implications also serve as a prime example of the aforementioned problem with disentangling corporate and public responsibility. Public governance may in some cases be so weak that international investors have to ask themselves if participating, in any way or form, in infrastructure projects would be commensurate with their ethical standards. This could for instance be the case where private operators have to rely on informal security arrangements for the safety of their assets. In 1997, a U.S. utilities company was involved in constructing a power plant in India as one partner in a joint venture. Police patrolling the company's site were alleged to have routinely used excessive force against protesters, exposing the company to criticism from several campaign organisations.

25. However, in most other cases public dissatisfaction with the conduct of an infrastructure project falls on both the private and public partners. Responsible business conduct then does not imply that the private investors necessarily guarantee that the project as a whole meets societal implications, but rather that they take steps to ensure that their role in the process is not inappropriate.

Box 3. San Roque Dam in the Philippines

The veracity of the information in this box has not been confirmed by the OECD Secretariat.

The San Roque Dam was constructed on the Agno River in the northern Philippines for four main objectives: electricity generation (345 megawatt capacity), irrigation of 87,000 hectares of land, flood control, and water quality improvements. The project took place amid strong opposition from local communities and accusations of violations of Filipino law and the financial backers' own guidelines.

Sediment accumulating behind the reservoir is expected to raise the level of the river bed and flood adjacent low-lying lands, affecting up to 20,000 villagers of the Ibaloi, an indigenous people who depend on the Agno River basin upstream of the dam. These impacts, acknowledged by project proponents, cannot be mitigated or avoided.

2,545 families were also made to give up their agricultural land to make way for the project, and more than 3,000 gold-panners lost their livelihoods. The tenants were reportedly made to sign forms in English indicating their agreement to be relocated, even though most of them did not understand English. They were entitled only to cash compensation for their houses, land improvements, and crops and were given no alternative means to restore their livelihoods. As a result, the standard of living of those resettled is thought to have deteriorated. Six years after they were moved many lack sufficient sources of income and some, being unable to pay for electricity and water, have had to move away again.

Source: ECA-watch (2005), A Trojan Horse for Large Dams, as posted on the Corner House's website: www.thecornerhouse.org.uk.

26. On the issue of whether to participate in an infrastructure project at all, additional impetus comes from infrastructure investors' financial backers. One main source of guidance for financial practices has been the *Equator Principles*, a set of social and environmental guidelines designed to ensure that project funding is used in a sustainable way. The Principles were formulated in June 2003 by leading financial institutions, based on the social and environmental safeguard mechanisms of the International Finance Corporation (IFC). They have since been adopted by more than 40 banks. The IFC has since developed a revised set of Performance Standards encompassing subject areas including labour and working conditions; pollution; health and safety; land acquisition and resettlement; biodiversity and natural resource management; indigenous peoples; and cultural heritage. The Principles recommend the withholding of finance from projects that do not comply with certain minimum standards.

27. On the issue of behaving "responsibly" when engulfed in a partnership with other actors, a challenge that tends to present itself early in a project is communication. Communication and consultation with affected communities are commonly considered as key elements of responsible business conduct.[6] Corporate approaches to communication and consultation generally work better when applied in concert

6. The *OECD Guidelines for Multinational Enterprises* recommend that enterprises "encourage local capacity building through close co-operation with the local community, including business interests, as well as developing the enterprise's activities in domestic and foreign markets…" (Section II, Point 3). Section III of the Guidelines deal specifically with corporate disclosure.

with – rather than in lieu of – public communication strategies. This applies in particular to infrastructure projects, the construction and operation of which often have significant societal and environmental consequences.

28. Some of the generally-accepted lessons from past experiences include a need to involve affected communities early in the planning process in order to give them a genuine chance to be heard. Also, providing as much information as possible is essential, including about technological and location options the investor faces. When projects are limited in size and/or confined to specific local areas, one option for policy makers (often termed "community empowerment") is to invite local communities to assume a direct responsibility for the execution of the projects. The involvement of representative civil society organisations has also been attempted.

d) Access to vital services

29. An evolving international consensus among civil society organisations – which applies equally to their views of the public and private sectors in developing countries – evolves around the so-called rights based development. According to this thinking, certain basic tenets of human quality of life are not optional or "to be addressed in the course of the development process", but absolute rights of the individual. The access to clean water is commonly perceived as such a right. Other infrastructure services may be as well, depending on local circumstances (e.g. transport access to rural communities).

30. Responsible business in the face of perceived rights of host communities is notoriously difficult – especially where infrastructure facilities were dilapidated prior to the private participation, or where private entry coincides with a cessation of subsidies. In such cases, a commercial provision of infrastructure may imply a hike in user tariffs even to maintain the previous level of services. End users will naturally be incensed at having to pay sharply higher prices for the same, unsatisfactory product. Considerable anger by users and civil society is usually directed at the infrastructure provider, though it could be argued that the private sector operator serves mainly as a lightning rod for criticism of insufficient subsidisation of infrastructure services.

31. One widely quoted example is the water tariff increases in the Bolivian City of Cochabamba. The public water supply was privatised in 1999 to *Aguas del Tunari*, jointly owned by British and American infrastructure companies. The company argued that higher tariffs were needed to pay for investment obligations that were laid down in the concession agreement. There was a mass local opposition, rising to the point of a general strike and widespread rioting. Following months of protest, international publicity and six deaths, the Bolivian government cancelled the privatisation contract.[7] A recent example from the African continent is summarised in Box 4.

32. Conversely, international investors do not "walk blindly" into infrastructure projects in the developing world. Where the commercial viability of a project hinges on immediate increases in prices to finance later service improvements, a degree of controversy must be expected. Companies are well advised to device communication or mitigation strategies to garner a degree of local acceptance of their undertaking. Their challenge rises when local stakeholders feel, rightly or wrongly, that infrastructure investors have gained access to the market by illicit means, or are effectively reneging on their service obligations.

7. *Business and human rights: A geography of corporate risk.*

Box 4. The water supply in Dar-es-Salaam

The veracity of the information in this box has not been confirmed by the OECD Secretariat.

The water supply of Dar-es-Salaam was privatised in 2003 by means of a lease contract, following donor conditions. The purpose of the privatisation was to improve a situation in which previously only 100,000 homes in a city of 2.5 million had a direct water connection, and 60 per cent of the water was being lost through leaks. The contract was awarded to a joint-venture called City Water Services, comprising British, German and Tanzanian partners.

Following the privatisation, widespread public dissatisfaction surfaced. Tariffs increased (estimates range from 11 to 40 per cent), though by less than the near-doubling that according to World Bank officials may eventually be needed. The households with access to piped water are mostly upper and middle-class who face no immediate subsistence problems, but protests have focused on the fact that privatisation was embarked upon without prior public debate and that the rising tariffs have coincided with an unchanged, or deteriorating, supply situation.

After two years the Tanzanian authorities cancelled the contract, alleging the quality of water had deteriorated and that City Water had reneged on a contractual obligation to invest US$8 million. (Only US$4.1 million had been invested and none of this investment had gone to installation of new pipes.) City Water argues any delays were not directly caused by it and that the government had given it erroneous data regarding water supplies and levels of non-payment by customers. Tanzania has since deported three of City Water's top executives.

Source: ActionAid International (2005), Turning off the taps: Donor conditionality and water privatisation in Dar-es-Salaam, Tanzania and supplementary information.

III. Compounding the societal benefits of PPI: corporate experiences

33. Throughout the developing world, infrastructure providers have taken in increasing interest in developing strategies for generating local benefits. The logic of such initiatives is that, while infrastructure in itself mostly contributes to sustainable development, it is advisable for companies to make an effort to bolster the positive impact and make it more widely available in the host society. The priority areas for corporate intervention have included employment, social improvements, local factoring and environmental enhancement. Host governments have in some cases tied similar conditionalities to large-scale infrastructure projects, but private enterprises have, for a number of reasons, found that making an effort in these areas makes good business sense.

34. First, businesses have a strong interest in social stability, which is an integral part of a sound enabling environment for investment. By making infrastructure services widely available in their area of operation, companies can contribute to stability, establish a bound of loyalty with local communities and

on the whole improve their productivity.[8] Second, and related to the previous point, responsible and transparent involvement in infrastructure projects can strengthen corporate reputation and help to secure a "licence to operate".

35. Third, through responsible engagement in infrastructure projects, companies can enhance their competitive advantage by being the first to supply services that make a real difference – sometimes the difference between going to school and walking several miles to fetch water for the family, or between going to the hospital and staying home ill because the road is impassable. Finally, involvement in infrastructure projects and other development initiatives can encourage innovation, enabling companies to cross traditional boundaries and build valuable leadership skills. Employees at the heart of such initiatives gain knowledge of a completely different business climate, learn to negotiate and manage change and, in many cases, to work with extremely limited resources.[9]

a) Making infrastructure services more widely available

36. A large number of infrastructure providers have engaged in, and bankrolled, local activities to boost infrastructure connectivity. This has been done partly in the form of an extension of services in areas where the private investor was already active, partly as more targeted activities focusing on a selected community.[10] Predictably, these activities have been most widespread in infrastructure activities that involve a degree of natural monopoly, at least locally, such as electricity and water. In other sectors such as telecommunication where competition is stiffer – in itself highly beneficial to host communities – "charitable" activities have been rarer, and the private contribution to sustainable development consisting chiefly in a rapid rollout of the sought-after infrastructure services.

37. On the realisation that individual companies can make only a small difference, and that narrowly targeted activities may be perceived by the public as merely a feel-good exercise, infrastructure investors have increasingly pooled their resources. Two examples of sectoral activities, in electricity and water, bringing together a number of private operators as well as civil society organisations are provided in Box 5 and Box 6. In addition to sectoral activities a need is increasingly perceived to identify areas where companies can cooperate across a spectrum of infrastructure activities, partly to serve better host country communities, partly to address global issues such as climate change and energy efficiency.

b) Communication and public policy dialogue

38. As indicated in the previous section, many of the problems encountered in the course of infrastructure projects in developing countries seem to reflect deficient communication strategies. Put bluntly, companies may have been too complacent in view of the fact that a large number of the formal responsibilities for the conduct of infrastructure projects remained with the public sector. In view of the fact that the "public face" of a PPI project is usually this of a private partners, a proactive communication strategy is needed, starting in the pre-project phases and continuing throughout the duration of the involvement.

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8. For further discussion of this area see "The business benefits of stakeholder partnership", pp 52-53, *Business as partners in development*, IBLF, The World Bank and UNDP, 1996. www.iblf.org/resources/general.jsp?id=123710.

9. *Developing people through partnerships*, IBLF, January 2004. www.iblf.org/docs/DevelopingPeople.pdf

10. One example of the latter is ABB's Access to Electricity programme which, in cooperation with civil society, developed a model for providing power to rural areas in Tanzania. The project consisted of providing villagers with a mini-grid and a power generator – who are free to decide how much electricity to produce as a function of their ability to cover the generating costs.

Box 5. The e7 micro hydropower project in Bhutan

The veracity of the information in this box has not been confirmed by the OECD Secretariat.

e7 is a collection of multinational energy companies that are committed to "playing an active role in global electricity issues and promoting sustainable development". In Bhutan, the group is bringing energy access to a local community in the mountains.

The site was chosen by an e7 working group, led by Kansai and including Electricité de France, Hydro-Québec and American Electric Power, that began studying the potential for a micro hydro project in 2001. The e7 Team developed close relationships with the Bhutan Department of Energy/Ministry of Trade and Industry, the Ministry of Finance, the National Environment Commission, and the Ministries of Communication of Health and Education. Together the groups identified environmental, educational, health and economic development benefits from the project for the area.

Environmental benefits from the project include an expected annual reduction of carbon dioxide emissions of about 500 tonnes that would have otherwise occurred with diesel generation, and a reduction in consumption of firewood, which is currently used extensively.

The project will also power a satellite Internet link-up for distance learning, supported by the Bhutanese government. The e7 will make this distance learning technology available free of charge to potential curriculum providers, such as the Bhutan Ministry of Education and the United Nations Development Programme.

The project was registered under the Kyoto Protocol's Clean Development Mechanism, earning certified carbon credits for the government of Bhutan and the e7 group. The credits can be used against future greenhouse gas emissions or sold on the open market.

Source: IBLF (2006), "Responsible Private Sector Investment in Infrastructure", paper presented at the Expert Meeting on 3 March 2006.

39. There is a need to divulge early information on what a given infrastructure project is expected to achieve, and not to achieve, and the extent of the responsibility of the private providers. As a project proceeds, financial disclosure is essential to avoid controversy – especially where tariff increases lead to suspicions about exorbitant profits being earned at the cost of host societies.

40. In addition, direct consultations with affected communities are essential. This is generally the case, but perhaps more so in developing countries where poor mass communication and low literacy rates combine to reduce the effect of top-down information disclosure. Channels need to be established through which local communities, or their representatives, can be engaged. This is particularly challenging in countries where there is no tradition for an active civil society involvement and, perhaps, the political environment is not conducive to such involvement.

Box 6. Water and Sanitation for the Urban Poor (WSUP)

The veracity of the information in this box has not been confirmed by the OECD Secretariat.

WSUP is a partnership between the private, public and civil society sectors to provide more effective delivery of water supply and basic sanitation services. It was first established on 1 September 2004, and then formally incorporated in the UK on 9 April 2005 as a not-for-profit company limited by guarantee. Its membership is made up of three businesses (Thames Water, Unilever and Halcrow), three international NGOs (Care International, WaterAid, WWF), and Cranfield University, UK.

WSUP works by bring together "diverse experience and complementary skills from multiple sectors with a genuine interest in providing water and sanitation services to the poor". The private sector contributes its strong technical and managerial expertise, including design and project management. Water utility and technical consulting expertise is critical to achieving a satisfactory performance level from the local water agency or service authority and adds value to what some would call the 'mechanical' aspects of ensuring a continuous supply of water while ensuring improved billing and revenue collection.

Currently the initiative is implementing projects in Bangalore, India (where it hopes to connect 70,000 residents to water supply) and Naivasha, Kenya. The business model is unique and the website sets out its focus on skills transfer, active involvement of poor consumers, capacity building, ongoing project relationships, and a commitment to transparency.

Source: Material posted on www.wsup.com

41. In addition to the evolving channels for community involvement in developing countries, a large number of coordinating and advocacy groups have been established. Such organisations mostly aim to encourage cooperation toward maximising the benefits of private involvement in infrastructure, particularly in the poorest countries. The initiatives include capacity building with international organisations in the driving seat; business-to-business cooperation; umbrella organisations for cooperation between business and civil society. A list of some of these organisations is provided in an annex to this paper.

IV. The way forward: points raised at the Experts Meeting[11]

42. Public, corporate and civil society actors clearly need to work together to minimise the risks and maximise the opportunities for international investor participation in infrastructure projects. The following eight points for consideration, drawing on other papers prepared in the course of this project and to some extent the previous sections, provide a framework for enhancing and enabling responsible private sector participation.

11. The eight priority areas for companies and authorities presented in this section were proposed by IBLF at its intervention at the meeting.

a) The enabling environment

43. Many of the challenges of operating responsibly have been at least as much to do with failures of public governance as with shortcomings on the part of companies. In a report on sustainable mobility, the WBCSD argues that the enabling environment influences: "the time and effort required to reach consensus about whether to address a particular issue and how aggressively to address it…the ability of a government to formulate long-term approaches and the credibility of its commitments…the social acceptability of certain products and services…the apportionment of responsibility and cost within society to achieve a desired result".[12]

44. Sound government policies that facilitate responsible business conduct and are based on open and transparent procurement mechanisms can help to encourage business investment in infrastructure. Host governments can provide access to local operating environments, not least by putting in place effective regulatory standards; legal frameworks; investment vehicles; policy consultation mechanisms; accountability structures; and civil society networks. Home governments – through their embassies and development agencies – and international organisations can support these efforts. Companies can play a role by making the business case for a strong enabling environment, helping to build capacity among public officials, and contributing skills and knowledge through participation in research, dialogue and consultation.

b) Corruption and business ethics

45. High-profile cases of corporate governance failures[13] in the United States and Europe have helped to accelerate corporate governance reforms, both by companies, and through legislation such as the Sarbanes-Oxley Act in the US. The international fight against corruption has gained momentum through the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, and through ratification of the United Nations Convention against Corruption (UNCAC) in December 2005.

46. Increasingly, companies also act in accordance with principles based on internationally agreed standards, such as the OECD Guidelines for Multinational Enterprises, UN Declaration of Human Rights and ILO conventions on labour standards. Companies can help compound the impact of their commitment to such standards by strengthening their management oversight processes.

47. Many leading infrastructure companies now refuse to operate in markets where to do so would compromise their business principles. Where, for instance, public governance is so weak that the regulatory system is totally ineffective, or where there appears to be substantial risk of political interference in procurement process, conducting business may in itself be incommensurate with corporate policies. Borrowing from the most recent corporate responsibility report of a UK-based company, "There are places and circumstances in which it would be difficult to operate in accordance with our business principles. In these circumstances, we will either decline what may otherwise be good business propositions or put substantial mitigation measures in place, possibly incurring short-term business costs.[14]

12. WBCSD, 2004, *op. cit.*

13. For example, the collapse of Enron, WorldCom and Parmalat.

14. BG Group, 2005, http://www.bg-group.com/cr/media/BG_CR_2005.pdf.

c) Project finance

48. If the Millennium Development Goals are to be reached, an estimated US$550-600 billion per year are required to finance infrastructure in developing countries – a doubling of current levels of spending.[15] Such amounts of money cannot be found from one source, and clearly the private sector is expected to be a major investor. However, important sources of funding have so far remained untapped, partly due to a lack of capacity among public officials to raise and manage large capital investments and a general trend among governments to invite private participation in order to cut costs rather than step up investment in basic services.

d) Local capacity

49. The development, operation and delivery of infrastructure projects are only the first steps – it is equally important to ensure that support mechanisms are in place to sustain and improve projects over time. Projects should not only provide services, but also develop the skills with which local communities may carry out services themselves in the long run. By sharing its knowledge and expertise, the private sector can for example help to build the capacity of public officials to negotiate contracts and manage change, or to enable communities to take responsibility for the management and maintenance of decentralised services. SMEs comprise the majority of the private sector in most countries – and especially in the developing world. By creating linkages with SMEs, for instance by sourcing locally, international investors in infrastructure can help to develop essential entrepreneurial and business skills.

e) Engaging in public policy dialogue

50. All sectors need to work collectively to address issues such as climate change, water management and energy efficiency, which are either exacerbated by, or affect the success of infrastructure projects. An increasing number of cross-sector initiatives bring together business, government and civil society organisations to find solutions to telecommunication, energy, transportation, and water and sanitation challenges. These initiatives provide valuable opportunities for participants to share achievements, mistakes, and lessons learned – often in a safe-haven environment – and for the different sectors to work together toward more effective forms of collaboration.

f) The value of small-scale delivery systems

51. Following a wave of infrastructure privatisation, ownership structures have become diverse and involve a myriad of partners. A report from the World Resources Institute argues that "low-income, predominantly rural communities located at the edge of the telecom network, the edge of the electrical grid, and the edge of existing commercial markets, are becoming a key driver of technology innovation, in large part because their sheer scale warrants such attention".[16]

52. The question is no longer "who owns the service" but "how can the service best be delivered"? In some cases, community-based distribution systems for basic services can offer solutions that are more culturally and financially appropriate than traditional, large-scale systems. Grassroots initiatives such as rainwater harvesting and well recharging in India, for example, use traditional, low-cost and low-technology techniques that draw upon local knowledge and skills, and rely on local people to administer,

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15. *Reforming infrastructure: privatisation, regulation and competition*, World Bank, June, 2004. http://web.worldbank.org/external/default/main?menuPK=477792&pagePK=64168092&piPK=64168088&theSitePK=477780.

16. *Technology innovations at the edge*, World Resources Institute, October 2005.

supervise and finance efforts. Indeed, small-scale initiatives may be able to serve greater numbers of people in the long term if models can be adapted for replication elsewhere.[17]

g) Aligning business activities with local development needs

53. Companies are finding long-term value in going beyond minimum business requirements to take into account local development needs. This is often achieved through understanding how one aspect of service delivery can impact other basic needs.[18] Obstacles to and opportunities for development are best understood at the country and community levels. Effective infrastructure development and service solutions therefore involve local people, and ensure local buy-in and ownership.[19] Companies can work with local businesses, civil society organisations and/or local branches of international development agencies, in order to respond appropriately to unique local development contexts. In conflict situations, for example, the supply of goods and services can be disrupted and facilities and instalments are vulnerable to damage. Ensuring that basic services are maintained and restored, and providing jobs and livelihood opportunities are crucial elements in rebuilding war-torn economies.

h) Building cross-sector partnership skills

54. Despite the experience of more than two decades, most organisations still have much to learn about effective ways to participate in cross-sector partnerships. Greater access to expertise, tools and resources on building partnerships is essential if members of the development and business communities are to find new and improved methods of working together for infrastructure development.[20] Some organisations are working to professionalise the field of partnership by offering an accreditation scheme for partnership brokers,[21] as well as common-sense guidance on managing partnerships.[22] Multilateral agencies such as the International Finance Corporation and business associations such as the International Council on Mining and Metals have significant resources dedicated to supporting cross-sector partnerships.[23]

55. Open communication – including a willingness to disclose progress reports and be transparent about mistakes – is often the key to successful infrastructure partnerships. Partnership contracts should also be flexible enough to allow partners to respond to changes in the external environment, and mediation processes should be built into partnerships to anticipate and resolve potential disputes when they arise. Risks should be shared equitably by all partners, to ensure that public bodies are not left to pay for mistakes made by companies, and that companies are not forced to invest in areas that are properly in the public domain.

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17. *Community-based solutions to water and sanitation challenges: Rainwater harvesting*.

18. For example, in its operations in Idku, Egypt, a BG Group subsidiary built a water pipe larger than the company's requirements, in order to supply water to a part of the local community that lacked access. The extra project was a relatively limited US$1.5 million, but 400,000 extra people were attached to the water delivery system.

19. *Business action for development*, IBLF, June 2005. www.iblf.org/resources/general.jsp?id=30.

20. *Business action for development.*

21. See the Partnership Brokers' Accreditation Scheme website at: www.odi.org.uk/PPPG/PBAS/index.html.

22. See publications section of www.iblf.org.

23. See, for example, the ICMM's work on materials stewardship: www.icmm.com, or the safeguard mechanism projects of the IFC's Compliance Adviser Ombudsman: www.cao-ombudsman.org.

ANNEX

MULTI-STAKEHOLDER INITIATIVES TO ENHANCE THE IMPACT OF PRIVATE INVESTMENT IN INFRASTRUCTURE

The energy sector

UNEP Rural Energy Enterprise Development Initiative. A partnership between clean energy investor E+Co, UNEP and others, providing seed financing for clean energy entrepreneurs in developing countries. Currently active in Africa, Brazil and China. (www.uneptie.org/energy/projects/REED/REED_index.htm).

World Business Council for Sustainable Development: Energy and climate workstream. WBCSD works to help business respond to climate change by "devising practical mechanisms, measurement tools, and market-based solutions. The workstream helps companies reduce the impact of their operations today". (www.wbcsd.org).

Energy Sector Management Assistance Programme. A joint World Bank/UNDP technical assistance programme designed to "help build consensus and provide policy advice on sustainable energy development to governments of developing countries and economies in transition". It works in partnership with, and receives funding from, private companies and business associations, as well as governments. (www.worldbank.org).

Telecommunication

Global E-sustainability Initiative. A "global and open initiative including major stakeholders in the ICT industry which has an objective of disseminating awareness of the relationship between the ICT and social, industrial and ecological systems, and promoting cooperation in the field of sustainability performance. The initiative partners with the United Nations Environment Programme and the International Telecommunications Union". (www.gesi.org).

Nextbillion.net. With the strapline "development through enterprise", this site is run by the World Resources Institute and keeps track of international efforts to provide access to basic services in developing countries. Many of the projects featured employ low-cost ICT products such as wind-up radios and phone chargers and nanotech biological water filters. (www.nextbillion.net).

The Digital Partnership. A collaboration between global ICT companies, foundations and international organisations including the World Bank, this IBLF initiative 'facilitates affordable access to technology, training and the Internet – primarily through technology refurbishment – for learning and enterprises purposes in developing countries. (www.digitalpartnership.org).

Transportation

World Business Council for Sustainable Development: Sustainable mobility workstream. The WBCSD began the Sustainable Mobility project in April 2000 to address the complex challenges of this sector based on the understanding that "current mobility trends are unsustainable, which means that the

growing worldwide demand for transportation cannot be met simply by expanding today's means of transportation". It has so far produced three research reports. (www.wbcsd.org).

International Association of Public Transport (UITP). A cross-sector initiative uniting "the entire supply chain of public transport players", the UITP 'acts as knowledge hub on past and current developments and future trends' in mobility. It has developed a database of urban mobility, based on 120 indicators in 50 cities worldwide, and a charter on sustainable development for the transport sector. (www.uitp.com).

Business for Social Responsibility: Clean Cargo and Green Freight groups. A collaboration between ocean carriers, freight forwarders and shippers of cargo, this is a business initiative which aims to "benefit the environment and people by understanding the environmental footprint of goods transported globally, and the ways that global transportation systems affect employees and communities". (www.bsr.org/CSRResources/WGO/CC-GF/index.cfm).

Water and sanitation

Partners for Water and Sanitation. "An innovative not-for-profit partnership initiative with members from government departments, private enterprises (ranging from water companies to engineering groups), NGOs such as Wateraid and Tearfund, and a trade union group". Initially focussed on Africa, the initiative places an emphasis on finding local solutions. (www.partnersforwater.org).

Building Partners for Development in Water and Sanitation (BPDWS). "A worldwide network of partners involving government, donors, business and civil society". Originally established by the World Bank, it has developed a series of papers on the practical dimensions of establishing partnerships in water and sanitation, such as contracting NGOs, the role of transaction advisers, and running public awareness campaigns. (www.bpdws.org).

World Economic Forum: Water and Sanitation Initiative. A business-led coalition that "strives to help improve water resource management for communities, businesses and the environment and to improve access to water and sanitation services for all". Its primary achievement has been the establishment of the Water Project Exchange, "a matchmaking platform for water and sanitation and watershed management projects". (www.weforum.org/site/homepublic.nsf/Content/The+Water+and+Sanitation+Initiative).