

PART I
Chapter 3

**International Investor Participation
in Infrastructure:
Challenges for Policy Makers***

The main success and failure stories of international investor participation in infrastructure over the past decade are enumerated in a rich body of literature. A number of challenges for policy makers and businesses can be identified from this body of evidence, including pieces of supplementary analysis made available by the Investment Committee's Secretariat, which were discussed with infrastructure specialists at an Expert Meeting on 3 March 2006. Some of the tentative lessons are summarised in this article.

The success of infrastructure projects depends on the general political, regulatory and economic reality in which they are set. International investor participation in infrastructure should be seen as a long-term commitment to provide end-consumers in the host country with services. Government, in its capacity of a contracting party, acts as proxy for these consumers' interests, and it partners with the private sector in delivering the services. Responsible business conduct is a key challenge for international investors participating in infrastructure. This is particularly in developing countries, where enabling environments tend to be less developed, and governments' relative bargaining positions vis-à-vis international enterprises weaker.

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Introduction

International investor participation in infrastructure may cover a wide range of models of co-operation between the public and private sectors. In terms of increasing private investor involvement, options range from subcontracting; to publicly-controlled incorporated infrastructure providers; to delegated management contracts; to concessions and joint ventures; to full privatisation with the public partner ceding all but a regulatory role. All of these are covered touched upon in the present article, but in practice most of the focus is on the models that involve a degree of continued partnership between government and international investors.

“International investors” are considered in the broad sense of the word. The focus of the discussion is infrastructure providers operating on a wholly commercial basis and subject to international competition. International investor participation may be used interchangeably with the more common phrase private participation in infrastructure (PPI), with the proviso that truly local operations (including “private” involvement through publicly held special-purpose vehicles) are not included.

1. Getting the background right: enabling environment, attitudes and capacities

International investor participation in infrastructure raises some of the perhaps most complicated challenges for investment policy makers. PPI involve contracts that are more complex, and of a longer duration, than what is seen in manufacturing and other parts of the service sectors. Moreover, direct investment in the infrastructure sector attracts political and public interest, and frequently a commercial relationship between the private and public sector. And, in the words of a private sector participant at a recent OECD event, “working with the public sector is much more complicated than a contractual relationship with another company”.¹

1.1. Is private participation necessarily the best solution?

A textbook approach to PPIs would be that their main advantage over publicly run projects lies in the private operators’ superior operational and administrative efficiency. Their main drawback would be the fact that the public sector has access to cheaper funding than private companies. In consequence, the involvement of private infrastructure providers is warranted when the efficiency gains are expected to exceed the extra financing costs.

To some extent recent developments around the world have reflected this – not so much in terms of the projects embarked upon as in the extent of private sector involvement. For example, “high-tech” activities such as mobile telephony – in which the private sector advantages in knowledge and efficiency are assumed to be major – have been largely developed by the private sector. Infrastructure sectors commonly considered as “low tech” (the best example being water and sewerage) have, following initially sweeping privatisation in a number of countries, in many cases seen the ambitions for corporate involvement scaled back to the management of publicly-owned networks.²

A special case arises where host country authorities face binding fiscal constraints. Where the counterfactual scenario of government-funded infrastructure is not available, a decision on PPI will rely on a cost-benefit evaluation of this option alone. That said, for a country in this situation particular caution regarding fiscal sustainability is warranted. PPIs whose main purpose is to escape budgetary discipline are rarely successful. Few PPI projects involve transferring every risk to the private sector. And, if a project involves an element of government guarantees – explicit or implicit – the contingent liabilities that arise from these can potentially impede fiscal sustainability. The implication is not that PPI should be avoided or even circumscribed, but that prudent fiscal transparency practices must be applied.³

1.2. Market access

Infrastructure services are among the few economic activities where important barriers to cross-border participation exist, even among OECD countries. Many countries have liberalised access to their national markets over the last decade, and in only a few activities (*e.g.* air and water transport) are discriminatory practices still the norm. Supplementary material for non-member countries, based *inter alia* on GATS schedules, tell a similar story.

However, statutory discrimination is only part of the picture. Several countries are in principle open to direct investment in their infrastructure sectors, while at the same time maintaining legislation on grounds of public order and essential security that may potentially be used to stifle market entry. Examples range from clauses protecting sensitive technologies to more sweeping rights to screen any foreign investment on grounds of “national security”. Recently, a number of countries appear to have tightened their approaches to cross-border mergers and acquisitions, based on stated national security and other “strategic” considerations.

Moreover, a number of non-discriminatory barriers to entry, which may be particularly onerous to foreign or non-resident companies, remain in place. In most OECD countries, monopolies, public ownership and sweeping concessions persist in parts of the infrastructure area, hampering market

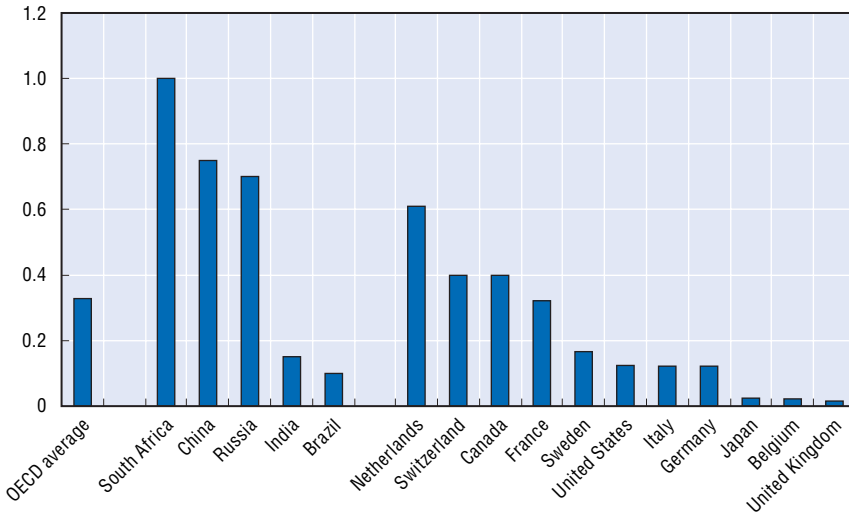
access and competition for international and domestic investors alike. Others apply complex regulatory practices that, whilst not directed specifically at foreigners, make market entry cumbersome.

A methodology for quantifying restrictiveness to direct investment was developed and the results published under the auspices of the OECD Economic Policy Committee.⁴ This methodology is based largely on the prevalence of discriminatory restrictions (whether on the basis of nationality or residency) in individual sectors. The main initial data sources were OECD countries' positions under the MAI negotiations and their GATS schedules. The first uses of the data for economic analysis attracted much interest in and outside the OECD.⁵ Recent work has served to update the indicators for OECD countries, and extend them to 13 non-member countries. The information contained in OECD's investment instruments was used as a principal data source, but supplementary information from national and multinational sources was also included.

The methodology behind the restrictiveness indicators is as follows. Essentially each sectoral indicator is constructed by scoring the existence/absence of restrictions which fall into three groups: 1) foreign equity limits; 2) screening and approval procedures; and 3) other restrictions (mainly board restrictions, expatriate staff and domestic content requirements). Many of the restrictions reported under (2) and (3) are often of a cross-sectoral rather than sector specific nature. Totally closed sectors are scored 1; totally open ones are scored 0.

By ways of illustration, the FDI restrictiveness index for the electricity sectors of the G10 countries and selected non-OECD members is shown in Figure 3.1. It appears from the figure that variations among countries are vast. The largest OECD countries do generally not have monopolies or near-monopolies in their electricity sector, but in several of them foreign establishment is nevertheless difficult. Among the large non-member economies, the electricity sector of South Africa is seen as effectively closed to foreigners, and China and Russia also come across as very restrictive. Conversely, several countries – including Brazil and India outside OECD – have either no restriction on investment in electricity or only generic requirements (e.g. notification of investment; limitations on expatriate staff) applying to electricity among other sectors.

Finally, infrastructure providers are particularly sensitive to government procurement practices. Adherents to the OECD Declaration are required to notify exceptions to National Treatment in government procurements. According to the notifications, few statutory discriminatory measures are in place – and notified exceptions relate largely to development aid programmes. However, these notifications refer only to statutory measures, not to administrative practices that could in some cases be strongly biased toward national preference.

Figure 3.1. **FDI Restrictiveness Index: Electricity**

Source: OECD's FDI Restrictiveness Indicators.

1.3. The enabling environment

Where authorities welcome international investor participation in infrastructure the main obstacle tends to become the business climate surrounding such investment. The outcome of PPI projects depends strongly on the quality of the political, economic and regulatory environment in which it takes place – in short, on many of the elements of the enabling environment for investment as defined in the emerging Policy Framework for Investment.

The quality of the legal environment is of paramount importance. Unless the rule of law is firmly established, and regulation consistently enforced, PPI is fraught with risk.⁶ Even the strongest contracts and project finance amount to little in an environment where agreements cannot be adequately enforced. In addition, the concrete contractual underpinnings of PPI projects need to have the strongest possible legal grounding, consistent with internationally accepted good practices.⁷ A lack of legal clarity has been behind many widely-publicised cases of governments (especially newly-elected ones) challenging existing contracts or dismantling regulatory setups.

There has been a tendency in the past among countries aiming to involve international investors in their infrastructure sectors to focus on the legislation deemed particularly important for such projects – that is, concession and privatisation law. However, such an approach has often proven too narrowly focused, as the success tends to depend on a whole body of other legislation

bearing on business. Often PPI has been held back by tax and government procurement laws seen by the potential investors as unsuitable for private involvement in the infrastructure sectors.

A specific issue pertains to international treaty obligations, which may gain prominent importance where the domestic legal underpinnings of contracts and investor protections are seen as falling short of international standards. This is attested by a relatively large number of investor-state disputes in the infrastructure sector that have arisen under international investment agreements. Not many disputes have so far reached final awards, but those that have (all of which in consequence of bilateral investment treaties) have mostly been decided in favour (or, at least partly) of the private claimants (for an overview, see Table 3.1). Several cases have ended with arbitration tribunals finding that disagreements of a largely contractual nature breached the fair and equitable treatment provisions of the relevant investment agreements.

1.4. Stakeholder involvement

The infrastructure sector is “burdened by its own past”. International investors are often invited into national infrastructure sectors at a point where basic services are already at risk. This may imply a generally difficult investment environment, where newcomers are expected to address long-standing problems of inefficiency and mismanagement. This can be particularly difficult for foreign-based operators who are seen by some stakeholders as lacking in legitimacy.

Host country authorities may also sometimes have been too focused on international investment as a means of getting hold of infrastructure assets. There is a need to see private involvement more as a long-term process by which companies deliver a stream of infrastructure services to the general public. In other words, from the corporate perspective public authorities act as an intermediary for the end users and main stakeholder groups. The implication is that PPI is more likely to be successful when authorities have assured themselves that the envisaged undertakings meet the approval of consumers and other stakeholders – or are at least not wholly unacceptable to them.

Several challenges have been encountered in this respect. First, the decision to transfer utilities services from the public to the private domain is not infrequently linked with a decision to cede subsidies. This has been the case in the past where PPI was motivated predominantly by a need to break a long period of underinvestment. The previous subsidies were largely invisible – taking the form of utilities tariffs that were artificially low on grounds of not covering the cost of maintaining the capital equipment. The subsequent shift to “cost recovery pricing” to finance the new capital spending was seen by many existing consumers as a denial of well-earned rights, especially as it was not accompanied by any immediate or visible benefits to them.

Table 3.1. **Arbitral decision and negotiated settlements in cases related to infrastructure operations**¹

Case name	Activity	Arbitral institution/ rules	Instrument containing consent to arbitration	Direct or indirect claim	Nature and status of underlying Agreement	Nature of dispute	Nature of claim	Negotiations/ settlement	Award
Water sector									
Aguas del Tunari v. Bolivia, Decision on Jurisdiction, 21 October 2005	Water and sewage facilities.	ICSID.	Netherlands-Bolivia BIT.	Indirect claim.	Concession agreement, contract rescinded.	Policy changes.	The dispute arose as public resistance to the concession terms made the Bolivian authorities rescind the contract. Aguas del Tunari asserts the authorities acted in breach of the investor protection provisions of the relevant BIT.	n.a.	A Tribunal has assumed jurisdiction to hear the claims.
The Biwater Dispute, case registered 2 November 2005	Water and sewage facilities.	ICSID.	n.a. ²		Privatisation agreement; contract terminated.		Both parties to this dispute have alleged breach of contract; Biwater has also stated it will contest the legitimacy of the termination of contract.	n.a.	Dispute has been submitted to international arbitration.
Vivendi v. Argentina, Award of 21 November 2000	Water distribution.	ICSID.	France-Argentina BIT.	Direct claim by investor.	Concession Contract; contract terminated.	Policy change (Provincial authorities).	Claimants alleged a series of contract breaches and, under the BIT, violations of the fair and equitable standard of treatment and expropriation.	Negotiations failed.	1st Award annulled; new decision pending.
Energy sector									
OPIC Decision, Ponderosa Assets S.A., Decision 2 August 2005	Gas transport.	OPIC Tribunal.	OPIC Contract (US investor; US overseas investment insurance scheme).	Indirect claim by share holder.	Privatisation of industry sector.	Policy changes.	The dispute in this case relates to the termination of US dollar based tariffs and termination of certain tariff adjustment mechanisms as part of the foreign exchange reforms taken in an attempt to remedy the Argentine financial crisis; the Claimant alleged breach of contract, breach of fair and equitable treatment and expropriation of investment.		The OPIC Tribunal concluded the acts of the Argentinean government amounted to expropriation as the value of the investor's investment was extinguished. As such, the Claimant was entitled to claim for damages under its political risk insurance.

Table 3.1. **Arbitral decision and negotiated settlements in cases related to infrastructure operations**¹ (cont.)

Case name	Activity	Arbitral institution/ rules	Instrument containing consent to arbitration	Direct or indirect claim	Nature and status of underlying Agreement	Nature of dispute	Nature of claim	Negotiations/ settlement	Award
CMS Gas Transmission v. Argentina, Award 12 May 2005	Gas transport. ³	ICSID.	US-Argentina BIT.	Indirect claim by share holder.	Privatisation of industry sector.	Policy changes.	The dispute in this case relates to the termination of US dollar based tariffs and termination of certain tariff adjustment mechanisms as part of the foreign exchange reforms taken in an attempt to remedy the Argentine financial crisis; the Claimant alleged breach of contract, breach of fair and equitable treatment and expropriation of investment.		The Tribunal rejected claims of expropriation but held Argentina liable for breach of contract and breach of fair and equitable treatment; the Tribunal awarded pecuniary damages and ordered Argentina to re-purchase the Claimant's shareholding. Argentina has recently instituted annulment proceedings against this decision.
Gas Natural v. Argentina, Decision on Jurisdiction 17 June 2005	Gas supply and distribution.	ICSID.	Spain-Argentina BIT.	Indirect claim by share holder.	Privatisation of industry sector.	Policy changes.	The dispute in this case relates to the termination of US dollar based tariffs and termination of certain tariff adjustment mechanisms as part of the foreign exchange reforms taken in an attempt to remedy the Argentine financial crisis; the Claimant alleged expropriation, measures tantamount to expropriation and breach of fair and equitable treatment.		The Tribunal assumed jurisdiction to hear the claims however the proceedings have since been suspended pursuant to an agreement between the parties.

Table 3.1. **Arbitral decision and negotiated settlements in cases related to infrastructure operations**¹ (cont.)

Case name	Activity	Arbitral institution/ rules	Instrument containing consent to arbitration	Direct or indirect claim	Nature and status of underlying Agreement	Nature of dispute	Nature of claim	Negotiations/ settlement	Award
Camuzzi/Sempra v. Argentina, Decisions on Jurisdiction 11 May 2005	Gas supply and distribution.	ICSID.	Belgium and Luxembourg-Argentina BIT.	Indirect claim by share holder.	Privatisation of industry sector.	Policy changes.	The dispute in this case relates to the termination of US dollar based tariffs and termination of certain tariff adjustment mechanisms as part of the foreign exchange reforms taken in an attempt to remedy the Argentine financial crisis; the Claimants have alleged breach of investment protections under the relevant investment treaties.		A Tribunal has assumed jurisdiction to hear the claims; a decision on the merits is pending.
Petrobart v. Kyrgyzstan, Award 29 March, 2005	Gas supply.	Stockholm Chamber of Commerce.	ECT (investor company incorporated under the laws of Gibraltar).	Direct claim by contractor.	n.a.; delivery ceased.		The dispute concerns non-payment under the supply contract and interference by the authorities to enforce such payment; the Claimant alleged breach of the ECT provisions providing for fair and equitable treatment and the obligation to provide effective means for enforce legal rights.		Tribunal awarded pecuniary damage to Claimant for non-payment under the contract and breach of fair and equitable treatment.
The Dabhol Power Project	Power generation.	n.a.	n.a. ⁴		Power Purchase Agreement; Production and construction halted.	Policy change.	Dispute concerned failure of a state agency to pay invoices generated under the contract and failure of the government to honour guarantees granted in connection with the contract.	Settlement agreement reached with two investors; claims against the state agency resulted in pecuniary damages awarded by arbitral tribunals.	n.a.

Table 3.1. **Arbitral decision and negotiated settlements in cases related to infrastructure operations**¹ (cont.)

Case name	Activity	Arbitral institution/ rules	Instrument containing consent to arbitration	Direct or indirect claim	Nature and status of underlying Agreement	Nature of dispute	Nature of claim	Negotiations/ settlement	Award
Plama v. Bulgaria, Decision on Jurisdiction 8 February 2005	Power generation.	ICSID.	ECT (Cyriot investor).	Indirect claim by majority share holder.	n.a.	Policy.	The Claimant alleges actions and omissions of the Government have led to material damage of the enterprise in which the Claimant holds a majority interest; the Claimant has sought compensation for damages and expropriation.	n.a.	A Tribunal has assumed jurisdiction and a decision on the merits is pending.
Enron v. Argentina, Decision on Jurisdiction (Ancillary Claim) 2 August 2004; Decision on Jurisdiction 14 January. 2004	Gas transport.	ICSID.	US-Argentina BIT.	Indirect claim by share holder.	Privatisation of industry sector.	Policy changes.	The first dispute relates to Enron's tax liabilities; the ancillary claim relates to Argentina's measures taken in response to the financial crisis. The Claimant has alleged these actions amount to expropriation and other violations of the relevant BIT.		The Tribunal has assumed jurisdiction to hear both claims.
PSEG v. Turkey, Decision on Jurisdiction 4 June 2004	Power generation.	ICSID.	United States-Turkey BIT.	Direct claim by investor.	Concession Contract; Dispute arose before performance under contract commenced.	Policy change alleged.	A dispute arose between the parties as to purchase price and capacity purchase obligations under the Contract; the Claimant alleged breach of contract, breach of treaty protections and expropriation.	Negotiations failed.	Tribunal has assumed jurisdiction to hear case.

Table 3.1. **Arbitral decision and negotiated settlements in cases related to infrastructure operations**¹ (cont.)

Case name	Activity	Arbitral institution/ rules	Instrument containing consent to arbitration	Direct or indirect claim	Nature and status of underlying Agreement	Nature of dispute	Nature of claim	Negotiations/ settlement	Award
Nykomb Synergies v. Latvia, Award 16 December 2003	Power generation.	Stockholm Chamber of Commerce.	ECT (Swedish investor).	Indirect claim by sole share holder.	Liberalisation of energy sector; delivery of energy continued under interim settlement but further construction works halted.	Policy change.	The dispute concerned a disagreement between a domestic energy producer and a state agency as to the appropriate tariff rate; the Claimant alleged breach of contract, violation of the fair and equitable standard of treatment and expropriation.	Negotiations failed.	Tribunal found state liable for breach of ECT and contractual obligations.
AES Summit Generation v. Hungary, case discontinued 3 January 2002	Power generation.	n.a.	Unclear on the basis of available information (US investor).	Direct claim by investor.	Privatisation Agreement; Project continued.	Policy change.	Claimant's alleged breach of contract and breach of protections under the ECT in relation to the government's refusal to ratify the PPA and failure to agree to an appropriate power purchase price.	Settlement agreement reached by parties.	n.a.
Tanzania Electric Supply (TANESCO) v IPTL, Award 12 July 2001	Power generation and distribution.	ICSID.	Contract (Malaysian investor).	Claim raised by State agency.	Power Purchase Agreement; Dispute arose during construction phase of project.	Contract dispute.	The dispute in this case relates to a failure between the parties to agree on an appropriate tariff; both parties alleged breach of contractual stipulations by the other party.	Negotiations failed.	The Tribunal awarded non-pecuniary remedies in this award; more precisely, the Tribunal set the mechanism for determining the appropriate tariff, determined questions of breach of contract and ordered the parties to perform their obligations under the contract.

Table 3.1. **Arbitral decision and negotiated settlements in cases related to infrastructure operations**¹ (cont.)

Case name	Activity	Arbitral institution/ rules	Instrument containing consent to arbitration	Direct or indirect claim	Nature and status of underlying Agreement	Nature of dispute	Nature of claim	Negotiations/ settlement	Award
Himpurna California v. Indonesia, Award 4 May 1999	Power generation and distribution.	UNCITRAL Rules, case administered by PCA.	Contract (US investor).	Direct claim by investor.	30 year Power Purchase Agreement; Operational site shut down; other construction works terminated.	Policy change resulting in breach of contract.	Claimant's contract suspended in response to the State's inability to meet its US dollar obligations in the wake of the Asian Financial Crisis 1997/98.	Negotiations failed.	Tribunal awarded Claimant USD 527 million in wasted costs and lost profits for breach of contract.
Telecommunication sector									
Motorola-Turkey Settlement	Mobile telephony.	ICSID.	United States-Turkey BIT.	Direct claim by creditor.	n.a.	n.a.	Dispute concerned the prioritisation of the State's claim against a third party over that of the Claimant.	Settlement agreement reached under which the State paid pecuniary damages to the Claimant and the Claimant suspended arbitral proceedings and agreed to enforce its claim against the third party in certain specified States.	n.a.

Table 3.1. **Arbitral decision and negotiated settlements in cases related to infrastructure operations**¹ (cont.)

Case name	Activity	Arbitral institution/ rules	Instrument containing consent to arbitration	Direct or indirect claim	Nature and status of underlying Agreement	Nature of dispute	Nature of claim	Negotiations/ settlement	Award
France Telecom v. Lebanon, Award 22 February 2005	Mobile telephony.	UNCITRAL Rules.	n.a. (French investor).	Indirect claim by share holder.	Shareholding; Contract terminated; project awarded to a third party.		Claimant raised a claim on the basis of early termination of contract.	Unknown.	Claimant awarded USD 266 million for early termination of a contract entered into by the State with the enterprise in which the Claimant had a 66.66% share ownership.
Nagel v. Czech Republic	Mobile telephony.	Stockholm Chamber of Commerce.	United Kingdom-Czech Republic BIT.	Direct claim.	Co-operation Agreement; Project not commenced.		Claimant attempted to enforce a Co-operation Agreement under which establishment and operation of a telecommunications network was envisaged.	Settlement agreement entered into with state enterprise but without prejudice to treaty claim raised against State itself.	Claim dismissed as no "investment" under the BIT. (Award rendered in 2003.)
Transport sector									
Soufraki v. UAE, Decision on Jurisdiction 7 July 2004	Port management and operation.	ICSID.	Italy-UAE BIT.	Direct claim by investor.	Concession Agreement; Project status unknown.	n.a.	n.a.	n.a.	Tribunal declined jurisdiction on basis of non-fulfilment of nationality requirements by Claimant.

Table 3.1. **Arbitral decision and negotiated settlements in cases related to infrastructure operations**¹ (cont.)

Case name	Activity	Arbitral institution/ rules	Instrument containing consent to arbitration	Direct or indirect claim	Nature and status of underlying Agreement	Nature of dispute	Nature of claim	Negotiations/ settlement	Award
Aucoven v. Venezuela, Award 23 September 2003	Highway maintenance and operation.	ICSID.	Contract (Claimant treated as having Mexican nationality through operation of Article 25(2)(b) ICSID Convention.	Direct claim by investor.	Concession Agreement; Dispute arose during the life of the Concession Contract but prior to commencement of main construction works under that contract.	Policy change.	Dispute related allegations of breach of contract, cancellation of contract and the consequences thereof.	Negotiations failed.	Tribunal found state liable for certain breaches of contract and awarded Claimant's pecuniary damage.

1. Because of confidentiality or other reasons, complete information is not available in all cases. N/A indicates that sufficient information is not available to adequately complete the field in question.
2. ICSID has registered a dispute in connection with this case under the name Biwater Gauff (Tanzania) Ltd. v. Tanzania (ICSID Case No. ARB/05/22), however, from the information available the place of incorporation of this corporate vehicle is unclear, nor is it apparent how nationality requirement will be satisfied under the ICSID Convention.
3. The ICSID Centre Web site lists this case as arising in the "gas transmission" sector, however, the Tribunal states the enterprise to be involved in "gas transportation". This latter language has been used so as to provide consistent use of language where possible. In all other ICSID cases arising from the Argentine financial crisis, the industry sector listed is as stated by the ICSID Centre Web site.
4. While the three investors involved in this project were reported to be enterprises incorporated under the law of the United States, it is unclear from the information available whether the investment took place through these companies directly or through subsidiary companies incorporated in other jurisdictions.

Second, where a part of the motivation is to raise productivity or lower costs in the provision of infrastructure. In both cases, private participation in infrastructure is almost invariably faced with resistance from domestic constituencies such as employee representatives and incumbent operators. Where employer-employee relationships and competition frameworks are codified and transparent, controversy can mostly be avoided. However, where arrangements are informal at best, authorities may need to make a concerted effort to gain support around PPI.

A policy of transparency and inclusive dialogue with all stakeholder groups invariably produce the best long-term results. Conversely, attempts to push PPI projects forward without consultations, or whilst providing faulty or no information to the public, have been at the heart of many policy upsets.

1.5. Authorities' consistency of approach and capacity to deliver

Another cross-cutting issue for public authorities is the coordination of infrastructure policy. Divergent PPI strategies are sometimes pursued at the national and sub-national levels. The need for coordination arises from the fact that infrastructure projects often have important repercussions outside the implementing jurisdiction. Such "externalities" may sometimes turn negative, as exemplified by certain failed PPI projects in the recent past that, while conducted at the local level, had an adverse effect on the reputation of the entire host country. A separate issue relates to the subsidisation that is in many cases needed to render PPI projects financially viable. Many governments have found it necessary to pass separate legislation regarding subsidies to avoid sub-optimal outcomes at the local and regional levels.

Even within the central government successful infrastructure programmes involve a host different functions – responsible for areas such as planning and financing, technical implementation and overall fiscal sustainability. If any of these is unable, or unwilling, to play their part, the overall outcome is imperilled. This is of particular relevance in the context of privatisation, where parts of the public sector may have a stake in the status quo. In consequence, national authorities will normally want to anchor their strategies for private participation in infrastructure in an overall policy programme, which is communicated and implemented throughout all levels of public administration.

Administrative capacity and competence are a separate issue. International investor participation in infrastructure involves sophisticated technological, corporate and financial solutions that government entities may not be fully equipped to handle. Even in OECD economies that count as among the most experienced in PPI one of the most consistent complaints from private infrastructure providers has been a lack of implementation capacity

among their public-sector partners.⁸ Hands-on corporate experience is in short supply among government employees in most countries, and authorities need to consider how to build the necessary competences to act as an equal partner to their private partners.

1.6. The role of domestic capital markets

The role of domestic capital markets is an important, yet often overlooked, aspect of international investor participation in infrastructure. First, many of the PPIs in recent years have taken place in countries without fully convertible exchange rates or an easy access to repatriation of profits and investments. Attempts to compensate investors for the exchange rate risk through tariffs linked to foreign currency have not been generally successful – and have been at the heart of some of the more problematic breakdowns of PPI contracts in recent years (as also exemplified in Table 3.1). This gives investors a powerful incentive to fund themselves locally, or charge a premium on their services where this is not possible. The implication is that countries with well functioning domestic capital markets find the involvement of international investors in their infrastructure sectors easier and cheaper.

Conversely, private participation in infrastructure can also help develop financial markets. Loans to infrastructure projects can be securitised with the double benefits of lowering the funding cost and adding depth and liquidity to domestic capital markets. Funds for investment in such instruments are available in the insurance and pension sectors of most countries. However, in the past the Treasuries of countries with illiquid capital markets have been unwilling to contemplate the issuance of corporate bonds to finance infrastructure for fears of the effects on the cost of governments' own borrowing.

2. Working together: toward a balanced partnership between public and private actors

Liberalisation and reform of infrastructure in OECD and other countries have revolved around one fundamental precept: the separation of commercial from public interest objectives and their assignment to different institutions. However, this does not imply that the institutions representing the two sets of objects do not need to co-operate and exchange information.

The most “radical” tool for separation, and the one that involves the smallest degree of co-operation between the public and private spheres, is a full privatisation of infrastructure providers with the public sector subsequently limited to a regulatory role. OECD experience indicates that a first-best privatisation strategy might include a thorough commercial reconstruction of enterprises, as well as an introduction of competition in the relevant markets, prior to privatisation.⁹ Where competition is not feasible (e.g. in the case of

natural monopolies), independent and well-resourced regulators must be put in place early in the process. Some of the least encouraging experiences have been made where governments privatised unreconstructed entities and offered a period of guaranteed monopoly to boost the privatisation bids.

2.1. Partnership

Where continued public ownership of the infrastructure assets is deemed preferable, involving private investors in public-private partnerships (PPP) is a preferred option. PPP range from delegated management contracts, where private operators make their managerial and operational expertise available to public asset owners, to concessions where the private investor gain control over the assets and undertake agreed investment for a specified period of time.

A vital observation – strengthened by the experiences of recent years – is that successful private involvement in infrastructure is feasible only when both the public and the private participants are willing to enter into a *bona fide* partnership for a considerable period of time. This gives rise to a number of separate issues, some of which are:

- Host country authorities need to make their general policy objectives, as well as the expectations to individual projects, clear. International investors may decide to participate in infrastructure amid a weak enabling environment, but the concept of partnership makes no sense in the absence of a modicum of openness about what is to be achieved.
- The expectations to infrastructure projects should be specified in terms of the services to be provided to the public. Output-based specifications are easier to verify, more relevant to stakeholders and encourage greater efficiency and flexibility than traditional “bricks and mortar” contracts. Also, when the general public rather than the government sector is considered as the client, the private infrastructure providers gain additional leverage through their direct contact with the end-consumers.
- A successful partnership must be based on a full disclosure of all project-relevant information between the partners. Unless sufficient technical, economic and environmental data is made available to would-be private sector infrastructure operators, a project is at risk from the outset. The same applies to information about the checks that the public sector is going to apply to a project and the penalties for underperformance that will be put in place.¹⁰
- The terms of PPI can be endangered by political change. A degree of political uncertainty is the norm since infrastructure is inevitably a political subject. Private infrastructure providers must live with this and be prepared to work with politicians and within the political realities of host countries. However, this engagement must not rise to the level of an improper involvement in the political process.

- Strong and enforceable contracts are vital to successful projects, but they cannot cover all aspects of PPI. Over-detailed contracts attempting to cover every eventuality of a long-term partnership are incompatible with operational flexibility. They also give the contractual parties incentives to “look for loopholes” rather than make the partnership work. By a similar logic, renegotiation of contracts is a normal consequence of long-term partnerships. However, they should be kept to a minimum.
- The best way of balancing the sanctity of the contract with the necessary flexibility may be to include contractual stipulations specifying under what circumstances revisions to the original agreement shall be considered. Permanent dispute and review panels could also be put in place as part of the contractual relationship.

2.2. Apportioning risk

The apportioning of risk has been crucial to the success, or failure, of many PPI projects. This cuts across many of the issues raised in the previous sections. First, the chosen strategy for involving the private sector in infrastructure already implies a risk allocation. Options range from delegated management contracts (almost all risks carried by the public partner); to concession contracts (risks split according to contractual stipulations); to outright privatisation (almost all risks carried by the private partner). Second, public governance the quality of the enabling environment has important ramifications for what has been termed political risk. Third, the contractual relationship between the PPI partners itself contains stipulations bearing on risk allocation.

A commonly agreed principle applies, namely that the party that has more control over a given risk factor should bear the risk.¹¹ This implies that the private partners should bear all the risks usually arising from a commercial venture, including design defects, cost overruns, failure to meet performance criteria and changes in demand – except where these occur in direct consequence of action taken by authorities. This does, however, raise the issue of the financial capabilities of infrastructure providers: weakly capitalised operating companies have in the past sometimes been unable to carry risks that were “appropriately allocated” to them.

The public sector is expected to carry risk classified as political and regulatory. Again, this does not imply that political and regulatory change should not take place, but it should take place in an open and transparent fashion including stakeholder involvement. Private operators are normally not expected to bear the burden of political upheaval, regulatory upsets and public discontent, except if triggered by their own actions.

There is, however, a grey zone between the risks appropriately allocated to either the public or the private sector. In the context of partnerships between investors and governments the allocation and shifting of risk are recurrent subjects of negotiation. For instance, it has been argued that the asymmetry of power between the partners creates an additional regulatory and contractual risk. Delays in regulatory approvals and denial of previously agreed tariff increases may be seen by the public partner as integral to its “right to regulate”, but from a commercial viewpoint they constitute an endogenous risk.

From the viewpoint of international investors exchange rate arrangements constitute an additional source of risk. Ordinary exchange rate fluctuations and devaluations of pegged exchange rates constitute a commercial risk that the private partners are expected to bear. However, where foreign exchange is not convertible or contractual relationships are the subject of specific exchange arrangements major shifts in this area may take the nature of political risk. The same observation applies to financial crises in which the private sector’s recourse to many of its habitual financial instruments is impaired.

Measures are available to mitigate risk. Major risks and risks outside anybody’s control (e.g. acts of God, political upheaval) are commonly covered by insurance and most exchange rate risks can be hedged against. In developing countries, aid agencies have sometimes offered specific risk mitigation instruments to induce the private sector to invest.¹²

Somewhat more controversial have been efforts to mitigate or eliminate risk involving the host country authorities. Recent attention has been given to the issue of “standstill” or “stabilisation” clauses written into infrastructure contracts, effectively guaranteeing the private party against political and regulatory change. There are examples where such guarantees are offered by the authorities in the form of insurance in return for a fee or other contractual benefits.¹³ In the absence of an insurance element, certain stabilisation clauses which effectively impede the country’s right to regulate have been considered excessive.

2.3. The specifics of concessions

Most PPI and almost all public-private partnership involve an element of concession contracts. As concessions imply a degree of monopoly they are rarely the first choice of policy makers who prefer to rely on competition between infrastructure providers to maximise the public outcome. Where competition is feasible in part of a given infrastructure activity, the best policy option is normally to separate these parts from the rest and open them to competition. An example of this is the separation of track ownership from operating companies in the railway sectors of many OECD countries. Also, in some activities (mobile

telephony being the most widely quoted example) authorities may keep monopoly rents in check through “monopolistic competition” by granting multiple licences to companies engaged in similar operations.

Where such approaches are not applicable, authorities rely on a triple strategy of: 1) awarding concession (whether through public tendering or negotiations); 2) circumscribing the commercial discretion of the infrastructure providers through detailed service contracts; and 3) empowering regulatory bodies to monitor compliance with the contractual terms and applicable law. Each of these elements raises a number of challenges for authorities, including:

- *Award procedures.* Competitive tendering is commonly considered as the best way to allocate concession contracts – though in certain cases (for instance where large amounts of proprietary information are exchanged in the pre-contract phases) preferred bidders may be desirable. The above discussion indicates that the concrete services to be provided to the end-users should be the object of the contract for which would-be concessionaires are invited to be. A consensus also seems to be developing that the likelihood of a successful tendering process is enhanced when relatively simple award criteria are applied. Multiple criteria make it virtually impossible to discern what bid is “best”, and lay the tendering process open to manipulation and illicit practices. An example of problematic award procedures is provided in Box 3.1.
- *Contracts.* One recurrent issue in contract renegotiations and investor/state disputes in the infrastructure sector is claims by investors that host country authorities have reneged on agreed tariff adjustment clauses. Another one is the contestation, by the public authorities, that investors have failed to honour their service obligations (or, in some cases investment obligations, which are even harder to monitor). The need alluded to above, to combine unambiguous contracts with formal mechanisms through which they can be renegotiated, applies particularly to the award of concessions. In extreme cases, opportunistic renegotiation may totally undo the benefits of a competitive awards procedure.
- *Future tariffs.* Most infrastructure concessions world wide (though not necessarily in the OECD area) have applied a capped-price regime with automatic adjustments for inflation, etc., including regulation clauses allowing a review of the tariff structure after a period or time or in the case of extraordinary events. The revision procedure pits the private investors against host countries’ regulatory authorities. By a purely economic logic, decisions should be as forward-looking as possible, taking into account expected future investment needs, coverage, operational efficiency, etc. However, this assumes a very high degree of regulatory autonomy that investors may perceive as a source of uncertainty and risk. In practice, tariff revisions are often based on contractual stipulations taking into account

Box 3.1. 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 USD 500 million in improvements and service extensions in the first five years of the concession. The winning bidder was the foreign owned water company, which offered USD 227 million for the right to provide water services in three zones of the province. The other firms bid USD 15 million, USD 10 million and USD 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 the concessionaire 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 the company 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.

the operating figures and capital spending of previous years. The alternative to capped prices – rate-of-return regulation – has the advantage from firms' perspective of allowing a freer setting of tariffs and being perceived as less "risky". However, it involves recurrent assessments of the costs of capital that may give rise to additional regulatory complications.

- **Regulation.** Immediately after the transfer of infrastructure services from the public to the private domain a strong case can be made for relying on formal agreements leaving little scope for both regulatory discretion and investor-induced contract renegotiations. However, as concessions are set in a changing external context, a greater degree of flexibility is called for in the longer run. The challenge for authorities is to safeguard the independence and objectivity of regulatory bodies, generating the necessary confidence by all stakeholders (together with the emergence of a body of case-law) to allow regulators to fill this enhanced role.

3. Infrastructure investment in developing countries

International investor participation in the developing world may raise a number of additional concerns for governments and businesses. The challenges of getting the private sector involved do not differ fundamentally from the points made above, but the economic and political realities add to the difficulty of addressing them. Enabling environments tend to be weaker, technical and administrative competences less developed, and mechanisms for stakeholder involvement sometimes non-existent. End-consumers are generally poorer, which means that the financial viability of PPI in many cases hinges on a subsidisation that host country authorities may not be able to provide. Moreover, the relative bargaining position of host governments *vis-à-vis* multinational enterprises tends to be weaker in developing countries, which might lead to different dynamics of the partnership between private and public operators.

The poorest developing countries also differ qualitatively from others in the sense that meeting their populations' infrastructure needs may be intrinsically linked with issues of subsistence and human rights. There is an emerging consensus that many of the developmental challenges, including infrastructure, are interlocked and need to be addressed concomitantly. Efforts to address the quality of governance, the fight against corruption, legal and contractual frameworks, infrastructure, poverty reduction and sustainable development need to be conducted in unison and with the involvement of host and home country governments as well as private investors.

Bilateral and multilateral development aid agencies have taken steps to encourage private investment in infrastructure, including in the poorest countries. Their disbursement of aid in support of this objective has essentially followed a three-pronged approach:

- *Outright subsidisation of individual projects.* The basic idea is the fill a funding-gap to render a socially desirable infrastructure project financially viable from the private perspective. Where subsidisation can be limited to the preparatory and start-up phases, or is otherwise limited in time, this is uncontroversial. However, most development agencies find it difficult to commit themselves to an "open ended" subsidisation for the duration of an infrastructure project.
- *Technical assistance and capacity building.* Official development assistance is used to fund a host of technical capacity building programmes. Some of these aim at the general enabling environment for investment and will only indirectly affect infrastructure. Others involve educational programmes and direct assistance in the planning, design and project finance phases of infrastructure projects.¹⁴

- *Risk mitigation.* As mentioned most foreign investors have access to market-based insurance against political and other risks. However, as recent experience show risks go well beyond what is thus covered and a case can be made for development agencies providing extra coverage. More evidence and policy analysis would be needed to establish the boundaries between purely actuarial risk insurance and subsidised schemes with the purpose of boosting cross-border investment.

3.1. Responsible business conduct: the challenges

For the purpose of the present paper responsible business conduct (RBC) is defined as efforts by corporate players to ensure that their actions are consistent with societal expectations in the host country. This includes compliance with laws and regulations as well as observance of host countries' standards communicated by other means than laws and regulation. One complication is that host countries encompass a number of stakeholder groups that rarely have the same expectations. A second complication arises in economies or geographic areas where public governance is so weak that legal and regulatory frameworks themselves fall short of communicating "societal expectations".

The RBC challenge is further complicated by the fact that, as observed earlier, most PPI projects are delivered in a form of partnership involving public and private participation. The end-users of infrastructure services and other stakeholders tend to state their expectations in terms of the outcome of infrastructure projects rather than the behaviour of individual investors. The implication is that RBC may in practice often be engulfed in the greater issue of the project partners' joint responsibility. In more extreme cases RBC could be even construed as a "residual political risk" that is shifted onto the private investors.

That said, prior to the awards of infrastructure contracts a more "traditional" case for RBC can be made. One of the main challenges for responsible business conduct in the early phases is corruption. In weak governance zones and other national contexts where corrupt practices are commonplace, the procedures for awarding infrastructure contracts as well as subsequent regulatory practices have frequently been called into question (a frequently-quoted example is provided in Box 3.2).

While corruption arises for a variety of reasons, infrastructure has a number of peculiarities that make it a frequent target. The monopoly structure of supply can provide significant opportunity for rent-seeking. The political protection and intervention given to infrastructure often blurs financial accountability, and provides cover for a range of corrupt activities, including in allocating scarce services, overstaffing and excessively high

Box 3.2. 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 USD 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).

A Canadian engineering company 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 the company guilty of bribery and sentenced it to a fine of USD 2.5 million.

Following this trial, a German engineering company faced similar charges. The facts of the case were different, but the German and Canadian companies had used the same middleman, 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.

wages. With difficulties in establishing the relationship between level of capital investment and service outputs, infrastructure providers can inflate levels of capital spending or hide underinvestment. The large scale of infrastructure often creates opportunities for large kickbacks associated with procurement.¹⁵

A second 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.¹⁶ Corporate approaches to communication and consultation generally work better when applied in concert 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.

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.

On the broader issue of whether private-invested infrastructure projects deliver the hoped-for benefits (and, if not, who is to blame), one of the central issues is the access to and affordability of vital services. Widely publicised debates of this issue have arisen from the water and sanitation sector, where cost-recovery prices have been at risk of rendering basic services unaffordable to many households. The subsidisation of basic utility services is ultimately a public responsibility, and companies have in the past treated issues such as the imposition of penalties, denial of service, etc., in case of non-payment as purely contractual issues.

However, an evolving international consensus among civil society organisations – which applies similarly to their views of the public sector in developing countries – focuses on the so-called rights based development. According to this thinking, certain basic tenets of human development are not optional or “to be addressed” but absolute rights of the individual. The access to clean water is commonly perceived as such a right. Unless partners to infrastructure projects take account of this fact they are likely to face further controversy.

International investors in infrastructure often find themselves more strongly criticised in their home countries than in the developing world. To some extent this may reflect different societal expectations in countries at different levels of economic development, but there have also been cases in which civil society organisations in developing countries have actively canvassed the support of foreign partners. Arguably, this development could be

a reflection of investors' increasing recourse to international arbitration: civil society organisations, equally distrustful of the legal recourse in their home countries, also increasingly seek international redress for their grievances.

3.2. Societal benefits from international investor's presence

Some of the controversy over the record of private infrastructure investment in developing countries may derive from unclear success and failure criteria. In particular, should success be measured by the quantity, the quality or the affordability of the infrastructure services provided? A plethora of studies have documented that PPI has been successful in delivering infrastructure services to a growing number of households in developing countries.¹⁷ Much of the contestation of societal benefits seem to derive from the fact that most PPIs have been associated with increasing tariffs and improved revenue collection. In other words, insofar as the tariff increases have not been disproportionate or priced households out of their access to vital services, some such criticism may be discarded as the discontent of existing users who saw their "well earned rights" eroded.

Secondly, a point often raised by corporate representatives is the fact that, even if the conduct of private infrastructure providers in developing countries can sometimes be criticised, the relevant point of comparison is the quality of infrastructure that predated private involvement. Since the participation of international investors is often sought only as a last option, PPI has often had as its immediate impact improved services, enhanced governance and less corruption relative to the operations previously run by national or local authorities.

Finally, as infrastructure projects are mostly large and depend strongly on project finance, the attitude of financial institutions have important ramifications for responsible investment. 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.

Notes

1. A discussant at the OECD Global Forum on International Investment in Brazil, November 2005.
2. An overview of recent evidence was provided by S. Thomsen, "Encouraging Public Private Partnerships in the Utilities Sector: The Role of Development Assistance", *OECD International Investment Perspectives* 2005.
3. The appropriate fiscal practices have been discussed in recent studies by the International Monetary Fund, including IMF (2005), "Government Guarantees and Fiscal Risk", SM/05/120, and IMF (2005), "Public Investment and Fiscal Policy", SM/04/93.
4. This work was first documented in S.S. Golub (2003), "Measures of Restrictions on inward foreign direct investment for OECD countries", *Economics Department Working Papers*, No. 357, OECD.
5. Nicoletti, G., S.S. Golub, D. Hajkova, D. Mirza and K.Y. Yoo (2003), "Policies and international integration: Influences on trade and foreign direct investment", *Economic Department Working Paper*, No. 359, OECD; and OECD (2005), "The benefits of liberalising product markets and liberalising barriers to international trade and investment: the case of the United States and the European Union", *Economic Department Working Papers*, No. 432.
6. The EBRD Transition Report 2004 treated infrastructure investment as a main topic. It found that many of the problems with PPIs in the transition economies have to do with weaknesses in the general enabling environment rather than faulty design of the individual projects.
7. One example of guidance in this area is the UNCITRAL Model Legislative Provisions on Privately Financed Infrastructure Projects.
8. A participant at the Expert Meeting on 3 March 2006 said that surveys of participants in public-private partnerships in the United Kingdom regularly identify a lack of commercial skills in the public sector as a top concern among the private participants.
9. Nestor, S. and L. Mahboobi (2000), *Privatisation of Public Utilities: The OECD Experience*.
10. A participant at the Expert Meeting on 3 March 2006 suggested that an apparently excessive number of renegotiations of infrastructure concessions in Latin America may reflect this point: if bidders know beforehand that they are at a serious informational disadvantage they may perceive a strengthened incentive to low-ball their bids.
11. This is occasionally supplemented by a second criterion, suggesting that the party that is more risk-willing should bear the risk.
12. An overview was provided by J. Winpenny (2005), "Guaranteeing Development? The Impact of Financial Guarantees", study prepared for the OECD Development Centre, mimeo.
13. Chile has pioneered a policy of offering foreign direct investors an "insurance" against corporate tax increases. Investors were offered a constant tax rate for a ten year period in return for paying a premium. Brazil's recent Infrastructure Trust Fund aims to provide infrastructure operators with insurance against risk arising at the sub-national level.

14. One of the most high-profiled activities is the Public-Private Infrastructure Advisory Facility (PPIAF), a multi-donor technical assistance facility hosted by the World Bank.
15. Quoted from *Connecting East Asia: A New Framework for Infrastructure*, Asian Development Bank, Japan Bank for International Co-operation and World Bank, 2005.
16. 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.
17. C. Harris (2003), “Private Participation in Infrastructure in Developing Countries: Trends, Impacts and Policy Lessons”, *World Bank Working Paper*, No. 5, is one among many examples.