First Meeting of the Working Group on Infrastructure Finance in Iraq

Risk Assessment and Mitigation in Infrastructure Projects

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Insuring Investments  □ Guaranteeing opportunities
Presentation plan

I. MIGA and World Bank Group
II. Governance
III. Role and Missions of MIGA
IV. Intervention of MIGA
V. Risks covered by MIGA
VI. Present portfolio and examples of projects
VII. Summary of New Products and Coverage Enhancements
VIII. Preliminary Application

I. MIGA and World Bank Group

Positioning

- MIGA is one of the 5 agencies of World Bank Group like IBRD, AID, IFC and ICSID.
- IBRD makes loans to middle income countries
- AID makes loans and distributes grants to low income countries
- IFC invests in equity and makes loans and guarantees to private sector
- ICSID is a unit of Arbitration and Conciliation which manages processes which under are under its regulations.
- MIGA protects investors against Political Risk: non transfer of currencies, expropriation, war, civil disturbance breach of contracts and non honoring of sovereign guarantee.
I. MIGA and World Bank Group

History

<table>
<thead>
<tr>
<th>Year</th>
<th>Organization</th>
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<tbody>
<tr>
<td>1945</td>
<td>IBRD - International Bank for Reconstruction and Development</td>
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<td>1950</td>
<td>AID - International Development association</td>
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<tr>
<td>1956</td>
<td>IFC - International Finance Corporation</td>
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<tr>
<td>1966</td>
<td>ICSID - International Center for Solution of International Dispute</td>
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<tr>
<td>1988</td>
<td>MIGA - Multilateral Investment Guarantee Agency</td>
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II. GOVERNANCE

MIGA Bodies

- **Council of Governors**
  - 1 Governor and 1 alternate by Country
  - Admission of new members
  - Capital increase
  - Modification of the Convention establishing MIGA

- **Board**
  - 24 board members
  - Day to day management of the agency
  - Chairman of the World Bank is ex officio Chairman of the Board of MIGA

- **Management**
  - Executive Vice président
  - Chief Operating Officer
  - Different departments
III. Role and Missions of MIGA

- **Role**
  - Stimulate the investments flows in the developing countries.

- **Missions**
  - Political risk insurance
    - Non conversion and non transfer of currencies
    - Expropriation
    - Breach of contract
    - War and civil disturbance
    - Non honoring of sovereign guarantee
  - Tools of promotion of foreign investments
  - Service of Mediation in case of Dispute

IV. INTERVENTION of MIGA

1. Eligible Investors

- **Individuals**
  - Needs to have a different nationality than the host country

- **Companies**
  - Need to be a foreign company
  - Need to operate on commercial basis

- **Local Investors**
  - MIGA can cover a local investor if
    - Funds to be invested are coming from a foreign country
    - There is a common request from host country and investor to the Board of Agency
IV. INTERVENTION OF MIGA

2. Eligible investments

Form of the investment

- Investment with direct shareholding (equity)
  - Shares and equivalent
  - Loans and equivalent
  - Minimum maturity: 3 years
- Investment without direct shareholding (Non-equity)
  - Contracts of Management, franchise, licensing, turn-key contracts ......
  - Common characteristics: 3 years minimum and return depending heavily from projects returns

- Other form of investment — any other form of investment under approval of the Board by special. Loans other than shareholder loans can be covered by agency if and only if they are contemporaneous of an investment covered by the agency. Minimum duration 3 years.
- Host country — the investment has to be made in a developing country. Host country of the investment has to be developed or developing country (South South investments)
- Investment schedule
  - Principle: investment has to be made irrevocably after the registration by Agency of an application (preliminary or definitive)
  - Exceptions:
    - Prospection and exploration costs: Frais de prospection et d’exploration
    - Returns on invested capital: Produits du capital réinvestis
    - Modernization, restructuring, privatisation and developing of an existing project
IV. INTERVENTION OF MIGA

3. Country members

- 173 country members
- Industrialized countries (25) — Australia, Austria, Belgium, Canada, Czech Republic, Denmark, Finland, France, Germany, Greece, Iceland, Ireland, Italy, Japan, Luxembourg, Netherlands, New Zealand, Norway, Portugal, Slovenia, Spain, Sweden, Switzerland, United Kingdom, United States
- Developing countries (148)

AFRICA: Angola, Benin, Botswana, Burkina Faso, Burundi, Cameroon, Cape Verde, Central African Republic, Chad, Congo (Democratic Republic of), Congo (Republic of), Côte d’Ivoire, Djibouti, Equatorial Guinea, Ethiopia, Eritrea, Gabon, Gambia, Ghana, Guinea, Guinea-Bissau, Kenya, Lesotho, Liberia, Madagascar, Malawi, Mali, Mauritania, Mauritius, Mozambique, Namibia, Nigeria, Rwanda, Senegal, Sierra Leone, Seychelles, South Africa, Sudan, Swaziland, Tanzania, Togo, Uganda, Zambia, Zimbabwe

ASIA PACIFIC: Afghanistan, Bangladesh, Cambodia, China, East Timor, Fiji, India, Indonesia, Korea (Republic of), Lao People’s Democratic Republic, Malaysia, Moldova, Micronesia, Mongolia, Nepal, Pakistan, Palau, Papua New Guinea, Philippines, Samoa, Singapore, Solomon Islands, Sri Lanka, Thailand, Vanuatu, Vietnam

MIDDLE EAST NORTH AFRICA: Algeria, Bahrain, Egypt, Iran (Islamic Republic of), Iraq, Israel, Jordan, Kuwait, Lebanon, Libya, Morocco, Oman, Qatar, Saudi Arabia, Syrian Arab Republic, Tunisia, United Arab Emirates, Yemen

EUROPE CENTRAL ASIA: Albania, Armenia, Azerbaijan, Belarus, Bulgaria, Bosnia and Herzegovina, Croatia (Republic of), Cyprus, Estonia, Georgia, Hungary, Kazakhstan, Kyrgyz Republic, Latvia, Lithuania, Macedonia, Malta, Moldova, Montenegro, Poland, Romania, Russian Federation, Serbia, Slovak Republic, Tajikistan, Turkey, Turkmenistan, Ukraine, Uzbekistan

LATIN AMERICA AND CARIBBEAN: Antigua and Barbuda, Argentina, Bahamas, Barbados, Belize, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominica, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Nicaragua, Paraguay, Panama, Peru, St. Kitts & Nevis, St. Lucia, St. Vincent, Suriname, Trinidad & Tobago, Uruguay, Venezuela

IV. INTERVENTION OF MIGA

4. Type of structure

- Investor
- Commercial Bank
- Loan of a third party
- Country A
- Country B
- Investor capital
- Shareholder loan
- Company or project
- Project
V. Risks covered by MIGA

- Non-transfer and non-convertibility
- Expropriation
- War and civil disturbance
- Breach of contract
- Non honoring of sovereign guarantee (described in part VI)
v. **RISKS COVERED BY MIGA**

1. **Non-transfer and non-convertibility**

- Protection against losses than can arise from the impossibility to convert the assets coming from the project which are in local currency and the impossibility to transfer out of the host country these assets when they are converted.

  *Attention*: the risk of depreciation and devaluation cannot be covered.

2. **Expropriation**

- Protection against Host Government from actions having for effect to deprive the investor from the free disposition of its investment or from the rights he has on its investment.

- The insurance covers non exhaustively: expropriation, nationalisation, confiscation, sequestration, seizure, attachment and freezing of assets.

- Direct or Indirect Expropriation

- Expropriation of bank funds and reimbursement of borrowings

- Exclusion on measures of discrimination of general application
v. RISKS COVERED BY MIGA

3. War and civil disturbance

- Protects against losses arising directly from degradation, destruction or disappearance of assets following acts of war, revolution, terrorism or sabotage in the host country having a political motivation
- Cover the incapacity to pursue the project on a viable basis during a certain period of time following these events (business interruption)
- MIGA can extend its guarantee to conflicts that arose in a contiguous country to the host country.

4. Breach of contract

- Covers losses resulting from a Government decision of the host country to rescind or denounce a contract with the investor or the enterprise of project or not to respect certain clauses of these contracts
- Need a non-execution of an arbitration decision or a judiciary decision in favor of the investor by the host country Government
- Possibility of a provisory indemnification by MIGA under certain circumstances
- Close to the « deny of justice »
VI. Present portfolio and examples of covered projects

VI. MIGA’s Financial Highlights

Key Figures
- Issued 952 guarantees for 600 projects for a total of $20.9 billion during 1990-2009
- Portfolio: $7.3 billion in FY09
- Issued $1.4 billion during July 2008-June 2009

MIGA’s Strengths
- Total subscribed capital: $1.9 billion as of June 2009
- Strong capital base and ability to pay compensation in the event of large-scale losses
- Implied AAA by major credit rating agencies
Claims history

- Of the 600+ projects MIGA has supported in its history, more than 60 instances when a project has gone into pre-claim status but then the dispute was resolved and it was not necessary to pay a claim
- MIGA has successfully facilitated the settlement of disputes in all currency transfer/inconvertibility issues
- Since inception MIGA has never denied a claim and has needed to make claim payments in just 5 cases:
  - Indonesia ($15 million for expropriation in FY00)
  - Nepal ($144,600 for war and civil disturbance in FY05)
  - Argentina ($558,311 for expropriation in FY05)
  - Kenya ($491,100 for war and civil disturbance in FY09)
  - Madagascar ($12,824 for war and civil disturbance in FY09)
- All other cases have been resolved (before or after the claim was filed) or the claim was withdrawn

General PPP issues behind need for PRI

- Regulatory/policy risk
  - Regulatory frameworks are in many cases not implemented or untested
  - Independence of regulator
  - Role of creeping expropriation relating to regulatory pronouncements
- Breach of contract
  - Offtaker’s status as sovereign, regulator or privatized company
- Sub-sovereign risk
  - Growing trend to decentralize government control of services such as water delivery from national to local authorities
  - Linkage between state, local or municipal authorities to central government
General Experience – PPP Projects

- Overall, better structured and drafted Agreements pose less risk of partner disputes and future claims payouts;
- Generally, agreements tend to be subject to two instances of re-negotiation; immediately following partner selection, and, post investment execution where belief that initial stage allocation of risks were no longer appropriate
  - Post-investment renegotiations tend to be more problematic / dispute prone, and hence more likely to require MIGA intervention;
- MIGA has had no past claims, nor currently monitored disputes related to PPP projects in its portfolio;
- Projects must be economically viable—provide essential services at an affordable and a profitable basis;
- Poor project economics enhance pressures to renge on commitments (take or pay contracts, commitments to raise rates);
- Financial engineering / risk mitigation (PCG, PRG, full wrap) can help, but no substitute for project fundamentals;
- PRI won’t turn a bad project into a good one

VI. Examples of projects of MIGA

- Infrastructure : Container terminal port in Doraleh, Djibouti
- Finance : Shareholding loan in Central Europe
- Agrobusiness : sugar plantation in Mozambique
- Oil, Gas and Mining : project of pipeline between Mozambique and South Africa
vi. Doraleh : description of project

- MIGA has issued guarantees to DP World Djibouti FZCO (DPW), Standard Chartered Bank (SCB), Dubai Islamic Bank PJSC (DIB), and WestLB AG for their investments in Doraleh Container Terminal S.A.R.L. in Djibouti. The guarantees include $5 million to cover DPW’s equity investment into the project and $422 million to cover funding provided by DIB, SCB, West LB and other participating banks under an Islamic project finance facility. The coverage is for a period of 10 years against the risks of transfer restriction, war and civil disturbance, expropriation, and breach of contract. MIGA’s gross exposure under the project is $427 million (including $21 million for the SWAP contracts).

- Doraleh Container Terminal S.A.R.L. (DCT) has a 30-year concession for the development, financing, design, construction, management, operation, and maintenance of a new container terminal in the city of Doraleh.

- This is MIGA’s first project in Djibouti, which became a member in 2007. Djibouti is strategically located in East Africa along one of the fastest growing East-West international shipping routes. About 85 percent of imports into Djibouti are destined for the land-locked nation of Ethiopia.
vi. Doraleh: scheme of the operation

Islamic Financing Structure for Doraleh Container Terminal Project

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585 millions $US
Société Générale Group
Shareholder loan in Central Europe
VI. Société Générale Russia
Guaranty of the loan of the Shareholder:
SG Frankfort

- MIGA has issued a guarantee of $285 million to Société Générale S.A. of Francfort for its $300 million shareholder loan to its subsidiary in the Russian Federation, Commercial Bank DeltaCredit Closed Joint Stock Company (DCB). The guarantee is for a period of 10 years against the risks of transfer restriction and expropriation of funds.

- This is MIGA’s first guarantee in support of a specialized mortgage bank in the Russian Federation. MIGA will play a catalytic role in this transaction, as political risk mitigation is a requirement for the shareholder loan.

- MIGA’s support for this project is in line with the World Bank Group’s Country Partnership Strategy for the Russian Federation. The strategy recognizes the rapid development of the banking sector, but acknowledges that the level of financial intermediation is small relative to the needs of the economy. This investment will support the development of private financial intermediation and contribute to the increased provision of specialized banking projects, such as mortgage financing, thus broadening the range of financial services available to the population.
VI. Sugar Plantation Mozambique

- MIGA has issued two guarantees totaling $22.1 million to Mauritius Commercial Bank Limited, covering senior and mezzanine loans that it has taken over from the original guarantee holder, Sena Development Limited. The loans are for a sugar plantation project in Mozambique. The guarantees are for a period of ten years and cover against the risks of currency transfer restriction, expropriation, and war and civil disturbance.


- The project involves the rehabilitation of Mozambique’s largest sugar estate. It employs 6,000 people on a permanent basis, as well as 2,000 seasonal workers. It injects $7 million in annual salaries and wages into the local Marrameu economy, and contributes an estimated $33 million annually to the mozambiquean economy via import substitution and export earnings.

- The project addresses two of MIGA’s priority areas: an investment in an IDA-eligible country (among the world’s poorest) and in sub-Saharan Africa. and strengthening governance.
VI. Oil Project Mozambique

- MIGA has provided the Sasol Limited Group of South Africa ("Sasol") with guarantees for $27 million to cover $30 million of its investment in Sasol Petroleum Temane Limitada (SPT), Mozambique and $45 million to cover $50 million of its investment in the Mozambican branch of Republic of Mozambique Pipeline Investment Company (Pty) Ltd (ROMPCO), South Africa. Both SPT and ROMPCO will initially be wholly-owned subsidiaries of Sasol. The guarantees are for a period of up to 15 years against the risks of: Transfer Restriction, Expropriation, War and Civil Disturbance, and Breach of Contract. MIGA's participation was a necessary component for the completion of the deal.

- The project will contribute to developing the Mozambican economy through monetizing its gas reserve - the country will receive significant royalty payments as well as dividends, production bonuses, and corporate taxes in excess of US$2 billion over the 25-year lifetime of the project.

- Environmentally, the project will contribute to the reduction of harmful emissions by replacing sulphur-rich coal and heavy oils with clean burning natural gas. The project will provide contracting opportunities for both Mozambican and South African companies during the construction phase. The upstream benefits for local enterprises are estimated to be in excess of $1 million per year. The project is expected to create more than 720 job opportunities for local employees during construction.

- The project will be a substantial addition to Mozambique’s infrastructure through the development of roads, water supplies and the removal of land mines. The Sasol project meets two of MIGA’s priority concerns: it is a South-South Investment and in an IDA eligible country. Furthermore, it represents the first cross border initiative in sub-Saharan Africa in developing regional natural gas markets.

VII Summary of New Products and Coverage Enhancements

1 New coverage
- Non-honoring of Sovereign Financial Obligations

2 Enhancement of existing coverages
- Enhanced Breach of Contract coverage
  - SOEs for whose obligations the government may not be legally liable
  - "Denial of justice" risk, i.e. no recourse to dispute resolution forum by the investor
- Enhanced War and Civil Disturbance coverage
  - Temporary business interruption resulting from war and civil disturbance

3 Other Changes
- Expanded eligibility for the acquisition of existing assets
- Capital market transactions can be covered with no equity requirement
- Shortened minimum tenor of guaranteed loans from three years to one year
- Expanded WCD coverage for third country risks (where project conducts essential operations)
- WCD coverage includes acts against nationals of Host Government
VII 1 new coverage: non-honoring of sovereign financial obligations

- Coverage for unconditional sovereign financial guarantees or payment obligations
  - No defenses relating to the underlying guaranteed obligations
  - Typically cover loan agreements guaranteed by Host Government
- Must be associated with a specific investment project with developmental benefits and private sector participation
- Can be used for projects that involve unconditional government guarantees, particularly associated with repayment obligations of an underlying obligor under a loan agreement with a commercial lender, or unconditional obligation to inject equity or other funding on demand of a third party

VII 1 Non-Honoring of Sovereign Financial Obligations (cont.)

- Underlying project must satisfy MIGA’s eligibility requirements:
  - Environmental and social impacts
  - Development impact and financial viability
  - Reputational risks
  - Consistent with World Bank country and sector policies
  - Coordination with IMF required
- Sub-sovereign obligations (i.e. provincial or municipal governments) eligible on a case-by-case basis. Guarantees issued by an SOE not eligible.
- Standard Tenor (15 years and up to 20 years with Board Approval).
VII 1 Non-Honoring of Sovereign Financial Obligations (cont.)

- Sovereign obligation must be valid, enforceable and in full force and effect
  - Legal Opinion required
- Coverage of scheduled payments of principal (95-99%) and interest (default interest excluded)
- Waiting period and claims determination period condensed in order to provide seamless coverage
  - Waiting Periods of 90-180 days depending on risks
- First payment default on a Sovereign Financial Obligation is “Date of Loss”
- Customized approach to pricing: takes into consideration bond spread, loan margin, and guarantee holder’s cost of capital. Pricing quote available upon request.

Example of Claims Procedure (for loans)

- A public-private joint venture entity borrows from a commercial bank for a project, loan is guaranteed by the MoF
- Loan repayment is semi-annual
  - Default by borrower on Jan 1
  - Non-Payment by MoF under Guarantee same day ("Date of Loss")
  - Immediate notification to MIGA
  - Guarantee Holder tries to enforce during waiting period (180 days)
  - Claim may be filed 30 days prior to end of waiting period (150 days after "Date of Loss")
  - If satisfied, MIGA pays at the end of waiting period, e.g. July 1
VII 2 Breach of Contract by a State Owned Enterprise

- Historically, MIGA could only provide BoC cover to a public authority or an SOE for whose obligations the Host Country Government is legally and financially liable.

- MIGA can now insure BoC by a public authority or state-owned entity for whose obligations the Host Country Government is not legally liable.

- To qualify for coverage, an SOE must be:
  - Majority owned and controlled by the state or political subdivision thereof;
  - Performing a public service or fulfilling a governmental function; and
  - Financially viable and creditworthy.

VII 2 Breach of Contract by an SOE (cont.)

- Underwriting is subject to SOE’s rating review, if available, and evaluation of credit worthiness.

- MIGA will request and review independently audited financial statements.

- MIGA may request that the Guarantee Holder obtains credit analysis by a third party (processing fees).

- For non-rated SOEs with no independently audited financial statements, MIGA may provide coverage only if attribution to Host Government is established through a guarantee or letter of support.
VII 3 Full “Denial of Justice” Coverage

- BOC is now offered under 2 circumstances: a) No recourse to judicial or arbitral forum, and b) Decision cannot be enforced
- For contracts that involve dispute resolution through international arbitration, compensation is based on the amount of the claim up to the amount of the investment
  - For loans, compensation based on scheduled payments
- In all cases, investor must continue to use all lawful means of obtaining recourse to arbitral forum
- Pricing: MIGA may charge an incremental price in addition to the standard BOC premium

VII 4 Short-Term Business Interruption

- Business interruption now extended to temporary cessation of operations
- Coverage not offered on a stand-alone basis but added to the WCD coverage upon request
- Three sources of interruption: Asset damage, Forced Abandonment, and Loss of Use
- Shorter Waiting Periods (30 days) and Claim Determination Periods
- Sub-limit within the overall coverage for WCD (30%)
- MIGA would cover interruption that lasts no more than one year
- Pricing: MIGA charges a small incremental price in addition to the standard WCD premium
- Compensation based on lost business income, unavoidable continuing expenses and extraordinary expenses to resume operations
**STRUCTURE 1**
Examples of Structures for NHSG

- **MIGA guarantee**
- **FI**
- **Foreign Investor**
- **Sov. Govt.**
- **Sovereign guarantee on repayment of loan**
- **PPP or JV with SOE**
- **Project or Asset**

**Notes**
- Foreign insured equity investment (Does not have to be majority position)
- Identified project

**STRUCTURE 2**
Examples of Structures for NHSG

- **MIGA guarantee**
- **FI**
- **Management Company**
- **Sov. Govt.**
- **Sovereign guarantee on repayment of loan**
- **SOE or Municipality**
- **Project or Asset**

**Notes**
- Foreign insured equity investment related to project
- Dependent on specific facts, including relative size of private commitment
VIII. Preliminary Application (PA)

- The application form can be found on the net: www.miga.org
CONCLUSION

Why choosing MIGA?

◆ For its cover and its deterrence power
  ◆ MIGA belongs to World Bank Group
  ◆ Structure of Shareholding of the Agency
  ◆ Only a weak percentage of projects are subject to difficulties
◆ Because it can help in case of arising problems
  ◆ Host country is motivated by finding a solution in order to preserve its reputation vis-à-vis investors
  ◆ Sponsors and Financiers have a direct interest in the continuation and success of the project
  ◆ 3 indemnified claims on a total of 556 projects
◆ Because it brings the available resources and the detailed knowledge of the emerging countries by the Bank.
◆ Because it has a recognized expertise in the field of environment and social issues
◆ Because it helps to get a financing from the banks

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