

MIGA

## LEGAL AND CLAIMS



INSURING INVESTMENTS • ENSURING OPPORTUNITIES

# Welcome!



On behalf of the Multilateral Investment Guarantee Agency, it is my pleasure to welcome you to the World Bank Group's Law, Justice, and Development Week 2011. For the first time, all the legal departments of the World Bank Group have jointly organized this event, which explores how legal innovation and empowerment can contribute to development.

We are living in turbulent times. The sovereign debt crisis in Europe and the ongoing changes in the Middle East and North Africa are among the many fac-

tors rapidly altering the landscape for foreign direct investment (FDI). At the same time, MIGA is better positioned than ever to support FDI. MIGA's Council of Governors recently approved significant changes to our Convention and the Board of Directors has approved changes to our Operational Regulations. These changes allow MIGA to offer new coverage, including coverage for standalone debt and certain existing investments. In addition, we've opened a regional hub office in Asia and an office in Europe. With these products, a strong financial position, and a broader global reach, we're able to reach our clients more effectively and deliver on our mission of promoting FDI to support economic growth, reduce poverty, and improve people's lives.

MIGA's legal team has played a critical role in all of this—particularly the amendments to the Convention and Operational Regulations. We have advised on new structures, including MIGA's first Murabaha financing and new coverages, such as non-honoring of sovereign financial obligations. The legal team has been involved in financial, environmental, and reputation risk management. I'm very proud that our legal team offers innovative solutions that help advance MIGA's development mandate, protect the agency, and respond to its evolving needs.

Today, we have brought together a distinguished panel of leaders from the private sector, legal field, and academia to discuss the challenges investors are facing in emerging markets—particularly in the Middle East and North Africa. Our goal is to have a fruitful and engaging discussion that will not only capture your attention, but help us identify the risks and opportunities facing investors so we can continue to be an effective partner in managing and mitigating political risks in the developing world.

We thank our panelists for their participation and our colleagues throughout MIGA and the World Bank Group for their collaboration in this event. Most of all, we thank our audience for joining us today as we together explore Global Risk in Today's Changing Landscape.

### GLOBAL RISK IN TODAY'S CHANGING LANDSCAPE

November 14, 2011

#### Keynote Speaker

**Vladimír Dlouhy** is currently international advisor for Goldman Sachs, located in Prague and covering the region of Central and Eastern Europe.

#### Panelists

**Witold J. Henisz** is the Deloitte & Touche Associate Professor of Management in Honor of Russell E. Palmer, former Managing Director at The Wharton School, The University of Pennsylvania.

**Michael Kelley** is General Counsel and Managing Director at EMP Global and General Counsel at EMP Latin America.

**Cathy Marsh** is a partner in the Global Project Finance Group of the law firm Milbank, Tweed, Hadley & McCloy LLP and is based in the London office.

**Ravi Suri** is the Managing Director, Regional Head Project and Export Finance for Europe, Middle East, Africa, and South Asia at Standard Chartered Bank.

### Ana-Mita Betancourt

DIRECTOR AND GENERAL COUNSEL, MIGA

# MIGA's Legal Affairs and Claims Group

## INTRODUCTION



MIGA'S MISSION IS TO PROMOTE FOREIGN DIRECT INVESTMENT TO SUPPORT ECONOMIC GROWTH, REDUCE POVERTY, AND IMPROVE PEOPLE'S LIVES.

MIGA's guarantees support investments in times of uncertainty, in difficult operating environments, and address multiple risks. MIGA recently supported a manufacturing plant in Iraq, an agribusiness venture in Liberia, and developed new products such as its capital optimization coverage. MIGA's ability to find innovative ways to support complex or unusual deal structures enables transactions to go ahead that otherwise would not have been possible, benefiting both investors and developing countries.

MIGA's Legal Affairs and Claims Group has advised in all these efforts and provides solutions that serve the agency's evolving needs, while mitigating legal and reputational risks for the agency. We are defined by our problem-solving approach, our objective and creative advice, our strong

work ethic, our unfailing integrity, and our commitment to excellence and learning.

Our legal team is headquartered in Washington, DC, although we support MIGA's operations and offices around the world. MIGA's legal team provides legal advice and transactional support for all activities the agency undertakes. An important part of our work is advising on all projects underwritten by MIGA, including:

- assistance with structuring complex projects at an early stage, to ensure the investments meet MIGA's eligibility requirements while meeting the needs of our clients
- drafting and negotiation of MIGA's contracts of guarantee
- providing policy and legal advice on operational, environmental and social, and other issues with respect to each project to MIGA's Board of Directors, senior management, and other internal departments
- liaising with host countries to ensure their support of MIGA-insured investments
- assistance with monitoring, amendments, and addressing any issues

that arise during the term of a MIGA guarantee

- leading efforts to address investor disputes

MIGA's legal team is also responsible for membership issues and host country approval matters. We also play a role in promoting the agency's thought leadership and knowledge management efforts. MIGA's legal team has supported operational teams in training in a number of countries, regularly partners with the IFC and the World Bank in learning events, and offers in-house "legal clinics" for MIGA staff.

## Dispute Resolution and Claims

As a member of the World Bank Group, MIGA provides an umbrella of deterrence against government actions that could disrupt insured investments and helps resolve potential disputes to the satisfaction of all parties—both of which enhance investor confidence in the safety of investments and ensure that developmentally beneficial FDI continues to flow into the host country. In order to prevent a potential claims situation from escalating, MIGA provides dispute resolution services to all of its clients. Since inception, MIGA's Legal Affairs and Claims group has led the discussions on more than 90 disputes of this type. To date, MIGA has been able to resolve disputes that would have led to claims in all but two cases, where the claims were actually paid. MIGA has paid four additional claims resulting from damage due to war and civil disturbance. This approach to potential claims and similar matters enables MIGA-supported projects to continue operating in host countries, preserving value for the investor and ensuring that projects continue to contribute to the local economy.

# Legal Affairs and Claims Group

## AT WORK

### Keeping a Critical Water Project on Track



The county of Deqing in China's Zhejiang province was facing a serious shortage of potable water due to its rapid growth. Investment in the water sector was sorely needed. In 2004, MIGA issued a guarantee covering an equity investment by Darco Environmental Pte Ltd of Singapore in a water treatment plant that would supply 60,000 cubic meters of potable water per day.

The plant was nearly complete when a dispute broke out between the investor and the local authorities. As the dispute escalated, and each party claimed breaches of the joint-venture contract by the other party, the construction of a water plant that would provide potable water to nearly half a million people was delayed.

To prevent further delay of this critical project, a MIGA conflict-resolution team led by the Legal Affairs and Claims Group traveled to China. MIGA successfully mediated a settlement, through the cooperation and goodwill of all parties concerned, including the foreign investor, the Chinese government, and the provincial authorities. As a result, the project was back on track and the water treatment plant is now completed and operational.

In fact, one day after commissioning the plant in April 2006, company officials announced that it signed letters of intent for two new projects in the province. At the end of June 2007, the company signed a new insurance policy with MIGA for the new projects.

According to Darco executives, "without MIGA the dispute would not have been resolved and the project could not have been completed."

regarding coverage of principal and profit (analogous to the interest component of a conventional loan); there is additional sponsor support, so MIGA had to ensure that there was no overlap in coverage; the financing was being syndicated after closing, potentially to a "sukuk" issuance, and the banks wanted to ensure that syndicates could "opt-out" of MIGA cover; and MIGA had to obtain reinsurance from the private market, so all special provisions were subject to reinsurance approval.

MIGA's legal team negotiated and drafted all of the special provisions to finalize the contract of guarantee. In the end, MIGA was able to issue its first-ever contract of guarantee for Murabaha financing. This is an important demonstration of MIGA's increasing flexibility and, given the growing role of Islamic financial markets in supporting projects in developing countries, it is indeed a landmark transaction.

### Underwriting Islamic Financing

In June 2011, MIGA provided \$450 million in investment guarantees to support the expansion of telecommunications services in Indonesia. MIGA's guarantees are backing a \$450 million Murabaha financing facility underwritten by Deutsche Bank and Saudi British Bank. The Islamic finance facility is part of a larger \$1.2 billion financing package for the expansion of Indonesian telecom company PT Natrindo Telepon Seluler (NTS), known by the brand "Axis."

The NTS project involved a particular type of Islamic finance known as Murabaha financing, which essentially involves a sale and purchase of commodities. Although the concept is fairly simple, the documentation was far from it. To add to the complexity, there were a number of novel issues to be addressed, which required extensive negotiation and drafting on the legal side. For instance, two separate currencies are being used, while the MIGA guarantee was in US dollars, so potential currency fluctuations needed to be anticipated; there were challenging provisions



# Modernizing MIGA's Convention



MIGA's legal team plays a key role in ensuring that all of MIGA's activities comply with the agency's Convention, Operational Regulations, and internal policies. The team's work was instrumental in helping MIGA secure the support needed to amend its Convention in 2010.

The amendments to the Convention responded to two very important

demands from the market: the ability for MIGA to insure project debt without also insuring a portion of the equity and the ability to insure some types of existing investments.

The ability to support non-shareholder loans supporting FDI was a critical milestone for MIGA. The agency frequently had to turn away projects where a lender wanted the benefit of MIGA's cover, but the equity investor did not meet MIGA's eligibility requirements or was not convinced of the need for PRI. This resulted in cases where prospective lenders to projects chose not to proceed, reducing the number of available financing options for the sponsors—and potentially increasing their financing costs. The ability to insure standalone debt has also made it easier for MIGA to provide non-honoring of sovereign financial obligations cover. Demand for this product has been substantial, coming primarily from lenders and involving transactions in the public finance area and sub-sovereign entities in frontier markets.



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