



legal
services

MIGA's Legal Affairs and Claims Department assists member countries on matters related to foreign investment, provides legal advice to MIGA underwriters regarding the issuance of insurance coverage, and handles claims for compensation brought under contracts issued by MIGA.

The first claim since MIGA's establishment was filed in the previous fiscal year. The claim was brought by Enron Corp. for loss as a consequence of the suspension by Indonesia of an independent power project in eastern Java in which Enron had invested. The claim arose under the expropriation coverage that MIGA issued to Enron in 1997. Enron's power project was unavoidably swept up in the economic turmoil that affected Indonesia at the end of the past decade.

For more than a year after receipt of notice of the claim, MIGA pursued discussions with Enron and Indonesia to find a mutually acceptable solution to the dispute. When the "cooling off" period set out in the insurance contract expired, MIGA became obligated to pay the claim. Talks continued for some time nonetheless, as both parties sought to restructure their relationship in a way that would have permitted the claim to be withdrawn. With Indonesia's economic situation deteriorating and the prospects for financing substantial new infrastructure investment made more difficult, mediation talks were terminated in mid-2000. In accordance with its contractual obligation, MIGA then paid Enron \$15 million for the loss it suffered on the project and negotiated a settlement agreement with Indonesia by which the loss will be salvaged over a three-year period. Payments under this agreement have already commenced, and MIGA has reopened its program in Indonesia.

In addition to those investment disputes in which it is involved as insurer, MIGA, in accordance with its Convention, uses its good offices on a selective basis to encourage the settlement of other disputes between investors and member countries that may be brought to its attention. MIGA staff experienced in resolving conflicts relating to foreign investment provided legal assistance and guidance during the



photo | Legal Services staff, including Luis Doderó, MIGA's General Counsel (bottom left).

year to parties from numerous countries that sought creative approaches to the resolution of their investment-related disputes. MIGA's objective in these cases is to help resolve disputes before they require formal arbitration.

At any given time, MIGA's legal staff may be consulting on as many as a dozen investment disputes around the world. A particularly contentious dispute resolved in fiscal 2001 illustrates the range of issues that can arise between foreign investors and host countries.

The claimant in *Matter of Idreco* is an Italian construction and engineering firm that won a contract in 1987 to build and operate a water purification plant in Córdoba, Argentina's second most populous province. The project was undertaken against a background of considerable economic instability, as the province became progressively less able to meet its financial obligations. Relations between the parties deteriorated and eventually collapsed entirely, either because of the wrongful interpretation of value added tax legislation, as the investor alleged, or because of repeated investor defaults, as the province contended. MIGA worked with the parties for four years to bring them eventually to an amicable settlement that resolved the investment dispute.

Talks on several other matters are now reasonably well advanced. Mediation is normally a more expeditious form of a dispute resolution than arbitration, but when the issues are complex or a host country is challenged to rethink substantial elements of its economic policies, settlement talks can drag on for several years until the parties become comfortable enough with the results of their efforts to strike a deal.

The involvement of MIGA as a mediator of investment disputes may also relate to a general situation that jeopardizes the ability of a particular member country to attract foreign investment. This is the role that the agency is playing with respect to the expropriations of foreign investments by the Mengistu regime in Ethiopia some

27 years ago, where a number of expropriated foreign investors have been trying unsuccessfully to obtain compensation.

In October 2000, MIGA and the government of Ethiopia concluded a Memorandum of Understanding by which MIGA was appointed mediator in an effort to find a solution to this ongoing problem. As of May 31, 2001, the deadline set by MIGA for registration of claims, more than 70 claimants had requested inclusion in the mediation process. MIGA has analyzed the evidence submitted by the claimants and is reviewing it with the Ethiopian authorities. Once the process is finished, the claimants and Ethiopia will hopefully be able to find, with MIGA's assistance, a solution for resolving these long-standing disputes. Such a resolution would also make a significant contribution to the development of the international law of dispute resolution.

The cases that are now advancing toward resolution, in Ethiopia and elsewhere, suggest that MIGA's mediation facilities are filling a gap in the international law remedies currently available to foreign investors in their disputes with host countries. Diplomatic solutions are not practical for some, and formal arbitration may be too costly for others. Mediation, which is voluntary, informal, and inexpensive, increasingly is recognized as an attractive alternative for the resolution of investment disputes.

Upon the request of member states, MIGA advises on the negotiation of bilateral investment treaties and other investment-related issues. In addition, during the past fiscal year, MIGA's lawyers lectured at law schools in Argentina, Bermuda, China, Colombia, Greece, Malaysia, Singapore, Spain, Turkey, and the United States and spoke to numerous conferences and workshops to promote foreign investment.