Citizen-Centered Approaches
to State and Market

Economic Tools Mapping

MULTILATERAL INVESTMENT GUARANTEE AGENCY (MIGA)

Market Building Initiative: A Program with the Aspen Institute

Institute for State Effectiveness

600 New Hampshire Ave NW
Suite 900
Washington DC 20037

+1 (202) 298-5959
info@effectivestates.org

© 2014

Economic Tools Mapping Multilateral Investment Guarantee Agency (MIGA)

Market Building Initiative
A Program with The Aspen Institute

Overview

The Multilateral Investment Guarantee Agency (MIGA) is a member of the World Bank Group. Though legally and financially independent, MIGA cooperates closely with the International Bank for Reconstruction and Development, the International Development Association, the International Finance Corporation, and the International Centre for Settlement of Investment Disputes. Its mission is to promote foreign direct investment (FDI) into developing countries to help support economic growth and reduce poverty. MIGA was founded in 1988 with a capital base of $1 billion and is headquartered in Washington, DC. At present, 175 member countries comprise MIGA's shareholders. MIGA fulfills its mission by providing political risk insurance guarantees to private sector investors and lenders, much as OPIC does for US investors. MIGA’s guarantees protect investments against-non- commercial risks and can help investors obtain access to funding sources with improved financial terms and conditions. Since its inception in 1988, MIGA has issued more than $24 billion in political risk insurance for projects in a wide variety of sectors, covering all regions of the world.[1] MIGA currently has an outstanding guarantees portfolio of $9.1 billion. [2]

MIGA focuses on insuring investments in countries eligible for assistance from the International Development Association (the world’s poorest countries), conflict-affected environments, complex deals in infrastructure and extractive industries (especially those involving project finance and environmental and social considerations), and South-South investments (from one developing country to another)[3]

Structure

MIGA offers coverage for five non-commercial risks. Coverage may be purchased individually or in combination, all with the goal of promoting FDI into developing countries. There is an initial eligibility determination for companies within a three day time period and, after application, a guarantee generally takes 3-4 months.[4] The following risks are optionally covered by MIGA insurance:

Currency Inconvertibility and Transfer Restriction:
Coverage protects against losses arising from an investor’s inability to legally convert local currency (capital, interest, principal, profits, royalties, and other remittances) into the hard currency specified in the contract of guarantee (Dollar, Euro or Yen) and/or to transfer hard currency outside the host country where such a situation results from a government action or failure to act. Currency depreciation is not covered. [5]

Expropriation:
Expropriation protection covers losses arising from certain government actions that may reduce or eliminate ownership of, control over, or rights to the insured investment. In addition to outright nationalization and confiscation, "creeping" expropriation—a series of acts that, over time, have an expropriatory effect—is covered. Coverage is also available on a limited basis for partial expropriation (e.g., confiscation of funds or tangible assets).

---

[1] MIGA Website, www.miga.org
[2] World Bank Website, www.worldbank.org
[3] MIGA Website, www.miga.org
[4] MIGA “Who we Are”, http://www.miga.org/whoweare/index.cfm?stid=1792m
[5] MIGA Website, www.miga.org

In case of total expropriation of equity investments, compensation for the insured party is based on the net book value of the covered investment. For expropriation of funds, MIGA pays the insured portion of blocked funds. For loans and loan guaranties, MIGA can insure the outstanding principal and any accrued and unpaid interest. Compensation is paid upon assignment of the investor's interest in the expropriated investment (e.g., equity shares or interest in a loan agreement) to MIGA.[6]

War, Terrorism, and Civil Disturbance:
This policy protects against loss from, damage to, or the destruction or disappearance of, tangible assets or total business interruption (the total inability to conduct operations essential to a project's overall financial viability) caused by politically motivated acts of war or civil disturbance in the country, including revolution, insurrection, coups d'état, sabotage, and terrorism. The policy separates the policy into three categories: tangible asset losses, total business interruption and temporary business interruption.

For tangible asset losses, MIGA would pay the investor's share of the lesser of the replacement cost and the cost of repair of the damaged or lost assets, or the book value of such assets if they are not being replaced or repaired.

For total business interruption that results from a covered war and civil disturbance event, compensation would be based, in the case of equity investments, on the net book value of the insured investment or, in the case of loans, the insured portion of the principal and interest payment in default. This coverage encompasses not only violence in the host country directed against a host country government, but also against foreign governments or foreign investments, including the investor's government or nationality.

Temporary business interruption may also be included upon a request from the investor and would cover a temporary but complete cessation of operations due to loss of assets or unreasonably hazardous conditions in the host country, which result in a temporary abandonment or denial of use. For short-term business interruption, MIGA pays unavoidable continuing expenses and extraordinary expenses associated with the restart of operations and lost business income or, in the case of loans, missed payments.[7]

Breach of Contract:

This coverage protects against losses arising from the government's breach or repudiation of a contract with the investor (e.g., a concession or a power purchase agreement). Breach of contract coverage may be extended to the contractual obligations of state-owned enterprises in certain circumstances. If, after a specified period of time, the investor has been unable to obtain an award due to the government's interference with the dispute resolution mechanism (denial of recourse), or has obtained an award but the investor has not received payment under the award (non-payment of an award), MIGA provides compensation. If certain conditions are met, MIGA may, at its discretion, make a provisional payment pending the outcome of the dispute and before compensation for non-payment of an award is paid.[8]

Non-Honoring of Sovereign Financial Obligations:

[6] Ibid.
[7] Ibid.
[8] Ibid.

Coverage in this case protects against losses resulting from a government's failure to make a payment when due under an unconditional financial payment obligation or guarantee related to an eligible investment. The policy does not require the investor to obtain an arbitral award. This coverage is applicable in situations when a sovereign's financial payment obligation is unconditional and not subject to defenses. Compensation would be based on the insured outstanding principal and any accrued and unpaid interest.[9]

Rules

MIGA insures cross-border investments made by investors in a MIGA member country into a developing member country. In certain cases, the agency may also insure an investment made by a national of the host country, provided the funds originate from outside said country. Corporations and financial institutions are eligible for coverage if they are either incorporated in, and have their principal place of business in, a MIGA member country or if they are majority-owned by nationals of member countries. A state-owned company is eligible only if it operates on a commercial basis. Similarly, an investment made by a non-profit organization may be eligible only if it is carried out on a commercial basis.[10]

MIGA currently has a limit of $720 million per country on a net basis but can augment this capacity through public and private insurer cooperation, reinsurance, and coinsurance.[11] There is no minimum size limit for a project and MIGA can cover up to $220 million on a net basis per project which can be augmented through coinsurance and reinsurance.[12] MIGA insures new and existing investments; but for an existing investment to be considered eligible, the project must meet certain criteria. For example, MIGA may insure existing investments where an eligible investor is seeking to insure a pool of existing and new investments, or where the investor demonstrates both the development benefits of, and a long-term commitment to, the existing project. Acquisitions, including the privatization of state-owned enterprises, may also be eligible. [13]

The types of foreign investments that can be covered include equity, shareholder loans, shareholder loan guaranties, and non-shareholder loans. All loans and loan guaranties, including those issued by shareholders of the project, must have a minimum maturity of more than one year provided that MIGA determines the project represents a long-term commitment by the investors. Other forms of investment, such as technical assistance and management contracts, asset securitizations, capital market bond issues, leasing, services, and franchising and licensing agreements, may also be eligible for coverage. [14] Gambling, tobacco production and processing, highly speculative investments, defense, illegal drugs, and the production of spirits are not eligible for coverage.[15] An investor in any project is required to remain at risk for a portion of any loss, which differs for equity investments, loans and loan guarantees, and technical assistance.[16]

Pricing:

---

[9] Ibid.
[10] MIGA Investment Guarantees, http://www.miga.org/investmentguarantees/index.cfm?stid=1548
[11] MIGA "Who we Are", http://www.miga.org/whoweare/index.cfm?stid=1792m
[12] Ibid.
[13] MIGA Investment Guarantees, http://www.miga.org/investmentguarantees/index.cfm?stid=1548
[14] MIGA "Who we Are", http://www.miga.org/whoweare/index.cfm?stid=1792m
[15] MIGA "Who we Are", http://www.miga.org/whoweare/index.cfm?stid=1792m
[16] MIGA Annual Report, http://www.miga.org/resources/index.cfm?stid=1854

MIGA prices its guarantee premiums based on a calculation of both country and project risk. Fees average approximately one percent of the insured amount per year, but can be significantly lower or higher. Generally speaking, the rates offered by MIGA are less expensive than political risk insurance offered by private providers. Detailed information on premiums is available via the MIGA website.[17]

Duration of guarantee:

Coverage is for up to 15 years (possibly 20, if justified by the nature of the project). MIGA cannot terminate the contract unless the investor defaults on its contractual obligations, but the investor may reduce or cancel coverage without penalty on any contract anniversary date starting with the third anniversary.[18]

Coverage:

Investors may choose any combination of the five types of coverage offered by MIGA. MIGA may insure up to $220 million per project, and if necessary more can be arranged through syndication of insurance. Other coverage can be made available under the Small Investment Program, investors are offered a package covering currency inconvertibility and transfer restriction; expropriation; and war, terrorism, and civil disturbance.[19]

Financing

MIGA derives its financial strength primarily from the capital it receives from its shareholders and its retained earnings. The MIGA Convention established authorized capital stock (membership shares) at 100,000 shares– equivalent to $1,082 million– with authorized capital stock automatically increasing upon the admission of a new member. MIGA's equity base ensures the financial sustainability in the short and
long term. The subscribed capital and retained earnings determine the Agency's statutory underwriting capacity and the Council of Governors and the Board of Directors have set the maximum amount of contingent liability that may be assumed by MIGA as 350 percent of the sum of its unimpaired subscribed capital and reserves and retained earnings, 90 percent of reinsurance obtained by MIGA with private insurers, and 100 percent of reinsurance obtained with public insurers.[20]

MIGA provides financial support in a range of sizes, but the average size of political risk insurance throughout the life of the organization is $40 million.[21] Its current outstanding guarantees portfolio stands at $9.1 billion.

Operations and outcomes

As of the 2010 annual report, MIGA had supported 600 projects in 100 countries and has issued $24 billion in political risk insurance.[22] The diversity of their coverage is highlighted by the outstanding

---

[17] MIGA Website – Terms and Conditions: http://www.miga.org/investmentguarantees/index.cfm?stid=1799
[18] Ibid.
[19] MIGA "Who we Are", http://www.miga.org/whoweare/index.cfm?stid=1792m
[20] MIGA Annual Report, http://www.miga.org/resources/index.cfm?stid=1854
[22] MIGA Annual Report, http://www.miga.org/resources/index.cfm?stid=1854

[21] MIGA Website, http://www.miga.org

[22] MIGA Annual Report, http://www.miga.org/resources/index.cfm?stid=1854

guarantees portfolio, which as of December 2010 had the following allocations by industry: 53% financial, 27% infrastructure, 9% oil, gas and mining, 6% manufacturing, 5% agribusiness and services.[23]

Box 1- Operations: Global Broadband Solution SPRL

Global Broadband Solution SPRL – This telecommunications deal included an $11.1 million gross exposure to a company located in the Democratic Republic of Congo (DRC). The insurance covers equity and shareholder loan investments by Global Broadband Solution, Inc. (GBS) of the United States in its subsidiary Global Broadband Solution SPRL (GBS-DRC) in DRC. The investor applied for MIGA guarantees of $11.1 million for a period of up to ten years against the risks of transfer restriction, expropriation, and war and civil disturbance.

As a result of political instability in the DRC since the mid-1990s, the national telecommunications infrastructure has been hampered by a lack of sustained investment. Political risk also makes private insurance difficult and expensive to obtain for investors in DRC. Currently, broadband access in the DRC is slow and expensive, and services offering true broadband speeds are not widely available. MIGA's support to this project aims to bring high-quality and reliable services to an under-served market.This project is aligned with the World Bank Group's country assistance strategy and the government's poverty reduction strategy which prioritizes the rehabilitation and expansion of infrastructure and private sector development to foster economic diversification. This proposed project is also aligned with MIGA's objective of encouraging investments into conflict-affected countries as well as countries eligible for assistance from the International Development Association.

See: *http://www.miga.org/projects/index.cfm*

[23]MIGA Sectors Overview, http://www.miga.org/sectors/index.cfm

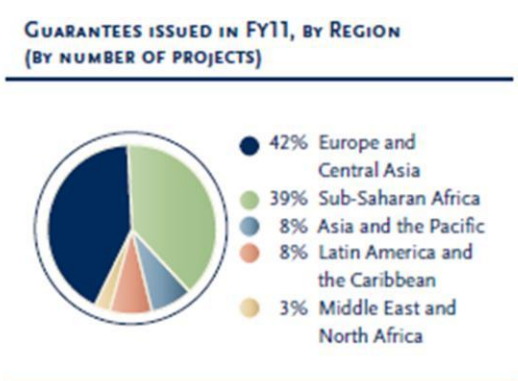
Box 2- Payouts since 1988

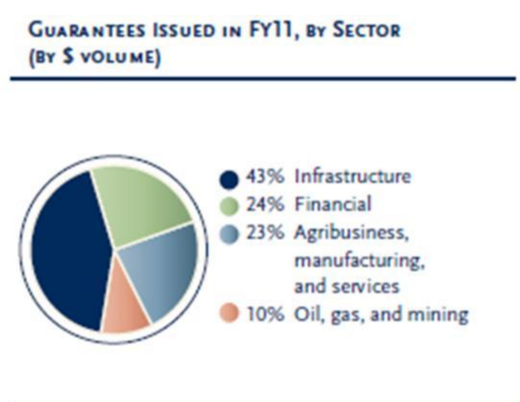
Due to its multilateral status and successful dispute resolution mechanisms, MIGA has only been required to pay 6 total claims since its inception. Often, the agency reaches pre-claim solutions. Facilitation by MIGA has successfully resolved over 90 disputes for guaranteed projects. The six claims that have been paid are as follows:

- Indonesia, 2000-for an investment in P.T. East Java Power Corporation in after one of several power-related suspensions by a presidential decree in 1997 in response to the country's economic crisis in the late 1990s
- Nepal, 2002- for the repair of a damaged turbine after war and civil disturbance relating to a power project when a Maoist guerrilla attack damaged a hydroelectric power plant
- Argentina, 2009- for a project at the time of the country's financial crisis
- Kenya, 2007- for losses under war and civil disturbance coverage incurred in the violence after a disputed election
- Madagascar 2007- for losses resulting from political violence
- Afghanistan 2011- a small claim for war and civil disturbance was paid from the donor-funded Afghanistan Investment Guarantee Facility

See: http://www.miga.org/whoweare/index.cfm?stid=1792

Box 3- Guarantees by Region and Sector





See: MIGA Annual Report, http://www.miga.org/resources/index.cfm?stid=1854

Further Resources:

- Investment Guarantee Guide: http://www.miga.org/documents/IGG_english.pdf
- MIGA Agents and Finders: http://www.miga.org/investmentguarantees/index.cfm?stid=1806
- Independent Evaluation Group: http://ieg.worldbank.org/content/ieg/en/home.html
- Environmental and Social Safeguards: http://www.miga.org/projects/index.cfm?stid=1822