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# Multilateral investment guarantee agency: a critical appreciation of its guarantee service

## **Abstract**

Foreign Direct Investment (FDI) in developing countries alarmingly decreased during the first half of the 1980s. Gross FDI declined during this period from \$13 billion to \$9 billion in 1986.<sup>1</sup> However, there are strong indications that viable investment opportunities exist in those countries but investors tend to avoid these opportunities because of concern about risks which are primarily non-commercial and political in nature. In such a situation Multilateral Investment Guarantee Agency (MIGA), fifth affiliate to the World Bank Group, has been established as the first international guarantor of FDI. It is an autonomous international organisation with 'full judicial personality' under international law and the domestic laws of its members.<sup>2</sup> The main objective of the Agency is to encourage the flow of investment for productive purposes among its member countries and, in particular, to its developing member countries.

## **Keywords**

its, appreciation, critical, service, agency, multilateral, guarantee, investment

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## MULTILATERAL INVESTMENT GUARANTEE AGENCY: A CRITICAL APPRECIATION OF ITS GUARANTEE SERVICE

S. M. Solaiman\*

Foreign Direct Investment (FDI) in developing countries alarmingly decreased during the first half of the 1980s. Gross FDI declined during this period from \$13 billion to \$9 billion in 1986.<sup>1</sup> However, there are strong indications that viable investment opportunities exist in those countries but investors tend to avoid these opportunities because of concern about risks which are primarily non-commercial and political in nature. In such a situation Multilateral Investment Guarantee Agency (MIGA), fifth affiliate to the World Bank Group, has been established as the first international guarantor of FDI. It is an autonomous international organisation with 'full judicial personality' under international law and the domestic laws of its members.<sup>2</sup> The main objective of the Agency is to encourage the flow of investment for productive purposes among its member countries and, in particular, to its developing member countries.<sup>3</sup>

The draft Convention of MIGA was adopted by a resolution of the Governors of the World Bank on 11 October 1985. It came into force on April 12 1988 after the necessary ratification.<sup>4</sup> Currently its country membership has grown from 29 founding members to 149 countries

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<sup>1</sup> Rowat M O, "Multilateral Approaches to Improving the Investment Climate of Developing Countries: The Cases of ICSID and MICA"33 (1992) Harvard International Law Journal, 103, at p.103.

<sup>2</sup> Convention Establishing the Multilateral Investment Guarantee Agency 1985 Art. 1.

<sup>3</sup> Ibid., Art. 2.

<sup>4</sup> MICA Annual Report, 1997, at p.10.

until 24 May 1999.<sup>5</sup> In total, MIGA has issued 363 guarantee contracts<sup>6</sup> that have facilitated foreign investment of about US\$ 27 billion in 63 developing countries.<sup>7</sup> There is no denying the fact that, in a decade, it has achieved a limited success in its mission by concluding a number of contracts which facilitated a good amount of FDI and created 40,820 jobs in host countries.<sup>8</sup> Moreover, at the end of the fiscal year 1997, the Agency had more than 1,000 active preliminary applications for coverage of prospective investments. However, it has issued only 55 contracts of guarantee during the fiscal year 1998<sup>9</sup> and 15 during the first half of 1999.<sup>10</sup> In such a situation, operations of this Agency deserve a searching reappraisal. The present study is devoted to that pursuit. This effort will explore various aspects of its guarantee operations and compare them with the relevant provisions of Major Investment Insurance Systems (MIIS) of the world. In this essay, MIIS includes US Overseas Private Investment Corporation, 1948 (OPIC) which covers 26% investment; Germany's TREUARBEIT, 1960 that covers 12% and the Japanese Export Insurance Division/Ministry of International Trade and Industry, 1970 (EID/MITI) which covers 46% investment. Together, these organisations represent over 80% of all outstanding national insurance coverage.<sup>11</sup> All of the above three are entirely national investment insurance programmes whose limitations in guaranteeing FDI warranted the emergence of an international insurer like MIGA. To serve its objectives, MIGA is required to complement the activities of the national insurance entities.<sup>12</sup> MIGA promotes such complementarities through co-insurance and re-

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<sup>5</sup> MIGA Press Release, 24 May 1999.

<sup>6</sup> MIGA News, Winter 1999. <sup>7</sup> *Supra* note 5.

<sup>7</sup> *Supra* note 5.

<sup>8</sup> 6 (1998) MIGA News.

<sup>9</sup> MIGA Annual Report, 1998. <sup>10</sup> *Supra* note 6.

<sup>10</sup> *Supra* note 6.

<sup>11</sup> See Appendix 3, *supra* note 1, at p. 139. For information regarding MIIS used in this effort, see Appendix 4 (pp. 140-144), *supra* note 1 if not indicated otherwise.

<sup>12</sup> *Supra* note 2, Art. 19.

insurance with these institutions, bilateral exchanges of information, and its membership in the Berne Union.<sup>13</sup>

A recent example of such complementarity could be found in the resolution of the plenary session of the 1998 IMF-World Bank Group Annual Meetings in Washington. The session announced a new multilateral initiative titled 'Asian Growth and Recovery Program' (AGRP) to revitalise private sector growth in Asia, in an effort to assist many of the countries hard-hit by the economic crisis in the region. The IFC will finance the AGRP while MIGA will provide investment guarantees to foreign investment projects in these countries. These efforts will be complemented by the OPIC and EID/MITI.<sup>14</sup> Before concluding the article, we also furnish a brief note on the continued guarantee services of MIGA to Bangladesh, a founding member of this world organisation. This note indicates the fact that Bangladesh has received fewer guarantees despite its attachment to this Agency" (MIGA) since its inception.

#### **GUARANTEE SERVICES**

MIGA was designed to mitigate political risks as well as to provide financial compensation to investors for losses caused by covered risks that actually eventuated during the long term of a FDI. In so doing, it follows a prescribed procedure as discussed below.

#### **Application for Guarantee-Fees and Formalities**

An investor must file a prescribed application with MIGA before the investment is made or irrevocably committed. The information in this application allows the Agency to make an initial determination of a project's eligibility. Upon qualification, a Notice of Registration (valid for one year) is issued and a Definitive Application is mailed to the investors.

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<sup>13</sup> The Berne Union denotes the International Union of Credit and Investment Insurers. The Union, which includes virtually all major programmes, is an association of public export-credit and investment insurers which facilitates the exchange of information among its members. The Countries in this Union include all members of the Development Assistance Committee of the DECO, as well as South Korea and India.

<sup>14</sup> *Supra* note 6.