

Amendments to the Convention Establishing  
the Multilateral Investment Guarantee  
Agency to Modernise the Mandate of the  
Multilateral Investment Guarantee Agency  
and  
Amendment to the International Finance  
Corporation Articles of Agreement

## Background

- 9.1 This chapter deals with a single treaty action that amends two treaties, the *Convention Establishing the Multilateral Investment Guarantee Agency* (MIGA Convention) and *International Finance Corporation Articles of Agreement* (the IFC Agreement).<sup>1</sup>
- 9.2 The Multilateral Investment Guarantee Agency (MIGA) and International Finance Corporation (IFC) are two arms of the World Bank Group.<sup>2</sup>

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1 *National Interest Analysis* (NIA), [2011] ATNIA 6, Amendments to the Convention Establishing the Multilateral Investment Guarantee Agency, done at Seoul on 11 October 1985 and Amendment to the International Finance Corporation Articles of Agreement, done at Washington DC on 20 July 1956, [2011] ATNIF 2, para. 1.

2 NIA, para. 1.

9.3 The MIGA:

...provides political risk insurance or guarantees against losses caused by noncommercial risks to facilitate foreign direct investment (FDI) in developing countries.<sup>3</sup>

9.4 The MIGA's mission is to promote foreign investment in developing countries to support economic growth and reduce poverty.

9.5 Perceptions of political risk often inhibit foreign direct investment in developing countries. MIGA exists to address these concerns by providing political risk insurance for foreign investments in developing countries and dispute resolution services for guaranteed investments to prevent disruptions to beneficial projects.<sup>4</sup>

9.6 According to the IFC, it:

...fosters sustainable economic growth in developing countries by financing private sector investment, mobilizing capital in the international financial markets, and providing advisory services to businesses and governments.

IFC helps companies and financial institutions in emerging markets create jobs, generate tax revenues, improve corporate governance and environmental performance, and contribute to their local communities. The goal is to improve lives, especially for the people who most need the benefits of growth.<sup>5</sup>

9.7 The Treaty constitutes four amendments to the MIGA Convention and one amendment to the IFC Agreement.

## The amendments

### Multilateral Investment Guarantee Agency

9.8 The MIGA Board of Directors proposed four amendments to the MIGA Convention in January 2010.<sup>6</sup>

9.9 The amendments:

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3 Multilateral Investment Guarantee Agency, *MIGA Annual Report 2010*, p. 5.

4 NIA, para. 9.

5 International Finance Corporation, *What We Do*, <<http://www.ifc.org/ifcext/about.nsf/Content/WhatWeDo>> viewed on 14 April 2011.

6 NIA, para. 2.

...do not alter MIGA's core mandate but are aimed at reducing transaction costs and enabling MIGA to insure political risk for projects based on actuarial qualities rather than excluding projects with particular financing structures. These changes were made to allow MIGA to more effectively pursue its development mandate and to respond to the changing demands of MIGA clients.<sup>7</sup>

9.10 To clarify, the four amendments permit MIGA to:

- Allow coverage for stand-alone loans, which MIGA was prohibited from doing. MIGA coverage of loans was only permitted if MIGA was covering a specific investment linked to the loan. The amendments allow MIGA to provide coverage to lenders for loans being made to eligible projects on a stand-alone basis, even when the Agency is not covering a related equity investment. Coverage of stand-alone loans will be allowed if the loan is related to, or finances, a project or investment where other direct investment is present.
- Broaden the process for investor registration. Clients of MIGA were required to file a Preliminary Application before commencing a project. Past experience has shown that clients routinely failed to file a Preliminary Application before investing funds, rendering their investment ineligible for coverage, even if they have discussed their projects with MIGA at an early stage. This amendment has broadened the registration procedure to permit other satisfactory evidence of investor intent in addition to a Preliminary Application.
- Broaden the scope of coverage to existing assets. The MIGA Convention prevented MIGA from covering existing assets. An incoming foreign investor acquiring an existing asset could only obtain MIGA political risk insurance if the acquisition was accompanied by an expansion, modernization or financial restructuring. This prevented MIGA's participation in a large part of the foreign direct investment market. This amendment has allowed MIGA to carry out its work by making investments in existing assets more attractive.
- Eliminate the need for investor and host country requirement to make a joint application to authorise coverage for specific additional non-commercial risks. In the absence of a joint application MIGA could only cover for the following four non-commercial risks: currency transfer; expropriation; war and civil disturbances; and breach of contract. This amendment has allowed the Board to authorise other

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7 NIA, para. 5.

non-commercial risks by special majority vote, without the requirement of a joint application of the investor and host government.<sup>8</sup>

- 9.11 In July 2010, Australia voted in favour of the amendments to the MIGA Convention, which were adopted by the MIGA Council of Governors.<sup>9</sup>
- 9.12 The MIGA Convention provides that amendments enter into force for all members 90 days after the Vice President and Corporate Secretary of the World Bank Group certifies that 60 per cent of the total membership and 80 per cent or more of the total voting power of MIGA has accepted the amendments.<sup>10</sup>
- 9.13 The World Bank notified Australia of the adoption of the amendments on 16 August 2010 and specified that the MIGA amendments entered into force on 14 November 2010.<sup>11</sup>

## International Finance Corporation

- 9.14 The proposed amendment to the IFC Agreement aims to improve the participation of developing economies in the World Bank by increasing their basic votes. The voting power of each IFC member is the sum of its basic votes, fixed at 250 votes per member, and its share votes, with one vote for each share of IFC stock held.<sup>12</sup>
- 9.15 The principle underlying the allocation of shares in the IFC had been to reflect each new member's relative weight in shareholding at the International Bank for Reconstruction and Development (IBRD), which in turn broadly reflects members' relative position in the world economy.<sup>13</sup>
- 9.16 The amendment should improve the legitimacy of the World Bank by increasing the basic votes of developing economies. The proposed voting reform also allows IFC shareholders to achieve voting power adjustments in both the IBRD and the IFC, taking into account different levels of shareholder interest in and support for the different institutions.<sup>14</sup>
- 9.17 The amendment will enter into force for all members three months after the Corporation certifies, by formal communication addressed to all members, that three-fifths of the Governors, exercising 85 per cent of the

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8 NIA, para. 12.

9 NIA, para. 2.

10 NIA, para. 2.

11 NIA, para. 2.

12 NIA, para. 6.

13 NIA, para. 6.

14 NIA, para. 6.

total voting power, have accepted the amendment. Since the proposed amendment was endorsed by the Board of Governors of the World Bank at the Development Committee Spring Meeting in April 2010, the Australian Government expects an affirmative vote by the member states.<sup>15</sup>

- 9.18 The amendment to the IFC Agreement must be adopted by the IFC Board of Governors, who must have cast their vote on the proposed amendment by 31 March 2011.<sup>16</sup>
- 9.19 At the time of writing, there appears to be no public indication from the IFC as to the fate of the proposed amendments.<sup>17</sup>

## What ratification will mean for Australia

- 9.20 The amendments in this treaty introduce no substantive changes to Australia's obligations to either the IFC or MIGA. Australia's actual IFC shareholding will remain unchanged as a result of the increase in basic votes, while its voting share will decline marginally.<sup>18</sup>
- 9.21 According to the NIA, Australia has an interest in seeing these amendments accepted as they will likely improve the effectiveness of the IFC and MIGA in promoting economic and financial stability, international development and poverty reduction.<sup>19</sup>

## Conclusion

- 9.22 While the Committee supports the changes made by this treaty, this is another example of a treaty for which it is impossible for the Committee to make a meaningful contribution because the amendments foreshadowed in the treaty will have already occurred by the time this report is tabled.
- 9.23 In relation to the MIGA amendments, there was insufficient time between when Australia was notified of the proposed changes and when voting took place on the proposed changes to allow for parliamentary

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15 NIA, para. 3.

16 NIA, para. 3.

17 International Finance Corporation, website viewed 14 April 2011.

18 NIA, para. 7.

19 NIA, para. 7.

consideration. In relation to the IFC proposal, the Committee acknowledges that the 2010 Federal Election would probably have prevented the Committee from reaching a view in the available time.

- 9.24 Nevertheless, in future, amendments of this sort should be provided to this Committee before they come into force.

### **Recommendation 11**

**The Committee recommends that all future amendments to the *Convention Establishing the Multilateral Investment Guarantee Agency* and *International Finance Corporation Articles of Agreement* be tabled in Parliament in sufficient time for the view of the Parliament to be taken into consideration before the amendments come into force.**