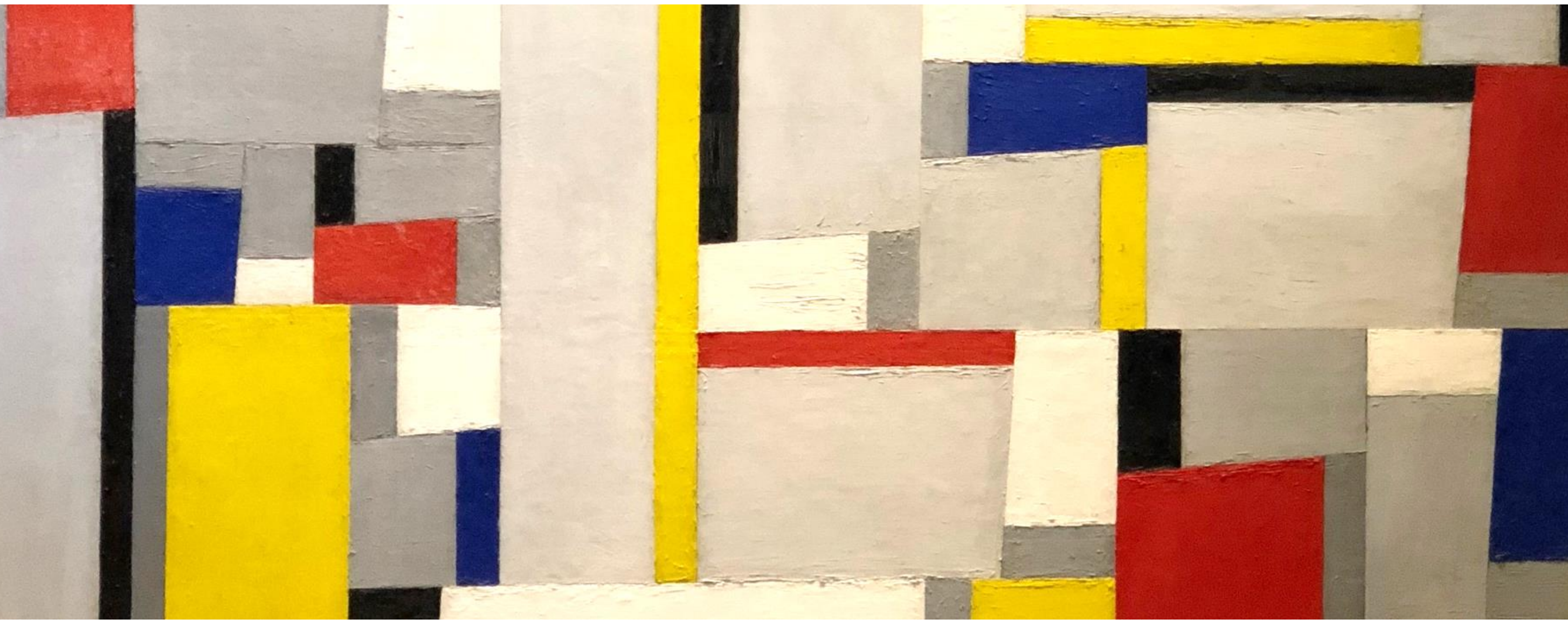
No.5 2018 OCCASIONAL POLICY PAPERS SERIES ON THE LEAST DEVELOPED COUNTRIES

# POLITICAL RISK INSURANCE AS A TOOL FOR SUSTAINABLE INVESTMENT POLICY IN THE LEAST DEVELOPED COUNTRIES: MIGA AND BEYOND



UN-OHRLLS
UNITED NATIONS OFFICE OF THE HIGH REPRESENTATIVE FOR THE LEAST DEVELOPED COUNTRIES, LANDLOCKED DEVELOPING COUNTRIES AND SMALL ISLAND DEVELOPING STATES

## NOTE

The purpose of this occasional policy papers series, published by the United Nations Office of the High Representative for the Least Developed Countries, Landlocked Developing Countries and Small Island Developing States (UN-OHRLLS), is to analyse policy issues relating to the development of the least developed countries (LDCs), stimulate discussions and promote international cooperation. In keeping with this objective, the authors are encouraged to express their own views, which do not necessarily reflect the views of the United Nations or its member States.

The series is prepared under the general guidance of the Under Secretary-General and High Representative and the overall supervision of the Director of the UN-OHRLLS.



The United Nations Office of the High Representative for the Least Developed Countries, Landlocked Developing Countries and Small Island Developing States (UN-OHRLLS)
United Nations Secretariat
New York, NY 10017
United States of America

Cover image: section of mural by Fritz Glarner at United Nations Headquarters

# POLITICAL RISK INSURANCE AS A TOOL FOR SUSTAINABLE INVESTMENT POLICY IN THE LEAST-DEVELOPED COUNTRIES: MIGA AND BEYOND

Robert Howse

Petrus van Bork[1]

## INTRODUCTION

Foreign Direct Investment (FDI) constitutes a dominant part of private capital flows to the least developed countries (LDCs). FDI plays a complementary and catalytic role in building and strengthening productive capacity as it can lead to tangible and intangible benefits, including export growth, technology and skills transfer, employment generation, higher wages and poverty eradication. While FDI flows to developing countries have risen dramatically in recent years, the total share of FDI to LDCs in global FDI remains below 2%, with the majority of FDI concentrated in very few countries and sectors.

Foreign direct investment is a priority of the *Programme of Action for the Least Developed Countries for the Decade 2011-2020* (IPoA).[2] The twin goals with respect to FDI are: "(a) Attract and retain increased foreign direct investment in least developed countries, especially with the aim of diversifying the production base and enhancing productive capacity; (b) Enhance

[1] Respectively Lloyd C. Nelson Professor of International Law, New York University School of Law, and independent consultant. The opinions expressed in this paper are those of the authors and do not necessarily reflect the views of the United Nations.

[2] United Nations, "Programme of Action for the Least Developed Countries for the Decade 2011-2020", A/CONF.219/3/Rev.1, 23 May 2011 available at: http://unohrlls.org/UserFiles/File/IPoA.pdf.

initiatives to support investment in least developed countries." (Paragraph 121). Towards these ends, the IPoA calls for action by development partners of the LDCs in particular to:

> (a) Set up and strengthen, as appropriate, initiatives to support investment in least developed countries such as *insurance*, *guarantees* … focusing in particular on sectors that are needed to build up a diversified production base and encourage linkages with domestic production activities as well as employment creation.
>
> (c) Support and implement initiatives aimed at encouraging investment in least developed countries, such as … *risk management tools* …. (Paragraph 122.3, emphasis added).

At the *Third International Conference on Financing for Development* in the *Addis Ababa Action Agenda* (AAAA), world leaders pledged to: "to adopt and implement investment promotion regimes for LDCs [and] offer financial and technical support for … access to information on investment facilities and risk insurance and guarantees such as through MIGA, as requested by the LDCs."[3] In the Political Declaration adopted in Antalya at the 2016 mid-term review of the IPoA development partners confirmed their commitments (made in the AAAA).[4]

This study examines existing political investment insurance programs and related risk management facilities for foreign investment, in particular those of the Multilateral Investment Guarantee Agency (MIGA), as they apply to LDCs. This study is divided into five main sections. Section I provides context and examine both commercial and country risks that FDI faces, the interface between commercial and country risks throughout the project cycles and the issue of cumulative liability build up. Section II examines the key role of MIGA, as well as providing samples of regional PRI programs, with specific reference to provisions each agency makes to support underwriting of PRI and related risk management facilities to LDCs. Section III surveys what is currently covered by existing MIGA PRI products. Section IV examines the need for product innovation and the development of other potential tools and approaches that either or both PRI underwriting agencies and non-commercial actors (development banks, multilateral agencies, the UN, and national governments inter alia) might develop to support the growth of private sectors in LDCs where commercial financial risk is too great to allow for conventional private sector financing. This section specifically poses questions about what *could* be done as opposed to what is already being done or proposed to be done. Section V examines current efforts to

[3] United Nations, "Addis Ababa Action Agenda of the Third International Conference on Financing for Development (Addis Ababa Action Agenda)", A/RES/69/313, 17 August 2015, paragraph 46.
[4] United Nations, "Comprehensive High-level Midterm Review of the Implementation of the Istanbul Programme of Action for the Least Developed Countries for the Decade 2011-2020", A/CONF.228/L.1, 23 May 2016, paragraph 67.

modify or re-conceptualize existing constraints current providers of PRI face and provides examples of such efforts. Finally, a discussion of pricing of PRI products is followed by an examination of the pros and cons of a more explicitly subsidized regime underlying PRI underwriting in the case of the LDCs.

## I. COMMERCIAL RISKS DOING BUSINESS IN LDCs

The kinds of **government-related risk** that investments in LDCs, and developing countries generally, face are (as suggested by the World Bank[5]):

- Contractual risk e.g. payment risk, performance risk, etc.
- Regulatory risk e.g. change in law, negation or cancellation of license, tariff adjustments, etc.
- Currency risk e.g. devaluation, convertibility, transferability, etc.
- Political risk e.g. expropriation, war and civil disturbance, etc.

**Non-government-related risks** include commercial risks, such as payment and performance risk with respect to private sector local partners, volatility in currency or commodity markets, as well as risks related to natural and man-made disasters and catastrophes.

A recent World Bank Report[6] noted that: “international investors prioritize political stability, security, macroeconomic conditions, and [a] conducive regulatory environment when deciding where to make investments...”.[7] This statement provides a convenient snapshot of what is most important to international investors, conversely what risks concern them most. These risks have a common factor that can largely be summed up in one word: “instability.” Investors can tolerate a great deal if the prospect for economic gains is good and the economic environment in which they operate is relatively stable. This applies to security risks as well, where known security risks can be met with the appropriate methods to control such risks. It is risks that are not quantifiable and hence are not subject to reasonable cost/benefit analyses that make even the boldest international investors wary. Indeed a 2013 MIGA survey (see Table 1 below) makes this clear. This is also true for investors in LDCs and other fragile countries "When it comes to the investors actively operating in FCS [Fragile and Conflict Situations] countries, their concerns

[5] World Bank, “Guarantees Program”, available at http://www.worldbank.org/en/programs/guarantees-program
[6] World Bank. 2018. Global Investment Competitiveness Report 2017/2018: Foreign Investor Perspectives and Policy Implications. Washington, DC: World Bank
[7] See World Bank, October 25th, 2017 Press Release, retrieved from: http://www.worldbank.org/en/news/press-release/2017/10/25/reducing-risks-in-developing-countries-is-key-to-spur-investment-and-growth

appeared to be more focused on unexpected and arbitrary changes in government policies against their investments, rather than the security issue itself".[8]

While a "business-friendly legal and regulatory environment"[9] are helpful in attracting investment, lack of stability in key factors driving FDI (identified by the World Bank as: the local political environment, macroeconomic conditions and/or conditions related to security) will most certainly deter FDI.

**Table 1: 2013 MIGA survey of Investors in Developing Countries**

| Issue | Respondents Concerned |
|---|---|
| Adverse Regulatory Changes | 58% |
| Breach of Contract | 45% |
| Transfer & Convertibility Restrictions | 43% |
| Civil Disturbance | 33% |
| Non-honoring of Financial Obligations | 31% |
| Expropriation | 24% |
| Terrorism | 13% |
| War | 7% |

Source: MIGA-EIU Political Risk Survey, 2013, page 68, available at:
https://www.miga.org/documents/WIPR13.pdf

## Project Cycle Risks

Major projects in LDCs and developing countries often face serious difficulties that can delay, cause cost over-runs or cause total failure of projects. Beyond the normal commercial and country specific risks major projects are subject to significant risk related to their complexity versus the availability of appropriate human resources, especially skilled and managerial resources as well as weaknesses in physical infrastructure.[10]

---

[8] Kyoo-Won Oh, Reflections on Investment Prospects for Countries Facing Fragility and Conflict, 2015, available at: http://blogs.worldbank.org/miga/reflections-investment-prospects-countries-facing-fragility-and-conflict
[9] Ibid.
[10] See UNCTAD, *Foreign Direct Investment in LDCs: Lessons Learned from the Decade 2001-2010 and the Way Forward* (2011), pp.26-28.

It is particularly noteworthy that most of these problems are either related to incorrectly performed planning, design or work, or related to other matters that delay the project. Thus, the over-arching generalizable risk to major projects in LDCs (and developing countries more generally) is excessive delays that drive up costs or make a project non-viable due either to cost over-runs or longer-term changes in the political environment adverse to the project.

**Cumulative Sovereign Liability**

Major projects that are excessively delayed, experience serious cost over-runs or which fail *in toto* bear a key relationship to another issue that LDC and developing country governments often end up facing. That issue is the accumulation of sovereign guarantees and obligations resulting from investment projects taking place within a host country. If many projects either fail or prove uneconomic, they generate no positive cash-flows and create too few or no benefits for the host economy, but leave the host government burdened with guarantees and obligations they must honor. As these obligations not correlated with economic returns accumulate, such an accumulation of obligations, when it becomes large enough, can impact on such a country's ability to borrow for future projects and hence, that country's ability to find the investment needed to foster future development.

**Available responses**

The development community has responded in different ways to situations where government-related or non-government related risks may make developmentally desirable projects too risky for private foreign investors. One obvious response is for multilateral development banks to provide direct project finance for such ventures; in the case of the poorest countries such finance may be through aid, or overtly concessional lending. Alternately, the World Bank Group's International Finance Corporation (IFC), multilateral and regional development banks (or indeed possibly development agencies or entities of individual states) could take equity positions in private ventures in developing countries, thus sharing risk with private foreign investors. In addition, these institutions offer several types of guarantees to cover for debt service default and aimed at increasing investors' access to credit. The IFC[11] offers several guarantee/insurance products including:

[11] See World Bank Group, Guarantee Products, Guidance Note, April 2016, available at: https://ppp.worldbank.org/public-private-partnership/sites/ppp.worldbank.org/files/documents/PPPCCSA_WBGGuarantees_Final%20_%20English%20_Printed%20Oct%202016.pdf

• Partial and Full Credit Guarantee – covering non-payment by private borrowers;
• The Global Trade Finance Program covering non payment by banks issuing letters of credit for import/export transactions and credit enhancement guarantees, such as guarantees of bid and performance bonds;[12] and
• Local currency guarantees.

The International Bank for Reconstruction and Development (IBRD) and the International Development Association (IDA) both part of the World Bank Group offer includes:

> Partial Risk Guarantees (PRG) to support private sector investment projects, including Public-Private Partnership (PPP) projects, green-field and rehabilitation/expansion projects, concession and privatization transactions. PRG can be structured to protect lenders of limited-recourse project finance debt, or to protect the project company ("Letter of Credit" or "Deemed Loan" PRGs). PRGs are available to all IBRD and IDA countries;
>
> Partial Credit Guarantees (PCG) to support commercial borrowing of either the government or non-government borrower (e.g. state-owned utilities, banks) chiefly in support of public investment projects; and
>
> Policy-Based Guarantees (PBG), which is a version of a PCG in support of commercial borrowing of the government for budget financing and to support a reform program. PCGs and PBGs only to IBRD-eligible countries.[13]

Taken together these programs address a wide range of both government (and to a lesser extent) non-government related risk. However, they also require a counter sovereign guarantee (except for IFC products) and thus do not address the problem of the cumulative sovereign liability build-up.

As a general matter guarantee programs are designed so as to be accessible to all developing countries, including LDCs, although there are some products where access is reserved to IDA countries (which include all LDCs except Angola[14]). Weather and geological risk, or risk of other disasters or catastrophes, is notable by its absence. This leads to dependence on private insurance markets, whose products in this area are likely to be too expensive for most developing

---

[12] See Global Trade Finance Program (GTFP) available at: https://www.ifc.org/wps/wcm/connect/industry_ext_content/ifc_external_corporate_site/financial+institutions/priorities/global+trade/gtfp

[13] See World Bank Group, Guarantee Products, Guidance Note, April 2016, available at: https://ppp.worldbank.org/public-private-partnership/sites/ppp.worldbank.org/files/documents/PPPCCSA_WBGGuarantees_Final%20_%20English%20_Printed%20Oct%202016.pdf; "World Bank Guarantee Program", World Bank, 2012, available at: http://siteresources.worldbank.org/INTGUARANTEES/Resources/HighlightsWBGProgramforConsulJan252012.pdf.

[14] See http://ida.worldbank.org/about/borrowing-countries and https://policies.worldbank.org/sites/ppf3/PPFAnnex/993431d6-2d14-406e-a923-69984923e494Annex2.pdf

countries, and certainly the LDCs.[15] One interesting exception is a World Bank project based in Kazakhstan, where the Bank has, with local insurance company partners and the Swiss Secretariat for Economic Affairs, launched the *South East Europe Catastrophe Risk Insurance Facility*.[16] In addition, the World Bank Group's *Global Index Insurance Facility* provides index insurance in particular to small agricultural producers and in certain other circumstances, with many of the programs in LDCs; index insurance provides a fixed payout in the case of a certain climatic or geological event occurring (rainfall above a certain level, drought, earthquake of a certain strength, etc.).[17] This avoids the complexity of pricing moral hazard, and the cost and delay in assessing the insureds' actual loss, and thus reduces insurance costs to a range that is affordable for agricultural producers in LDCs.

## II. **POLITICAL RISK INSURANCE**

Political Risk Insurance (PRI), as it is generally understood, provides coverage for a range of **government-related risks**; these may include what could be called political risk in the narrow sense (war, revolution, insurrection), as well as sovereign non-payment of obligations, some regulatory risks, and currency risks related to transfers and convertibility. Political risk insurance is offered by multilateral institutions, such as MIGA, states,[18] and by private insurance companies.[19]

---

[15] Marcelo Guigale, "Time to Ensure Developing Countries Against Natural Disasters", World Bank, October 2017, available at: http://www.worldbank.org/en/news/opinion/2017/10/11/time-to-insure-developing-countries-against-natural-disasters.

[16] "World Bank to support development of catastrophe risk insurance market infrastructure in Kazakhstan", World Bank, April 6, 2016, available at: http://www.worldbank.org/en/news/press-release/2016/04/08/world-bank-to-support-development-of-catastrophe-insurance-market-infrastructure-in-kazakhstan.

[17] See Global Index Insurance Forum, available at: https://www.indexinsuranceforum.org/.

[18] Most developed countries and emerging economies provide PRI through their Export Credit Agencies or similar entities, such as the Overseas Private Investment Corporation of the U.S. or the German investment guarantee scheme operated by a consortium formed by PricewaterhouseCoopers Aktiengesellschaft Wirtschaftsprüfungsgesellschaft (PwC) and Euler Hermes Aktiengesellschaft.

[19] Private providers of PRI cover the same risks as public sector providers but without reliance on government or other guarantees. As a result, private sector providers reliant on investor/owner provided capital have traditionally provided limited coverage to the LDCs due to perceived issues of risk and cost. It must also be noted that private sector players providing underwriting services in LDCs have been extremely discrete about their activities in past. However, the growth of the private sector industry and client-side demand have (over the last decade) led major players in the private industry (e.g. Arthur J. Gallagher & Co. (AJG)) to provide coverage to projects in LDCs either on a per project or 'bundle of projects' basis where coverage of deals in an LDC or LDCs is part of the overall bundle of coverage.

## II.a. WORLD BANK GROUP MULTILATERAL INVESTMENT GUARANTEE AGENCY: MIGA

MIGA was established in 1988 when the MIGA Convention entered into force. The Convention Preamble defines MIGA's core mission as "to enhance the flow to developing countries of capital and technology for productive purposes under conditions consistent with their developmental needs, policies and objectives, on the basis of fair and stable standards to the treatment of foreign investment." Between 2009 and 2017 MIGA has issued a gross amount of over US$2,5 million to LDCs of PRI or Non-honoring of Sovereign Obligation cover. Projects include 11 in South Asia (5 in Afghanistan and 6 in Bangladesh), 1 in the Middle East & North Africa (Djibouti) and 67 in Sub-Saharan Africa.

### Underwriting criteria

*Eligibility*[20]

MIGA insures cross-border investments made by investors from 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 that country. Corporations and financial institutions are eligible for coverage if they are either incorporated in, and have their principal place of business in, a member country or if they are majority-owned by nationals of member countries. A state-owned company is eligible if it operates on a commercial basis. An investment made by a non-profit organization may be eligible if it is carried out on a commercial basis.

MIGA insures both new and existing investments. 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.

*Covered Investment Types*[21]

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.

[20] Retrieved from https://www.miga.org/investment-guarantees/overview/eligibility/
[21] Retrieved from https://www.miga.org/investment-guarantees/overview/terms-and-conditions/

In keeping with MIGA's objective of promoting economic growth and development, investment projects must be financially and economically viable and meet MIGA's social and environmental performance standards.

It must also be noted that MIGA encourages investors to contact them directly to discuss the type of coverage as well as its potential duration and amount.

There are five available types of guarantee available. The first two types are contracts of guarantee for equity investments and shareholder loans. The third type a guarantee for non-shareholder loans incudes cover for three major situations:

- Non-Honoring of a Financial Obligation by a State-Owned Enterprise
- Non-Honoring of a Sovereign Financial Obligation (Government Guarantor)
- Non-Honoring of a Sovereign Financial Obligation (Government Borrower)

The final two types of guarantee are versions of the first two but geared for the "Small Investment Program."

*Risk Coverage*[22]

MIGA offers coverage for five non-commercial risks. Coverages may be purchased individually or in combination.

Currency Inconvertibility and Transfer Restriction

Protects against losses arising from an investor's inability to legally convert local currency (capital, interest, principal, profits, royalties, and other remittances) into hard currency (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*. In the event of a claim, MIGA pays compensation in the hard currency specified in the contract of guarantee.

Expropriation

Protects against 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- are also covered. Coverage is available on a limited basis for partial expropriation (e.g., confiscation of funds or tangible assets).

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

[22] Retrieved from: https://www.miga.org/investment-guarantees/overview/types-of-coverage.

War, Terrorism, and Civil Disturbance

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. 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 neither being replaced nor 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.

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 would pay unavoidable continuing expenses and extraordinary expenses associated with the restart of operations and lost business income or, in the case of loans, missed payments.

Breach of Contract

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. In the event of an alleged breach or repudiation, the investor should invoke the dispute resolution mechanism (e.g., an arbitration) set out in the underlying contract. 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 would pay 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.

For non-payment of an award, MIGA would pay the investor's interest in the award. For denial of recourse, MIGA would pay the investor's interest in the amount which, according to MIGA's claims determination, the host government would have to pay to the investor pursuant to the contract. In either case, MIGA's compensation would be capped by the amount of guarantee stated in the guarantee contract.

Non-Honoring of Financial Obligations

Protects against losses resulting from a failure of a sovereign, sub-sovereign, or state-owned enterprise to make a payment when due under an unconditional financial payment obligation or guarantee related to an eligible investment. It does not require the investor to obtain an arbitral award. This coverage is applicable in situations when a 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.

*Coverage levels*

As of 2017, for any given project in a developing country MIGA can provide underwriting up to a value of US$250M before needing to go to syndication of risk to cover any excess.

MIGA has the capacity to reinsure itself allowing it to cover risks in excess of the maximum US$250 million capacity it can provide to any given project. The agency regularly forms syndicates of both private and public sector insurers to facilitate this. MIGA has two specific programs to support syndication and risk sharing: Facultative Re-insurance (FACRE) and Cooperative Underwriting Program" (CUP).[23]

In recent years, MIGA has launched programs that reflect the logic that PRI needs to be adapted, in some instance to reflect special needs or circumstances that may not be met through MIGA's standard procedures and guidelines for underwriting. This recognition is important in the context of LDCs: adapting PRI products to smaller investments, introducing flexibilities to support investment in conflict-affected states, and introducing the possibility of subsidized or concessional PRI premia in the case of projects in poor countries (IDA recipients) all in particular ways address, if not explicitly, circumstances common in LDCs.

However, the underwriting restrictions of specific programs, such as the Conflict Affected and Fragile Economies Facility (CAFEF) and the Small Investment Programme (SIP) are significant. CAFEF underwriting is limited primarily by the size of the facility as opposed to specific underwriting limits other than the normal limits that MIGA sets for all projects. SIP, by contrast, has a specific program limit of US$10million in underwriting guarantee although the actual loan amount involved may exceed this sum. Eligible SMEs may have no more than 300 employees, and no more than US$15 million in assets and/or annual turn-over.

## II.b. REGIONALLY FOCUSED PRI: THE EXAMPLE OF AFRICA

Thirty-three out of fort-seven LDCs are in Africa. Regionally-focused initiatives offer the opportunity to develop PRI products that reflect the characteristics of the region, including the specific challenges for sustainable development. *The African Trade Insurance Agency* (ATIA) was created in 2001, within the framework of the Trade Finance Facilitation Project of the World Bank. The ATIA's mandate is to is to help increase investments into its member countries and

[23] Retrieved from: https://www.miga.org/Pages/Investment%20Guarantees/Reinsurance.aspx. August 2017.

two-way trade flows between Africa and the world.[24] PRI is offered for up to 10 years, with coverage including those events typically covered by other PRI providers, including expropriation and political violence. Cover can be provided for up to US$100 million, and for up to 10 years. There is no minimum transaction or investment size, which makes ATIA products particularly suitable for the smaller investments more typical of LDC destination countries (aside from extractive industries). The ATIA's 2015 Annual Report gives examples of investment projects provided with insurance cover, including PRI in many cases, in the following LDCs: Benin, Burundi, the Democratic Republic of the Congo, Madagascar, Malawi, Rwanda and Zambia. The ATIA also conducts insurance operations in Ethiopia. Insurance cover was provided for projects valued as little as US$1,6 million and as much as US$110 million. It is notable that 7 of the 10 Member Shareholders of the ATIA are LDCs. In 2015, the ATIA had a gross exposure of $1.7 Billion US (both trade and investment). Ethiopia's membership in the ATIA was funded by a loan from the ATIA itself - perhaps a precedent that could be followed to enable the membership of further LDCs from the region.

That an LDC-dominated PRI provider has been able to operate on an actuarially and financially sound basis, and in fact become profitable while expanding and increasing its exposure substantially, suggests there is no inherent reason why PRI is not suitable as a means of managing political risk in LDCs.

The Islamic Corporation for the Insurance of Investment and Export Credit (ICIEC), a member of the Islamic Development Bank Group, provides PRI on investments in a number of LDC destination countries in the African region. LDC members of the ICIEC are: Bangladesh, Yemen, Djibouti, Burkina Faso, Gambia, Mozambique, Niger, and Senegal. Investment political risks covered are typical: "war and civil disturbance, expropriation, currency transfer and convertibility restrictions, and breach of contract." According to the 2016 Annual Report, 3 of the top 10 countries in terms of the value of new insurance commitments were LDCs: Sudan, Mali and Senegal.[25] The ICIEC also provides re-insurance support that assists LDC projects in obtaining affordable PRI. The ICIEC has initiatives that indicate an awareness of the importance

[24] Art 4(1) of the 2012 edition of the Agreement Establishing the African Trade Insurance Agency states: "The object and purpose of the Agency is to provide, facilitate, encourage and otherwise develop the provision of, or the support for, insurance, including coinsurance and reinsurance, guarantees, and other financial instruments and services, for purposes of trade, investment and other productive activities in African States in supplement to those that may be offered by the public or private sector, or in cooperation with the public or private sector." (available at: http://ati-aca.org/wp-content/uploads/2017/10/English-Treaty.pdf)

[25] See ICIEC, 2016 Annual report, available at: http://www.iciec.com/sites/default/files/ICIEC%20AR%202016%20%28ENGLISH%29_0.pdf

of making insurance products accessible to SMEs and increasing visibility of its activities.[26] Like the ATIA, the trend with ICIEC is one of growth, but on a financially sound basis.

## III. STRENGTHS AND LIMITATIONS OF THE EXISTING INTERNATIONAL POLITICAL RISK INSURANCE MARKET FROM AN LDC PERSPECTIVE

MIGA and other PRI providers have been increasing the supply of PRI cover in recent years, reflecting recognition that the market can be significantly expanded, while maintaining a sound economic model. However, anecdotal evidence suggests that particularly in the case of LDCs there is an important question of awareness by the relevant decision-makers, including government officials and potential foreign investors, about PRI products. SMEs in particular may be unaware of the possibility of PRI, associating it exclusively with large infrastructure or extractive sector projects.

For instance, in 2010, an independent consulting firm did an assessment of the ATIA. Unfortunately, this evaluation does not systematically distinguish between the ATIA's PRI investment insurance products and other kinds of products, such as trade transaction insurance. But two concerns raised by the Report should be noted, even though the overall assessment is highly positive. First, the ATIA has "low visibility," limiting its ability to support investment where needed; second, "pricing remains out of reach for the SME sector and it needs to develop new and agile products to address this concern, through training and streamlining of processing."[27] A further recommendation of the Report was that the ATIA partners with private and non-state actors to diversify risks. (In section IV we address the opportunities that may be opened up by expanding partnerships between international PRI providers and the private PRI industry).

MIGA has made a number of efforts to address this awareness gap, including an agents and finders program that has now been discontinued. A new effort based on its participation (FY18 through FY20) in the WBG's "Cascade" approach "to systematically connect private financing with high-impact projects",[28] while worthy again does not address outreach to SMEs or

[26] Ibid.
[27] See International Financial Consulting, Africa Trade Insurance: Impact Assessment, 2010 available at: http://siteresources.worldbank.org/INTRANETTRADE/Resources/239054-1239120299171/5998577-1254498644362/6461208-1300202947570/AFR_Regional_Impact_Assessment.pdf
[28] Ghana Broadcasting Corporation, June 5, 2017. Retrieved from: https://news.ayekoo.com/1.11052496. October 8, 2017. In March 2017, the World Bank Group adopted the cascade approach as a concept to guide the WBG's effort to leverage the private sector for growth and sustainable development. See Forward look - A vision for the World Bank Group in 2030 - Progress and Challenges, prepared by the World Bank Group for the April 22, 2017

even larger enterprises potentially interested in IDA and LDC economies. MIGA has not attempted systematically to examine its underwriting criteria or practices in light of the special circumstances and needs of LDCs specifically. However, several programs of MIGA including the recently established Private Sector Window, that is a collaboration with two other World Bank arms, IDA and IFC, suggest an increasing recognition of the need for PRI products that differentiate the needs and circumstances of particular investors or countries, including the acknowledgement that the costs of PRI premia may be too prohibitive for some investments in poor countries. Each of these programs is relevant in particular ways to the situation of LDCs, and each deserves some examination.

**The Small Investment Programme**

MIGA administer a small and medium size enterprise (SME) Small Investment Programme (SIP). For an investment to be eligible for MIGA coverage under the Programme, the project enterprise must fulfill two of the following three criteria:

- no more than 300 employees
- total assets not more than $15 million
- total annual sales not more than $15 million

In all cases the investment guarantee must be US$10 million or less even if the covered project represents an investment amount larger than US$10 million.

Beyond specific program criteria projects must also meet the conditions of MIGA's regular guarantee program.[29] Under the SIP investors are "offered a package covering currency inconvertibility and transfer restriction; expropriation; and war, terrorism, and civil disturbance." By contrast with MIGA coverage for larger project, fully complete applications should not take longer than 8 weeks to process.[30]

Due to the fact that SIP funded cover is more heavily subsidized than regular MIGA cover, the SIP program represents annual losses each year on MIGA's accounts. While this is intentional, it is of note as MIGA has an overall mandate to balance its books. SIP coverage is by definition in small amounts but it aims to have a large impact in its support for SMEs. An example of a

---

Development Committee Meeting. See also Mahmoud Mohieldin, Senior Vice President of the World Bank who stated: "To better sequence our interventions, we've developed a "cascade approach" to investment decision-making to encourage private sector participation, while leveraging and preserving scarce public dollars for critical public investments." (http://www.worldbank.org/en/news/speech/2017/03/15/remarks-wbg-svp-mahmoud-mohieldin-at-ceo-summit-sustainability-leadership-conference-2017).

[29] See Small Investment Program, at: https://www.miga.org/investment-guarantees/small-investment-program

[30] Ibid.

recent SIP supported project announced in March of 2017, is MIGA's support for strengthening Burundi's competitiveness in the global coffee market. Burundi's US$5.6 million guarantee supports the further development of coffee local coffee distributors. These companies allow local smallholder farmers growing coffee beans to find markets as well as technical support in aid of increasing quality of product. Additionally, the growth of these coffee distributorships and support for the smallholders supports Burundi's 2009 initiative to privatize the country's coffee industry, an industry that "is estimated to support the livelihood of over 30 percent of the population."[31]

**The Conflict Affected and Fragile Economies Facility**

The Conflict Affected and Fragile Economies Facility (CAFEF) was founded in 2013 with the stated goal to support "...projects in labor-intensive industries, such as agribusiness and light manufacturing, the Facility will strive to promote direct job creation. Its support to infrastructure projects will underpin further private sector investment and also lead to direct and indirect employment generation."[32]

The CAFEF was created with funding from three founding nations: Canada, the UK and Sweden. Over its 20-year planned lifespan the facility was intended to and does operate as a first loss mechanism, enabling higher risk assumption by MIGA and the ability to insure more projects. Its founding capital was US$80million which allowed support of US$400million in aggregate risk mitigation.[33] By then end of 2015 its capital had increased to US$90million.[34]

Eligibility for the CAFEF is restricted to "fragile and conflict-affected states." According to a Canadian government report, the goal of CAFEF is to support up to 25 projects in its first five years of operation.[35] The terms and conditions for underwriting appear to be the standard terms for any MIGA supported projects although details appear closely held.[36]

---

[31] MIGA, MIGA Guarantees Help Strengthen Burundi's Competitiveness in Global Coffee Market**, Retrieved** from: https://www.africaglobalfunds.com/news/asset-servicing/miga-guarantees-help-strengthen-burundis-competitiveness-in-global-coffee-market--/

[32] MIGA Press Release, MIGA Approves new Facility for Conflict-Affected and Fragile Economies, April 10, 2013, available at: http://www.worldbank.org/en/news/press-release/2013/04/10/miga-approves-new-facility-for-conflict-affected-and-fragile-economies

[33] Retrieved from: http://www.brettonwoodsproject.org/2013/06/art-572737/.

[34] UK Department for International Development, Annual Review on CAFEF, June 2016 (available at: https://devtracker.dfid.gov.uk/projects/GB-1-203331/documents).

[35] Retrieved from: http://w05.international.gc.ca/projectbrowser-banqueprojets/project-projet/details/m013808001. August 2017.

[36] Retrieved from: https://www.gov.uk/guidance/conflict-affected-and-fragile-economies-facility-cafef. August 2017.

"As of December 2017, MIGA had issued 10 guarantees (cumulative) using CAFEF resources. … Sectors supported by MIGA guarantees using CAFEF include energy, services, financial sector and telecom in FCAS markets like the Democratic Republic of Congo (DRC), West Bank and Gaza, Iraq, Myanmar, South Sudan and Sierra Leone."[37]

**The Private Sector Window**

The 18th IDA replenishment (IDA18) included the establishment of a new IDA-IFC-MIGA Private sector window (PSW)[38] with a specific objective of expanding: "private investment in IDA-only countries, with a particular focus on Fragile and Conflict Affected States (FCS)."[39] Inspired by CAFEF,[40] the Window was created based on the specific recognition that: "the private sector is central to achieving the Sustainable Development Goals (SDGs) and IDA18 objectives."[41] This objective to be achieved by "de-risking at both the country and transaction levels." In sum, "its intent is to provide an option where no other commercial financial solutions are available and potential for development impact is high."[42] Furthermore, the PSW "is a key pillar of IFC's 3.0 strategy, which aims to tackle difficult development challenges by creating markets and mobilizing private investors."[43]

The PSW is deployed through four facilities (See Table 2 for an overview):

(1) a Risk Mitigation Facility (RMF) to provide project-based guarantees without sovereign indemnity to crowd-in private investment in large infrastructure projects and public private partnerships (PPPs) supported by IFC;

(2) a MIGA Guarantee Facility (MGF) to expand the coverage of MIGA guarantees through shared first-loss and risk participation akin to reinsurance;

(3) a Local Currency Facility (LCF) to provide long-term local currency investments through IFC in countries where capital markets are not developed and market solutions are not sufficiently available; and

(4) a Blended Finance Facility (BFF) to blend PSW support with pioneering IFC investments across sectors with high development impact, including small and medium enterprises (SMEs), agribusiness, health, education, affordable housing, infrastructure, climate change mitigation and adaptation, among others. [44]

[37] UK Department for International Development, Annual Review on CAFEF, February 2018 (available at: https://devtracker.dfid.gov.uk/projects/GB-1-203331/documents).
[38] IDA18 IFC-MIGA Private Sector Window, retrieved from: http://ida.worldbank.org/financing/ida18-ifc-miga-private-sector-window,
[39] IDA18 IFC-MIGA Private Sector Window, retrieved from: http://ida.worldbank.org/financing/ida18-ifc-miga-private-sector-window.
[40] UK Department for International Development, Annual Review on CAFEF, February 2017
[41] IDA18 IFC-MIGA Private Sector Window
[42] IFC Spokesman, Fred Jones, May 11, 2017. Retrieved from: https://www.cgdev.org/blog/please-can-you-help-me-understand-idas-new-private-sector-window, October 08, 2017.
[43] Ibid.
[44] IDA, retrieved from: http://ida.worldbank.org/financing/ida18-ifc-miga-private-sector-window

**Table 2: PSW Facilities**

| Facility | Instruments offered to end-use clients | Sector(s) | Additionality | Indicative Allocation (US$ M) |
|---|---|---|---|---|
| **Risk Mitigation Facility** | Project-based guarantees without sovereign indemnity, to private sector transactions with IFC origination and participation | Infrastructure (power, water & sanitation, transport & logistics, municipal infrastructure, telecom, and natural resource-related infrastructure) & PPPs | Increased investment in PSW-eligible countries above IFC's baseline. Expanded uses for existing guarantee products | $1,000 |
| **MIGA Guarantee Facility** | MIGA political risk insurance products to private sector | Infrastructure (power, water & sanitation, transport & logistics, municipal infrastructure, telecom and natural resource-related infrastructure), agribusiness, manufacturing and services, financial markets & PPPs | Increased MIGA-supported investment and risk participation in PSW-eligible countries above MIGA's baseline | $500 |
| **Local Currency Facility** | Local currency denominated loans to private sector clients (e.g., financial intermediaries that lend to SMEs) who operate in markets where there are limited currency hedging capabilities | Sectors will be linked to the underlying loans | Enables local currency financing for clients in PSW-eligible countries (e.g., SMEs) who operate in markets where there are limited currency hedging capabilities<br>Development of local currency financing instruments, risk mitigation, and capacity building | $400 |
| **Blended Finance Facility** | Loans, subordinated debt, equity, guarantees and risk sharing (to private sector) | High-impact pioneering investments across sectors (e.g., SMEs, access to finance, infrastructure, agribusiness & manufacturing, health & education, affordable housing, telecom and technology, climate change, municipal finance, etc.) | Increased investment in PSW-eligible countries above IFC's baseline<br>Blended finance investments in new sectors and to underserved client base (e.g., early-stage and women-owned SMEs)<br>Expanded uses for existing products (e.g., longer tenors) | $600 |

[Source: IDA, retrieved from: http://ida.worldbank.org/financing/ida18-ifc-miga-private-sector-window ]

The new PSW founded in April 2017 has initial funding of US$2.5billion with US$2 billion going to the IFC and US$500 million to MIGA. This capital will *reduce* the IDA's capital by a like amount which illustrates the heightened appetite for risk involved.

Of the three programs just discussed, the PSW is, in our view, clearly the most innovative and promising for LDCs. First of all, the PSW goes beyond the traditional approach of World

Bank guarantees by not requiring sovereign indemnities. This directly addresses the challenge of cumulative sovereign liabilities that we set out in Section I. Second, the PSW also recognizes the significance of currency risk over that covered by MIGA-type PRI, which is primarily concerning convertibility and transfers, i.e. general exchange rate volatility, by offering local currency loans. Third, as a conceptual matter, the PSW blending of traditional PRI products with other instruments that cover risks not traditionally insured under PRI may suggest a new paradigm, which better reflects the reality that political risk cannot in the context of LDCs particularly be disassociated with other kinds of risk, including contractual and default risk.

The multiplication of different kinds of PRI products adapted to different markets and circumstances is a positive development from the perspective of supporting foreign investment in LDCs. There is a downside risk, however, that potential investors as well as states may face information costs in comparing political risk products and coming to an understanding of what products or combination of products is optimal for their project. At the same time there is a strong perception that PRI is priced out of reach of many LDC projects that nevertheless have significant economic potential. The major constraint on pricing is the need to meet commercial prudential standards and maintain the underwriter's financial viability by generating adequate premium income to cover overhead and potential losses. The strongest advantages to this type of pricing scheme for official sector insurance providers is that it makes funding countries happy, while attracting a candidate pool for coverage of commercially potentially viable projects in LDCs and developing countries. The PSW suggests a partial departure from this model, by introducing an element of concessionality into the pricing of PRI in order to "crowd in" private FDI. The important issue is whether one could move farther in the direction of a concessionality or aid model for PRI in the case of LDCs. For example, might concessionality extend beyond premia to the terms and conditions of PRI? For instance, in the case of *national* PRI providers, Zampetti and Polanco Lazo suggest:

> Existing PRI policies often restrict the available cover up to a maximum ceiling (often 90 percent of the loss), exclude certain risks (such as currency devaluation risk, inflation risk (considered commercial risks), exclude losses due to violence not undertaken for political purposes, [footnote omitted] to lawful (non-discriminatory) regulation or taxation), to 'partial' expropriation, impose eligibility requirements (such as the conclusion of a Bilateral Investment Treaty with the host country) or prohibitions (preventing coverage for investment that may displace home country employment), and provide for compensation of loss limited to the 'book value' of the insured investment (thus excluding compensation for future income lost). [footnote omitted] These and similar limitations could be modified in order to provide larger and more attractive PRI coverage for foreign investors in the LDCs. For instance, higher than 90 percent coverage or compensation based on the discounted cash

flow method instead of the book value could be considered. Similarly, lower or subsidized premium costs for investors to the LDCs could be envisaged as an incentive element towards investing in these countries.[45]

With respect to CAFEF, an evaluation by the United Kingdom suggests that "more can be done to improve MIGA's effectiveness in FCAS."[46] The UK particularly believes that MIGA needs to be less reactive and more "hands-on" when it comes to business development. The U.K offers as an example the efforts to build closer relationships with private equity funds that focus on FCAS. The U.K. is also concerned that lessons learned in this area be passed on to the PSW.

## IV. POSSIBLE IMPROVEMENTS IN EXISTING PRI FACILITIES THAT COULD SUPPORT GREATER ACCESS TO PRI FOR FDI IN LDCs

As noted above, MIGA has made a number of efforts to address inadequate awareness of PRI. A new effort based on its participation (FY18 through FY20) in the WBG's "Cascade" approach "to systematically connect private financing with high-impact projects"[47] while worthy, again does not address outreach to SMEs or even larger enterprises potentially interested in investing in IDA and LDC economies. Thus, it is arguable that much more can be done, especially in the case of LDCs. Aggressive market outreach programs could be devised that especially target sectors and businesses that until now have made little use of PRI.[48] Market research could be undertaken to determine, apart from unawareness or misconception about PRI products, what the main reasons are why foreign investors, and their partners in LDCs, do not make more use of PRI products. While investment treaties and investor-state dispute settlement have a high public and media profile, and are extensively studied in academia and policy institutions, PRI, and the broader issue of risk management for foreign investment are not. Here, it is well worth working with media and public relations organizations that have executed successful information and marketing campaigns in LDCs. The objective would be to foster a government, business and

[45] Americo Zampetti and Rodrigo Polanco Lazo, Encouraging Sustainable Foreign Investment to the LDCs: Options for Support, United Nations Office of the High Representative for the Least Developed Countries, Landlocked Developing Countries and Small Island Developing States, Occasional Policy Papers Series on the Least Developed Countries, No. 3, 2018, p. 24.

[46] UK Department for International Development, Annual Review on CAFEF, February 2017(available at: https://devtracker.dfid.gov.uk/projects/GB-1-203331/documents).

[47] Ghana Broadcasting Corporation, June 05, 2017. Retrieved from: https://news.ayekoo.com/1.11052496. "With the Cascade, a more systematic effort to secure private participation in infrastructure will be enabled. … Where risks remain high, the priority will be to apply guarantees and risk-sharing instruments." See Forward look - A vision for the World Bank Group in 2030 - Progress and Challenges, prepared by the World Bank Group for the April 22, 2017 Development Committee Meeting, page 3 and 6.

[48] Here, a lesson could be taken from the Overseas Private Investment Corporation of the U.S., which runs seminars around the country every year reaching out to SMEs and explaining what it can do for them.

"third sector" (academia, civil society, etc.) culture where PRI is regarded as an indispensable and normal part of the tool kit for investment promotion and risk management. MIGA and other insurers might make additional use of partnerships with institutions and agencies concerned with investment and development in LDCs to spread awareness and understanding of PRI products. This can expand impact, despite limited internal resources for outreach activities.

There is some evidence that the high cost of PRI products is due in part to high transactions costs for PRI, particularly PRI by private insurance providers. An OECD study observes:

> Transactions costs refer to the costs incurred when exchanging good and services. Transactions costs in the PRI sector tend to be high relative to other parts of the insurance industry. The reasons for this are:
>
> ● High cost risk evaluation and packaging. Political risk is "human, subjective, severe and unpredictable". The sources of this risk are multi-faceted (e.g. the behavior of governments and other political actors and national and sub-national levels; as well as sectoral and macroeconomic developments). Thus, unlike some other insurance sectors, PRI risk evaluators cannot rely primarily on "statistical" modeling; models need to be supplemented by situation-specific, qualitative analysis. This is an expensive process.
>
> ● High contracting and monitoring costs. PRI provides cover for what are often complex events unfolding over extended periods of time. Moreover, as noted above, the incentive effects of the insurance are multi-faceted and need to be managed carefully. This means that PRI contracts tend to be detailed and relatively non-standardised.
>
> ● High cost claims management. Incomplete contracting refers to the fact that, in most situations, it is impossible to write contracts in advance that are so detailed as to foresee all possible contingencies. In PRI, even with its relatively detailed insurance contracts, this is an important consideration. Disputes often occur as to how the contract applies to a particular political event. These are usually resolved by arbitration or mediation.[49]

With facilities such as the new IDA/IFC/MIGA PSW, it is possible for development-oriented governmental and intergovernmental institutions to make it more attractive for private PRI providers to operate in LDCs through reducing transactions costs for private providers. Participation by official institutions can reduce the cost to private insurers of participating in LDC markets not only through explicit risk sharing, but also through sharing of information about risk and the unique capacity of institutions like MIGA to harness knowledge

[49] Kathryn Gordon, Investment Guarantees and Political Risk Insurance, OECD Investment Policy Perspectives, 2008, page 95.

of, and relationships with, governments and the public sector in LDCs to avoid disputes or intervene to settle them early. If costs can be managed, private insurers have strong incentives to break into LDC markets, including the possibility of new opportunities for selling insurance products beyond PRI once they become known market participants. Rightly, public PRI providers have tended mostly not to regard private insurers as hostile competitors, but as partners in maximizing the positive development impact of PRI in supporting FDI in the developing world.[50]

In addition, to address the multiplication of different kinds of PRI products adapted to different markets and circumstances, a broker or advisory-type intermediate agency, which allows the assembling of the "right" package for a given project, given the range of products available and their different features and costs might be contemplated. Some private entities may de facto be playing something of this role, offering PRI products which are in part created through reinsurance or co-insurance (i.e. not simply their own products). Whether or not there is currently any specific institution that could properly play the broker role, there is arguably a need for building the capacity of LDC actors and prospective investors to the LDCs, including internationally-oriented SMEs, in comparison shopping for PRI, also with respect to the nature of the coverage required for the specific project. This could extend to raising awareness of the range of other risks, related to political risk, such as for example currency risk that would require specific risk-management or hedging strategies and the variety of options available to do that.

## V. THINKING OUT OF THE BOX: OPTIONS FOR BETTER ADDRESSING RISKS OF FDI IN LDCs BEYOND THE CONVENTIONAL POLITICAL RISK INSURANCE PARADIGM

There may be ways of reducing political risk to FDI in LDCs that are consistent with sustainable development goals but do not entail using conventional political risk insurance products. For example, it is often suggested that a significant part of the success of MIGA, is in its capacity to screen ex ante and then monitor projects for potential political risk, as well as early intervention to prevent disputes that lead to significant and costly claims. It is arguable that MIGA and perhaps other official institutions, including within the UN system, could provide risk management advisory services that might be offered even without PRI itself. As noted in this

[50] This may also be related to the fact that MIGA is mandated to operate on an actuarially sound basis thus implying the need for a certain number of projects with risk parameters that allow the overall institution to maintain fiscally sound underwriting practices.

study, MIGA, for example, already offers mediation services in some instances where it is not involved as an insurer. This is done, however, on a highly-selective, case-by-case basis. Possible expanded activities could include: helping to deepen LDC government expertise in the pre-screening and evaluation of projects to identify *ex ante* red flags, or aspects of the project that may lead to political risk (including potential environmental or social liabilities); developing, based on experience of past disputes and also of effective avoidance of disputes, a set of best practices for LDC governments and the public sector with respect to relationships with foreign investors (transparency, responsiveness, internal mechanisms to resolve conflict at an early stage, e.g. ombudsman-type institutions); deployment of good offices and expertise in official institutions to improve understanding between the parties and settle in an amicable way disputes before they become so contentious and acrimonious as to trigger litigation. It is understandable that moving more towards general provision of mediation services and related risk management products would stretch MIGA's existing resources and mandate and that its primary focus and responsibility would of course remain its insured projects; thus, spinning off an Advisory/Dispute Avoidance and Resolution arm from MIGA may be desirable. Such an independent entity could be a joint project of MIGA, IDA and IFC, for example, with a particular focus on LDCs, at least initially.

As noted above, the PSW already reflects the notion that in some instances concessional PRI premia may be desirable. The existing PRI model as reflected in MIGA and other public and private providers is one of cost-recovery/profitability. Premia reflect this model and, as has been widely observed, they may be prohibitively high for many LDC investments. Where FDI is seen as generating developmental benefits, where it is needed for essential infrastructure, or where there are identifiable positive spillovers (e.g. job creation, transfer of technology and knowhow etc.) there is an argument that such investments should be supported through subsidization of PRI premia. This would not necessarily entail the PRI provider being directly subsidized, or deviating from its model for determining premia. Rather, a fund could be established to provide subsidies on a case by case basis to reduce the cost of PRI for foreign investors. Subsidies could also be used to support forms of PRI or investment guarantees that do not require the provision of sovereign indemnities, which, in effect, are future liabilities of LDCs.

Third, there is value in considering expansion of the insurance model to addressing risks that are not typically insured under PRI, but which may be of great significance in the context of FDI in LDCs. We have already mentioned the existence innovative pilot programs for natural disaster insurance, for instance. And some forms of investment guarantees already extend to contractual non-performance by non-state actors, for example.

Finally, along the lines of index insurance, described briefly above in section I, there may be an opportunity to offer new products that are more like standard casualty insurance, not the bespoke products typical of PRI today, which as noted, entail considerable transaction costs related to project- and country-based risk assessment, monitoring, and dispute settlement. These products would provide for fixed payment if a specified event occurs, for example drastic devaluation of local currency. This kind of index insurance may be suited to situations where there is a large pool of insureds that are SMEs, a large number of smaller projects-which often reflects the reality of FDI in LDCs. Such insurance might well have a significant deductible, a payout which may be considerably less than the full losses suffered by the investor. The logic here is that in fact all investors are prepared to take on *some* amount of risk and self-insure it, while still being concerned with risks that (but for some reallocation to a third party insurer) would be catastrophic for the business if they materialize.[51] It is these latter situations that may impede developmentally positive investments.

[51] See the excellent discussion in Mapfumo, Groenendal and Dugger, *Risk Modeling for Appraising Named Peril Insurance Products-A Practioner's Guide*, World Bank, 2017, available at: http://documents.worldbank.org/curated/en/391871491551425586/pdf/114095-PUB-PUBLIC-PUBDATE-4-6-17.pdf

The 47 Least Developed Countries (LDCs) are Afghanistan, Angola, Bangladesh, Benin, Bhutan, Burkina Faso, Burundi, Cambodia, Central African Republic, Chad, Comoros, Dem. Rep of the Congo, Djibouti, Eritrea, Ethiopia, Gambia, Guinea, Guinea-Bissau, Haiti, Kiribati, Lao People's Dem. Republic, Lesotho, Liberia, Madagascar, Malawi, Mali, Mauritania, Mozambique, Myanmar, Nepal, Niger, Rwanda, Sao Tome and Principe, Senegal, Sierra Leone, Solomon Islands, Somalia, South Sudan, Sudan, Timor-Leste, Togo, Tuvalu, Uganda, United Rep. of Tanzania, Vanuatu, Yemen and Zambia.

The United Nations Office of the High Representative for the Least Developed Countries, Landlocked Developing Countries and the Small Island Developing States (UN-OHRLLS) was established by the United Nations General Assembly in 2001. The Office advocates in favour of the LDCs and mobilizes international support for the implementation of the Programme of Action for the Decade 2011-2020 for the LDCs.