Insuring Investments In Russia And Other C.I.S. Republics: OPIC And MIGA

Paul E. Comeaux, N. Stephan Kinsella *Jackson & Walker, L.L.P. Houston*

Although the Russian Federation's hydrocarbon reserves constitute over one third of the world total,[1] Russia currently lacks the capital, management, and technology to continue to effectively exploit these vast resources.[2] This situation creates an extraordinary investment opportunity for Western investors, whose capital and know-how will be vital to the future development of this industry.

However, an investor in the Russian Federation's petroleum industry, or the petroleum industries of any of the former Soviet Republics, faces substantial risk from a variety of sources. In addition to ordinary business risk, such as the risk of dry holes and soft markets, investors face political risk.[3] The risk of currency inconvertibility and expropriation, for example, is much greater than that experienced by investors in Western liberal democracies.

The investor can take some comfort, however, in the recently signed bilateral investment treaties ("BITs") between the U.S. and several of the C.I.S. Republics, which contain promises by these countries concerning the treatment of U.S. investors and investment.[4] In addition, if an investor has enough clout, it may be able to negotiate directly with the host state to receive contractual assurances that the law in place when the investor initially invested will continue to apply to the investor, and that disputes between the investor and the government will be settled in a neutral forum.[5]

Another way an investor can reduce political risk is to purchase political risk insurance. This insurance typically provides coverage against currency inconvertibility, expropriation, and war, and is available from a number of sources, including nationally-sponsored insurance agencies,[6] private insurers, and the World Bank's Multilateral Investment Guarantee Agency (MIGA). This article focuses on MIGA and on the U.S. government-sponsored insurance agency, the Overseas Private Investment Corporation (OPIC),[7] which are the insurance providers of the most interest to U.S. investors. In addition, this article briefly discusses several private insurers that offer political risk insurance.

OPIC[8]

OPIC, established under the Foreign Assistance Act in 1969,[9] is a self-sustaining U.S. government agency that provides political risk insurance, project financing through direct loans and loan guarantees, and a variety of investor services to U.S. investors. OPIC's insurance is backed by the full faith and credit of the United States, as well as by OPIC's own substantial reserves.[10]

OPIC services are available for U.S. investments in more than 139 developing nations, including Russia and most of the other C.I.S. Republics.[11] As of January 1993, OPIC had issued insurance coverage for five projects in Russia with a total exposure of $128 million.[12] Its goal is to encourage American overseas private investment in sound business projects, thereby improving U.S. global competitiveness, creating American jobs, and increasing U.S. exports.[13]

Risks covered by OPIC insurance

OPIC will insure both new ventures and expansions of existing enterprises, and can cover equity investments, loans, technical assistance agreements, leases, and other investment structures which subject the investor to long-term exposure.

The investor may purchase insurance coverage for one or more of the following three types of risks: (1) currency inconvertibility, which is the inability to convert profits and other remittances into U.S. dollars; (2) expropriation, which is the confiscation of the investor's property by the host state; and (3) political violence, which includes war, revolution, insurrection, and civil strife. In addition, OPIC offers specialized insurance coverage for certain specific types of investments, including specialized insurance for oil and gas-related investments.

Currency inconvertibility insurance coverage compensates investors if they cannot convert remittances from the local currency into U.S. dollars and transfer those remittance outside of the host country. It includes earnings, returns of capital, principal and interest payments, technical assistance fees, and other remittances related to investment projects. This coverage also extends to losses to the investor caused by discriminatory exchange rates.[14]

Currency inconvertibility coverage does not extend to the devaluation of a country's currency. In addition, the investor may only collect on currency inconvertibility insurance if the currency was convertible into U.S. dollars at the time the insurance was issued.[15]

Expropriation insurance protects against the nationalization, confiscation, or expropriation of an enterprise as well as creeping expropriation, which is defined as a series of illegal government actions that cumulatively deprive an investor of the financial interests in his investment.

Expropriation coverage excludes losses due to lawful regulatory or revenue actions by host governments and actions provoked or instigated by the investor or foreign enterprise.

For equity investments, the amount of compensation is based on the book value of the investment as of the date of expropriation. For loans, payment is based on outstanding principal and accrued interest.

Political violence insurance compensates for property and income losses caused by violence undertaken for political purposes. Examples of the types of violence covered are declared war, undeclared war, hostile actions by national or international forces, civil war, revolution, insurrection, and civil strife. Civil strife may be included or excluded from coverage, at the investor's option. Actions undertaken primarily to achieve labor or student objectives are not covered.

The insurance may cover one or both of two types of losses—business income losses and damage to property. An investor may purchase one or both coverages.

Business income loss coverage includes income losses resulting from damage to the investor's property caused by political violence. With an "off-site" rider, OPIC will compensate for income losses resulting from damage to specific sites outside the investor's facility. Compensation is based on expected net income plus continuing, normal operating expenses. OPIC also will pay for expenses that reduce the business income loss, such as renting a temporary facility. Compensation is paid until productive capacity is restored, for a time period not to exceed 1 year.

"Damage to property" compensation is based on the adjusted cost of the property or replacement cost. Adjusted cost is defined as the least of the original cost of the item, the fair market value at the time of loss, or the cost to repair the item. OPIC will pay replacement cost up to twice the equipment's original cost, provided the item is actually replaced in the host country.

Special oil and gas insurance

OPIC offers specialized insurance coverage to encourage petroleum exploration, development, and production in developing countries. In addition to insurance coverage for the risks discussed above, an investor may purchase "exploration" coverage and "interference with operations" coverage.

Exploration coverage expands expropriation coverage to insure against losses due to material changes unilaterally imposed by a host government on project agreements. This includes an abrogation, impairment, repudiation, or breach of concession agreements, production sharing agreements, service contracts, risk contracts, and other agreements between the U.S. company and the host state. Such actions must last for at least 6 months and prevent the insured from effectively exercising its fundamental rights with respect to the project agreement, such as rights to take and export petroleum or to be paid for it. The coverage also compensates for tangible assets and bank accounts that are confiscated.

Interference with operations coverage expands political violence coverage to insure against cessation of operations for 6 months or more caused by political violence. Compensation for such cessation is based on the amount of investment, less returns of capital. Compensation must be repaid to OPIC, without interest, if within 5 years the political violence has abated and the insured can resume operations.

Eligibility for OPIC insurance

OPIC political risk insurance may only be issued if the investor, the country being invested in, and the investment itself meet OPIC's requirements. In addition, OPIC will take certain political requirements into account.

To be eligible for OPIC insurance, an investor must be either a U.S. citizen; a corporation, partnership, or other association created under the laws of the U.S., its states, or territories, which is beneficially owned by U.S. citizens; or a foreign business at least 95% owned by U.S. citizens or by associations owned by U.S. citizens.

An investment project qualifies for OPIC insurance coverage if the investment is a new investment, a privatization, or an expansion or modernization of an existing plant or investment. Acquisitions of existing operations are eligible if the investor contributes additional capital for modernization and/or expansion.

There is no requirement that the foreign enterprise be owned or controlled by U.S. investors. However, in the case of a project with foreign ownership, only the portion of the investment made by the U.S. investor is insured by OPIC. Insurance is normally not available for investments in enterprises which are majority-owned and controlled by a foreign government.

Investments may take many forms—conventional equity investments and loans, construction and service contracts, production sharing agreements, leases, and various contractual arrangements such as consigned inventory, licensing, and franchising, and technical assistance agreements.

Finally, for an investment project to be eligible for insurance, the investor must submit a Request for Registration for Political Risk Investment Insurance before the investment is made or irrevocably committed.

OPIC may not offer insurance for a project in a country with which the U.S. does not have an investment agreement.[16] Currently, OPIC programs are available in 139 developing countries, including Russia and many of the other C.I.S. Republics.[17] Investors should contact OPIC to determine the status of OPIC assistance in a particular country.

Under agreements with the host countries, the host government must approve the issuance of OPIC insurance for a project. The approval procedures vary from country to country and are available from OPIC.

OPIC has a legislative mandate to support projects which are responsive to the development needs and the environment of the host country and which foster private initiative and competition. In particular, OPIC must give preferential treatment to investments in countries with a per capita annual income of less than $984 in 1986 U.S. dollars.[18] If a project is given monopoly rights or other competitive advantages for more than five years, special justification for OPIC involvement is required.

The effect of a proposed investment on the U.S. economy also is closely examined. Coverage is denied to projects which are likely to have a negative impact on U.S. employment and where the host country imposes requirements that substantially reduce the potential U.S. trade benefits of the investment.

OPIC also may decline coverage to projects which are likely to have a significant adverse effect on the U.S. balance of payments. OPIC also requires that countries respect certain individual rights and internationally-recognized workers' "rights."[19]

Terms

The term of an insurance policy may extend a maximum of 20 years. For loans, leases, and transactions covered by the contractors and exporters program, the term is generally equal to the duration of the underlying contract.

OPIC insurance premiums are based on fixed rate schedules, which are determined by reference to the type of investment and the types of coverage sought.[20] OPIC's current base rates for coverage on oil and gas investments are as follows: for expropriation, 0.4% for development/exploration, and 1.5% for production; for political violence, 0.75%; for interference with operations, 0.4%; and for currency inconvertibility, 0.3%.[21]

OPIC will only insure and pay claims on 90% of a loss. OPIC's statute requires that investors bear the risk of loss of the remaining 10%. The only exception to this requirement is loans and leases from financial institutions to unrelated third parties, which may be insured for 100% of principal and interest.

OPIC typically issues insurance commitments equal to 270% of the initial investment—90% representing the original investment and 180% to cover future earnings. The maximum amount of coverage available for any one project is $100 million. Coverage amounts may be limited for investments in countries where OPIC has a high portfolio concentration and in highly sensitive projects.

Application

The insurance program has a two-step application process. First, investors are required to register projects with OPIC before the investment has been made or irrevocably committed. Registration is free of charge and treated as privileged business information by OPIC.

Upon receipt of the Request for Registration, OPIC will send a confirmation letter and application forms. A registration is valid for 2 years. Registration of a project does not commit OPIC to issue insurance, nor does it indicate that OPIC's eligibility criteria have been met.

Once the final form of an investment is determined, the investor must submit an Application for Political Risk Investment Insurance. This application provides OPIC with detailed information necessary for OPIC to determine a project's eligibility and underwriting risks.

Inquiries concerning insurance, including requests for the insurance registration and application forms, should be addressed to:

Applications Officer
Insurance Department
Overseas Private Investment Corp.
1100 New York Avenue, NW
Washington, DC 20527
Telephone: (202) 336-8799 or (800) 424-OPIC (6742)

MIGA[22]

The World Bank, a multilateral lending agency and MIGA's parent company, was formed over 40 years ago. It consists of the International Bank for Reconstruction and Development, the International Development Association, and the International Finance Corporation, as well as MIGA.

MIGA entered the political risk insurance market in 1988.[23] One of its basic objectives is to increase the flow of capital and technology to developing countries by complementing government-sponsored and private investment guarantee programs.[24]

Many national insurance programs, due to their respective national objectives, contain strict eligibility requirements that exclude many investors and investments. In addition, national insurance programs have limited financial resources. MIGA's insurance program overcomes some of these shortcomings and helps to fill the gaps.[25] Also, because MIGA is a multilateral agency, it can insure projects for both U.S. and non-U.S. investors.

Risks covered by MIGA insurance[26]

Like OPIC, MIGA insurance covers risks of currency inconvertibility, expropriation, and political violence. MIGA also covers breach of contract loss as a separate class of risk coverage.[27] These coverages, which may be purchased individually or in combination, are discussed below.

Currency inconvertibility insurance covers restrictions of currency transfers outside the country that prevent the investor from transferring profits or liquidation proceeds out of the host country. Excessive delays in acquiring foreign exchange caused by host government action or inaction, by adverse changes in exchange control laws or regulations, and by deterioration in conditions governing the conversion and transfer of local currency are insured as well.

On receipt of the blocked local currency from the investor, MIGA pays compensation in the currency of its guarantee. Like OPIC, currency devaluation is not covered.

Expropriation coverage protects against acts that deprive the investor of ownership or control of its investments. "Creeping" expropriation, a series of acts which, over time, have an expropriatory effect, are also covered.

However, an important difference is that MIGA, unlike OPIC, excludes from this coverage "non-discriminatory measures of general application which governments normally take for the purpose of regulating economic activity in their territories." Unfortunately, this exclusion can allow governments to enact "general" regulations that amount to an expropriation from the investor's viewpoint, without the regulation being covered under the expropriation insurance.

For total expropriation of equity investments, MIGA pays the net book value of the insured investment. For partial expropriation of funds or assets, MIGA pays the insured portion of the funds or the net book value of the expropriated assets. For loans and loan guaranties, MIGA insures the outstanding principal and any accrued and unpaid interest.

War and Civil Disturbance coverage insures against losses arising from politically- motivated acts of war or civil disturbance, including revolution, insurrection, coups d'etat, sabotage, and terrorism. Compensation paid is similar to that paid in the event of expropriation.

This coverage also extends to such events that, for a period of 1 year, result in an interruption of project operations essential to overall financial viability. This feature is effective when the investment is considered a total loss.

Breach of Contract coverage compensates investors for any breach or repudiation of a contract by the host government with the holder of a guarantee when the holder does not have recourse to another forum, or where a decision of the other forum is not available within a reasonable period of time, or where such a decision cannot be enforced.

Eligibility for MIGA Isurance[28]

MIGA requires that the investor seeking insurance be a national of a member country other than the host country. A corporation is eligible for coverage if it is either incorporated in and has its principal place of business in a member country, or if it is majority-owned by nationals of member countries.

Insurance may be obtained for new investments that are "economically sound," which originate in any member country and are destined for any developing member country. New investments also include expansion, modernization, and refinancing of existing projects, reinvestment of earnings, and acquisitions that involve the privatization of state enterprises. Environmental impact must also be considered.

Eligible investments have to be new and medium or long term in nature. They encompass equity investments, shareholder loans, and loan guaranties issued by equity holders, provided the loans have a minimum average maturity of 3 years. Loans to unrelated borrowers can be insured, provided that equity in the project is being insured concurrently.

Other forms of investment are also eligible, including technical assistance and management contracts, and franchising and licensing agreements, provided they have terms of at least 3 years and the investor's remuneration is tied to the project's operating results.

The investment must be made in the territory of a developing member country. MIGA's member list, dated June 30, 1993, available from MIGA, lists as member countries Azerbaijan, Belarus, Estonia, Georgia, Lithuania, Moldova, and the Russian Federation; and, as countries in the process of fulfilling membership requirements, Armenia, Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan, and Uzbekistan. Fiscal Year 1993 MIGA contracts include a $9.9 million insurance coverage of an investment in Russia by Multiserv Russia, S.A. (home country Belgium).[29]

As in OPIC, the host government must approve the project before MIGA insurance coverage will issue. In most cases, MIGA will request the approval on behalf of the investor. In some countries, MIGA can accept a copy of the standard investment approval, usually issued by a specific agency or ministry for all foreign investments, as the approval for MIGA.

Political considerations are not as important under MIGA as under OPIC.[30] For example, there is no "human rights" standard that must be met by the host country, as is required by OPIC.

Terms

MIGA's guarantee authority is limited to 150% of its unimpaired subscribed capital and reserves. Underwriting authority for individual investment projects is limited to 5% of MIGA's total capacity to issue guarantees. This amounts to a maximum coverage of approximately $50 million per project.

Insurance can be obtained for 90% of the amount invested plus up to an additional 180% for earnings attributable to the investment; or an additional 90% for interest accruing to increased principal for loans and loan guarantees.

For technical assistance and similar contracts, MIGA insures up to 90% of the total value of payments under the agreement. Regardless of the nature of the project, the investor is required to remain at risk for at least 10% of any loss.

The duration of insurance is from 3 to 15 years. The standard term of coverage is 15 years, and typically follows the term of the insured agreement for investments other than equity, such as a 10-year loan agreement. The term can be extended to 20 years if MIGA finds that the nature of the project "justifies" an extended term.

MIGA may not terminate its coverage unless the insured investor defaults on its contractual obligations, but the insured may terminate coverage after 3 years or any anniversary thereafter.

MIGA is supposed to be self-sustaining, and its premiums are similar to OPIC's. Typical base rates for oil and gas coverage for currency inconvertibility, expropriation, breach of contract, and war risks, are 0.50%, 1.25%, 1.25%, and 0.60%, respectively (as percentages of the total insured amount). Standby coverage is available for an additional 0.25%, 0.50%, 0.50%, and 0.25%, respectively.[31]

MIGA will cooperate with both public and private political risk insurers by entering into coinsurance and reinsurance arrangements for joint coverage of eligible investment projects.

A Preliminary Application for Guarantee should be submitted before the investment is made or irrevocably committed. Applications are treated confidentially.

If MIGA determines that the investment and investor are eligible, a Notice of Registration, along with a Definitive Application for Guarantee, are sent to the investor. There is no fee for filing either a Preliminary Application or a Definitive Application, and there is no obligation to accept a Contract of Guarantee if one is offered.

For further information contact:

Multilateral Investment Guarantee Agency
1818 H Street, N.W.
Washington, D.C. 20433
Telephone: (202) 473-0179 or (202) 473-6168.
Fax: (202) 477-9886.

Private and Russian insurance

Private insurance market

In the last 15 years, private insurers have begun to offer political risk insurance which both complements and competes with government-subsidized insurance programs.[32] This rapidly growing market[33] is concentrated mainly in the U.S. and U.K., and has been estimated to amount to $200 to $350 million in annual premiums.

The most versatile and experienced private insurer offering political risk insurance is Lloyd's of London.[34] Other insurers include American International Group (AIG), Citicorp International Trade Indemnity (CITI), Professional Indemnity Association (PIA, New York), Pan Financial (London and New York), Chubb Group (New Jersey), and Poole d'Assurance des Risques Internationaux et Speciaux (P.A.R.I.S.).[35]

Private political risk insurance is generally divided into two categories: asset coverage and contract coverage. Asset coverage may include risks such as confiscation, nationalization, expropriation (including creeping expropriation), and repossession of equipment.

Contracts coverage may include loss from contract repudiation, currency inconvertibility, and contract cancellation due to political violence.[36] Thus, the risks covered are similar to the risks covered by government-sponsored insurance.

Of the types of risk insured against by private insurers, confiscation, nationalization, and expropriation insurance are of the most interest to energy investors. As with government- sponsored insurance, compensation is usually based upon book value. Confiscation/nationalization/expropriation insurance policies can usually be expanded to cover license cancellations, trade embargoes, strikes, riots, loss of income following expropriation, and other types of political risk.[37] In addition, each insurer will have additional limitations and qualifications as to the amounts and types of insurance it can offer.

The terms offered by the private insurers are between 1 and 3 years, which are significantly shorter than those offered by OPIC and MIGA. Underwriting limits range from $5 million to $300 million per risk, depending on the insurer and the country in which the investment is located.[38] These limits are in the same range as those of OPIC ($100 million) and MIGA ($50 million per project).[39]

Private market fees are substantially higher than those of government insurance programs, and in some cases can be as much as 7% for coverage in high risk countries.[40] Lloyd's current rate for insuring investments in the former Soviet republics is between 2 and 3% of the value of the investment.[41]

Premiums are based on a number of factors, including the size of the investment, nationality of the investor, risks associated with the host country, risks covered by the insurance, and the structure of the investment.[42] Despite relatively higher rates, however, private insurance remains attractive to certain investors, such as those who fall outside the eligibility requirements of programs such as OPIC and MIGA.

Involvement of the Russian government

The Russian Agency for International Cooperation and Development, a Russian government agency, has put together a billion-dollar program to provide political risk insurance for investors in Russia, and is also establishing new investment banks in cooperations with major international financial institutions.[43] Further, in February of 1993 the Russian government set up the State Investment Corporation to sell political-risk insurance for foreign investors investing in Russia.[44]

BISNIS

A wealth of free information is available to any investor through the "Flashfax BISNIS Bank," a 24-hour automated fax delivery system administered by the International Trade Administration of the U.S. Department of Commerce, containing information on current trade and investment opportunities, trade statistics, and other information concerning the newly independent states of the former Soviet Union.

The Business Information Service for the Newly Independent States (BISNIS) can be reached by dialing (202) 482-3145 from a touch-tone phone. The address is:

United States Department of Commerce
International Trade Administration
Business Information Service for the Newly Independent States, Room H-7413
Washington, D.C. 20230.

Conclusion

Political risk insurance reduces uncertainty by providing protection against non-market risks which are beyond the control of the investor. In addition, the availability of insurance may attract more investment, which in turn may help to improve the economy of the host state, thereby reducing the chance that the host state will resort to expropriation in the first place.[45]

Whether OPIC, MIGA, or private insurance is best suited for any particular investment can only be determined on a case-by-case basis. On the one hand, private insurance is more flexible, can be customized to meet the needs of a particular investment, can be kept in strict confidence, and can be negotiated in days rather than months. Private insurance is also not constrained by political considerations to the same degree as is government-subsidized insurance.

On the other hand, because OPIC and MIGA policies are government subsidized, they are generally less expensive; they can also be issued for terms of up to 20 years. Finally, OPIC and MIGA also have better facilities for covering currency inconvertibility risks than do private insurers.[46] As between OPIC and MIGA, a decision as to which policy is best will often be based upon price and eligibility requirements.

While investors would of course prefer that Russia and other C.I.S. Republics respect the agreements that they make with investors and refrain from confiscating investors' property, experience has shown that this will not always be the case. Political risk insurance is an important tool and a prudent choice for investors in attractive but unstable regimes such as the C.I.S. Republics.

References

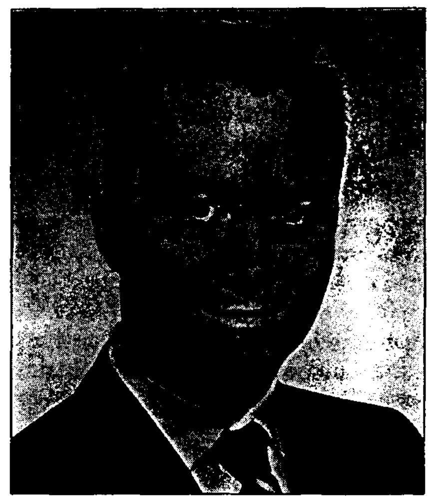
1. Dr. A. Konaplyanik, Russia Struggling to Revive Production, Rebuild Oil Industry, Oil & Gas Journal, p. 43 at 43 (Aug. 2, 1993).
2. Gary B. Conine, Petroleum Licensing: Formulating an Approach for the New Russia, in State Bar of Texas Prof. Dev. Program, Advanced International Law Institute: Investment and Trade with Emerging Economies, F1, F1-2 (May 14, 1993). See also Dr. A. Konaplyanik, supra, at 43, discussing the scarcity of oil field and drilling materials and equipment and the concomitant decline in drilling.
3. Political risk is the risk that the laws of a country will unexpectedly change to the investor's detriment after it has invested precious time and capital, reducing the value of its investment. Put simply, it is the risk of government intervention. Examples of political risk are the risk that a government will raise import or export duties, increase taxes, impose unexpected regulations, or nationalize or expropriate the assets of the investor. Political risk is a real phenomenon, with real consequences for investors. The greater the political risk in a country, the greater must be the minimum expected rates of return before investors will invest in that country. See, e.g., Dr. A. Konaplyanik, supra, at 44, Fig. 2, showing minimum rates of return acceptable to U.S. investors rising as political risk increases.
4. See generally N. Stephan Kinsella & Paul E. Comeaux, United States Bilateral Investment Treaties with Russia and Other C.I.S. Republics, Russian Oil & Gas Guide, July 1993, p. 23, and articles cited therein. See also Paul E. Comeaux & N. Stephan Kinsella, Political Risk and Petroleum Investment in Russia, Currents, International Trade Law Journal (Vol. 2, No. 2, Summer 1993—forthcoming).
5. See generally Paul E. Comeaux & N. Stephan Kinsella, Reducing The Political Risk of Investing in Russia and Other C.I.S. Republics: International Arbitration and Stabilization Clauses, Russian Oil & Gas Guide, April 1993, p. 21, and articles cited therein. See also Paul E. Comeaux & N. Stephan Kinsella, Political Risk and Petroleum Investment in Russia, Currents, International Trade Law Journal (Vol. 2, No. 2, Summer 1993—forthcoming).
6. The largest government-sponsored insurance agencies, which are the U.S. Overseas Private Investment Corporation, Germany's Treuarbeit, and the Japanese Export Insurance Division, Ministry of International trade and Industry together represent over eighty percent of all outstanding national insurance coverage. Malcolm D. Rowat, Multilateral Approaches to Improving the Investment Climate of Developing Countries: The Cases of ICSID and MIGA, 33 Harvard Int'l L. J. 103, 119 (1992) (hereinafter "Rowat").
7. For further information on OPIC and MIGA, see the Overseas Private Investment Corporation Act, 22 U.S.C.A. — 2191-2200b (West 1990 & Supp. 1993); the Convention Establishing the Multilateral Investment Guarantee Agency, opened for signature October 11, 1985, 24 I.L.M. 1598 (entered into force April 12, 1988), cited in Rowat, at n. 9; U.S. laws relating to MIGA in 22 U.S.C.A. — 290k to 290k-11 (West 1990); Steven Franklin and Gerald T. West, The Overseas Private Investment Corporation amendments Act of 1978: A Reaffirmation of the Developmental Role of Investment Insurance, 14 Tex. Int'l L. J. 1 (1979) (providing a complete discussion of the origins and background of OPIC); Ibrahim F. I. Shihata, MIGA and Foreign Investment—Origins, Operations, Policies and Basic Documents of the Multilateral Investment Guarantee Agency (MIGA) (1988).

See also Gary W. Orloff, Private Political Risk Insurance for Energy Investors, Maclean International Energy Network, Going International Seminar (Dallas, Texas, July 28, 1993) (hereinafter "Orloff"); B. Thomas Mansbach, Financing and Political Risk: Risk Sharing and Project Finance: The Programs of the Overseas Private Investment Corporation, State Bar of Texas Advanced International Law Institute, Investment and Trade with Emerging Economies, B-1 (Houston, Texas, May 14, 1993) (to appear in the June 1993 issue of the American Oil and Gas Review); Malcolm D. Rowat, Multilateral Approaches to Improving the Investment Climate of Developing Countries: The Cases of ICSID and MIGA, supra; Berger, The New Multilateral Investment Guarantee Agency Globalizing the Investment Insurance Approach Towards Development, 15 Syr. J. Int'l L. & Com. 13 (1988) (hereinafter "Berger"); Ibrahim F. I. Shihata, Factors Influencing the Flow of Foreign Investment and the Relevance of a Multilateral Investment Guarantee Scheme, 21 Int'l Lawyer 671 (1987) (hereinafter "Shihata, Factors"); Akinsanya, International Protection of Direct Foreign Investment in the Third World, 36 Int'l & Comp. L.Q. 58 (1987); Chatterjee, The Convention Establishing the Multilateral Guarantee Agency, 36 Int'l & Comp. L.Q. 76 (1987); Zakariye, Insurance Against Political Risks in Oil Development, 4 J. Energy Nat. Resources & Envt'l. L. 217 (1986); and Ibrahim F. I. Shihata, Towards a Greater Depoliticization of Investment Disputes: The Role of ICSID and MIGA, ICSID Rev. (1986).

8. Much of the following discussion of OPIC draws on information obtained directly from OPIC, e.g. the "Investment Insurance" document and related information supplied by OPIC.
9. Diaconis, Political Risk Insurance: OPIC's Use of a "Fiduciary Agent" to Facilitate Resolution of Subrogation Claims in Section of International Law and Practice, Spring, 1989.
10. "Investment Insurance" document, available from OPIC.
11. "Overseas Private Investment Corporation (OPIC)," p. 1 of 3, BISNIS document # 6815 (entered February 16, 1993); "Commercial Overview of Russia," p. 10 of 17, BISNIS document # 6550 (entered July 4, 1993, information current as of July 10, 1993) (BISNIS documents and information are discussed below); and the OPIC "Country and Area List" dated May 12, 1993, available from OPIC.
12. "Commercial Overview of Russia," p. 10 of 17, BISNIS document # 6550 (entered July 4, 1993, information current as of July 10, 1993). See also Caleb Solomon, "Texaco Project for Russian Oil Field Receives $28 Million of U.S. Assistance," The Wall Street Journal, p. A1 (Friday, Sept. 3, 1993), reporting a $10 million loan guarantee and $18 million insurance policy provided by Texaco by OPIC for a Siberian investment.
13. "Investment Insurance" document, available from OPIC. See also the Overseas Private Investment Corporation Act, 22 U.S.C.A. at 2191.
14. Diaconis, at 3.
15. Diaconis, at 3.
16. 22 U.S.C.A. 2197(a).
17. OPIC's "Country and Area List," available from OPIC, dated May 12, 1993, lists the following C.I.S. Republics as countries in which OPIC programs are generally available: Armenia, Belarus, Estonia, Georgia, Kazakhstan, Kyrgyzstan, Latvia, Lithuania, Moldova, Russia, Tajikistan, Turkmenistan, the Ukraine, and Uzbekistan.
18. Diaconis, at 4.
19. Rowat, at 122.
20. Orloff, at 7.
21. "OPIC Investment Insurance Rates" document, dated August 1992, available from OPIC.
22. Much of the following discussion of MIGA draws on information obtained directly from MIGA, e.g. the MIGA Investment Guarantee Guide and related information supplied by MIGA.
23. Rowat, at 105. MIGA was created by the Convention Establishing the Multilateral Investment Guarantee Agency, opened for signature October 11, 1985, 24 I.L.M. 1598 (entered into force April 12, 1988), cited in Rowat, at n. 9.
24. MIGA Investment Guarantee Guide; Rowat, at 127, citing the Preamble to the MIGA Convention.
25. Shihata, Factors, at 690.

26. Much of the following discussion of MIGA draws on the MIGA Investment Guarantee Guide; Rowat, at 128-30 and 140-44; and Berger, passim.
27. See generally Rowat, at 128-29 and 141-42.
28. For further details see Rowat, at 128-30 and 140-44; and Berger, at 29-37.
29. MIGA press release, "MIGA FY1993 Year-End Results; Insurance Business and Membership Continue to Climb," July 23, 1993, p. 2 of 2, available from MIGA.
30. See, e.g., Shihata, Factors, at 690.
31. MIGA Investment Guarantee Guide, p. 9.
32. Orloff, at 1.
33. Rowat, at 125.
34. Orloff, at 3.
35. Rowat, n. 84.
36. Orloff, at 4.
37. Orloff, at 5.
38. Orloff, at 3.
39. Rowat, at 126.
40. Rowat, at 126.
41. Orloff, at 6.
42. Orloff, at 7.
43. "Commercial Overview of Russia," p. 3 of 17, BISNIS document # 6550 (entered July 4, 1993, information current as of July 10, 1993).
44. "Some Cover," The Economist, p. 84 (February 27, 1993).
45. "Beyond insurance protection, MIGA's participation in a project enhances confidence that the investor's rights will be respected, an advantage inherent in the Agency's organization as a voluntary association of developing and developed countries." MIGA Investment Guarantee Guide, at 5.
46. Orloff, at 7.

Comeaux



Kinsella

The authors . . .

Paul E. Comeaux is an associate in the finance and real estate sections and in the international law practice group of the law firm Jackson & Walker. He received his B.A. degree (1988) in English Literature from Louisiana State University, his J.D. degree (1991) from the Paul M. Hebert Law Center, Louisiana State University, and his LL.M. degree (1992) in International Business Law from King's College London, University of London. He is licensed to practice in the States of Texas and Louisiana.

Mr. Comeaux may be contacted at Jackson & Walker, 1100 Louisiana, Suite 4200, Houston, TX 77210-4771. Phone: (713) 752-4386. Fax: (713) 752-4221.

N. Stephan Kinsella is an associate in the energy section and in the international law practice group of the law firm Jackson & Walker. He received his B.S. (1987) and M.S. (1990) degrees in Electrical Engineering from Louisiana State University, his J.D. degree (1991) from the Paul M. Hebert Law Center, Louisiana State University, and his LL.M. degree (1992) in International Business Law from King's College London, University of London. He is licensed to practice in the States of Texas and Louisiana.

Mr. Kinsella may be contacted at Jackson & Walker, 1100 Louisiana, Suite 4200, Houston, TX 77210-4771. Phone: (713) 752-4360. Fax: (713) 752-4221.