LEGAL TREATMENT
OF FOREIGN INVESTMENT:
THE WORLD BANK GUIDELINES

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To Anne Le Lorier and her colleagues at the French Treasury
who initiated the request which led to the development
of the guidelines discussed in this book;

and to Gillian Kettaneh for her assistance,
without which this book would not have been
produced in such a short time.

FOREWORD

On September 12, 1985, following extensive deliberations by the World Bank's[1] Executive Directors sitting in twenty sessions of their Committee of the Whole, the draft Convention Establishing the Multilateral Investment Guarantee Agency (MIGA) and the documents related to it were approved by the Board of Executive Directors without objection. Nonetheless, two Executive Directors abstained because the issue of the standards applicable to foreign investment, that is the general legal principles that should govern the treatment of such investment by host governments, had not been resolved in the convention, as previously requested by their authorities.

Following this decision of the World Bank's Executive Directors, the Dutch Executive Director, Ferdinand Van Dam, while congratulating me on the difficult chairmanship of the deliberations of the Committee of the Whole and the successful completion of the text of the MIGA Convention, urged me to continue to pursue the issue of applicable standards. "I believe," he said with confidence, "you can succeed in obtaining an international consensus on this question." However, I was convinced at the time that reaching an international consensus on such a controversial issue was an elusive goal. The United Nations' efforts in this field, initiated in 1977, like many earlier attempts in other fora, suggested that the gap between the traditional attitudes of developed and developing countries, hardened by years of unsuccessful negotiations, was too wide to allow for realistic compromises.

Exactly seven years later, on September 21, 1992, the Development Committee (a joint ministerial committee of the World Bank and the International Monetary Fund), without any reservations, issued a set of

[1] The terms "World Bank" and "Bank" refer to the International Bank for Reconstruction and Development and the International Development Association together, unless the context suggests otherwise. The World Bank Group consists of the International Bank for Reconstruction and Development (IBRD), the International Development Association (IDA), the International Finance Corporation (IFC), the Multilateral Investment Guarantee Agency (MIGA) and the International Centre for Settlement of Investment Disputes (ICSID).

universal guidelines on the legal treatment of foreign investment. The text of the guidelines was prepared by a small working group which I had the honor to chair. The successful outcome, however, was not so much a personal achievement as the product of changing realities and perceptions about foreign investment and the benefits it can bring to the global economy and the economies of developing countries in particular. In a broader sense, the great transformations of the late eighties and early nineties created a new environment which made possible agreement on many issues thought earlier to defy common solutions.

The purpose of this book is to provide a personal account of the steps which led to the issue by the Development Committee of the Guidelines on the Treatment of Foreign Direct Investment (the Guidelines) and a first hand explanation of the text of the Guidelines. The book places the Guidelines in the broader context of continuing international efforts to improve investment climates. It includes not only the text of the Guidelines (in three languages) but also the studies which preceded the preparation of that text and the official reports which explain its rationale and contents. This book may therefore be read as a complement to my earlier book on MIGA and foreign investment.[2] Together, the two books provide detailed accounts of the continued efforts by the World Bank to encourage the flow of international investments through specific mechanisms which complement its financing, catalytic and advisory roles, in pursuance of one of its main purposes, which is "to promote foreign private investment."[3]

Ibrahim F.I. Shihata

June 30, 1993
Washington, D.C.

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[2] IBRAHIM F.I. SHIHATA, MIGA AND FOREIGN INVESTMENT (1988).

[3] *See* Articles of Agreement of the International Bank for Reconstruction and Development, Article I.

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This book was written with the able assistance of Gillian Kettaneh, Counsel at the World Bank. Her qualifications in the fields of law, economics and government and her dedication made it possible to complete the research and writing of this book in record time. The contribution of Ms. Kettaneh is all the more appreciated as she joined the Bank's service on August 31, 1992, after the work on the Guidelines had been completed and, for that reason, did not have the advantage of prior involvement in the subject. I am also grateful to Antonio R. Parra, Legal Adviser of the International Centre for Settlement of Investment Disputes (ICSID), for having reviewed the manuscript in full in a very short time and for his useful remarks. Without Miss Cleone Hoover's efficient management of my office, this book could not have been prepared. Ms. Kerry Smyth's patient work in typing the manuscript and in managing parts of the production process are also acknowledged with appreciation.

My gratitude goes to D.C. Rao, Acting Vice President and Chief Economist, World Bank and Kwang W. Jun, Senior Financial Economist, for their review and useful comments on the Introductory Chapter, the first section of which is based mainly on the work of their department.

As the book explains in detail, the preparation of the Guidelines was a joint effort of José E. Camacho, Vice President and General Counsel of the International Finance Corporation (IFC), Luis Dodero, Vice President and General Counsel of the Multilateral Investment Guarantee Agency (MIGA), Daoud L. Khairallah, Deputy General Counsel of the IFC, and myself, with the assistance of Antonio R. Parra and his staff at the ICSID Secretariat and Bertrand P. Marchais, Senior Counsel in MIGA. It is therefore with great appreciation that I wish to acknowledge the contribution and support of these able colleagues.

The suggestions and criticisms received from many sources during the preparation of the Guidelines which are detailed in the book have helped in shaping the final product. While each of the sources, be they individuals or organizations, shares in the credit for the outcome, the responsibility for the shortcomings rests only with the Working Group which prepared the Guidelines and explanatory report, and with me in particular.

My great appreciation and thanks go to Barber B. Conable, former President of the World Bank Group, for having entrusted me with the primary responsibility for undertaking the work requested by the Development Committee and to Lewis T. Preston, the current President of the World Bank Group, for his unswerving support throughout the process.

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