

## Abstract

The Convention Establishing the Multilateral Investment Guarantee Agency has established the Multilateral Investment Guarantee Agency (MIGA) in 1985 (The Convention entry has effected in 1988). The objective need to stimulate Investment's flow for productive purpose among member countries and in particular to develop member countries. As supplementing the activities of the International Bank for reconstruction and development the International Finance Corporation and other international finance institutions. Nowadays, there are approximately 173 member countries and Thailand has ratified to be member on 21 July 2000 with the rank 156.

MIGA has 2 main duties as following:

1. Issue guarantee against non-commercial risk in respect of investments for member countries.
2. Carry out research, undertake activities to promote investment flows and disseminate information on investment opportunities in developing member countries, with a view to improve the environment for foreign investment flows to such countries.

MIGA has classified the non-commercial risk into 4 types namely currency transfer risk, expropriation and similar measure risk, breach of contract risk and war and civil disturbance risk. However MIGA may be able to approve the extension of coverage rather than those referred as above.

Among 4 types of non-commercial risk, expropriation risk is that most probability. Due to the generally accepted that host country can expropriate the property of foreign investors without discrimination and for the public purpose. In addition, the term of expropriation and similar measure includes other measure such as nationalization confiscation seizure sequestration and attachment and freezing of assets means and legislative action or administrative action or omission attributable to the host government which has the effect of depriving the holder of a guarantee of his ownership or control of, or a substantial benefit form his investment.

With regard to the eligible investments, MIGA requires the variety of investments which include equity interest, medium-or long-term loans made or guarantee by holders of equity in the enterprise concerned and such forms of direct investment as can be determined.

Although the convention defined host country or host government means a member its government, or any public authority of a member in whose territories an investment is to be located. However, host country could not be able to be the owner whose territories an investment which was located. For example, Thailand is the most country in Nan Theun 2 project which located in Laos. Because of the condition of dam construction depending on power purchase agreement between Thailand and Laos. The dam will produce electricity for Thailand about 93% of total production. Thailand is the host country that join investment with Laos as the MIGA Convention for 30 years. In this case, if Thailand cancels the power purchase agreement, it is tantamount to expropriate Nam Theun 2 project. Because the Bank who gave the loan for constructive the Nam Theun 2 Dam guaranteed that the investment against expropriation risk to MIGA. Therefore, if Thailand cancels the power purchase agreement, Laos will lose their earnings and could not pay debts. The bank who is the holder of a guarantee will have an effect of depriving and substantial benefit. The holder of guarantee can claim for compensation, when MIGA pays or agrees to pay compensation to him. MIGA shall be subrogated to such rights or claim related to the guaranteed investment as the holder of guarantee may have had against Thailand.

Regarding to the MIGA convention, MIGA shall be subrogated to rights or claims related to the guaranteed investment as the holder of a guarantee may have had against the host country and the rights of MIGA as above shall be recognized by the MIGA Coverage Act B.E. 2543 has not the provision of subrogation despite the subrogation is an important mechanic of this convention.

The Investment Promotion Act B.E. 2520 should be improved to be more cosmopolitan. It should provide a different definition defines a clear example of the dictions of Thai investors to invest their foreign investments, Thai investment overseas,

the prescription of compensation the exception of providing security and protection of investment. In the event of expropriation or transfer is a matter of state: "Except for public benefit, without discrimination and pay the appropriate compensation".

---