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East and North-Africa**

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**LESSONS LEARNT FROM INVESTMENT POLICY REVIEWS WITH A
FOCUS ON INFRASTRUCTURE SECTORS IN LATIN AMERICA, AFRICA,
SOUTH EAST ASIA (SEA) AND THE MIDDLE-EAST AND NORTH-
AFRICA (MENA)**

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The OECD Investment Committee has used the Policy Framework for Investment (PFI) to assist 22 developing and emerging economies to date in identifying gaps and policy reforms for infrastructure investment. In the context of the ongoing update of the PFI, it is timely to draw on the bulk of expertise gathered across various national and regional contexts (including among others Southern Africa, SEA and MENA). This also provides an opportunity to capitalise on many highly useful infrastructure policy tools and instruments developed across various parts of the OECD, which have been elaborated since the first release of the PFI in 2006.

In this context, the following draft report has been elaborated by the Secretariat of the Investment Committee, in collaboration with the Secretariats of the Committees on Competition, Corporate Governance, Regulatory Policy, and Environment Policy. The draft report aims to identify actionable policy options for the consideration of both developing country governments and the donor community, while contributing to the update of the infrastructure chapter of the PFI.

Disclaimer:

This draft discussion paper describes preliminary results and research-in-progress by the OECD Secretariat. It is published to stimulate discussion on a broad range of issues related to promoting private investment in infrastructure, including among members of the Task Force of the update of the Policy Framework for Investment. The opinions expressed and the arguments employed herein are those of the authors and do not necessarily reflect the official views of the OECD or of the OECD member countries. Comments on this paper are welcome and should be sent to carole.biau@oecd.org.

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EXECUTIVE SUMMARY: Overview of key findings

Infrastructure investment needs to be substantially increased in most developing and emerging economies, to meet social needs and support more rapid economic growth. There is a widespread recognition that governments cannot afford to bridge growing infrastructure gaps through tax revenues and aid alone, and that greater private investment into infrastructure is needed. Private sector participation in infrastructure can help reduce pressure on public finances and increase the portfolio of projects in the public sector investment programme. Government may also benefit from private sector skills and reap cost and efficiency gains by delegating the construction and oftentimes the management of infrastructure projects to private investors. Moreover, from an economic growth perspective, infrastructure is not only an enabling factor for facilitating private investments and competitiveness across all sectors of national and regional economies, but can also be an attractive investment opportunity in itself.

Although infrastructure investment opportunities are plentiful across developing countries, investors are not yet fully seizing them. The infrastructure sector presents specific risks to private investors, and since private participation in infrastructure delivery is a relatively recent form of procurement in many countries, governments do not necessarily have the experience and capacity needed to effectively manage these risks. There remains a need for concrete, implementation-oriented guidance that can help governments identify and manage reforms that will increase the quality and quantity of private investment in infrastructure, as an important complement to public investment.

Country-specific experiences reported in OECD Investment Policy Reviews provide examples of good practice in a number of policy areas, as well as risks to be avoided. Country cases help shed light on the complex links among regulatory and institutional frameworks that make private investment in infrastructure possible. Securing necessary resources and making infrastructure networks more attractive for private involvement is possible by improving the efficiency of service delivery, facilitating investor access to land, and establishing a more level playing field between State-owned infrastructure operators and private investors. In addition improving procurement processes can help ensure that projects are long-lived and secure the expected performance gains. Countries are also reforming their regulatory regimes in order to strike a balance between cost-recovery needs of public and private investors on the one hand, and end-user affordability on the other. More generally, developing national infrastructure plans, improving core standards of investor protection, and refining mechanisms for dispute resolution and contract renegotiation, are means through which governments can bolster investor confidence and mitigate project risks.

Lessons learned from country experiences for enhancing private participation and end-user affordability in infrastructure sectors

Country experiences provide a variety of options for ensuring that infrastructure projects are competitive, result in value-for-money for governments, and are ultimately acceptable and affordable for end-users. A few of these policy options are highlighted below, and expanded in further detail at the end of each chapter of this paper.

- Increasing private participation in infrastructure investment requires an investment regime that provides clarity and predictability for investors, in particular protection against expropriation and provisions for dispute resolution and contract negotiation. A supportive institutional environment is also needed. PPP units, procurement entities, and privatisation authorities need to be provided with adequate numbers of well trained staff, and have well defined responsibilities and co-ordination mechanisms, including for managing cross-border projects.

- **Careful project preparation** is essential to ensure efficient public sector investment in infrastructure. Project appraisal should include cost-benefit analysis and environmental impact assessment ; it should also analyse the suitability of projects for private sector participation, making use of the public sector comparator approach combined with a careful analysis of value-for-money and of the risks to be borne by the public and private sector partners. Project proposals which survive initial screening should be included in medium-term public investment programmes, and be coherent with long term strategic visions at national and sector level.
- **Sources of project finance** should be as varied as possible, and include innovative sources such as national and municipal bonds. Special purpose funds for infrastructure maintenance and for addressing social objectives such as universal service provision, or SME development, can also be critical to a successful infrastructure development programme.
- **Improving the public procurement regime** is of particular importance for increasing value for money in the use of public funds for infrastructure investment. This entails, *inter alia*, increasing transparency in the bidding process (including through E-Procurement). Increasing the number of bidders is important for reducing the costs of infrastructure projects. Reducing or eliminating any remaining restrictions on foreign direct investment in infrastructure would notably help to increase the number of bidders.
- **Improving SOE governance** is of crucial importance for meeting infrastructure investment goals. SOEs in many countries have shown improved performance when they have adopted reforms that include: converting them into corporatised enterprises; separating the ownership and management functions in their governing bodies; subjecting them to the authority of auditing bodies and competition authorities; and ensuring that they follow the same financial accounting and other corporate governance standards as private enterprises.
- **Unbundling vertically integrated supply chains in network infrastructure sectors** (ICT, transport, energy, and water and sanitation) can remove public monopolies and create more space for enterprises to compete. Countries have also often reduced or eliminated restrictions on foreign direct investment. The remaining restrictions can usefully be detailed in so-called “negative lists”, together with explanations justifying their continuation and plans to gradually reduce them.
- **Changes in regulatory regimes** may be necessary to safeguard user affordability alongside cost recovery for private participants. In an increasing number of countries independent regulators are being established to reduce the advantages of incumbent enterprises and to set tariffs for infrastructure services; competition authorities can also be strengthened and mechanisms for co-ordination with sector regulators established.
- **Reforming pricing structures in infrastructure networks** remains necessary in many countries, so as to move these sectors closer to cost-recovery levels. Where this has been possible and politically acceptable (such as in several transport sub-sectors, or the ICT sector and in particular mobile telephony), private sector participation has often substantially increased. Fewer countries have managed to reform pricing in the electricity and water sectors. Often stepped tariffs or cross-subsidisation are used as an alternative, to move to cost-recovery levels for business and higher income households while continuing to subsidise low income families.

Identifying and analysing these different responses to common policy challenges can be useful not only for developing country governments, but also for donor community. This can support attempts to better co-ordinate and align development partner support for infrastructure development, in view of greater competitiveness and social wellbeing in developing countries.

INTRODUCTION

Infrastructure networks are likely to have a strong impact on the investment attractiveness of host countries, most evidently as key variables within the production function of firms operating in the country. The extensiveness of the road network, together with the efficacy of the port system and length of container wait times for instance have clear implications for the timely and cost-effective delivery of goods – it is estimated that each day in transit costs between 0.6 and 2% of the value of traded goods (Hummels and Schaur, 2012). Likewise, access to water infrastructure has important impacts on the capacity for agricultural production and innovation, in addition to substantial health impacts on the domestic population. As regards electricity, for instance, it is estimated that private generators (used to compensate for an unreliable grid electricity system) add about 40% to the cost of goods and services produced in Nigeria, and that adequate power supplies could boost annual GDP growth by 3-4 percentage points (OBG, 2012).

Besides being a key enabler of investment, infrastructure can also be an important and lucrative recipient of investment inflows. Private investment in infrastructure networks, alongside or in place of state-owned operators, has been on the rise worldwide for several decades. However, since the global financial crisis this momentum has faltered somewhat: in 2010-2012, only 8% of FDI inflows received by OECD countries ended up in infrastructure sectors on average, as opposed to more than 10% in 2007-2009 (OECD, 2013). The same applies to developing countries – apart from exceptional investments in energy in Morocco and South Africa, Africa has seen a regular decline in private capital for infrastructure projects, year after year, from 2008 to 2012 (ICA, 2013). The attractiveness of infrastructure as an investment recipient varies significantly among countries: within the OECD in 2012 for instance, the share of infrastructure in total inward FDI stocks for individual countries ranged from less than 1% in Israel to 20% in Spain and 28% in Turkey (OECD, 2013).

Addressing infrastructure constraints is a priority for the majority of developing country governments. Worldwide, there is growing consensus that mobilising private investors to finance and participate in national infrastructure maintenance and development can ease the pressure on public funds and supplement resources for investment. Globally governments have found it more difficult to raise financing for infrastructure in the wake of the 2008-09 crisis and the 2011 downturn. Private sector participation in infrastructure is thus often sought to broaden the resources available for financing the portfolio of projects in the national infrastructural development programme.

By delegating the construction and oftentimes the management of infrastructure projects to private investors, governments are also likely to reap cost and efficiency gains. Evidence collected from performance of more than 1 200 water and energy utilities in 71 developing and transition economies, between the beginning of the 1990s and 2002, indicates that greater degrees of private participation are associated with stronger gains in productivity and service quality. These gains include a 12% increase in the average number of residential water connections, a 32% rise in electricity sold per worker, a 19% increase in the residential coverage of sanitation services, a 45% improvement in the electricity bill-collection rate, an 11% drop in electricity distribution losses, and a 41% increase in hours of daily water service (World Bank PPIAF, 2009).

Indeed besides financing issues, infrastructure development in many developing countries has traditionally been confronted to a problem of investment effectiveness, including poor management and underperforming service provision. Inefficiently-run SOEs, in particular, can adversely affect the quality of network management and subsequently deter private investment. Inefficiencies such as overemployment, poor bill collection, system losses, and irregular maintenance practices by SOEs in infrastructure markets cost about USD 12 billion annually in Africa – detracting public resources from amelioration of infrastructure networks (Trebilcock et al, 2011). Conversely and in somewhat of a virtuous circle, if

efficiency and cost gains are obtained via private participation in infrastructure, these can contribute towards reducing the amount of subsidy required to support infrastructure service provision when full cost recovery pricing cannot be achieved.

Augmenting private sector participation in infrastructure requires to address not only constraints on the financing of infrastructure – the “push” factors – but also to focus on country specific issues – the “pull” factors – including host countries’ investment climates. Numerous work streams have been initiated under the auspices of the OECD Investment Division to help developing countries enhance private sector participation in their infrastructure networks, including in green infrastructure. For example the infrastructure chapters of Investment Policy Reviews draw on the Policy Framework for Investment (PFI) to analyse infrastructure investment policy, highlight funding gaps, and identify reforms that governments can take to increase the quality and quantity of both private and public investment in different infrastructure sub-sectors. 22 such Reviews have been conducted to date. These country-specific experiences have shed light on the complex and important links among the regulatory and institutional frameworks for: investor protection; contract design and renegotiation; infrastructure procurement and public-private partnerships (PPPs); regulation and pricing of infrastructure markets; competition policy; and corporate governance of state-owned enterprises, which often dominate infrastructure markets in both developed and developing regions.

Drawing on the policy experience accumulated through the application of the PFI across developing and emerging economies, this paper highlights transversal policy bottlenecks and priority areas of action necessary for stimulating further private investment in infrastructure. The policy areas considered include: the investment regime underpinning infrastructure investment; mitigating project risks and obtaining value-for-money; the institutional environment for sound private participation in infrastructure markets; market structure considerations, including the regime for SOE governance and competition in infrastructure markets; fairness and transparency in the public procurement regime; and price-setting and regulation in infrastructure markets. Key policy take-aways for consideration by governments are proposed at the end of each section. In addition this paper will feed into the ongoing update of the PFI, in view of strengthening the policy relevance of the PFI’s infrastructure chapter thanks to the critical mass of country applications and experiences gathered to date.

I. THE INVESTMENT REGIME UNDERPINNING INFRASTRUCTURE INVESTMENT

The infrastructure sector presents specific risks to private investors. Not only do projects tend to be large-scale, capital intensive and with long development timelines, but it can also be difficult for the private party to transfer asset ownership. To a greater extent than in other sectors of the economy, investors in infrastructure are also particularly vulnerable to changes in government regulations (such as a modification in infrastructure tariffs) that can undermine their profitability. In addition as infrastructure development is a critical means of supporting economic growth and catering to essential social needs, government decisions on how much, where and what kind of infrastructure to build are politically charged. As a result governments have traditionally built, owned and managed infrastructure capital themselves.

For all these reasons, making the transition towards more private participation in national infrastructure provision carries a number of risks. Moreover, since certain forms of private participation (such as public-private partnerships or PPPs) are relatively recent in many countries, governments do not necessarily have the experience and capacity needed to effectively manage the risks entailed. Over the past two decades, 37% of PPP projects have thus been conducted in “lower middle income” countries, and 4% only in “low income” developing countries (Trebilcock et al, 2011). Yet public sector capacity for project design and implementation is indispensable in order to obtain value-for-money from infrastructure projects

and to avoid unbalanced risk-sharing arrangements which can result in fiscally unsustainable contracts and costly contract renegotiations.

In such a delicate context, investors considering a country's infrastructure investment opportunities are especially attentive to what in economic terms (in the words of Paul Collier) comes down to government "commitment technologies" – essentially all measures, be they economy-wide, sector-specific or even contract-specific, that make it more difficult for governments to renege ex-post on the commitments made within an infrastructure project.

1.1 National infrastructure planning

Government procedures to decide how much to spend on public infrastructure and how to allocate spending, as expressed in medium-term development plans or strategies at the national or sector level, are one such "commitment technology". These plans are likely to receive careful scrutiny from any domestic or international investor considering investment in the country's infrastructure networks. Investors will pay particular attention to government intentions to promote private participation, be it in specific utility markets (for instance, plans to increase the number of independent power providers connected to the national electricity grid or to embrace more forms of renewable energy) or through a particular contract structure (as embodied in a PPP Policy for instance). Political commitment is critical for assuring private investors that their investments in national infrastructure will be promoted, and that institutional and regulatory obstacles will be mitigated by government.

Public discussion of national infrastructure plans and other strategy documents is especially important when a shift towards enhanced private participation is undertaken, as this can help modify embedded ways of thinking among government officials and the general public. Indeed investors expect the consistency of the regulatory framework to transcend any given government. In Mauritius, which is a model in this regard, since 2005 the National Development Strategy provides a framework for all public sector investment programmes – including for transport, water and energy utilities; and the Mauritian "Government Programme 2012-2015 for Moving the Nation Forward" sets the objective of ensuring that at least 10% of the financing for major public infrastructure over 2012-2015 should come from Foreign Direct Investment flows. By contrast in many countries there is a confusing multiplicity of such plans or strategies, which are seldom accompanied by a formal public sector investment programme or by a strategic approach to attract private investment to key sectors.

The formulation of reliable national infrastructure plans, or more specifically PPP or privatisation policies, is especially necessary to reassure investors in contexts where initially divested enterprises have been subsequently re-possessioned. Indeed in several countries the strength of the political commitment to private participation in infrastructure has sometimes been ambiguous. In such cases, countries have at times cancelled contracts and retaken possession of facilities (Tanzania, Zambia). In Tanzania, although five major utilities (in electricity, harbours, water, ICT and air travel) involved some private participation by 2003, most of these companies were re-possessioned by Government in 2010-2011 for pricing considerations.

Whether politically or socially motivated, such changes in government positions (within a single administration but also across election periods and beyond party lines) send conflicting and deterrent messages to private investors potentially interested in infrastructure investment. Such evolutions confirm that to back national plans and policies, it is paramount that laws, regulations and agreements governing infrastructure sectors are clearly defined and transparent, as well as adequately enforced. These elements are addressed in the following section.

1.2 Access to land and protection against expropriation

Land acquisition is often a major obstacle in infrastructure projects and countries have initiated reforms accordingly. A peculiarity of Indonesian PPP regulations in the past was that projects could be tendered before the necessary land had been acquired, leading to costly delays as landowners held out for higher prices. Following incremental improvements to land procurement regulations, a 2010 regulation ensures that land is procured before the tender process commences. In 2012, a new law on Land Provision for the Public Interest was also enacted, which facilitates the adoption of a court-led land consignment scheme and reduces by half the time spent negotiating such schemes.

In Myanmar land leasing, from either a public or private owner, remains subject to prior approval by the Myanmar Investment Commission (MIC). When foreign investors lease land directly from the government, it is most often done through a Build-Operate-Transfer agreement, which also requires MIC approval. Most frequently, foreign investors use land through joint ventures with Myanmar nationals who have already leased land from the state. Beginning in 2013, the MIC can also issue permits for sub-leases of land, provided that the land is used for the same investment project as initially planned (Myanmar 2014).

In Zambia strides have been taken to improve access to land for investment purposes, involving close collaboration with traditional local rulers. Improvements in the systems of processing land acquisition applications and registration of titles are being implemented, including through the decentralisation of the Lands Department (Zambia 2012). Like in Mozambique however, the award and administration of land use rights at the local government level remains a challenge.

The question of access to land is intimately tied to that of protection of property rights – and by extension, expropriation procedures. In the interest of attracting more long-term investment, including in infrastructure, domestic legal frameworks must contain a sound, clear and detailed provision that lays down the obligation for compensation in the event of an expropriation and that clearly sets out the public benefit purposes for which an expropriation can lawfully occur. In Indonesia, the 2012 law on Land Provision for the Public Interest introduces safeguards for more transparent and fair expropriation procedures, including in cases where the government exercises the right of eminent domain. The 2012 provisions: provide a clear definition of public interest; require public and stakeholder consultation from the time when the location is initially designated; secure just and fair compensation through independent appraisal; and establish a single institution responsible for land acquisition, together with a dedicated fund.

Expropriation provisions can also cover not only direct expropriation, but also indirect forms of expropriation that can occur through interference by the state in the use of the property, or with the state enjoying certain benefits of the property even where it is not seized and the legal property title is not affected (OECD, 2004). For example and especially in infrastructure projects, pricing policies that deter investors' rights and affect their chances of cost recovery may amount to an indirect expropriation against which investors would be entitled to request a prompt, adequate and effective compensation, together with a right to challenge the expropriation decision before an independent administrative body or a judicial court.

In many countries, the protection against expropriation is laid out not only within the national law, but also within international investment agreements (IIAs) signed between the host and home countries. For several decades, IIAs have been designed with a view to nurture investor-state relationships, to attract new investors and reduce perceived risks that can deter investment. They therefore often provide an additional layer of "commitment", beyond domestic regulations pertaining to investment. However, in order for governments to fully reinforce the credibility of these commitments vis-à-vis all kinds of investors, be they foreign or domestic, they should address potential inconsistencies between levels of protection provided by

domestic laws and regulations and within IIAs. Otherwise, discrepancies regarding investment protection can impede legal predictability and transparency for investors. Moreover and as IIAs mostly grant investor protection on a bilateral basis, such disparity risks creating an uneven playing field between investors based on whether or not their home countries have signed IIAs with the host country.

1.3 Contract renegotiation

Given the long time-lines of infrastructure projects and the unpredictable nature and variability of many of the risks involved (such as commercial or demand risk), it is highly likely that most infrastructure contracts will have to be renegotiated at least once during their lifetime. Out of 1 000 Latin American concession contracts awarded between the mid-1980s and 2000, 30% were renegotiated. This proportion reaches 54.4% in transport contracts and 74.4% in water contracts. Interestingly, renegotiations often favour the concessionaire: in Latin America, 62% of renegotiation cases studied led to tariff increases, 38% to extensions of the concession term and 62% to reductions in investment obligations (Guasch, 2004). Such high renegotiation rates point to the importance of adequately addressing the need for contract renegotiation in long-term contractual arrangements – through flexible contracts and renegotiation structures on the one hand, and appropriate mechanisms for dispute settlement in case of disagreement between public and private parties on the other hand.

Most often and provided that the contract structure is flexible enough, these renegotiations take place smoothly and do not lead to disputes between the investor and the state. When disputes do arise, they are in majority settled privately or dealt with by the national courts. The legal framework for concessions and PPPs currently under preparation in Tunisia provides an example of how a degree of contract flexibility can help address demand and revenue risks so as to ensure that projects are resilient to changing economic conditions. Both the forthcoming regulations for Tunisia's PPP law (currently in draft form) and the November 2013 decree relative to concessions require that project contracts contain clauses specifying in which cases their terms can be revised (for instance in response to unforeseen changes in the needs of the public party or in the financing conditions). Meanwhile in Peru, a single state agency, *ProInversión*, handles all nationwide public infrastructure and utilities, as well as concession and public tender processes. All concession agreements must include a clause on the projects' economic balance, which means that if – due to the legislative changes – the concessionaire's profit decreases or its costs increase, economic balance should be re-established. The private investor has a guarantee that if the State executes the redemption clause, which allows it to terminate the concession unilaterally, the State shall pay to the concessionaire the total invested amount and the loss of potential profit (Peru 2008).

The Peruvian case provides an interesting example of mitigating political risk and enabling more flexible contract renegotiation. Nevertheless excessive flexibility on renegotiation can also be dangerous, as it can encourage private bidders to deliberately underestimate costs in their offers so as to win the bid, while expecting to break even through subsequent renegotiation. A 2009 econometric evaluation of PPP renegotiations suggests that this is a common tendency, and that likewise governments often use renegotiation to increase spending and shift the burden of payments to future administrations. Thus out of 50 concessions awarded in Chile between 1993 and 2006, total investment increased by nearly one-third via renegotiation (from USD 8.4 billion to USD 11.3 billion) and the costs of renegotiation were in majority not borne by the administration that renegotiated (Engel et al, 2009). The *OECD Principles for Public Governance of Public-Private Partnerships* seek to help avoid such fiscal mismanagement, by providing concrete guidance to policy makers on how to ensure that PPPs represent value-for-money (VFM) for the public sector.

In view of such risks, Tunisia's decrees relative to concessions and PPPs (forthcoming) also define in which cases contract modifications are considered to be "substantial" and therefore require launching a new bidding procedure (substantial modifications for instance include: the introduction of contract

conditions that would have enabled alternative bidders to be selected initially; a modification of the contract's economic balance in favour of either public or private party; or a change in the scope of the contract which results in the coverage of services or works not originally included in the contract). This strikes a balance between contract resilience and excess flexibility in the contractual terms, and can help ensure that VFM and competitiveness are retained as priorities throughout the lifetime of the infrastructure project. Specifying limits to the financial amounts that can be renegotiated within concessions laws is another frequent approach, although in several countries insufficient enforcement and budgetary oversight has allowed these limits to be frequently exceeded. Indeed as Section 3.2 details further, even in the best of cases well-written contracts cannot overcome institutional weaknesses (Trebilcock et al, 2013).

1.4 Settlement of infrastructure investment disputes

Alongside a balanced approach to contract renegotiation, a reliable structure for domestic arbitration can help settle public-private disputes. In the Chilean case above, while 83% of the renegotiation volume was settled bilaterally between the contracting parties, the rest resulted from decisions from arbitral panels. However domestic arbitration is not always a sufficient or satisfactory recourse, and in some cases infrastructure investment cases are taken to international arbitration fora. Whether a dispute can be taken to international arbitration or not is dependent on the parties' consent to arbitral jurisdiction, which is often contained within an IIA (although consent to arbitration may also be included in an investment contract or within domestic legislation). For these reasons, alongside addressing expropriation risks, domestic legal frameworks can also include as another core standard of treatment the right to resolve through arbitration any disputes that may arise in the course of project operation.

Overall prior to 2003 at least 28 cases relative to arbitrations and settlement agreements in infrastructure projects (involving telecommunications, transportation, water and sanitation, and energy) have been taken to the ICSID tribunal. Out of these, five disputes pertained to concession contracts, six to construction contracts, and seven involved infrastructure privatisation agreements. In a significant number of these cases the disputes have related to tariff adjustments, often triggered by public resistance to cost-reflective pricing (see section 6.1 below). In construction contracts, disputes most frequently relate to allegations of breach of contractual stipulations, or to the final payments due under the contract (OECD, 2003). More rarely the case may relate to repossessions of divested infrastructure services – Tanzania has been involved in four such ICSID cases to date. Most recently the ongoing case between Standard Chartered Bank (Hong Kong) Limited and the state-owned electricity utility TANESCO sheds light on inconsistencies remaining between Tanzania's national framework and its international commitments.¹

These court and arbitration procedures are extremely lengthy and costly, including for the host country concerned, and also send out negative signals to potential future investors. This highlights the necessity of providing sufficiently protective domestic frameworks, consistent with host countries' international commitments, so as to anticipate and manage potential investment disputes in infrastructure projects without necessarily having to refer them to international arbitration.

¹ ICSID proceedings between Standard Chartered Bank (Hong Kong) Limited (SCB HK) and the Tanzania Electric Supply Company (TANESCO, the state-owned operator) were commenced in 2010, and were brought pursuant to the tariff payable under a Power Purchase Agreement (PPA) relating to a power plant in Dar Es Salaam. In the PPA Tanzania consented to ICSID arbitration. On 12 February 2014 the Tribunal concluded that it had jurisdiction over the dispute and ordered the parties in the light of its findings to renegotiate the disputed tariff. However on 23 April 2014, the Tanzanian High Court ordered both parties (TANESCO and SCB HK) to refrain from "enforcing, complying with or operationalising" the Tribunal's decision.