

## 12. Settlement of disputes

61. Another important factor for the implementation of privately-financed infrastructure projects is the legal framework in the host country for the settlement of disputes (see chapter XI, “Settlements of disputes”, \_\_). Investors, contractors and lenders may be encouraged to participate in projects in countries that provide a hospitable and internationally acceptable legal climate for the settlement of disputes, as offered by the UNCITRAL Model Law on International Commercial Arbitration. The efficiency of the national judicial system, the expeditiousness of court proceedings and the availability of forms of judicial relief that are adequate to commercial disputes are additional factors to be taken into account. Of particular importance is the possibility of recognition and enforcement of foreign arbitral awards, which will be fostered by adherence to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958).

62. A framework for the settlement of disputes between the host Government and foreign companies participating in a project consortium (see chapter XI, “Settlement of disputes”, \_\_) may be provided by adherence to the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (Washington, 1965). The Convention, which has thus far been adhered to by 139 States, established the International Centre for the Settlement of Investment Disputes (ICSID). ICSID provides facilities for the conciliation and arbitration of disputes between member countries and investors who qualify as nationals of other member countries. Recourse to ICSID conciliation and arbitration is voluntary. However, once the parties to a contract or dispute have consented to arbitration under the ICSID Convention, neither can unilaterally withdraw its consent. All ICSID members, whether or not parties to the dispute, are required by the Convention to recognize and enforce ICSID arbitral awards. ICSID is an autonomous international organization with close links with the World Bank.

### C. National legislation and international agreements

63. In addition to the internal legislation of the host country, privately financed infrastructure projects may be affected by international agreements entered into by the host country. The implications of certain international agreements is briefly discussed below.

#### 1. General agreements on trade facilitation and promotion

64. A number of multilateral agreements have been negotiated to promote free trade at the global level. The most notable of those agreements have been negotiated under the auspices of the General Agreement on Tariffs and Trade (GATT), and later the World Trade Organization (WTO). Those agreements may contain general provisions on trade promotion and facilitation of trade in goods (e.g. a most-favoured nation clause, prohibition of the use of quantitative restrictions and other discriminatory trade barriers) and on the promotion of fair trade practices (e.g. prohibition of dumping and limitations on the use of subsidies). Some specific agreements are aimed at the removal of barriers for the provision of services by foreigners in the contracting States or promoting transparency and eliminating discrimination of suppliers in public procurement. Those agreements may be relevant for national legislation on privately financed infrastructure projects which

contemplates restrictions on the participation of foreign companies in infrastructure projects, or establishes preferences for national entities, or for the procurement of supplies in the local market.

## 2. International agreements on specific industries

65. The telecommunications sector to date is governed by specific international commitments on matters of market structure, competition and regulation. In the context of the negotiations on basic telecommunications concluded as part of the General Agreement on Trade in Services (GATS), a number of World Trade Organization (WTO) member States representing most of the world market for telecommunication services have made specific commitments to facilitate trade in telecommunication services. Other WTO member countries may still file specific commitments, those that already made them may offer improvements at any time, whereas new WTO members may be asked as part of the accession negotiations to include specific telecommunications commitments.

66. It should be noted that all WTO member States (even those that have not made specific telecommunications commitments) are bound by the general GATS rules on services, including specific requirements dealing with most-favoured-nation treatment, transparency, regulation, monopolies and business practices. The WTO telecommunications agreement adds sector- and country-specific commitments to the overall GATS agreement. Typical commitments cover the opening of various segments of the market, including voice telephony, data transmission and enhanced services, to competition and foreign investment. Legislators of current or prospective WTO member States would thus ensure that the country's telecommunications laws are consistent with the GATS agreement and their specific telecommunications commitments.

67. Another important sector-specific agreement at the international level is the Energy Charter Treaty, concluded at Lisbon on 17 December 1994 and in force since 16 April 1998, which has been enacted to promote long-term cooperation in the energy field. The Treaty provides various commercial measures like the development of open and competitive markets for energy materials and products, the facilitation of transit and the access to and transfer of energy technology. Furthermore, the Treaty aims at avoiding market distortions and barriers to economic activity in the energy sector and promotes the opening of capital markets to encourage the flow of capital in order to finance trade in economic materials and products. The treaty also contains regulations about investment promotion and protection: equitable conditions for investors, monetary transfers related to investments, compensation for losses owing to war, civil disturbance or other similar events, and compensation for expropriation.