

APPENDIX 11
LESSONS LEARNED FROM PRIVATE SECTOR OPERATIONS

Sector Issues

Water concessions are very sensitive to the political climate and the economic situation of the concession area. Extraneous economic factors have a direct impact in the stability (or a lack of thereof) of the regulatory environment. To date, each water concession has had to be modified in some way to reflect unanticipated events or responses by users to the regulatory climate. Therefore, the terms of a concession contract should be flexible enough to provide for future, mutually agreed upon, modifications in order to protect the economic equilibrium of a water project.

In energy projects, the use of the concept of “project completion” and/or the “conversion date” should always be used for setting important threshold tests including meeting certain commercial, operational and financial criteria. However, the use of a firm date, that would lead to a default, needs to be considered carefully in order to avoid the Bank incurring extra work and cost in making amendments of the loan agreement when that date proves to be unrealistic.

Loan Administration

Certain local standards in terms of formats/methods of approval (validity of signatory, fax authorization, additional certification to prove validity) should be acceptable to the local collateral agents and the Bank, and need to be agreed on prior to financial closing.

Having a clear understanding of all triggering events reflected in the Loan Agreement and taking pre-emptive actions on a timely manner with the support of external and internal legal counsels is key to preserving the credit quality of the loan.

Loan Syndication

In order to ensure a smoother decision-making process among the Bank and its B-lenders, it is important that whenever a “club-deal” type of syndication is formed with commercial banks to mitigate the syndication risk (one which does have a clear lead arranger), a representative of these banks needs to be assigned to work with the Bank’s team negotiating with the project sponsors.

Whenever there is a requirement from the B-lenders for a hedging mechanism as a disbursement condition, it should first be made certain that such product is available to be provided in a timely manner and on reasonable commercial terms. Otherwise, future disbursements will be delayed and/or complicated.

Environmental and Social Issues

In private sector transactions, the Bank only has a legal contract with the private Borrower and not with the State, and thus the legally enforceable position is always with the Borrowers. Therefore, the Bank must consider this fact when considering how to design environmental and social covenant and remediation programs and how much

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dependence to place on the performance of the State and what type of responsibility can be effectively placed on the Borrower to meet the Bank's objectives and concerns.

At times, the Bank will support a specific project or stage, or a project that is only part of a Borrower's overall operations. In such cases, the Bank should seek to require the Borrower to follow certain minimum environmental and social standards throughout all stages of its operations as well as to abide by more specific requirement pertaining to the Bank financed project.

To date, projects that have involved complex or difficult environmental and social issues have required significant staff resources. Therefore, every effort should be made to identify such projects in advance and to discuss the costs, efforts and issues with the sponsors early on so as to properly plan for the resolution, monitoring and financing of the costs or such issues.

The Sponsors' commitment to follow the environmental and social standards of the Bank is very fundamental for the performance of the project and has been directly related to its experience on working with the Bank in former projects. Therefore, additional educational efforts are recognized as needed for sponsors who are new to the Bank's requirements in this area.

Guarantee Administration

The role of trustee for a guarantees transaction is not often a familiar task to firms typically providing trustee services for lending syndications. Therefore, to avoid future problems in administration, project teams should be mindful to discuss very clearly with the proposed facility trustee the functions, roles and responsibilities to be undertaken by the facility agent/trustee prior to the execution of a guarantee agreement.

To avoid any risk of confusion in administration and in payments to reinsurers, project teams should ensure that the various financing documents (Guaranteed Loan Agreement, the IDB Guarantee and the Reinsurance Contract) are consistent with the Bank's standards for payment calculation conventions (such as number of days in year, business days convention, coverage period). Revisions to be made in 2002 to the guarantee and reinsurance agreements should assist in this respect.

Independent Engineer (IE) reports

Project teams should ensure that technical services such as IE Monitoring Agreements signed prior to Financial closing cover the whole life of the loan, in order to avoid re-negotiating with Sponsors and amendments to the loan agreement.