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BUILDING THE LEGAL ENVIRONMENT FOR PPPs

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Building the legal environment for PPPs

Panellists

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She gained a qualification at the Faculty of Law at the University of Ljubljana. She practised at the High Court of Justice in Maribor, Slovenia, legal adviser at the trade companies in Maribor, Ljubljana and at Ljubljanska banka, she specialised in international financing and trade. Among others, she was the leader of the experts group which prepared the proposal of the current Public Procurement Act in Slovenia, passed in April 2000. Ms Primec participates in many seminars in Slovenia and abroad (Istanbul, 1999, organised by Sigma) and works in many expert groups at the award procedures. In October 2000, she prepared the Comment to the Public Procurement Act.

Jernej Sekolec is Secretary for the United Nations Commission on International Trade Law (UNCITRAL) and Chief of the International Trade Law Branch (substantive secretariat of UNCITRAL) of the United Nations Office of Legal Affairs. Prior to joining the International

Trade Law Branch in August 1982, he was a law professor at the University of Maribor, Slovenia, and a judge, member of the appellate panel of the Court of Appeal Maribor (commercial chamber). He has published books and articles on commercial law, including contract law, commercial arbitration, international payments, negotiable instruments, transport law and products liability. In UNCITRAL, he has worked in the areas of international commercial arbitration, transport law, international contract law, international credit transfers, counter-trade transactions, legal aspects of electronic commerce, cross-border insolvency, assignment of trade receivables and privately-financed infrastructure projects.

MR MAURICE: Good morning. My name is Emmanuel Maurice; I am the General Counsel of the EBRD. I should like to welcome you all to the Business Forum which is held on the occasion of the 10th Annual Meeting of the Board of Governors of the EBRD. I should like to welcome you to one of the first events in the forum, in which we shall discuss an important and topical question: how to build the appropriate legal environment for public-private partnerships in the sector of infrastructure and public utilities.

As you all know, the EBRD was created 10 years ago to assist the countries of Central and Eastern Europe in their transition to a market economy. It is trite transition economics to say that infrastructure investment is critical to economic development. In the countries of central and eastern Europe the demand for better roads, public transportation, cleaner water and more reliable electricity supply is huge, so huge that no government in the region – and for that matter no government in any other country – could meet all these needs by its own resources, even if it wanted to. Attracting private investors and operators to the infrastructure sector is therefore essential for the governments of Central and Eastern Europe.

It has also become commonplace to say that there can be no enduring interest by these private investors and operators without sound, predictable and transparent rules and without legal institutions that operate and apply those rules in a fair and efficient manner. Some countries in Central and Eastern Europe have already made good progress to adopt these rules and to create those institutions, but some other countries still have a long way to go.

The EBRD is trying to help in various ways. I shall try to stress two ways in which the EBRD is trying to help. First, the EBRD helps the countries of Central and Eastern Europe by participating in the financing of public-private infrastructure partnerships so that the countries obtain direct experience for themselves in this sector. The EBRD has provided financing for private entities on the basis of concession agreements for the construction or upgrading of wastewater treatment facilities in Bulgaria, Estonia, Kazakhstan and Slovenia; it has also provided concession financing for the construction of motorways in Hungary; and, finally, it has provided concession financing for the construction of handling and storage port facilities in Latvia and Romania. In addition, the EBRD has supported the privatisation of companies which provide infrastructure services where the companies being privatised were formally granted concession agreements. Examples of such projects include motorway projects in Poland and Ukraine.

The other way in which the EBRD is trying to help public-private partnerships in the infrastructure sector is through its involvement in global efforts to develop and promote internationally acceptable concession laws and practices and in participating, as well, in national initiatives to set up the rules and the institutions that regulate and facilitate this type of operation.

This morning you will hear about some of these initiatives and more particularly about the UNCITRAL guide on privately financed infrastructure projects, and also, to a lesser extent, on some other initiatives such as the one sponsored by the OECD in the same field. You can read more about these initiatives and about concessions in

general in the spring issue of *Law in Transition*, which is the EBRD legal journal which was distributed to you at the entrance and which has just been released today. This issue focuses on concessions. I am sure that those of you who make or influence legal policy in Central and Eastern Europe will be interested to read it.

We have four distinguished speakers today, all of whom, through serendipity, have some connection with Slovenia and in particular with the city of Maribor. Our first speaker is actually from Slovenia. Dr Jernej Sekolec is the Secretary General of the United Nations Commission on International Trade Law (UNCITRAL). Prior to joining UNCITRAL in 1982 Dr Sekolec was the Law Professor at the University of Maribor and a judge on the Appellate Panel of the Commercial Court of Appeal in Maribor.

Dr Sekolec, I should like to ask you and each of the other speakers to try to speak for no more than 10 to 12 minutes so that we have time for a question and answer session at the end of the four presentations.

DR SEKOLEC: Thank you, Mr Maurice. It is really good to be here. This morning, when I was going through this week-end's *Herald Tribune*, I saw an interesting article by Jean Lemierre, the President of EBRD, and I should like to start by quoting a few lines from that article. It says:

“Privatised utilities now provide steady supplies of clean drinking water, reliable power, affordable, efficient telecommunications, and so forth, and there have been hundreds of thousands of small companies started in the client countries of the EBRD.”

Then he says:

“Progress in the transition to market economies has been uneven across the region and there have been several setbacks. No investment or aid package will help in the long term unless business is conducted to internationally accepted standards. Owners of businesses, from software designers and gold mines, say that their most enduring problems are” – I stress this – “with the laws, regulations and officials who foil efficiency.”

Why has progress been uneven in these countries? I think the same would apply to developing countries in Latin America, Africa, Asia, and so on. It is certainly not for lack of ambitions, of entrepreneurial people or of educated people, in particular in Eastern Europe. Is there a factor, perhaps a single factor, which unleashes the powers capable of economic progress in these countries?

There used to be a belief in the days of the Cold War that by introducing democracy and a free market and strengthening multi-party systems economic progress would come of itself. However, necessary as democracy is, it does not explain why we have democratic countries where there is political freedom, where political parties can be established, where there is freedom of speech and freedom of the press, and yet the success is not there. There is an increasing realisation, as well as sociological evidence, that what makes or breaks a successful economy is the way the market operates.

In many client countries of the EBRD the markets are free, with no restrictions as to what one can buy or sell or as to the price. The problem is that the markets are what some call spot markets. The goods and services are exchanged for money close to each other. There are no long-term transactions. Why are there no long-term transactions? Because nobody trusts; nobody gives credit; nobody makes a contractual commitment that would be repaid or lived up to two years from now. Why? Because laws are not there and to the extent they are there they are not enforced properly. There are many factors behind it, but, unless one is able to make long-term contractual commitments and creditor and investor have assurance that the investment will be safe, there will be no progress.

Here is where we come to the crux and where EBRD and UNCITRAL converge. What UNCITRAL is about is to provide legislative mechanisms which cater to modern business, and that business is long-term business. Quality comes only from long-term commitments. Of course, a good law does not do anything on its own; there has to be a judicial system to enforce it. But still there are many countries among the client countries of EBRD where laws, even if they are enforced properly, do not allow for long-term transactions. A businessperson in my own country is not able to pledge his inventory in order to provide collateral for credit. He is not able, without undue obstacles, to pledge trade receivables. That is the case not only in my country but in a good number of countries. We need modern laws, and those modern laws have to be properly enforced. Here one should credit EBRD which, in addition to being involved in individual transactions, tries to do its best to bring about this new legal culture.

One example of where UNCITRAL is trying to offer advice to countries on how to make possible long-term transactions and project finance for investment in infrastructure where transactions are concluded for 20 years or 30 years is "*The UNCITRAL Legislative Guide on Privately Financed Infrastructure Projects*", which has just come out. It does not tell one how to negotiate the transaction or what are the contractual clauses one should put in; it tells the legislator what it has to do in order to make these deals possible. This book is useful even in countries which have legislation in place to review that legislation, to see whether it really does not contain unnecessary obstacles. There are several areas. For example, how do you select a concessionaire in a procedure that will eliminate nepotism, corruption, and so forth? What must be present? It tells you what the law must provide when someone comes with an unsolicited proposal for an interesting project. Can you just negotiate it with that person or are there safeguards to be put into legislation? What kind of secured transactions laws would a country need in order to allow project finance? Pledging future receivables, future payment claims, is the lifeblood of these transactions, and many countries do not have laws that allow this. This book gives an explanation of what we do. It is on a conceptual basis and discusses policy changes. UNCITRAL is now considering whether it should be producing a more concrete statutory text, a model law on project finance transactions.

I should like to mention in my last minute or so several other UNCITRAL projects which, although they are not solely geared to project finance, make these transactions safer and more do-able. One such area is the area of settlement of commercial disputes. Without a credible mechanism for settling commercial disputes, it just will

not work. If a problem comes up an investor must have confidence that there will be a transparent and fair system. In some cases it may be through courts but in many cases the investor says: "If I have to go to the courts of that country, it is just not worth the risk. I want to be able to arbitrate my dispute." But, in order to arbitrate it, the country would say that the arbitration has at least to be in that country, for political or whatever reasons, but in order for arbitration to be in that country a good arbitration law which is friendly to the modern concept of arbitration is necessary. UNCITRAL has prepared a series of legal texts that make arbitration, as a method, function: the UNCITRAL model law on arbitration, the UNCITRAL arbitration rules, the UNCITRAL notes on organising arbitral proceedings, and so forth.

Another area is electronic commerce. In order to make commercial communications between trade persons legal so that they would be enforceable in court and so one could show a print-out to a judge and have it accepted, many countries, if not all, need to adjust their evidence legislation and their court procedural laws, or at least they have to review them, to allow these things. Here again UNCITRAL has done that.

In the area of secured transactions we are natural partners with EBRD. You produce a very useful model law on secured transactions and you have valuable experience with it. We are embarking on a project to produce statutory guidance in this area.

Another area is insolvency legislation. Without good insolvency legislation nothing will move. There must be certainty that if a project goes wrong there will be fairness in dealing with it. There are cross-border, international aspects of insolvency. All these texts are there. I should like to commend EBRD for doing all it can to take these texts and advise countries to put them into practice.

That is UNCITRAL's mission. We should like to help the Bank and the client countries directly, as far as possible, to upgrade and modernise their legislation to make it hospitable for long-term transactions.

MR MAURICE. Thank you very much, Dr Sekolec. I turn now to Walid Labadi, who is Senior Counsel and Team Leader at the EBRD. Walid is one of the more experienced lawyers in the legal dept at the EBRD. He provides legal support for many of the most important transactions there. He was, in particular, the lawyer responsible for the wastewater project in Maribor in Slovenia, which was arguably the first limited recourse private sector financing of a water treatment facility in the region.

MR LABADI: I must confess, Emmanuel, that this is the first opportunity I have had to speak in a forum with round tables like this facing the audience, a bit like a British talkshow. I am a little bit fearful that someone like Jeremy Paxman or another expressive talkshow host is going to ask me a hard question, wagging their finger. Putting those fears behind me, I will proceed with my presentation.

The focus of my talk and of this panel generally is infrastructure development and concession. The challenge of infrastructure development, whether you do it through a concession arrangement or otherwise, is raising the money to do it. Even if you can find a developer who is willing to go in and build the project or enter into a concession agreement, that developer probably does not have the money or does not

have the resources or does not have the appetite to take the full risk for project construction and completion. What he will seek to do is offload a portion of that risk on lenders.

One of the things that is sometimes forgotten in assessing a concession regime or a concession arrangement or in negotiations between a developer and a government is what exactly the lenders are concerned about. I am here today to tell you a little bit about some of the issues in assessing risk that lenders are concerned about and some of the ways host governments can work to improve their environment to make those risks more acceptable for lenders.

My talk will be divided into two parts. In the first part I identify some action areas that governments can think about for enhancing the concessions regime in terms of addressing lenders' concerns. In the second part, I should like to give you a few thoughts on the results of a survey conducted by the EBRD of the adequacy of the concessions regime in its countries of operation.

The first part of my presentation focuses on seven action areas that policy-makers can think about acting on to enhance the bankability of concession agreements in their regime. I must confess that when I was developing these seven areas I was a little torn as to how many to talk about. Should I talk about five? Should I talk about eight? Should I talk about 10? I decided on the number seven with the view in mind that seven has a historical importance in the Judaeo-Christian tradition and it's a nice magic number to go with. However, I have done some reading lately and it seems that seven is not the luckiest number for all people. If you remember your history, when the ancient kingdom of Israel was captured the Jews were taken back into Babylon as slaves. For the ancient Babylonians the most important number was 60 because that was a unit of measurement. The way we might think of two dozen, they would say two 60s, whatever the Babylonian word for that was. The most unlucky number for the Babylonians was the first number that could not be divided into 60 evenly, the number seven, and so the theory is that the unlucky number for the Babylonians became the lucky number for the Jews and the lucky number in our traditions. With apologies to any Babylonians out there, I have decided to move ahead with my seven action items.

First, award concessions fairly. This has a number of implications. Generally, any creditor is concerned where there is some funny business going on in the way a concession agreement is awarded because there are risks that a future government might come in and say: "That looks a little fishy. We're not going to co-operate. We're not going to comply with our obligations. We're going to look for ways to undermine this concession agreement." That is an obvious concern in assessing the risk profile of a project.

No lender, particularly an IFI, likes to be associated with a project that smells, and there is an obvious concern about that. In assessing any project, a lender will look at the way the concession agreement was awarded. In particular, international financial institutions are concerned not just about the way the agreement was awarded; there is a certain aspect where they want it to be a fair contract, and that is very difficult to evaluate. When you are dealing with IFIs, it is very helpful if the process is fair. If the process is fair, it is easy to say that the concession agreement is fair: if there was a

pre-selection process, if there was an international consultant involved in helping select the concessionaire or the pre-selection tender. If there was a fair process of actually awarding the concession and it was open and transparent, it makes it easier for us to deal with it and to process it within our institutional guidelines.

Secondly, clarify the power of granting authorities. It seems it always comes up near the end of the financing of a concession agreement. People will start to dig in and try to identify whether the concession agreement was properly signed or whether some problem will arise. Obviously a risk which lenders are not comfortable taking is whether or not the concession agreement was properly signed. Any clarity that can be brought to a legal regime in terms of identifying who the signing authority is of a concession agreement and clarifying that they have the ability to enter into it is very useful.

What comes up even more often than that is that the general terms of a concession agreement are published in a tender and thereafter there are some negotiations of the concession agreement and it is not clear what authority the government has to modify the terms from the original idea of the concession agreement. To the extent that that is clear, lenders are more comfortable that there is not a risk that somebody will argue that the local governmental authority exceeded its authority with the concession agreement.

Finally, a concession agreement will often provide for undertakings by a variety of governmental authorities, and that is a risk that lenders are concerned about. If one governmental agency enters into an agreement and another one is responsible for diverting traffic or doing something else, then lenders are not comfortable that that risk has been properly addressed. To the extent that the legal regime can impose obligations more generally on the government for the provisions of a concession agreement, lenders are more comfortable with that environment.

Action item three is to clarify the tax and licensing regimes. I think the biggest problem in the concession laws in our countries of operation, whether there is a concession law or not, is that there is a myriad other laws and one is not sure how it all fits together. To the extent that people sit down and think with clarity about the way their whole regime works and make sure that people feel comfortable that if they can do certain things they will have complied with the law, which obviously minimises the risk for lenders and for developers in moving forward with the concession agreement. This is just an obvious point of clarity. I think it is one that takes a lot of work and one that we find most prevalent as one of the problems in developing concession arrangements.

Another element of that is that many times you can have a concession law but it needs implementing legislation. The clearer that implementing legislation is, the clearer things are for everyone as to what is required.

Finally, we have found it helps a lot if there is overriding legislation which supersedes other laws. People have a reference point, lenders have a reference point, and developers have a reference point, as to what needs to be done to comply with the law.

Action item four: permit concessions to be governed by investor-friendly choice of law rules and dispute resolution mechanisms. I will not spend much time on this because Dr Sekolec mentioned in his presentation the importance of an investor-friendly choice of law regime and of international dispute resolution process. Obviously lenders, in lending to a country that they are not familiar with, are more comfortable if they know the choice of law, if there is a history of it working, if there is a fair dispute resolution mechanism.

Action item five: provide for market-sensitive financial stabilisation. Christopher Clement-Davies, on my right, will talk a bit about this. The point here is that lenders are not comfortable taking legal risks associated with regime changing. If a government is going to change the legal regime that affects the economics of a project, lenders like to see something in a concession agreement to compensate the concessionaire for that change in regime and to create enough cash flow for the project. That is what financial stabilisation clauses are about.

It becomes a little trickier when one talks about issues like *force majeure*. Where should that risk lie? If it is war, maybe the risk should lie with the government. If it is an insurable risk, that is clearly something a concessionaire can think about putting into the context of their tender bid so that that risk is properly insured and lies with a third party.

Action item six: allow lenders to take effective security. Again, Dr Sekolec spoke about this in his presentation and I shall not spend much time on it. If developers are looking for lenders to take limited recourse risk and not have recourse to a developer or anyone else, lenders are going to want security. The more a regime provides for that, the easier it is for lenders to get that, the more likely it is that lenders will be interested in providing finance.

Action item seven: permit government undertakings to lenders. These are commonly known as direct agreements, or direct undertakings, between governments and lenders. These are very important to lenders because they can fix a lot of ills, a lot of other problems. They provide formal recognition of a lender's interests in the project, an acknowledgement by the government of a lender's interest in the security. They provide for a mechanism or process for notification to lenders if a concessionaire is not complying with its obligations. They provide cure and substitution rights, which again Christopher can speak to more later. They provide a waiver of sovereign immunity. My favourite is this. Every concession agreement that I have ever looked at, or had lawyers look at, has had something wrong with it, something people did not understand, something people thought was unclear. Direct agreements can fix that because they can help make things clear, usually at no cost to anyone. Everyone gets things a little clearer.

Moving to the second part of my presentation on the legal indicators survey, the EBRD conducted a survey of the lawyers in its countries of operation to get their reactions on the efficacy of their legal regimes in respect of a concession environment. The goal of our survey was to get a perceptual basis of where things stood so that we could identify, and help countries identify, where they might have need for law reform or for changes in the way that they process concessions. In designing the survey, we very much used the earlier drafts of the UNCITRAL guide

and we used the seven items I talked about to design questions that looked at issues we felt were important in assessing the efficacy of a concession law regime. Our questions were sent to lawyers in the countries of operation and when we received the answers we attributed certain values for certain answers and tabulated them and came up with our numbers. It is important to point out that these are subjective answers. It is lawyers' perceptions, not scientific, hard data. It is a perceptual assessment.

Going to the results of the survey, how good are concession laws in the region? You will note a couple of things on this survey. First, there were no countries that scored "comprehensive" in terms of our evaluation. The best we had were six countries that scored "adequate". Most of those have an overriding concession law, with just a couple of exceptions. The exceptions are quite interesting. Slovenia is an exception. It scored "adequate" in its concession law effectiveness and extensiveness but it does not have an overriding concession law. That is mitigated by some other factors which relate primarily to the effectiveness of the regime. People felt that the procurement process in Slovenia was generally fair and transparent. People felt that they could work with the government authorities in Slovenia to help move things along and address risks as they arose. Even though the concession law in Slovenia might need some further development, Slovenia scored reasonably well because of other aspects that affected the survey.

Another interesting point is how some countries scored differently even though they have very similar regimes. For example, if you look at the Czech Republic and Slovakia, obviously they come from a similar system and they have nearly identical concessions regimes, yet the Czech Republic scored "inadequate" whereas Slovakia scored "detrimental". That, again, goes to lawyers' perceptions of effectiveness. Maybe in the Czech Republic there has been a little bit more experience with concessions so the feeling was that you could get things done even though it was not perfect and in Slovakia the feeling was that that was not really possible.

You can read more about this and about the seven items I talked about in *Law in Transition*, which has been distributed.

One last item on the concessions survey that I wanted to point out, and which I think gave one of the most important results of our survey, is the following question. In practice, is the concessionaire selection process fair and transparent? I find these results quite astounding. Almost a third of the respondents said that never or rarely is it fair and transparent. I think that is really telling of the work that needs to be done in the region in terms of making the concessionaire selection process more fair and transparent.

I would point out that these results were much worse in the central Asian countries and were therefore skewed towards those countries, but, when you think that the lawyers of a third of the countries in our region felt that the concessionaire selection process was not fair and transparent, there is clearly room for some work.

Finally, where do we go from here? I think host governments need to keep in mind some of the items I have talked about and keep in mind lenders' concerns in developing an investor-friendly concession regime. The EBRD can, I think, play a very active role in this in two areas. One is in the law reform area, which has been

talked about. We are already helping Slovenia develop a concessions law. We also have a project in Lithuania that we are working on. Even more important is our role in project work. The more projects that are undertaken, the more comfortable investors are going to be, regardless of the legal environment. People will devise ways of addressing problems because they will be actually confronted with them.

MR MAURICE: Thank you, Walid. Our next speaker is Ms Blanka Primec, State Under-Secretary for Public Procurement and Concessions in the Ministry of Finance of Slovenia and a member of the Cabinet of the Minister of Finance in Slovenia. Ms Primec was formerly Chief of the Unit for Public Procurement of the Slovenian Ministry of Finance. She has played a leading role in the development of procurement legislation and procedures in Slovenia.

MS PRIMEC: As mentioned by the previous speaker, I shall talk about Slovenian practice with regard to the public-private partnership and concession awarding process. As in other markets, we soon realised in Slovenia that public funds were not sufficient to finance public infrastructure through case-by-case contracts. Infrastructure, including the energy sector, transport, communications, water and waste disposal is vital for every country. It links all the elements of the economy and ensures an adequate flow of production goods and services.

Practically all infrastructure sectors – utility sectors, if I use the term from public procurement law – in our country currently involve some sort of reform process. Previously state-owned companies have been, or are in the process of being, converted into joint stock companies if possible by privatisation of the facilities by private investors, such as, for example, Slovenian Telecom. The investment requirements in most sectors are substantial. The involvement of the private sector might therefore play an important role.

In our country the state is responsible for the energy sector, telecommunications, highways, railways, ports and airports and partly responsible for solid waste disposal, but water supply, wastewater and solid waste treatment are all businesses which in the first instance fall under the responsibility of municipalities. The municipalities have established individual corporate entities, public entities, to provide these services. These public utility companies are sometimes responsible for only one sector, for example drinking water distribution, or for several different sectors: wastewater, garbage collection, parking spaces, and so on.

Centralisation has brought about a number of advantages. For example, its regulatory approach is to be adapted to local conditions and preferences and it can foster experimentation through more innovative regulatory practices. However, the centralisation has some weaknesses, of course, which are likely to become more apparent. These include, for example, reduced capacity to deal with cases such as projects serving more than one municipality. This problem is particularly tough in Slovenia, where even the largest municipalities are relatively small. For example, the Public Procurement Office, in conjunction with the land ministries, is responsible for preparing special programmes for assistance to local governments, including the provision of training, development of model contracts, and so on. The Public Procurement Office was established in February this year.

However, the national government also plays an active role in defining the operating environment through the approval of tariffs and through step-in rights to enforce the quality of service. Of course, as in many other countries, there is a conflict of interest between the Ministry of Finance and other ministries, for example the Ministry of Transport or of Environment. From the point of view of the Ministry of Finance, we would like to review the financial burden of the state and of the municipality budget. The private sector contribution would consist of providing the necessary resources, expertise and know-how to design, build, operate and maintain the infrastructure facilities. An optimal mix of both sectors' input will lead to the success of a project.

According to our current practice, we see good cooperation between all actors in the process of public-private partnerships, the state and the municipality and the state and the concessionaires. In practice, the private sector's involvement in building and operating the infrastructure facilities resulted in partnerships in both. The public and private sectors, the state or municipality, concludes many contracts both at the national and municipal levels. I have to stress here that the municipalities are ahead of the state in this respect since, due to their weak financial position and inability to finance their environmental and other tasks; they quickly invited the private sector to participate. At the moment, several joint projects are being implemented by the municipalities using also the PHARE and ISPA financial sources, and also two or three times this project in Maribor was mentioned.

As I have already mentioned, many sectors are under the responsibility of the municipalities. Sometimes companies provide services for different sectors: water, wastewater and so on. Almost all municipalities are suffering from a severe shortage of appropriate funds. The Slovenian government controls the tariffs for water supply, public transport and other public services. Also, the price level is not the same in all cities. The municipalities are the owners of assets and have the responsibility for providing the services. The public companies, public entities, offering such services on behalf of one or more municipalities claim that low tariffs are the main reason for their unfavourable financial position. In some cases, for social welfare reasons, the tariffs do not allow companies to cover their maintenance and operating costs.

They often request because of the lack of necessary resources that the reconstruction of the existing facilities be delayed for several years, but on the contrary, investments in transport, energy and communications have increased over the last few years. The reasons for this are numerous, and many of them are rooted in the pre-transition period.

This is monitoring of the current situation in Slovenia: according to the requests of the European Community, Slovenia must solve over the next years the problem with drinking water, wastewater and solid waste. One of the largest and most widely known projects is currently under way in Maribor. The French company Aqua System (?) won a tender based on the BOT for the construction and wastewater treatment plant. Also well-known are some minor gas pipe construction projects, which have already been completed.

At the administrative level, support is necessary to create an investor-friendly environment. This support could become visible through setting up one or more governmental agencies dealing with the technical aspects of public-private partnership

on behalf of the state. The legislative support is a condition sine qua non, of course. However, an adequate legal framework is of little use if no proper mechanism for the implementation and enforcement of laws is in place, and the judicial support to enforce legal procedures and contracts, seek remedies and recognise and execute court decisions. According to Article 133 of the current Public Procurement Act, the National Revision Commission, established with a special law on the revision of the public procurement procedures, is also responsible for the remedies to concession procedures on the first level and Administrative Court of Justice is responsible at the second level.

Legal aspects: since 1992 nearly 60 different laws have been passed in which the word “concession” is mentioned. These laws regulate various public services in areas such as drinking water supply and wastewater treatment, public transport, construction of hydro-electric power plants, environmental protection, and telecommunication and so on. They include two basic laws: the public procurement acts, which regulate procedures and valid since November 2000, and the Public Trading Service Act passed in 1993. The Public Trading Service Act established the general rule for the provision of public services, including concession agreements, but leaves the details to the sectoral legislation because, as I have mentioned, there are approximately 60 different laws.

In Article 133 of the Public Procurement Act the rules for concession awarding are in compliance with Directive Number 37 of 1993 of the European Council. I would like to mention that this Article applies to all types of concession contracts, not only to those in the construction sector, and that covers three basic procedures: open, restricted and negotiation procedures, which is the most important in the area of awarding of concessions. In contract awarding, all the main principles governing the public procurement procedures apply, namely transparency, equal treatment of bidders and, of course, fair competition. All notices regarding awarding procedures have to be published in the Slovenian official journal. Sometimes they are also published in the daily newspapers, but it is obligatory that they are published in the official journal for the Republic of Slovenia.

The Public Procurement Act provides for establishing the new body I mentioned, the Public Procurement Office, the decree of establishment having been passed in February of this year. One of the main tasks of this body is the provision of training in the field of concession, because our people, especially in the municipalities, are short of knowledge in how to provide the procedure for the award of concessions.

There is such a variety of laws and secondary legislation regulating this domain that the Slovenian Government has realised that a basic systematic act is needed to ensure consistent procedures for various forms of public-private partnership. This is also one of the main priorities of our government. The new legislation will be based on the European rules and standards in view of the European Union accession process. We would like to regulate this field using the good practice of other states with longer traditions and wider practical experience of concession procedures, as well as with BOT projects and the UNCITRAL guidelines for public procurement partnership are very useful. I have to say that Mr Sekolec regularly sent me all the documents from UNCITRAL. I am sure that also this forum will be very useful for us.

Thank you very much. I have to say, the Slovenian market is open for other investments, and they are always welcome.

MR MAURICE: Thank you very much, Ms Primec. Our last speaker is going to be Mr Christopher Clement-Davies, who is a partner in the law firm of Vinson & Elkins in the London office, and who specialises in concession-based financing. Mr Clement-Davies was also involved in the Maribor project we referred to before as the EBRD outside counsel.

MR CLEMENT-DAVIES: It is a pleasure and privilege to be speaking as part of such a distinguished panel this afternoon and to a large and distinguished audience. In contrast with the earlier speakers today, who have taken more of a macro view of their subject, I am going to try to take more of a microcosmic view and to try to talk for a few minutes about some of the key issues that regularly recur when one is trying to negotiate concession agreements for infrastructure projects in the region. I think it almost goes without saying that any number of issues can arise when one is structuring and negotiating a concession agreement, and the importance of inter-relating a concession agreement with the broader country themes, financial and economic, that we have heard about from the other speakers I think reinforces the fact that it is almost impossible to delimit the number of issues that can crop up in negotiation.

Concession agreements were once relatively little known documents. They were thought to be rather strange and exotic beasts found in projects like the Channel Tunnel or the Bangkok Expressway, but in recent years they have become rather more familiar, and I am going to assume a certain degree of familiarity on the part of most of the members of the audience. Of course, rigorous attempts have been made in recent years in some environments, particularly the United Kingdom, to standardise them and to try to cut down on the amount of disparity and diversity that one encounters when one works on them. But I think it is fair to say that, at an international level, there is still very little standardisation available. It is often almost a matter of re-inventing wheels every time one works on these agreements, and that can be a problem in itself.

I think that the model form of agreement produced by the Treasury Task Force in the United Kingdom, the standardised clauses they have tried to develop here, can be instructive, they can be helpful as precedents, but it is very difficult to reproduce them automatically in emerging markets and in the countries of the region because the environments you are dealing with are so different.

It is important when one is structuring these things to remember that concession agreements involve interplay between a number of differing but overlapping objectives. Obviously they are going to define the scope of the project but represent a cornerstone of the lender's security, as Walid was saying. They may represent the Government's economic and regulatory tool and of course, they will have to provide the sponsors with a suitable return on their investment. Allowing for the interplay between these different objectives creates a complex and interesting dynamic that people need to be aware of as they are working on them. You also need to be very much aware of the way that local law defines and categorises them, and this can differ very much from country to country. In some countries there is a well-defined

concession law which can even set up model concession terms which have to be imported into the agreement. In other environments, in other jurisdictions, concessions are really just another form of commercial agreement. There may be no legislative input whatsoever, and I think one has to take account of the way that local law handles them at an early stage in carrying out one's due diligence.

But let me try and run through what I think are the nine or ten key issues that repeatedly crop up in negotiation, and which tend to dominate the discussion between the parties as these agreements are being sorted out. Again, I am going to draw very much on the experience I had of working on the Maribor project, and also some concession-related projects in Romania and Kazakhstan recently. Obviously, the first one is going to be the process of risk allocation. The concession agreement will represent the principal tool by which the risk allocation process on any project financing is achieved. The main danger here is the temptation one often encounters on the part of both public and private sector in a sense to push too hard. There is often a temptation to load as much risk as possible on to the other party to the concession agreement in the hope that that will give you a better deal. That approach is often frankly rather ill-advised.

One of the most interesting lessons we have learned from the private finance initiative and its experience is that the most advisable approach should be based on risk allocation rather than risk transfer. I have seen concession agreements in the past where governments have tried to back away from any and all responsibilities of any kind. Equally, I have seen sponsors, particularly in some of the more difficult environments, trying to load as much risk as they possibly can on to the government. I can think of one project I worked on recently where the sponsors defined government risk as "any risk affecting the project which the project company could not specifically insure itself." That kind of uncompromising approach is usually going to be counter-productive. It is much better to think very carefully about how risks are going to be allocated rather than simply transferred. Be sensitive to the needs that both sides have to achieve a fair result, and structure the agreement in such a way that it creates a long-term partnership ethos, a win-win solution, if you like, during the life of the agreement.

The second difficulty, I think, is public sector control. You will often see the public sector when these agreements are being negotiated striving to give itself as much control as it can over the activities of the project company during the life of the concession. Again, there is a balance to be drawn. When governments seek to control every aspect of the project's financing documents, for example, every aspect of its insurance policy, when they try to control and approve all aspects of design and construction, they are probably going too far. It is important to allow the project company a sufficient degree of autonomy to achieve the results as effectively as possible. That is the only reason for launching a public-private partnership in the first place. You want the private sector to be able to offer its special contributions of management skill, experience, innovation and so on. But at the same time, it is not appropriate to ask the public sector to take too much of a hands-off approach, and again, I have seen that done in the past. You must allow the government entity appropriate rights of supervision and appropriate flow of information during the course of the concession project. If the sponsors are going to have a right to buy their way out of the project almost as soon as they have financed it, that is unlikely to be in

the best interests of either side in the long term. So there is a balance to be struck, and the government's legitimate concerns in this context also have to be respected.

Thirdly, tariff structures. These are obviously going to be a difficult area whenever these agreements are negotiated. In a sense, this takes us beyond the scope of what the lawyers are trying to achieve in these agreements, because the way in which the tariff is structured will be very much above the fundamental economics of the project, but lawyers have to understand how they work, they have to make them work in the most efficacious way when the agreement is being drawn up, and they have to understand the issues. One common issue is the inter-relationship between the tariff, the tariff structure and the regulatory structure as a whole. An unusual feature you encounter on projects in the region is that the regulatory system in the sector in question, whether it is water or transport or whatever may be relatively embryonic, so that the concession agreement has to operate as the government's regulatory tool. I have seen some agreements slowed down very badly by this very problem, as governments have tried to get to grips with the challenge of making a tariff work for an individual project but at the same time allowing it to work in a consistent way across a range of projects. Lawyers have to be sensitive to those demands.

It is also worth bearing in mind that the agreement may provide for charges to be levied directly by the project company to the public users of the completed facility, or occasionally there may be a government-sourced revenue stream. Maribor is an example of the latter and of course, the PFI system in the United Kingdom usually involves government-sourced revenue streams. On projects in central and eastern Europe, that is going to be relatively rare, I think. Usually the project company will be charging the public itself, and it has to be borne in mind that whichever approach is adopted is likely to involve very different patterns of risk allocation, and that is something to be borne in mind as one is developing these agreements.

To move on to the next subject, performance standards. Again, these can be difficult to apply in an effective way on projects in the region. Again, there is a sharp contrast here with the very precise way in which performance standards tend to be defined on PFI projects in the United Kingdom, where you are dealing with perhaps a much more limited scope of project, much more closely defined responsibilities. Eastern and central European infrastructure projects are likely to be more wide-ranging in their scope, and there is also likely to be a significant degree of uncertainty at the outset about exactly what the scope of the deal may be. It may only be possible to define the exact nature of the project company's responsibilities as the project takes shape, as further due diligence is carried out, further investigations made and so on. This is very much an example with the Maribor project. It may be necessary to structure the agreement in a way which allows this to be done on a phased basis. So performance standards can be something of a blunt instrument in a region, although I think that there is a tendency to define them more and more closely on projects these days, which is likely to be healthy.

The next issue, financial balance mechanisms. Walid touched on these briefly during his talk. A financial balance clause is going to be a fundamental part of any concession agreement. Put crudely, it is a mechanism which allows alterations and modifications to be made to the agreement during its life to accommodate the impact of certain risks beyond the parties' control. However there is never any consistency

in the way they are handled from project to project. It can be very difficult to define their exact scope. Sponsors again may be tempted to push too hard and to load them up with absolutely every risk they can think of, which in turn may make the public sector unduly suspicious and somewhat resistant to them, so again, it is important to think carefully about what their scope is and to define them as closely as one can. Again, providing for the way in which the agreement is modified once these provisions come into play is also something that takes a lot of skill and a lot of thought. How do you measure the impact of exceptional events over the life of the concession? What exactly is meant by the concessionaire's net financial position, and so on?

Let us move on to the next one, sixthly. Change in law is really another example of this. In the United Kingdom concession agreements now offer only very limited protection against changes in law. But that kind of limited protection is unlikely to be acceptable to either sponsors or lenders where you are dealing with the much greater uncertainties and in a sense greater instability of the countries of Central and Eastern Europe. Lenders are going to want fairly extensive protection against changes in law. Again, I think it is important to avoid the temptation to push too hard. A provision that says the project company can simply ask the municipality or the conceding authority for cash compensation every time there is a change in law in the country in question is unlikely to work. It is better to try and come up with a more refined mechanism, one which respects the conceding authority's legitimate interests and achieves a more balanced position – again, a partnership ethos.

Seven, termination compensation. This is obviously going to be a key issue whenever a concession agreement is negotiated. If the agreement is terminated, the sponsors will lose their investment, the lenders will lose the cornerstone of their security, the project will collapse. So a great deal of effort always goes into the negotiation of termination clauses. Defining the ground for termination is one difficulty. Perhaps the greater difficulty though is knowing how to deal with the subject of compensation. Municipalities, conceding authorities, in the region can find it difficult to understand sometimes why any compensation should be paid to the project company when the concessionaire is in default. The concessionaire has made a mess of things – why should he be paid anything? Of course, the fact that some very valuable assets would be transferred to the public sector as a result of this termination is the answer to that. But it can take time and patience to explain this, and again there is no consistency in these agreements in the way in which compensation is defined from agreement to agreement. A greater degree of consistency would be very helpful. I have seen sponsors attempt to get full pay-outs, even when they are at fault, which cover their equity investments and covers all their unwinding costs. That is unlikely to be appropriate. Lenders, however, are likely to insist on being paid out, whatever the reasons for termination, and I think that is going to have to continue to be respected for some time.

Let us move on to the next issue, step-in rights. Walid mentioned these so I will only cover them very briefly. I am often startled at how little understanding there is in the region of step-in rights, their underlying rationale, the need for them, and also the way in which they ought to operate. This is one area where, as Walid said, the region is crying out for a greater degree of standardisation and consistency in the way the subject is approached. Simplicity is going to be a real advantage when you are

working on a direct agreement. I have seen some projects very badly delayed and slowed down because of the difficulties the conceding authority has had in getting to grips with the complexities of a direct agreement. So if institutions like the EBRD and UNCITRAL can come up with simpler, clearer mechanisms that can be adopted in a more standardised way across the region, I think that is going to be in everyone's interests.

Finally, dispute resolution. Just a very quick word about this. Concession agreements tend to pose unusual problems for their participants when it comes to crafting dispute resolution provisions. You often need to make use of a range of different mechanisms, from expert determination to arbitration, often a panel or committee mechanism of some kind to allow the agreement to be adjusted to allow for the impact of exceptional events, and often you need to provide for joinder provisions with other project contracts, and again, it can often take a lot of time and patience to make these clauses work most effectively as the concession agreement is being negotiated. Of course, there is the very familiar subject of choice of law and jurisdiction. Here you tend to get an inevitable clash between bank policy and local policy, with lenders saying that they have to use some form of widely recognised international system, and governments saying that, as a matter of policy, they have to make use of the local arbitration system. The most one can do is offer a plea for restraint and understanding and flexibility on both sides so that the most appropriate result can be found.

That is a quick scamper through what I see as some of the most recurrent themes and some of the central themes when one is negotiating concession agreements. I am sure we are going to see many more of them in the region as public-private partnerships continue to spread there. You hear a lot of debate about how effectively public-private partnerships have worked in the region. My view – and I think it is shared by many others – is that they are here to stay. There is no alternative to using them on a large scale, and I am sure we will see much more of concession agreements in future.

Thank you very much.

MR MAURICE: Now we have heard from our four speakers and we have a variety of points of view. I would like to open the floor to the audience for questions and answers possibly. We have 15 minutes to answer your questions, if we can. We have a microphone here. If you want to ask a question, I would like you to identify yourself first and then to ask your question.

If there are no questions for the time being, maybe I should turn to Christopher and ask him, since he referred a few times to the PFI in the United Kingdom, could you tell us a little more about it and how interesting it could be for the countries of central and eastern Europe.

MR CLEMENT-DAVIES: That is a large question. I will try and give an ultra-brief answer to it. I am sure there are many PFI experts in the audience today, but the PFI stands for the Private Finance Initiative. To try and give a very brief summary of what it is about, it is a government policy that was launched in 1992 by the then Conservative government. It has been kept in place without hesitation by the current Labour government, so it straddles the political divide, and it is really a methodology for attracting greater private sector finance and resource to the implementation of

infrastructure projects. When it was launched by the British Government, they originally said that it had to apply to every area of government capital spending in the infrastructure field. Since it was launched, something like 150 projects representing some £50-20 billion of financing have been signed up under the system. But it has become a highly specialised system in many ways. It has become a huge growth industry in itself, keeping many professionals as well as many banks and sponsors very busy. The most interesting thing about it, I think, is that it is a very impressive example of how governments can set about making public-private partnerships work across the board within their particular country, to do it in a systematic way. I think it has generated a great deal of very interesting know-how, which can be exported to the countries of the region. We are starting to see people export it consciously. We are starting to see it imitated by other countries and to see law firms, banks and others talk about how that experience can be used most effectively in the region.

One thing is clear: you cannot simply copy it. You may be able to emulate parts of it, but it is not readily reproducible elsewhere.

MR MAURICE: I think there is a question.

OLTMANN ORTMAN SIEMENS (International Finance Corporation, World Bank Group): My question is: what do we have to learn from the experience which is unfolding now in California and also in the UK, in California in the power sector, in the UK in the rail sector for our countries? I think these are very serious developments, which have a great impact on the policy makers in our countries of operations, where we have to find some answers, because they are examples which have gone wrong. You mentioned just now that there are high standards of performance, and we find that there is obviously no standard of performance, and the question is, who failed? The question to the panel would be, are there lessons to be learned directly from what has been said this morning by the panel?

MR MAURICE: Christopher, do you want to take the British part?

MR CLEMENT-DAVIES: I am certainly not an expert on the Californian situation so I will not attempt to talk about that. British Rail – yes, in a sense it is a system of public-private partnerships, the privatisation there, although it is more a privatisation rather than a series of public-private partnerships. That is one difference to bear in mind.

In terms of what the lessons are, they will be numerous. I do not think we have the time available now to discuss them in much depth. For my own part, my conclusion would be that you need to think very carefully about the model of public-private partnership you adopt for any particular sector once you are starting to privatise it or partially privatise it. That is perhaps the most you can say. What has happened in the rail context has been very complicated, and I am not a great expert on it. Let us see what others think.

MR LABADI: I will just comment briefly because I think it is an excellent question, and it is one that has come up in a couple of PFI conferences that I have been involved in recently. I think there is no one answer. I think the answer is you do not go hurtling into a PFI as a government. You have to consider the whole

macroeconomic environment and the implications of a PFI on that. That was not properly done in California. In the EBRD when we assess a project we have our Chief Economist's Office look at the overall effect of a privatisation on the economy. It tries to make an assessment as to whether it will have a knock-on effect and how it will work in the overall context of an economy. I think it is important to do that, and I do not think they really did that in California. It is a good cautionary note that we can stand up here and pronounce the benefits of PFI as a way of providing private finance for initiatives, but you do have to be careful. You have to make sure that it fits within the overall macroeconomic environment of your country.

MR MAURICE: Thank you, Walid. There is another question.

JEAN-JACQUES LECAT (Francis Lefebvre, Paris): We have been acting for the winning sponsors in two projects which have been cited in Maribor in Bucharest. I have first a remark and then a question. Those two projects are illustrations of the differences between the BOT type of project, where the concessionaire has one single client, like Maribor, which is always a water treatment plant or like in an IPP project. I think there is a big difference between that type of project and the full concession, where you have to render services to the final users. That means that there is no single part applicable to all types of concession. There may be general principles which can be set up in a general law, but it is very important to bear in mind that there are a lot of differences between all kinds of projects. There are a lot of different criteria for selection depending on the objective of the project.

Those two projects were in fact urban services projects, and my question is related to the particular political risks related to those municipality projects. For the time being, there is no instrument covering those risks, that is, the insurance or the treaties; bilateral protection treaties or multilateral treaties do not cover that kind of risk. You may know that we have had an example in Argentina quite recently, where the sponsor has a big conflict with the local authority. In many cases we do not have a choice of jurisdiction in law in the case of municipal services concessions. I think there should be a particular instrument addressing those particular risks.

MR LABADI: Actually, in Maribor there is a mechanism where the lenders have taken some of the political risk associated with that, and that is in that the sponsors have agreed to provide a certain amount of support for the project to make sure it is completed, and the lenders, EBRD in that transaction, have agreed to take some of the risks, the political risks; if those risks arise, the lenders will in effect release the sponsors from those obligations. That is one device that the EBRD uses, not just in this transaction but in transaction in the region where sponsors are asked to provide for a completion risk, EBRD provides of a way of them getting off that hook if certain political events arise.

In terms of the larger question as to whether there should be political risk insurance, there are types of political risk insurance available from a number of the ECAs. Whether they were used or considered in Maribor I do not know. Not at the municipal level? OK. I think that is a fair point then for the ECAs. We take that risk as a lender in terms of letting sponsors off the hook, but whether the ECAs should expand their product line to include municipal risk, I think that is a very good point.

That is where the region is going. When we have discussions with ECAs we can certainly bring that up.

MR MAURICE: There are a few more questions.

VANYA NOSH (Danube Fund): I am the Managing Director of the Danube Fund, a fund that invests in the Balkan countries, not in infrastructure yet. In infrastructure, one way to probably simplify this problem of the best legal structure for infrastructure projects is to look at this as a marriage of three interests. One: the government, which wants to give, let us say, the citizens of Bucharest safe water; two, a contractor that will build it efficiently, and ideally also finance it; three, the public, which will benefit from the safer water. PFI in the UK is a way of doing such projects by an agreement between the state and the contractor. PFI, if I can put it very simply, is a system of doing such things without involving the user. The contractor builds a prison or builds schools; the user does not pay; the government pays the contractor over the long term, linking these payments with what it saves, typically, from this project.

Projects where the user pays the contractor directly – I enjoyed Mr Labadi's reference to the ancient times but there were such projects in Ancient Greece, irrigation - water supply in a way - where the state or the city gives the job to a contractor to build an irrigation project and be paid directly over a period of time by the users of that water. I think much of the confusion that we see now in these infrastructure projects is that the governments take advantage. Bucharest citizens want safe water, and the government has been providing unsafe water until then free. An important change is that the public will now get to pay. Yes, it will get safe water but it will pay for it, hence a lot of political pain. If you try by means of this ideal legal structure to sell the citizens the fact that now they are going to have to pay for the safer water, of course, there is going to be a political cost, and of course, this concession contract will be complicated.

In contradiction to what Mr Clement-Davies said, I think the PFI model would be better suited to infrastructure projects in the developing countries because it takes out of the equation the political pain. Of course, the government will have to realise that providing safer water needs a project that costs, and now it has to decide whether to take that cost or not. Otherwise, it is very difficult, when by means of a concession contract you agree to do two things: one, do the project that needs financing, and two, get the public to pay for a service that they have been getting for free so far without bringing to the surface outright that there is a cost that has to be paid. It is difficult to solve the problem.

MR MAURICE: These are very interesting comments. Your fund may not have invested in infrastructure yet but you seem to know quite a bit about it. Do you want to comment?

MR CLEMENT-DAVIES: Just to say that in principle I agree. If governments could use concessions based on government-sourced revenue streams more often, it may make their lives easier but I think they face two dilemmas when they try to do that. One that they impose strains on their budgets which they may not be in a position to meet, and that can be one of the reasons they want to make use of a concession

structure, because they do not have the resources to provide a revenue stream. Two, very often, I think for policy reasons, they want to get the public used to the idea of paying for the infrastructure services they are receiving, and that can be another reason to allow the concessionaire to charge the public directly. But I agree with you; whichever approach is adopted does tend to lead to a very different pattern of risk allocation.

MR MAURICE: We have time for two more questions now.

(?) DEUTSCHE GIBITSKIN: In order to put my question into perspective I need to wave my own corporate flag. I represent the Autostradevilkoposka (?) concession company. We are the concession holder for a bit of the Berlin-Warsaw-Moscow motorway. I have a question directed primarily at Mr Labadi. If you could superimpose on your analysis of the legal framework the actual empirical observations of successful concession projects, which is the leading factor? Is it a legal framework that affects investment or is it more an economically viable project that gets through whatever environment there is, provided the government and the investor agree on a common goal?

MR LABADI: I think the most important factor is an economically viable project. If a project is economically viable, everyone is amazed at the number of problems that can be solved, in many ways with direct agreements. With all these problems I talked about, if a government is committed enough to something that they will solve half the problems by passing the concession agreement in a parliamentary law, that solves two or three of the main issues I had. If the government solved the problem by committing in a direct agreement direct resources to a particular project to resolve problems, that solves a lot of problems. So clearly, if the government commitment is there, and a project is viable, it will get done. I think the trouble is that you do not always have that kind of government commitment, and you also have projects that are on the borderline of economic viability, and those are the ones where enhancing your concession regime with these steps I talked about can get projects done that would not otherwise get done.

LIDIA RETKOWSKA-MIKA: I am the Managing Director of the law firm Puchinska & Partners (?) in Poland. We are a member of the business consulting group named EVIP. We have been doing a number of projects for the government of Poland which are not only typical public-private partnerships but also privatisations, and these have been projects, of course, involving international sponsors and investors. The problem that we have encountered on the legal side of those projects to a large extent stems from different legal cultures. Certainly most of the investors represent what we may call Anglo-Saxo legal approach, while the central and eastern European law is more based on the German and French systems. In negotiating we have been proposing a number of legal solutions that are in our legal system but they may be unknown to our investors. My question is the following: how does EBRD see the role of the local lawyers and the knowledge that they can provide about the system in place? Sometimes we may find solutions that are acceptable to both sides, but they may not necessarily be those that the investors want to have. I would appreciate the answer to that.

MR MAURICE: If I may answer that question, EBRD is present in all countries of the region, and for each of the projects involves the legal framework of the country which is the host of the project, and for all these projects we are in very close cooperation with the local lawyers. We do not go to any country without being in partnership with local lawyers. We have in our own Legal Department a number of lawyers who come from the region of the countries of operations and who know the laws of those countries, and therefore we can say that although many, probably most of the agreements that we enter into are in the English language, they are not all subject to English law, and the part of local law and the involvement of the local lawyers in the EBRD work is extremely significant. So I think the EBRD is very sensitive to the needs and the constraints that the countries of operations have in terms of their legal traditions and their legal frameworks, and works very closely with both the legislators and the practitioners in the region.

MR SEKOLEC: May I just add that, UNCITRAL being a universal body, when it prepares these model texts and guidelines for legislators it takes full account of these traditional divides in legal systems, and that they are different ways to heaven and they are all good. One has to apply that advice to these historical differences. That goes for different areas: arbitration, secure transactions and so forth.

MR MAURICE: I would like to thank you all for coming to this discussion this morning and participating in it. I would also like to thank the four distinguished speakers for their contributions and I would like you to extend to them your thanks in the normal way. (Applause)
