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IRADe Integrated Research and Action for Development

PROMOTING CROSS BORDER INVESTMENTS IN SOUTH ASIA

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Risks in Cross-Border Investments…(1/4)

Cross-border investments have significant risk that must be reasonably mitigated for the investments to materialize

- Project risks in general tend to be high in **countries without wide experience on large project development**

- Cross-border element greatly increases the risks due to **geopolitical, economic and trade related factors**

- Even projects that appear to have conclusive rationale, **in practice struggle to get financed and built**

Risk identification and allocation is a very important first step in developing the investment framework.

Risks in Cross-Border Investments…(2/4)

A first step to addressing the investment issues is to investigate risks

Typical examples of risks are

Political: What happens if for political reasons the flow is prevented in the exporting, intermediary (if relevant) or importing country ?

Economic: What happens if the economic assumptions on the project changes? What is the protection available to buyers and sellers ?

Trade Barrier: What happens if a tax or duty that affects the economic fundamentals is imposed ?

Infrastructure: What happens if the infrastructure to transfer the energy is not built or is not available when needed ?

Risk identification and allocation is a very important first step in developing the investment framework

Risks in Cross-Border Investments…(3/4)

The risks that finally manifest in operational aspects must be addressed as far as possible strategically for cross border projects

The measures could include

Bilateral or Multilateral Framework Agreements	Host Government Agreements	Market Access Agreements and Codes
Closely lay down the objectives and measures to promote trade and investments	Gives shape to the commitments of the Governments in the exporting, transit (if applicable) and importing countries to facilitate investments and reduce fiscal uncertainties	Provide certainty to commodity flow and hence to the investments

Ideally the agreements should be backed by suitable institutional structures that facilitate implementation and address disputes

Risks in Cross-Border Investments…(4/4)

The existence of a transparent, fair and commonly accepted legal framework becomes crucial for mitigating the risks. Commitment to such legal systems by all parties creates investor confidence

- **Fortunately all South Asian countries follow 'Common Law'** systems based on the **British Systems of Jurisdiction**
- However this needs to be translated into appropriate instruments **– such as Electricity Laws/Acts & Policies, Open Access Provisions, Harmonization of Charges, Export/Import Duties, etc.**
- The relevant law and thus **seat of litigation and arbitration must be acceptable to all**

Common dispute resolution and settlement procedures must form part of the framework agreements

Instruments affected by Cross-border trade and investments.(2/2)

Instruments / Aspects	Applicability	Grid Code Adherence	Inter Governmental Agreement	Policy & Regulatory Provisions	`Balancing & Settlement Mechanism
Possible Export Duty/ Import Duty Imposition			X		
Rationalization of laws and regulations		X		X	X
Harmonization of Charges		X		X	X
Open Access provisions harmonization				X	X
Licensing of specific transmission link				X	
Institutional Arrangements (Nodal Agency)			X	X	X
Transit Charges			X	X	

Bilateral

Bilateral without transit interconnection

Bilateral with transit interconnection

Instruments affected by Cross-border trade and investments.(1/2)

Key instruments	Prevalent scenario in South Asia
Rational provisions for CBET in Electricity Laws/Policies & Acts	• *The Electricity Acts in India and Sri Lanka does not talk about CBET* • *Other countries' Acts do mention CBET, however there are no detailed provisions* • *Policies in most countries (excluding India) recognize CBET*
Third Party Open Access	• *It is only in India, Bhutan and Bangladesh that specific provisions related to OA exist.* • *Afghanistan, Pakistan, Nepal and Sri Lanka have not yet introduced OA.*
Export/Import duties	• *Currently there is no custom duty, export tax or transit tax in regional electricity trade*
Harmonization of Transmission /Transit charges	• *Only India has adopted POC mechanism which accounts for location specific congestion costs, rest of the countries follow cost plus methodology*

Structured Approach towards Cross-Border Trade

Start Simple

Bilateral flows under a commonly accepted legal and contractual framework creates confidence. Prior to investing in specific cross-border assets, simple trading contracts provide the experience

Learn From the Experience

Trade will throw valuable experiences. Create the institutional structure and capabilities that can record/retain that experience and put to use at the investment stage

Create Enabling Infrastructure

Especially transmission that is relatively low cost and can be financed in a regulated cost plus regime is a great way to increase volumes and create confidence in trade. It also creates the confidence in regulating regimes

Keep up the Momentum and Visibility

Investment will require much more than trade. Keep building on the institutional structures, treaties and agreements that will provide long term visibility

Get Political Buy In

Cross-border trade and investments require political buy-in on Do’s and Don'ts. Ensure the buy-in and capture it in the agreements

Thanks