

Formulating a New Generation of Investment Policies

South Africa's International Obligations in Terms of Investment

Portfolio Committee on Trade and Industry
Parliament of the Republic of South Africa

James Zhan
Director of Investment and Enterprise
UNCTAD
Cape Town, 25 August 2015

Outline

1. Global context: recent developments in investment rule making
2. FDI in the South Africa's economy: trends and significance
3. Regulatory framework for foreign investment: a new generation
4. Comments on South Africa's Investment Bill
5. Three aspects beyond protection: access, facilitation and coherence
6. Concluding remarks

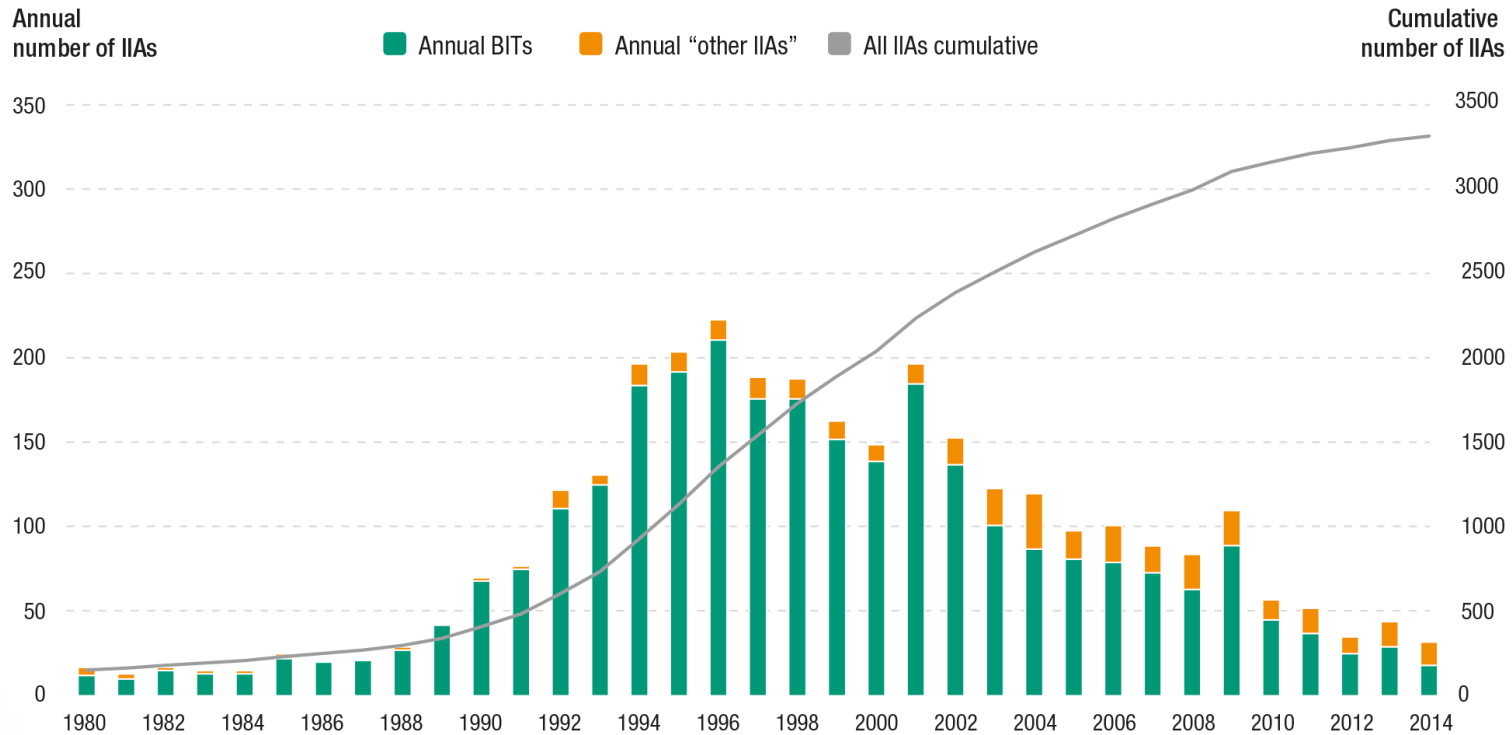
Key messages

- The investment paradigm is shifting towards investment for sustainable development and inclusive growth.
- Foreign investment plays an important role in South Africa's economy and there is great potential for more, and more can be done.
- A modern regulatory framework for investment needs to effectively deal with three dimensions: protection, openness and facilitation. It should balance the rights and obligations of investors and States.
- The current version of the Investment Bill represents an important step towards a “new generation” investment policy framework for South Africa.
- Beyond the scope of the current Bill, further work is important to strengthen the dimensions of investment facilitation and policy coherence of the regulatory framework.

Global context: recent developments in investment rule making

New IIAs concluded in 2014: 31

Trends in IIAs signed, 1980–2014



ISDS cases by economic sector

Total as of end 2014

(Per cent)



- Waste collection, treatment and disposal (3 per cent)
- Transportation and storage (3 per cent)
- Manufacture of food products (4 per cent)
- Real estate activities (4 per cent)
- Telecommunications (6 per cent)
- Construction (8 per cent)
- Financial and insurance services (9 per cent)
- Mining, including oil and gas (16 per cent)
- Supply of electricity and gas (19 per cent)
- Other (28 per cent)

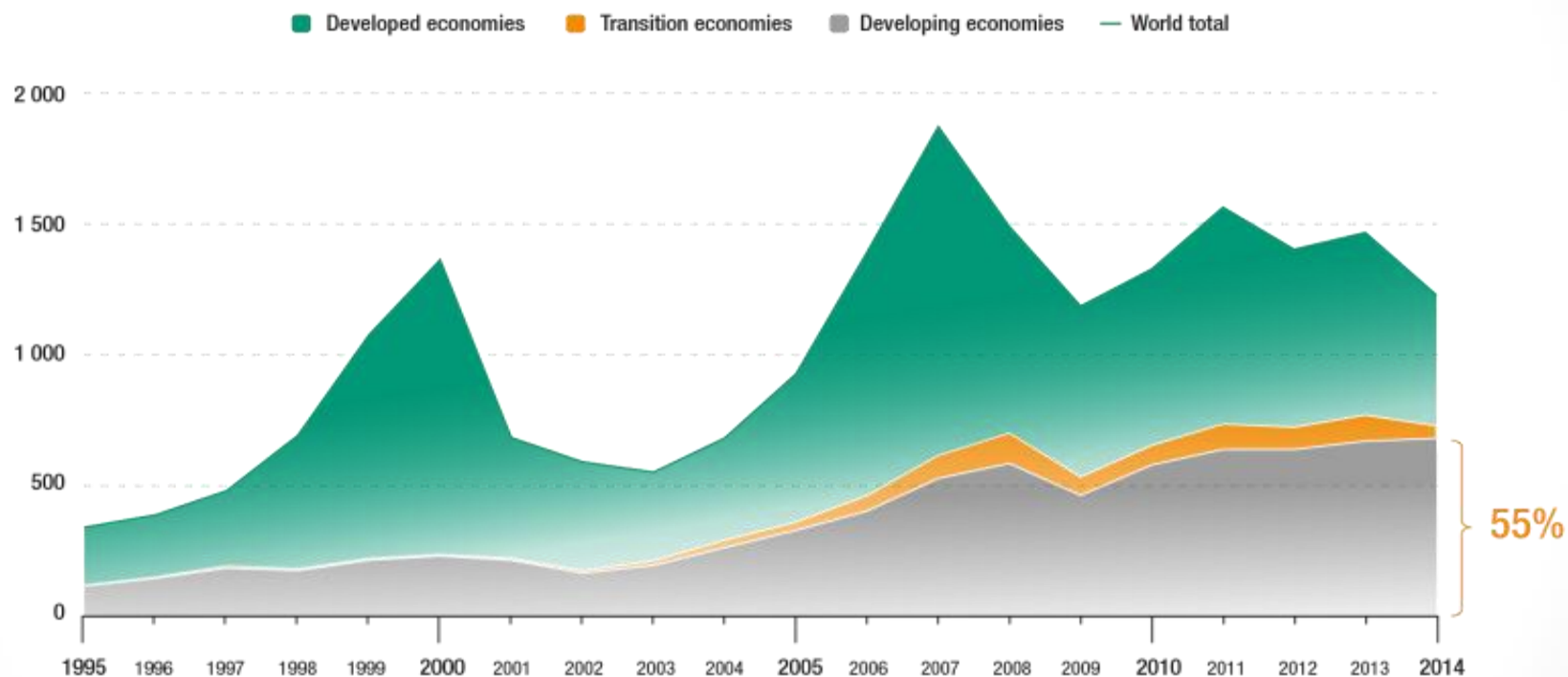
The investment-development paradigm is shifting

- The investment-development paradigm is shifting towards investment for sustainable development and inclusive growth and a new generation of investment policy is emerging.
- It responds to growing unease with the current functioning of the global IIA regime, today's sustainable development imperative and the evolution of the investment landscape.
- Today, new IIAs increasingly pursue the objectives of sustainable development and inclusive growth, and pay attention to the right balance between rights and obligations of investors and States.
- Regarding the 3,000 “old” treaties, the IIA regime is going through a period of reflection, review and revision, marking the beginning of widespread reforms of the IIA regime.
- In this light, UNCTAD formulated a new Investment Policy Framework to facilitate investment policy making in this new era and proposed a roadmap for reforming the existing international investment regime.

FDI in South Africa's economy: trends and significance

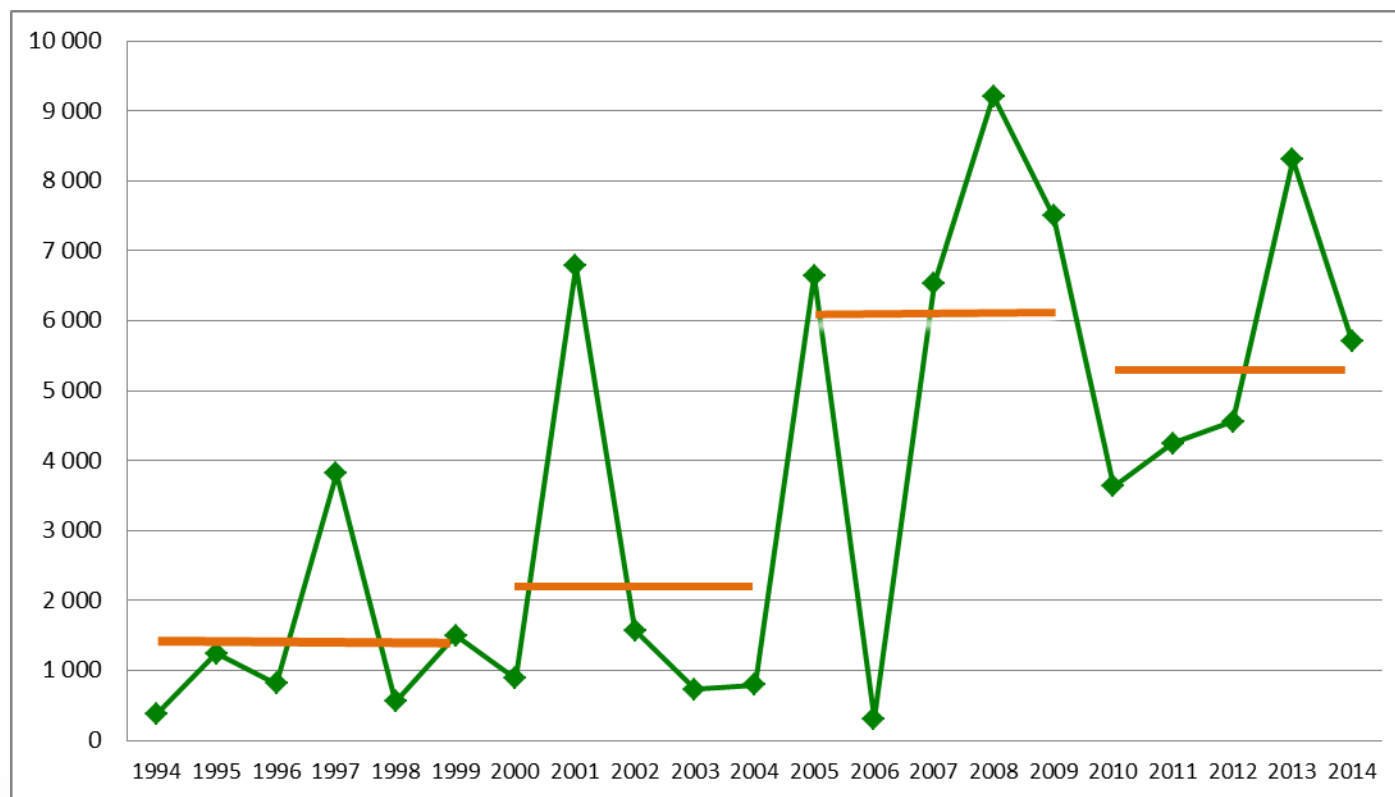
Global FDI flows declined in 2014

FDI inflows, global and by group of economies, 1995–2014
(Billions of dollars)



South Africa: FDI inflows have been lumpy annually but steady increase over the longer-time...

FDI inflows, 1994-2014, and averages 1994-1999, 2000-2004, 2005-2009 and 2010-2014
(Millions of dollars)

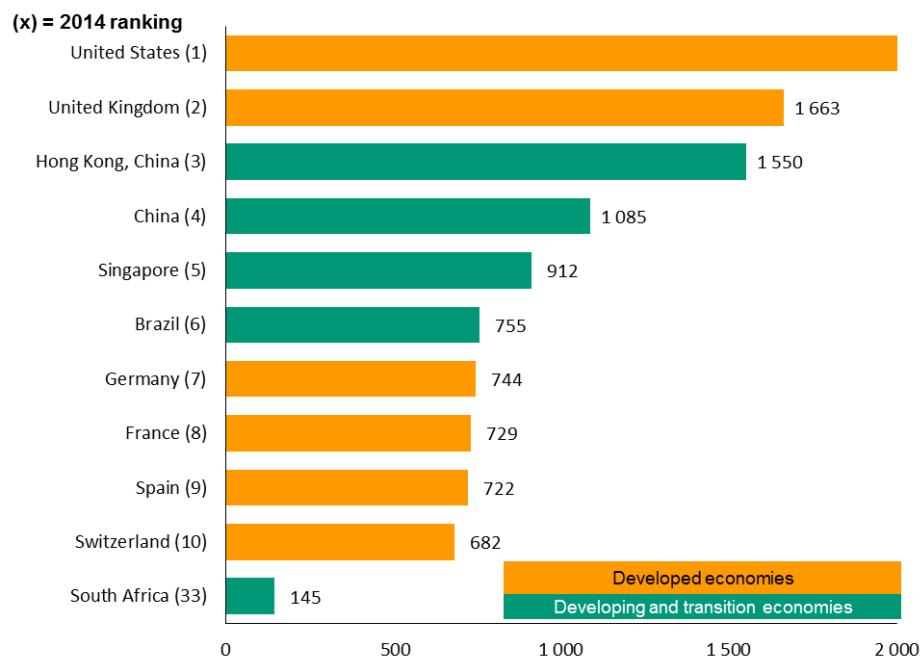


South Africa: among major recipients of FDI

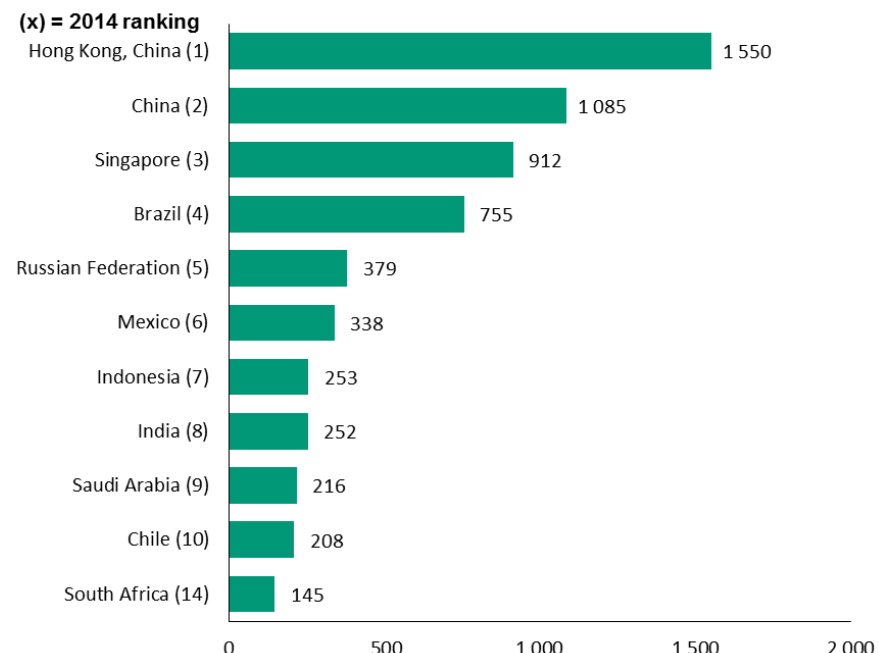
Inward FDI stock as of 2014

(Billions of dollars)

World & South Africa

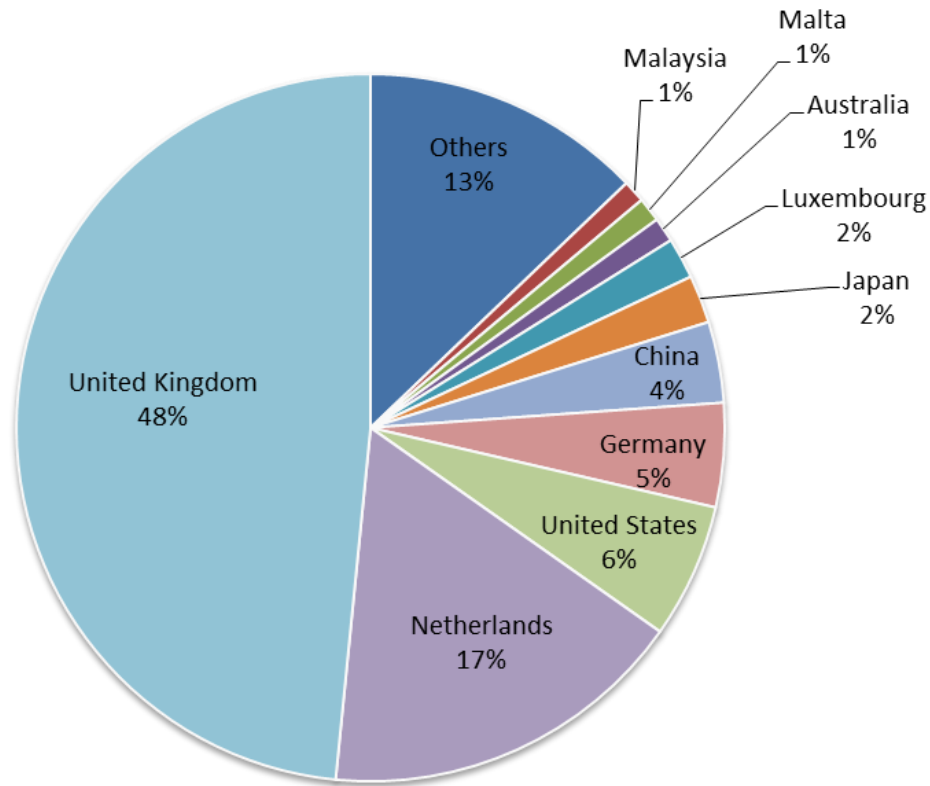


Developing economies & South Africa



South Africa: The United Kingdom remains a key source of FDI, emerging market investors are on the rise

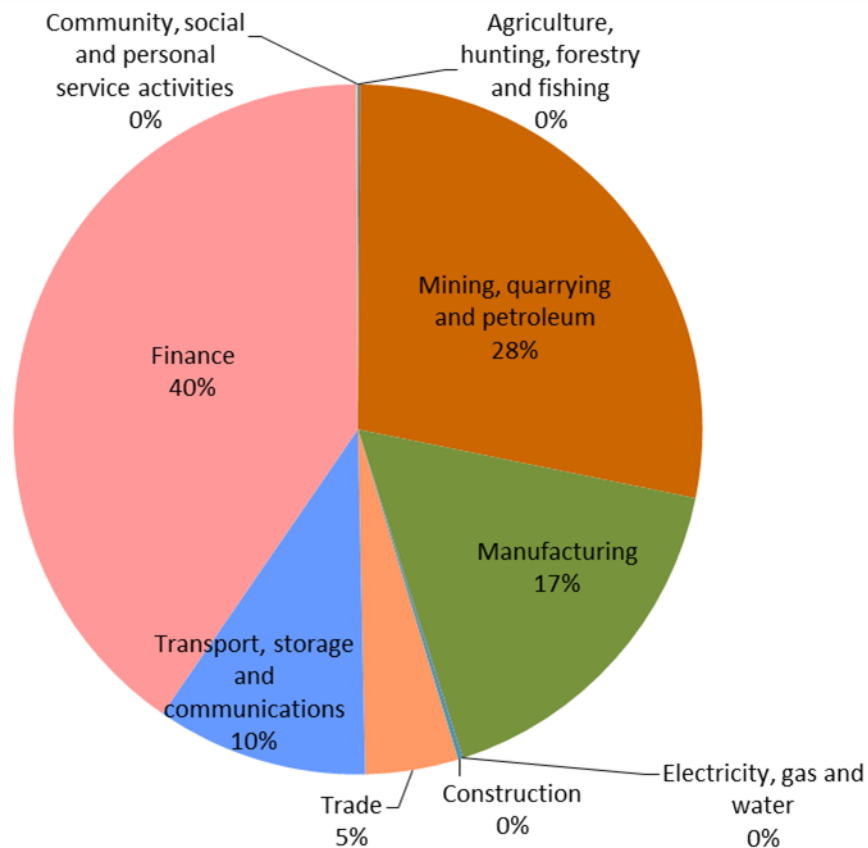
Origin of inward FDI stock, 2013
(Shares in per cent)



South Africa: prime destination for services FDI in SSA

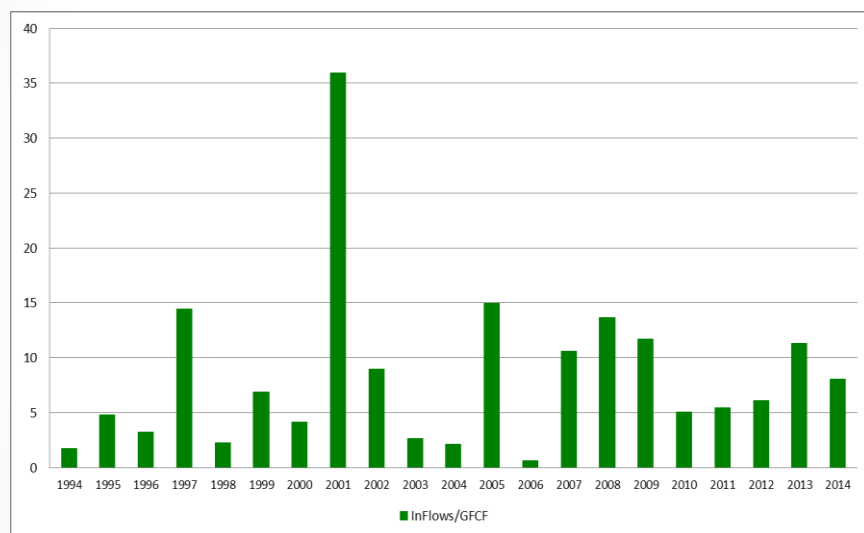
Sector distribution of inward FDI stock, 2013

(Shares in per cent)

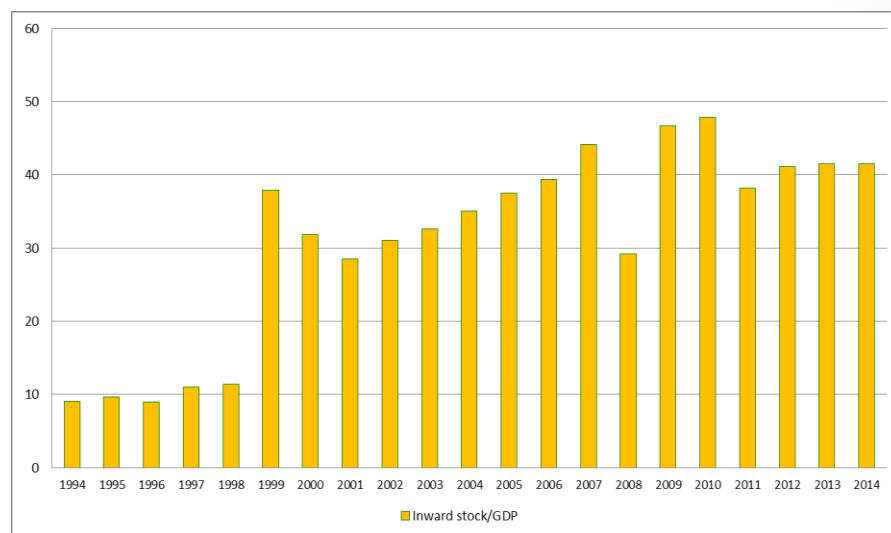


South Africa: high share of inward FDI stock in GDP

Inflows/GFCF: 1994-2014
(Per cent)



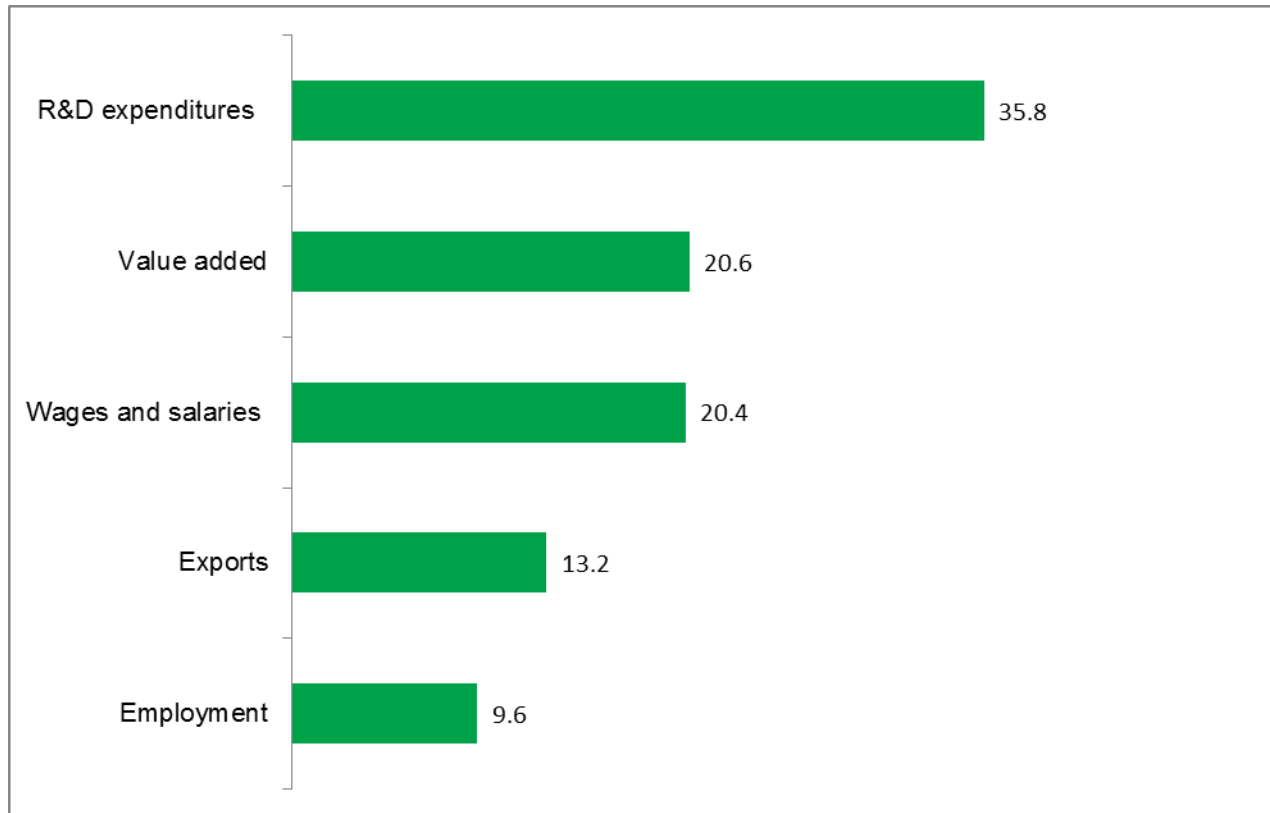
Inward stock/GDP: 1994-2014
(Per cent)



Note: Inflows as a percentage of gross fixed capital formation (GFCF) and inward stock as a percentage of gross domestic product (GDP).

South Africa: contribution of multinational enterprises in the economy

Estimated shares in total R&D expenditures, total value added, total wages and salaries, total exports of goods and services and total paid employment
(Per cent)



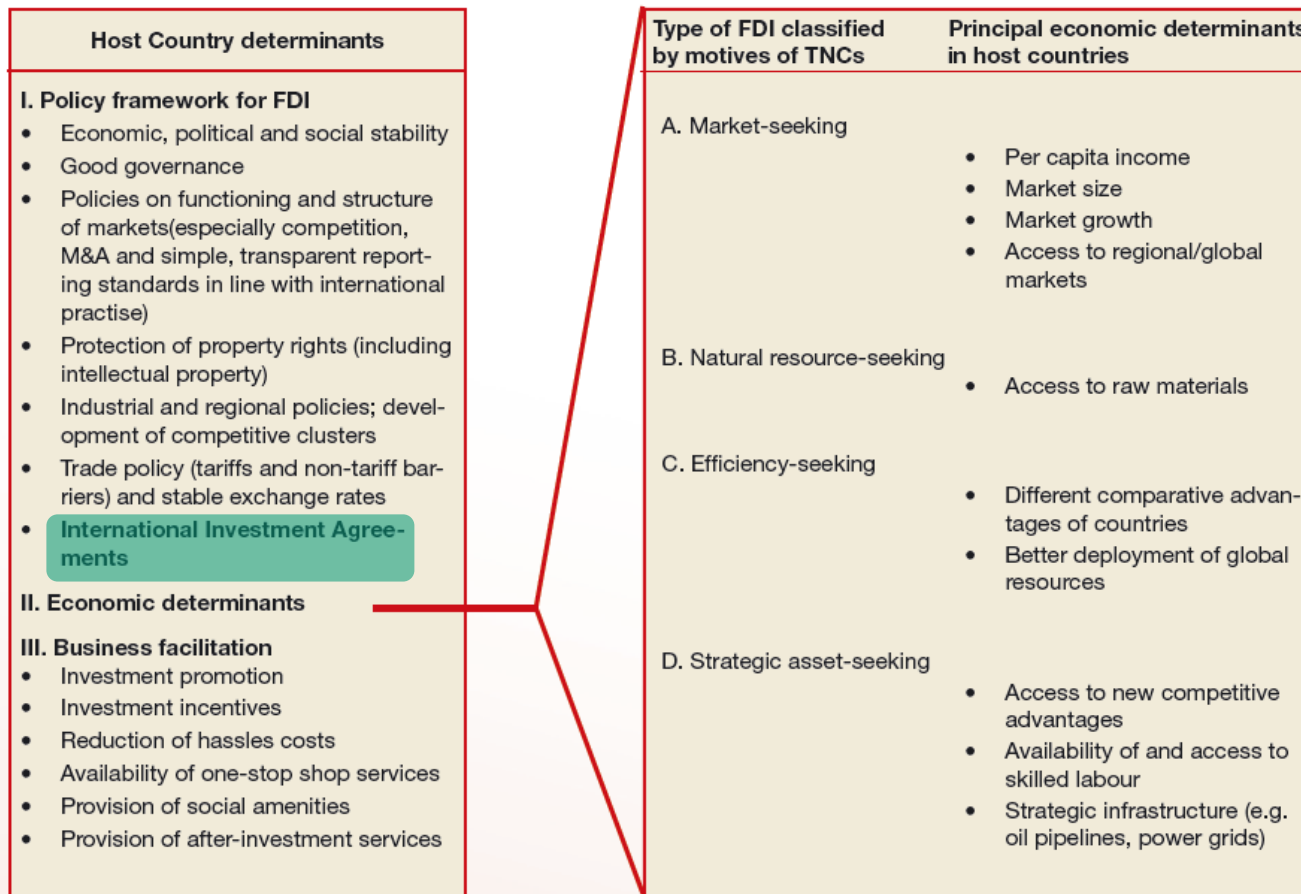
Regulatory framework for foreign investment: a new generation

WORLD
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REPORT **2015**

UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT
UNCTAD



Attracting investment: host country determinants of FDI



Source: UNCTAD, 1998a and 2010.

UNCTAD's Investment Policy Framework (2015 update)



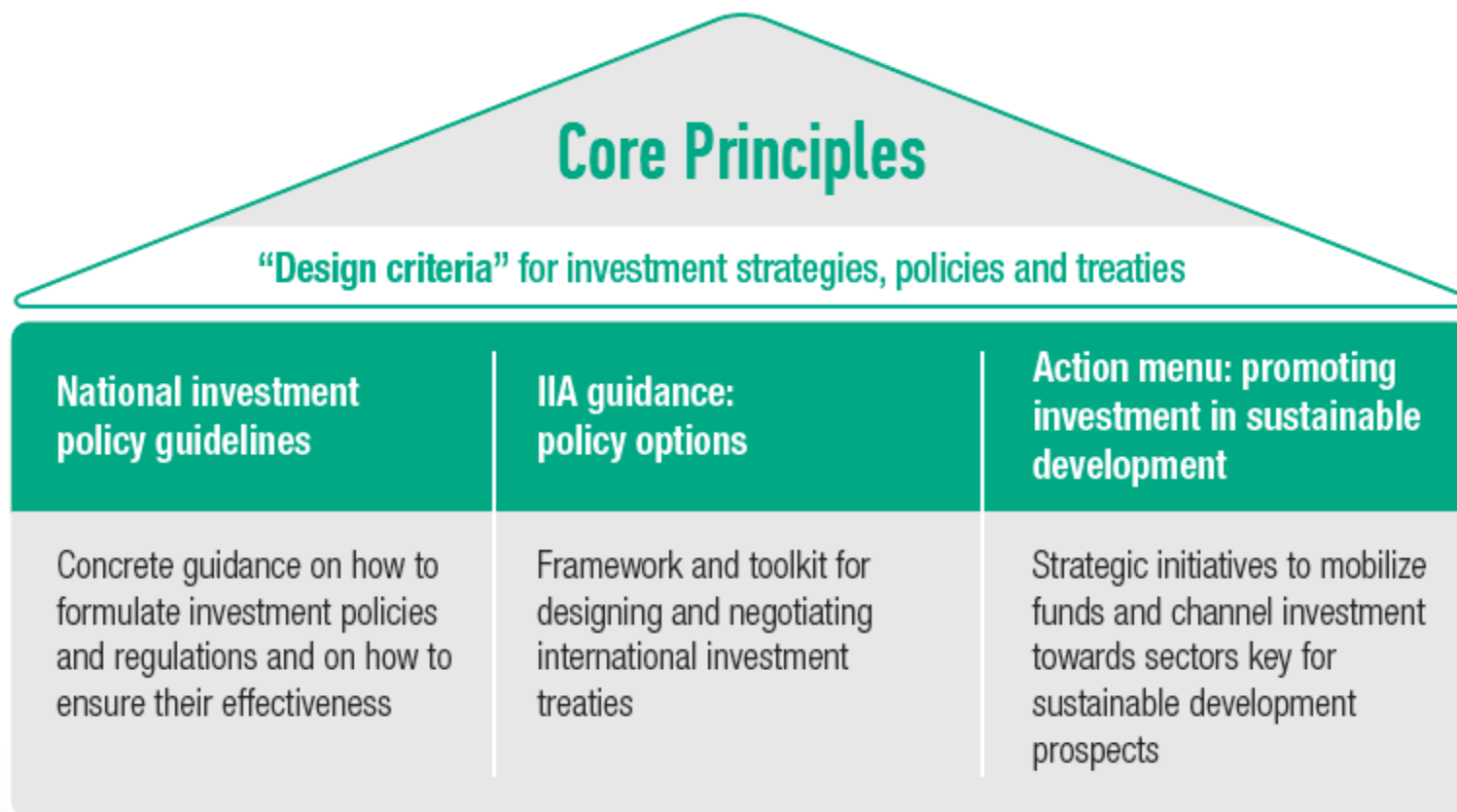
INVESTMENT POLICY FRAMEWORK FOR SUSTAINABLE DEVELOPMENT

- NEW GENERATION INVESTMENT POLICIES
- PRINCIPLES FOR INVESTMENT POLICYMAKING
- NATIONAL INVESTMENT POLICY GUIDANCE
- GUIDANCE FOR INVESTMENT TREATIES
- ACTION MENU FOR INVESTMENT IN SDGs
- THE WAY FORWARD



UNCTAD's Investment Policy Framework (2015 update)

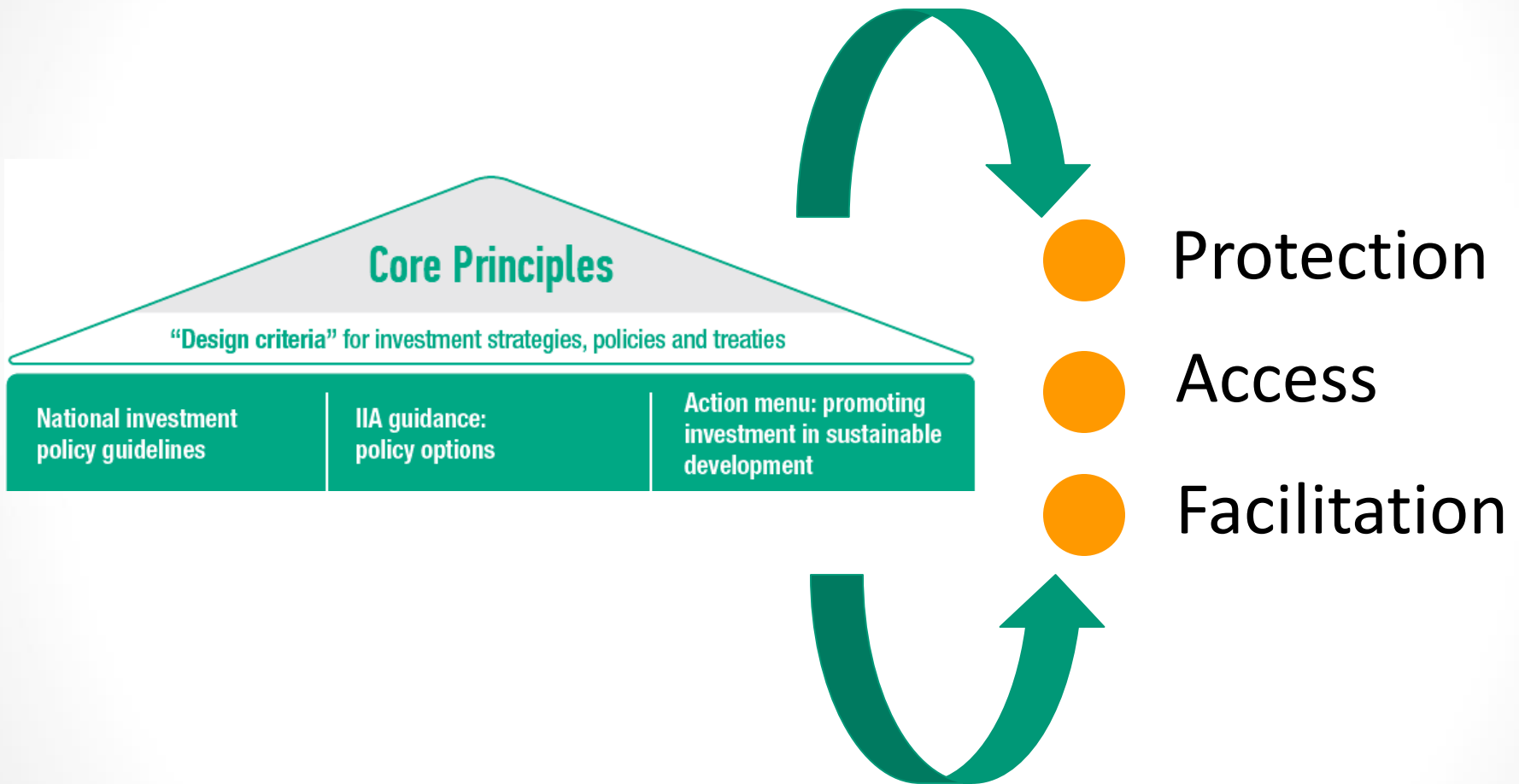
Investment Policy Framework for Sustainable Development



10 Core Principles for Investment Policymaking

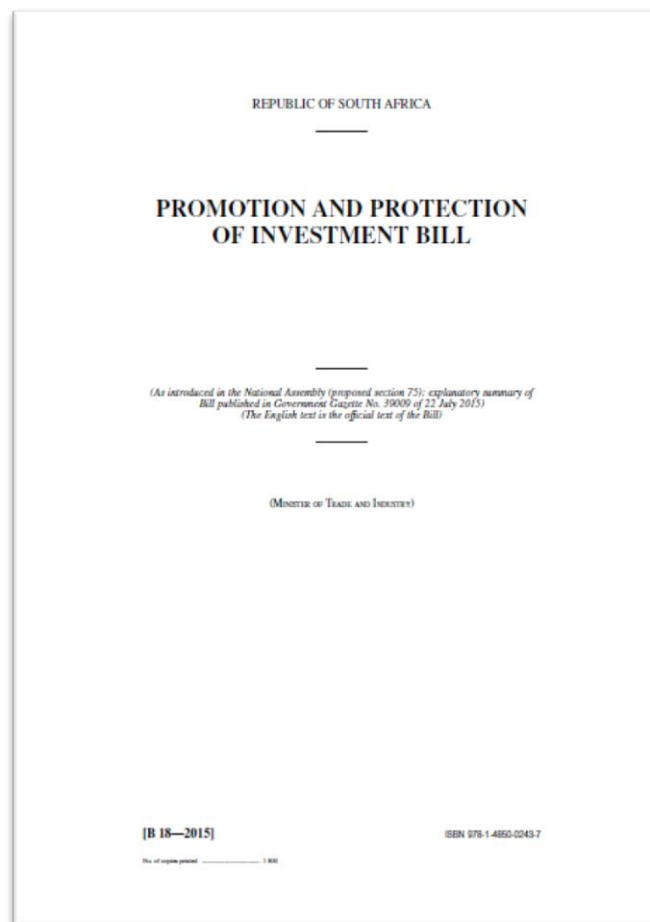
Area	Core Principles
Investment for sustainable development	<ul style="list-style-type: none"> The overarching objective of investment policymaking is to promote investment for inclusive growth and sustainable development.
1 Policy coherence	<ul style="list-style-type: none"> Investment policies should be grounded in a country's overall development strategy. All policies that impact on investment should be coherent and synergetic at both the national and international level.
2 Public governance and institutions	<ul style="list-style-type: none"> Investment policies should be developed involving all stakeholders, and embedded in an institutional framework based on the rule of law that adheres to high standards of public governance and ensures predictable, efficient and transparent procedures for investors.
3 Dynamic policymaking	<ul style="list-style-type: none"> Investment policies should be regularly reviewed for effectiveness and relevance and adapted to changing development dynamics.
4 Balanced rights and obligations	<ul style="list-style-type: none"> Investment policies should be balanced in setting out rights and obligations of States and investors in the interest of development for all.
5 Right to regulate	<ul style="list-style-type: none"> Each country has the sovereign right to establish entry and operational conditions for foreign investment, subject to international commitments, in the interest of the public good and to minimize potential negative effects.
6 Openness to investment	<ul style="list-style-type: none"> In line with each country's development strategy, investment policy should establish open, stable and predictable entry conditions for investment.
7 Investment protection and treatment	<ul style="list-style-type: none"> Investment policies should provide adequate protection to established investors. The treatment of established investors should be non-discriminatory in nature.
8 Investment promotion and facilitation	<ul style="list-style-type: none"> Policies for investment promotion and facilitation should be aligned with sustainable development goals and designed to minimize the risk of harmful competition for investment.
9 Corporate governance and responsibility	<ul style="list-style-type: none"> Investment policies should promote and facilitate the adoption of and compliance with best international practices of corporate social responsibility and good corporate governance.
10 International cooperation	<ul style="list-style-type: none"> The international community should cooperate to address shared investment-for-development policy challenges, particularly in least developed countries. Collective efforts should also be made to avoid investment protectionism.

UNCTAD's Investment Policy Framework: three key policy areas



Comments on South Africa's Investment Bill

South Africa's Investment Bill



Three aspects beyond protection: access, facilitation and coherence

Investment facilitation: Six action packages identified in WIR 2014

1  New generation of investment promotion and facilitation

2  Reorientation of investment incentives

3  Regional SDG Investment Compacts

4  New forms of partnerships for SDG investment

5  Enabling a re-orientation of financial markets

6  Changing the global business mindset



Concluding remarks



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- Beyond the scope of the current Bill, further work is important to strengthen the dimensions of investment facilitation and policy coherence of the regulatory framework.
- UNCTAD can offer its full range of technical assistance.

THANK YOU!

The Investment Policy Hub:
<http://investmentpolicyhub.org>

UNCTAD websites:
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