



INVESTMENT POLICY FRAMEWORK FOR SUSTAINABLE DEVELOPMENT

- A "NEW GENERATION" OF INVESTMENT POLICIES
- PRINCIPLES FOR INVESTMENT POLICYMAKING
- NATIONAL INVESTMENT POLICY GUIDANCE
- FRAMEWORK FOR INTERNATIONAL INVESTMENT AGREEMENTS: OPTIONS
- PROMOTING INVESTMENT IN SDGs: ACTION MENU
- THE WAY FORWARD

EXECUTIVE SUMMARY

2015



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PREPARATION, REVIEW AND DISSEMINATION OF THE UPDATE OF THE UNCTAD INVESTMENT POLICY FRAMEWORK FOR SUSTAINABLE DEVELOPMENT

The 2015 version of the United Nation's Conference on Trade and Development (UNCTAD) Investment Policy Framework for Sustainable Development intends to bring it up to date as regards new developments and lessons learnt since its first launch in 2012. As part of this undertaking, it incorporates elements from the 2012, 2013, 2014 and 2015 editions of UNCTAD's World Investment Reports (WIR).

The revision is the result of a collective effort, led by UNCTAD, pooling global expertise in the investment and development field from other international organizations, numerous international experts, academics, practitioners and other investment-development stakeholders.

The 2015 edition of UNCTAD's Investment Policy Framework was prepared by a team led by James Zhan. The team members included Richard Bolwijn, Chantal Dupasquier, Hamed El Kady, Thomas van Giffen, Joachim Karl, Ventzislav Kotetzov, Hafiz Mirza, Sergey Ripinsky, Elisabeth Tuerk and Joerg Weber. Ana Conover Blancas, Rhea Hoffmann, Kendra Magraw, Anna Mouw, Diana Rosert, Catherine Titi, and Elizabeth Zorilla also contributed to the work. The update benefitted from UNCTAD's internal peer review process.

Jeffrey Sachs acted as the lead adviser on the Action Plan for Investment in the Sustainable Development Goals (SDGs) as part of the 2015 edition of the Policy Framework.

Since 2012, different parts of the Policy Framework were field-tested in beneficiary countries (including through UNCTAD's Investment Policy Reviews) and peer reviewed at numerous high-level intergovernmental meetings. These include the briefings of the Second Committee of the UN General Assembly, the preparatory process for the Third International Conference on Financing for Development in Addis Ababa in July 2015, the UNCTAD side event at this Conference, as well as the meetings of UNCTAD's Trade and Development Board, UNCTAD's Investment, Enterprise and Development Commission, and the Ministerial Roundtables and IIA Conferences at UNCTAD's biennial World Investment Forums (WIF). The Framework was also discussed in the context of the annual WIR launches worldwide and at numerous briefings to missions in Geneva, New York and Vienna.

The UNCTAD Policy Framework also received significant attention from numerous international organizations and groupings. It was discussed at the Asia Pacific Economic Cooperation (APEC) Investment Expert Group meetings, the European Economic and Social Committee (EESC), the Commission on Trade and Investment Policy of the International Chamber of Commerce (ICC), the Organisation for Economic Co-operation and Development (OECD) Freedom of Investment Roundtables, the United Nations Commission on International Trade Law (UNCITRAL) Commission sessions and Working Group meetings, and at the "G8 plus 5" Informal Multilateral Investment Dialogue. Deliberations on the World Health Organization (WHO) Framework Convention on Tobacco Control, the Energy Charter Treaty, in the United Nations Human Rights Council (UNHRC) and its Working Groups, and at the International Institute for Sustainable Development (IISD)-South Centre Annual Forums of Developing Country Investment Negotiators also addressed elements of the Framework.

Parliamentary groups that discussed elements of the Policy Framework include the European Parliament Committees on Legal Affairs and International Trade, the Alliance of Liberals and Democrats of the European Parliament, the United Kingdom All Party Parliamentary Group, and the South African Parliament, Trade and Industry Committee.

Feedback was also received through numerous consultations with civil society groups, stakeholders and academic events. Examples include China's International Fair for Investment and Trade, the Financing for Sustainable Development Forum, (organised by the Sustainable Development Solutions Network (SDSN) and Investec Asset Management), the World Trade Organization (WTO) Public Forum and the Biennial Global Conferences of the Society of International Economic Law (SIEL). Events organized by the British Institute of International and Comparative Law (BIICL), the Columbia Center for Sustainable Investment (CCSI), the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ), the European Federation for Investment Law and Arbitration (EFILA), and the Geneva Forum on International Trade and Investment also discussed the Framework, allowing UNCTAD to benefit from a range of views and expertise.

Comments were also provided through the <http://investmentpolicyhub.unctad.org/> and social media tools. The Framework's uptake in blogs, discussion forums and academic or policy exchanges, together with extensive media coverage of the World Investment Report, generated rich and diverse feedback from a broad range of stakeholders.

The Policy Framework formed the basis of numerous regional training courses organized or co-organized by UNCTAD, including for countries in Africa, Asia, Latin America, the Pacific Islands and for economies in transition.

Since its launch in 2012, it has been used by a large number of countries and regional groupings to review and revise their national investment laws and regulations, as well as their models or bargaining positions for the negotiation of international investment agreements. Regular reviews of the investment treaties concluded over the past three years show that most of them include provisions such as those identified in the 2012 Policy Framework. The Framework has also been extensively cited in academic work and policy documents.

Through all of this, the UNCTAD Investment Policy Framework for Sustainable Development has established itself as a major instrument for governments worldwide formulating a new generation of investment policies.

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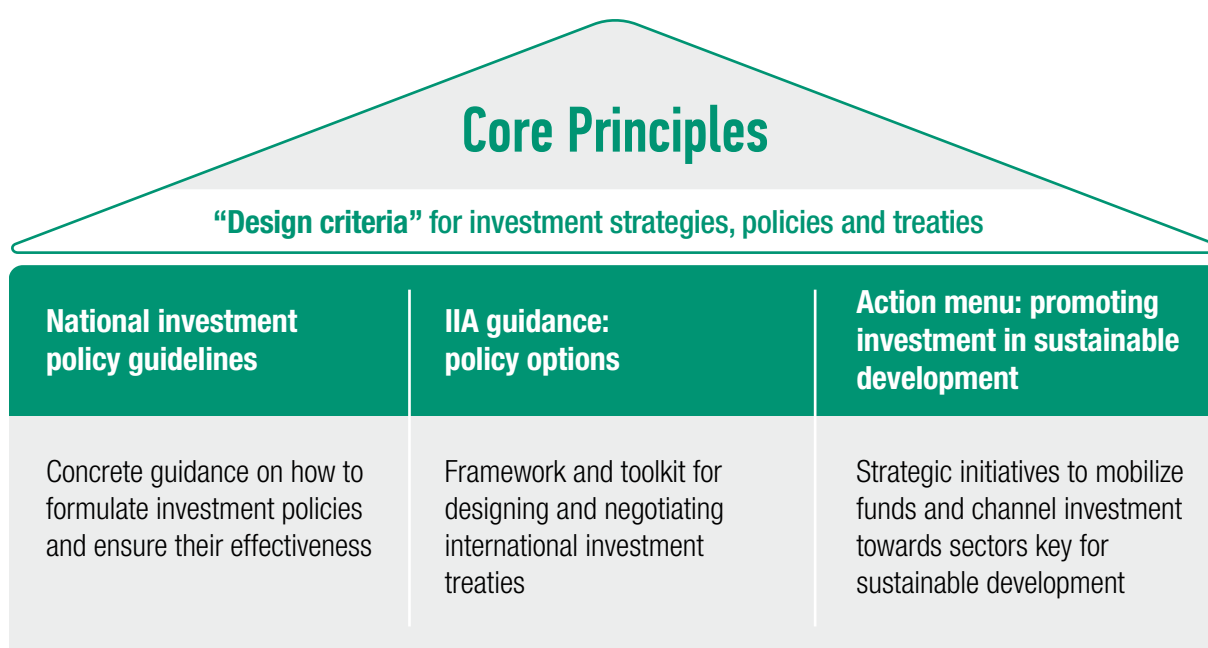
EXECUTIVE SUMMARY

Mobilizing investment and ensuring that it contributes to sustainable development is a priority for all countries. A new generation of investment policies is emerging, pursuing a broader and more intricate development policy agenda, while building or maintaining a generally favourable investment climate.

“New generation” investment policies place inclusive growth and sustainable development at the heart of efforts to attract and benefit from investment. They address specific investment policy challenges at the national and international levels. At the national level, these include integrating investment policy into development strategy, incorporating sustainable development objectives in investment policy and ensuring investment policy relevance and effectiveness. At the international level, there is a need to strengthen the development dimension of international investment agreements (IIAs), balance the rights and obligations of States and investors, and manage the systemic complexity of the IIA regime. “New generation” investment policies further incorporate innovative investment promotion and facilitation mechanisms – at the national and international levels – to stimulate investment specifically geared towards sustainable and inclusive growth, including infrastructure, renewable energy, water and sanitation, food security, health and education (sustainable development goals-related sectors).

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Figure 1. Structure and components of UNCTAD’s Investment Policy Framework
Investment Policy Framework for Sustainable Development



UNCTAD's Investment Policy Framework consists of an overarching set of Core Principles for Investment Policymaking that serve as design criteria for three sets of operational guidelines or action menus: (i) guidelines for national investment policies, (ii) guidance for the design and use of IIAs, and (iii) an action menu for the promotion of investment in sectors related to the sustainable development goals.

In national investment policymaking, action is needed at the strategic, normative, and administrative levels.

The *national investment policy guidelines (i)* contain advice on policy action at the strategic, normative, and administrative levels.

- At the strategic level, policymakers should ground investment policy in a broad road map for economic growth and sustainable development. They should define the roles of public, private, domestic and especially foreign direct investment in development strategy. At this level it is also important to develop policies to harness investment for productive capacity building and to enhance international competitiveness, with critical elements including human resources and skills development, technology and know-how, infrastructure development, and enterprise development.
- At the normative level, through the setting of rules and regulations, policymakers can promote and regulate investment that is geared towards sustainable development goals. Positive development impacts of FDI do not always materialize automatically and FDI can have negative side-effects. Reaping the development benefits from investment requires regulations covering policy areas beyond investment policies per se, such as trade, taxation, intellectual property, competition, labour market regulation, environmental policies and access to land. While laws and regulations are the basis of investor responsibility, voluntary CSR initiatives and standards are increasingly influencing corporate practices, behaviour and investment decisions. Governments can build on them to complement the regulatory framework and maximize the development benefits of investment.
- At the administrative level, through appropriate implementation and institutional mechanisms, policymakers can ensure the continued relevance and effectiveness of investment policies. Measuring policy effectiveness is a critical aspect of investment policymaking. Investment policy should be based on a set of explicitly formulated policy objectives with clear priorities and time frames. Assessment of progress in policy implementation and verification of the application of rules and regulations at all administrative levels is equally important.

The guidance on *international investment policies (ii)* set out in UNCTAD's Investment Policy Framework provides options for the design of provisions in investment agreements, with an analysis of sustainable development implications. This principally implies four areas of evolution in treaty-making practice.

- Incorporating concrete commitments to promote and facilitate investment for sustainable development. Options to improve the investment promotion aspect of treaties include concrete facilitation mechanisms (information sharing, investment promotion forums), outward investment promotion schemes (insurance and guarantees), joint investment promotion initiatives, and technical assistance and capacity-building initiatives targeted at sustainable investment.
- Balancing State commitments with investor obligations and promoting responsible investment. Investor obligations could be the basis for stipulating in the IIA the consequences of an investor's failure to comply with domestic laws. In addition, IIAs could refer to commonly recognized international standards and support the spread of CSR standards.
- Ensuring an appropriate balance between protection commitments and regulatory space for development. Countries can safeguard the right to regulate by clarifying the scope and meaning of treaty provisions such as the fair and equitable treatment standard and expropriation, and by using specific flexibility mechanisms such as exceptions and reservations.
- Shielding host countries from unjustified liabilities and high procedural costs. Shielding countries from unjustified liabilities and excessive procedural costs through treaty design involves looking at options both in the way investment dispute settlement is conducted and in the scope and application of substantive clauses.

The framework's guidance on IIAs contains a comprehensive compilation of policy options available to IIA negotiators. This includes options that clarify or circumscribe key IIA protection standards (e.g. most-favoured nation (MFN) treatment, fair and equitable treatment (FET) or indirect expropriation), options that strengthen the right to regulate (e.g. exceptions for public policies or national security), options that improve investment dispute settlement (clauses for improving investor-State dispute settlement, State-State dispute settlement or dispute prevention), clauses aimed at promoting and facilitating investment and clauses aimed at ensuring responsible investor behaviour.

These areas of evolution are also relevant for "pre-establishment IIAs", i.e. agreements that – in addition to protecting established investors – contain binding rules regarding the establishment of new investments. As a growing number of countries opt for the pre-establishment approach, it is crucial to ensure that any market opening through IIAs is in line with host countries' development strategies. Relevant provisions opt for selective liberalization, containing exceptions and reservations well designed to protect a country from overcommitting and/or ensuring flexibilities in the relevant treaty obligations.

Taken together, the options for the design and use of IIAs can support the

IIA reform focuses on safeguarding the right to regulate, improving dispute settlement, more effective promotion and facilitation, and fostering responsible investment.

ongoing process of reform towards a future architecture of international investment governance that is more conducive to sustainable development.

The *action menu for the promotion of investment in priority sectors for sustainable development (iii)* presents a range of policy options to respond to the challenge of mobilizing funds and channeling investment towards areas that often remain under-served by private investors:

- A new generation of investment promotion and facilitation. Establishing investment development agencies to develop and market pipelines of bankable projects in relevant sectors and to actively facilitate such projects.
- Sustainable-development-oriented investment incentives. Transforming investment incentive schemes from purely “location-based” incentives towards “sustainability-based” incentives, aiming to promote investment in relevant sectors and conditional upon their sustainable development contribution.
- Regional Investment Compacts. Launching regional initiatives towards the promotion of sustainability-driven investment, especially for cross-border infrastructure development and regional clusters of firms operating in relevant sectors (e.g. green zones).
- New forms of partnership for sustainability-driven investments. Establishing partnerships between outward investment agencies in home countries and investment promotion agencies (IPAs) in host countries for the purpose of marketing relevant investment opportunities, provision of investment incentives and facilitation services for projects, and joint monitoring and impact assessment.

A key challenge is promoting investment in areas that make the greatest contribution to sustainable development. This requires a new generation of investment promotion and facilitation strategies, tools, institutions and partnerships.

UNCTAD’s Investment Policy Framework aims to serve as a point of reference for policymakers in formulating national investment policies, in negotiating or reviewing IIAs, and in designing concrete policy initiatives to promote investment in priority sectors for sustainable development. It provides a common language for discussion and cooperation at national and

international levels. It has been designed as a “living document” and incorporates an online version that aims to establish an interactive, open-source platform, inviting the international community to exchange views, suggestions and experiences on the framework for the inclusive and participative development of future investment policies.

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