

# 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

VERSION  
**2015**

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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.

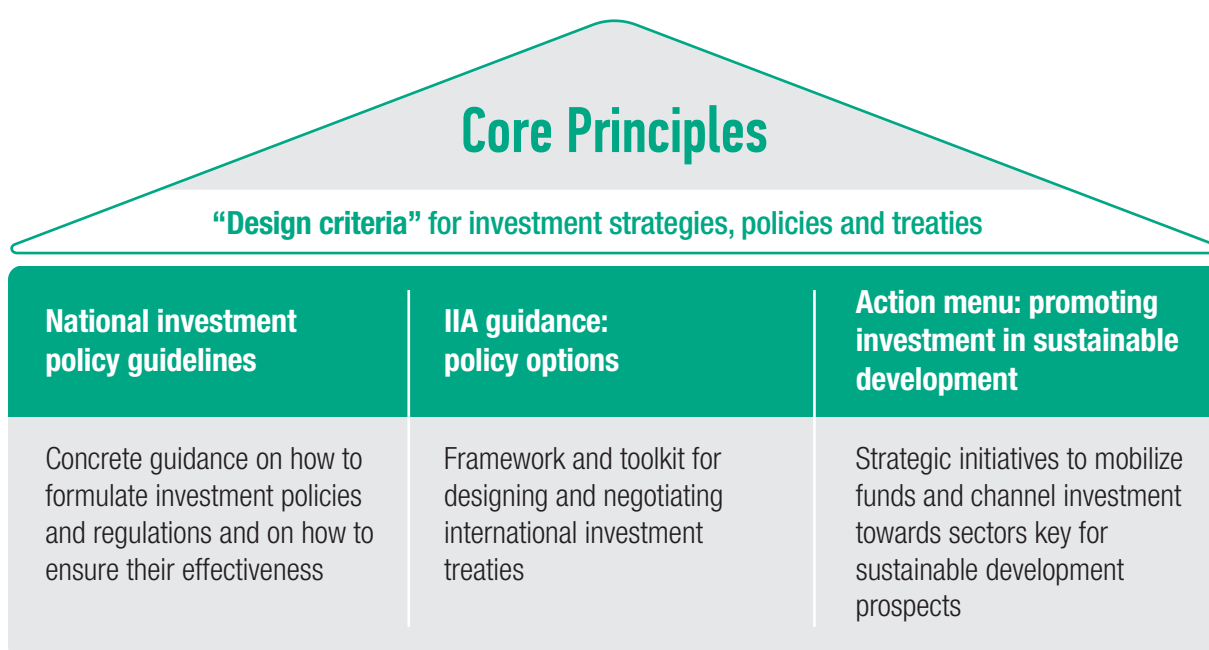
"New generation" investment policies place inclusive growth and sustainable development at the heart of efforts to attract and benefit from investment. They address specific investment policy challenges at the national and international levels. At the national level, these include integrating investment 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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**"New generation" investment policies place inclusive growth and sustainable development at the heart of efforts to attract and benefit from investment.**

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**FIGURE 1. INVESTMENT POLICY FRAMEWORK FOR SUSTAINABLE DEVELOPMENT: STRUCTURE AND COMPONENTS**



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.

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

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*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 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 investment do not always materialize automatically and investment 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 Policy 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 behavior.

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.

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

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Taken together, the options for the design and use of IIAs can support the 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 sustainable development goals-related sectors (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 SDGs 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 SDGs 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.

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**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.**

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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 sustainable development sectors. 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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