



I NVESTMENT **P** OLICY
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Preface

Towards a New Generation of Investment Policies

At a time of persistent crises and pressing social and environmental challenges, harnessing economic growth for sustainable and inclusive development is more important than ever. Investment is a primary driver of such growth. Mobilizing investment and ensuring that it contributes to sustainable development objectives is therefore a priority for all countries and for developing countries in particular.

Against this background, 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. Although these concepts are not new in and by themselves, to date they have not been systematically integrated in mainstream investment policymaking. “New generation” investment policies aim to operationalize sustainable development in concrete measures and mechanisms at the national and international level, and at the level of policy making and implementation.

Broadly, “new generation” investment policies strive to:

- create synergies with wider economic development goals or industrial policies, and achieve seamless *integration in development strategies*;
- foster *responsible investor behavior* and incorporate principles of corporate social responsibility (CSR);
- ensure *policy effectiveness* in their design and implementation and in the institutional environment within which they operate.

To help policymakers address the challenges posed by this new agenda, this report takes a fresh look at investment policymaking, and does so by taking a systemic approach, examining the universe of national and international policies through the lens of today’s key investment policy challenges. It explicitly focuses on the development dimension, and presents a comprehensive Investment Policy Framework for Sustainable Development (IPFSD).

The IPFSD consists of a set of Core Principles for investment policymaking, guidelines for national investment policies, and guidance for policymakers on how to engage in the international investment policy regime, in the form of options for the design and use of international investment agreements (IIAs).

The IPFSD is built on the experience of UNCTAD and other organizations in designing investment policies for development, and it incorporates lessons learned on what policies and measures work well, or not so well, under what circumstances. It represents the best endeavour by the UNCTAD secretariat, in collaboration with numerous international experts and investment stakeholders. It is the result of collective wisdom.

It is hoped that the IPFSD may serve as a reference for policymakers in formulating national investment policies and in negotiating investment agreements or revising existing ones. It can also serve as the basis for capacity building on investment policy and for UNCTAD’s technical assistance work. And it may come to act as a point of convergence for international cooperation on investment issues.

The IPFSD has been designed as a “living document”. UNCTAD will continuously update its contents based on feedback from its numerous policy forums and from its work in the field, and it will provide a platform for “open sourcing” of best practice investment policies.

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Introduction

Investment Policy Framework for Sustainable Development

The policy environment for cross-border investment is subject to constant change. At the national level, governments continue to adopt investment policy measures (at a rate of around 150 annually over the past decade according to UNCTAD's monitoring of such measures), not to speak of countless measures taken every year that influence the overall business environment for investors. At the international level, new investment agreements have been concluded at a rate of more than one per week for the past few years. At the level of "soft law", the universe of codes and standards that govern the behavior of corporate investors also continues to expand.

Over the last two decades, as more and more governments have come to realize the crucial role of private investment, including FDI, in fuelling economic growth and development, great strides have been made to improve both national and international investment policies. Very significant efforts have been made by governments in developing countries in particular, often aided by the international development community through policy frameworks, model treaties and technical assistance (such as UNCTAD's Investment Policy Reviews). A lot of experience has been gained and documented that now helps policymakers identify measures that work well, or less well, under what circumstances and in what context.

Despite the progress made, and despite the lessons learned, important questions remain unanswered for policymakers. Some perceived or acknowledged shortcomings in investment policy regimes are addressed only partially, or not at all, by existing models and frameworks intended to support policymakers.

This report takes a fresh look at investment policymaking – *focusing on direct private investment in productive assets* (i.e. excluding

other capital flows which should be addressed by the financial system and policies) – by taking a systemic approach that examines the universe of national and international policies through the lens of today's key investment policy challenges. It also aims explicitly to strengthen the development dimension of investment policies, and presents a comprehensive *Investment Policy Framework for Sustainable Development* (IPFSD).

Encouragement to pick up this gauntlet comes from discussions with senior policymakers in numerous forums, including at UNCTAD's biennial World Investment Forum; at its Commission on Investment, Enterprise and Development; and at its regular intergovernmental expert group meetings on investment and enterprise. It also stems from discussions with academics and business advisors in UNCTAD's round tables on investment policy, and from UNCTAD's technical assistance work with developing countries. Further encouragement has emerged from other important policy platforms, most notably the G-20, which in its Seoul Declaration in 2010 and the accompanying Multi-Year Action Plan for Development specifically refers to the need to strengthen the sustainable development dimension of national and international investment policies.

The IPFSD also comes at a time when many other investment stakeholders are putting forward suggestions for the future of investment policymaking. At UNCTAD's 2012 World Investment Forum the International Chamber of Commerce (ICC) launched its contribution in the form of (revised) Guidelines for International Investment. The OECD has announced its intention to start work on an update of its policy framework for investment. The recently adopted European Union-United States Statement on Shared Principles for International Investment and the release of the new

United States' model BIT are also testimony of policy dynamism. These developments appear to signal a window of opportunity to strengthen the sustainable development dimension of investment policies.

The remainder of this report first details the drivers of change in the investment policy environment – introducing a “new generation” of investment policies – and the challenges that need to be addressed in a comprehensive IPFSD (chapter I). It then proposes a set of Core Principles for investment policymaking,

which serve as “design criteria” for national and international investment policies (chapter II). Chapter III presents a framework for national investment policy. Chapter IV focuses on IIAs and translates the Core Principles into options for the formulation and negotiation of such instruments, with a particular focus on development-friendly options. The final chapter looks at the way forward, suggesting how policymakers and the international development community could make use of the IPFSD, and how it could be further improved.

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