National Investment Policies: trends and issues
(Session 1)

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Investment Policy Officer
UNCTAD
Session 1

- Introduction
- UNCTAD’s Investment Policy Framework for Sustainable Development (IPFSD): national investment policies
- Recent trends in national investment policies and regulations
Foreign direct investment (FDI) is an investment involving a long-term relationship and reflecting a lasting interest and control by a resident entity in one economy in an enterprise resident in an economy other than that of the foreign direct investor.
# FDI determinants
## Connecting home and host

<table>
<thead>
<tr>
<th>Company motivations (drivers)</th>
<th>Economic determinants</th>
<th>Policy framework</th>
<th>Business facilitation</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Market size</td>
<td>Economic, social and political stability</td>
<td>Investment promotion</td>
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<td></td>
<td>Labour cost</td>
<td>FDI rules and regulation</td>
<td>Cost of doing business</td>
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<td>Resources</td>
<td>Standards of treatment</td>
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<td>Infrastructure</td>
<td>International agreements</td>
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<td>Market seeking</td>
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<td>Related policies (e.g. tax, trade, IP)</td>
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<td>Resource seeking</td>
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<td>Efficiency seeking</td>
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</table>
FDI impact
Both pros and cons

Potential positive impacts:
• Employment creation
• Capital formation
• Technology transfers
• Human resource development
• Tax payments
• International trade
• Clean technologies
• Modern environmental management systems

Potential negative impacts:
• Environmental issues
• Worker exploitation
• Economy
• Local firms
• Employment
FDI and the SDGs
Public sector fundamental, private sector indispensable

Contributions to the sustainable development goals
• Economic infrastructure
• Food security and agriculture
• Social infrastructure
• Environmental sustainability

Estimated annual investment needs in key SDG sectors, 2015–2030
(Trillions of dollars, annual average)

- Total annual investment needs: 3.9
- Current annual investment: 1.4
- Annual investment gap: 2.5

Source: UNCTAD.
UNCTAD’s Investment Policy Framework
Making investment work for sustainable development and inclusive growth

INVESTMENT POLICY FRAMEWORK FOR SUSTAINABLE DEVELOPMENT

- NEW GENERATION INVESTMENT POLICIES
- PRINCIPLES FOR INVESTMENT POLICY MAKING
- NATIONAL INVESTMENT POLICY GUIDANCE
- GUIDANCE FOR INVESTMENT TREATIES
- ACTION MENU FOR INVESTMENT IN SDGs
- THE WAY FORWARD
National investment policies
The challenges

1. Integrating investment policy in development strategy
   - Channeling investment to areas key for the building-up of productive capacity and international competitiveness
   - Ensuring coherence with the host of policy areas geared towards overall development objectives

2. Incorporating sustainable development objectives in investment policy
   - Maximizing positive and minimizing negative impacts of investment
   - Fostering responsible investor behaviour

3. Ensuring investment policy relevance and effectiveness
   - Building stronger institutions to implement investment policy
   - Measuring the sustainable development impact of investment
Promoting investment in SDG-related sectors

Policy challenges

1. Resolving policy tensions associated with private sector engagement
   - Balancing public and private investment and mitigating the risks involved with greater private sector participation in sensitive sectors
   - Alleviating regulatory barriers to investment while maintaining appropriate safeguards

2. Finding mechanisms to overcome inadequate risk-return ratios
   - Dealing with high risk perceptions
   - Helping investors mitigate risks and designing attractive risk-return profiles and risk-sharing models

3. Gearing up for far more demanding investment promotion and facilitations
   - Overcoming a lack of investor expertise and attention
   - Prioritizing, preparing and packaging concrete sustainable-development investment projects
The national investment policy guidelines

1. Investment and sustainable development strategy
   - Integrating investment policy in sustainable development strategy
   - Maximizing the contribution of investment to productive capacity building and international competitiveness

2. Investment regulation and promotion
   - Designing investment-specific policies regarding:
     - Establishment and operations
     - Treatment and protection of investment
     - Investor responsibilities
     - Investment promotion and facilitation

3. Investment-related policy areas
   - Ensuring coherence with other policy areas, including: trade, taxation, intellectual property, competition, labour market regulation, access to land, corporate responsibility and governance, environmental protection, infrastructure and PPPs

4. Investment policy effectiveness
   - Building effective public institutions to implement investment policy
   - Measuring investment policy effectiveness and feeding back lessons learned into new rounds of policymaking

INVESTMENT POLICY FRAMEWORK FOR SUSTAINABLE DEVELOPMENT
Trends in national investment policies and regulations

- Investment Policy Monitor
- National Investment Laws database

http://investmentpolicyhub.unctad.org
Trends in national investment policies Overall policy climate geared towards investment liberalization


Source: UNCTAD, Investment Policy Monitor.
Entry and establishment
Openness to FDI depends on industry

Entry restrictions by industry

Entry liberalization by industry, 2006–2015

Source: WB, Investing Across Borders.
Source: UNCTAD, Investment Policy Monitor.
Treatment and operation
Investor protection key area for improvement

**Liberalizations:**
- Capital transfer and FOREX: 29%
- Operational conditions: 29%
- Dispute settlement: 18%
- Other: 13%
- Nationalizations/expropriations: 2%
- Non-discriminaton: 9%

**Restrictions:**
- Capital transfer and FOREX: 17%
- Operational conditions: 47%
- Other: 6%
- Nationalizations/expropriations: 2%
- Non-discriminaton: 2%

**Strength of investor protection**
0–10 (=best)

Source: UNCTAD, Investment Policy Monitor.

Source: World Economic Forum, Global Competitiveness Index.
Promotion and facilitation
Incentives common instrument to attract FDI

Incentives and facilitation measures as share of total liberalization and promotion measures

Source: UNCTAD, Investment Policy Monitor.
Investment laws

Mostly a developing and transition economy instrument

- Developing economies: 90
- Transition economies: 17
- Developed economies: 2

- Domestic & foreign investment: 64
- Foreign investment specific: 47

Source: UNCTAD, Investment Laws Database.
Main objectives
Investment promotion driving regulation

Objectives mentioned in investment laws, by category
(Number of laws)

- Investment promotion: 78
- Economic development: 56
- Investment protection: 43
- Social development: 40
- Sustainable development: 13
- Environmental investment impact: 4

Source: UNCTAD, Investment Laws Database.
Entry and establishment
Most investment laws include industry-specific restrictions

- Negative list approach: 67
- Positive list approach: 9

Entry restrictions in investment laws
(Number of laws)

<table>
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<tr>
<th>Industry specific restrictions</th>
<th>76</th>
</tr>
</thead>
<tbody>
<tr>
<td>&quot;National security&quot; and &quot;public order&quot;...</td>
<td>25</td>
</tr>
<tr>
<td>&quot;Environmental protection&quot; safeguards</td>
<td>21</td>
</tr>
<tr>
<td>&quot;Public health&quot; safeguards</td>
<td>18</td>
</tr>
</tbody>
</table>

Source: UNCTAD, Investment Laws Database.
Investor rights and guarantees

Investor rights and guarantees in investment laws (Number of laws)

- Capital transfer: 98
- Expropriation: 82
- National treatment: 70
- Entry foreign personnel: 43
- Intellectual property: 27
- Local finance: 17
- Civil strife: 8
- Fair and equitable treatment: 8

Source: UNCTAD, Investment Laws Database.
## Investor obligations
**Not so common**

77 laws of the laws include some reference to investor obligations

<table>
<thead>
<tr>
<th>Investor obligations in investment laws</th>
<th>(Number of laws)</th>
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<tr>
<td>Comply with national laws</td>
<td>41</td>
</tr>
<tr>
<td>Disclosure requirements</td>
<td>40</td>
</tr>
<tr>
<td>Labour rights</td>
<td>33</td>
</tr>
<tr>
<td>Fiscal obligations</td>
<td>25</td>
</tr>
<tr>
<td>Environment and public health</td>
<td>25</td>
</tr>
<tr>
<td>Local staff</td>
<td>20</td>
</tr>
<tr>
<td>Corporate social responsibility</td>
<td>2</td>
</tr>
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Source: UNCTAD, Investment Laws Database.
**Investor-State dispute settlement**

- ISDS provisions: **82 (75%)**

**Investor–State dispute resolution mechanisms in investment laws** (number of laws)

- International arbitration: **68**
- Local courts: **58**
- Alternative dispute resolution: **25**

Type of consent to international arbitration

- Unclear: 11 (16%)
- Case-by-case: 31 (46%)
- Explicit or implicit consent: 26 (38%)

Source: UNCTAD, Investment Laws Database.

- Access to domestic courts *and* international arbitration: **44 (53%)**
Investment promotion and facilitation

- Incentives (74): African laws are most detailed
- Establishment of IPAs (46)
  - By the law itself: mostly African laws
  - Reference to future establishment
- One-stop shop (25): tasks rarely specified

**Frequency of investment promotion elements**
(Number of laws)

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Source: UNCTAD, Investment Laws Database.
THANK YOU

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