INVESTMENT FACILITATION: AN ACTION MENU

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*The proposed Action Menu is preliminary research and does not represent the official views of UNCTAD member States or the UNCTAD Secretariat.

Investment Facilitation: An Action Menu

I. Background: the rationale for investment facilitation

Investment can drive productivity, create jobs, raise incomes, strengthen trade flows and spread technology and know-how internationally. Investment can bolster economic growth for developed and developing economies alike. The extent of the positive impact of investment depends on the dynamics of investment regulatory and facilitation measures.

Mobilizing investment and maximizing its positive contribution to growth and sustainable development is a priority for all countries. Concerted efforts are required to boost cross-border investment in productive assets, not only in the realm of national and international investment policies but also in addressing administrative barriers and hurdles that stand in the way of investment.

Numerous initiatives aimed at stimulating investment, both foreign and domestic, exist at national, sub-national and international levels that try directly to affect the risk-return ratio for investors. Such initiatives may try to lower risks by providing guarantees, by sharing risks (e.g. in public-private partnerships) or by offering certain protections. Alternatively they may try to increase potential investor returns through fiscal or financial incentives or through the provision of low-cost capital.

In the most common international instruments for investment promotion, relatively little attention is being paid to ground-level obstacles to investment, such as a lack of transparency on legal or administrative requirements faced by investors, lack of stability and predictability in the operating environment, and other factors causing high costs of doing business.

Addressing such barriers to investment could provide a real boost to both cross-border and domestic investment, complementing direct stimulus instruments (guarantees, incentives), and reinforcing trade facilitation efforts – given that 80% of trade is driven by the international production networks dependent on investments from multinational firms.

Investment facilitation initiatives could, in fact, mirror many elements common in trade facilitation. They could include improvements in transparency and information available to investors; they could work towards efficient and effective administrative procedures for investors; they could enhance the consistency and predictability of the policy environment for investors through consultation procedures; they could increase accountability and effectiveness of government officials and mitigate investment disputes through ombudspersons; they could include cross-border coordination and collaboration initiatives such as regional investment compacts or links between outward and inward investment promotion agencies; and they could include technical cooperation and other specific support mechanisms for investment.

II. Investment facilitation: scope and objectives

Investment facilitation covers a wide range of areas, all with the ultimate focus to attract investment, allowing investment to flow efficiently, and for host countries to benefit effectively. Transparency, investor services, simplicity and efficiency of procedures, coordination and cooperation, and capacity building are among its most important principles. It interacts at all stages of investment, from the pre-establishment phase (such as facilitating regulatory feasibility studies), through investment installation, to services throughout the life span of an investment project.

Progress in the international community on investment facilitation should provide a broad range of policy choices suitable for different economic circumstances. The Action Menu proposed here for discussion is based on UNCTAD's Investment Policy Framework and rich experiences and practices of investment promotion and facilitation efforts worldwide over the past decades.

The Action Menu excludes, in the first instance, policy measures aimed at the protection of investment. Investment protection issues are well-established in the existing national regulatory frameworks and international investment treaties. Nevertheless, progress on investment facilitation would fill a gap in the existing international investment agreement (IIA) regime. In the great majority of the existing 3'300 IIAs, concrete investment facilitation actions are either absent or weak.[1]

Similarly, the Action Menu proposed here excludes fiscal or financial investment incentives. By focusing exclusively on promoting transparency, investor services and efficient and effective administrative procedures for investors any initiative on investment facilitation would complement investment protection and direct investment support measures.

The ultimate objective of any initiative in the international community on investment facilitation is to boost global investment, particularly in productive sectors, and to contribute towards progress on the global sustainable development agenda, by placing special emphasis on facilitation measures that are critical for promoting investment in priority sectors for sustainable development.[2] Any investment facilitation initiative should strengthen collaboration in investment promotion and the dissemination of good practices among investment host and home economies.

III. Investment facilitation: an action menu

The Action Menu below proposes 10 action lines with a series of options for investment policymakers to adapt and adopt for national and international policy needs: the package includes actions that countries can choose to implement unilaterally, and options that can guide international collaboration or that can be incorporated in international investment agreements. The Action Menu should be read in the broader context of UNCTAD's Investment Policy Framework for Sustainable Development.

An investment facilitation package could thus form the basis for formulating a legal instrument, or serve as an informative or guidance instrument, reflecting a collaborative spirit and best endeavor.

[1] Based on a representative sample of over 1'200 IIAs for which UNCTAD has mapped treaty content, as well as specific research on investment promotion provisions in IIAs.

[2] See also UNCTAD's Action Plan for Investment in the Sustainable Development Goals (SDGs) in the *World Investment Report 2014.*

Action line 1

Promote accessibility and transparency in the formulation of investment policies and regulations and procedures relevant to investors.

- Provide full, clear and up-to-date information on the investment regime.
- Adopt a centralised registry of laws and regulations and make this available electronically.
- Establish a single window or special enquiry point for all enquiries concerning investment policies and applications to invest.
- Maintain a mechanism to provide timely and relevant notice of changes in procedures, applicable standards, technical regulations and conformance requirements.
- To the extent possible, provide advance notice of proposed changes to laws and regulations and provide an opportunity for public comment.
- Make widely available screening guidelines and clear definitions of criteria for assessing investment proposals.
- Publicise outcomes of periodic reviews of the investment regime.

Action line 2

Enhance predictability and consistency in the application of investment policies.

- Systematise and institutionalise common application of investment regulations.
- Give equal treatment in the operation of laws and regulations on investment.
- Avoid discriminatory use of bureaucratic discretion.
- Establish clear criteria and transparent procedures for administrative decisions including with respect to investment project screening, appraisal and approval mechanisms.

Action line 3

Improve the efficiency and effectiveness of investment administrative procedures.

- Simplify and streamline application and registration, licensing and tax-related procedures.
- Provide timely, relevant and prompt administrative advice.
- Promote use of time bound approval processes or no objections within defined time limits to speed up processing times, where appropriate.
- Encourage and foster institutional cooperation and coordination.
- Where appropriate, establish online "one-stop" approval authority; clarify roles and accountabilities between different levels of government. Maintain clear demarcation of agency responsibilities where an economy has more than one agency screening or authorising investment proposals or where an agency has regulatory and commercial functions
- Keep the costs to the investor in the investment approval process to a minimum.
- Facilitate entry and sojourn of investment project personnel (visa, dismantling bureaucratic obstacles).
- Shorten the processing time and procedures for investment applications.
- Simplify the process for connecting to essential services infrastructure.
- Conduct periodic reviews of investment procedures ensuring they are simple, transparent and low-cost.

- Establish amicable dispute settlement mechanisms, including mediation, to facilitate investment dispute prevention and resolution.

Action line 4

Enhance proactive investment promotion.

- Maintain an active investment promotion agency (IPA) with adequate funding, capacity and expertise.
- Support IPAs in the development and execution of national investment promotion strategies.
- Facilitate feasibility studies of potential investment projects in priority sectors (including on regulatory issues and administrative approvals).
- Build expertise in IPAs (or investment development agencies) for the preparation of pipelines of investment projects that are clearly defined and prepared (regulatory approvals, prefeasibility studies and support measures in place).
- Make special efforts to support sustainable development focused investments such as green investments and social impact investments.
- Provide post-investment services, including support for expansion of existing operations and re-investment of earnings.
- Organize investment promotion forums, business fairs and business-government networking events.
- Promote backward investment linkages between businesses, especially between foreign affiliates and local enterprises, including through the promotion of industry clusters and supplier networks and through capacity building for global value chain (GVC) participation.
- Promote the role of policy advocacy within IPAs as a means of addressing the specific investment problems raised by investors, including those faced by SMEs.

Action line 5

Build constructive stakeholder relationships.

- Maintain mechanisms for regular consultation and effective dialogue with investment stakeholders throughout the life-cycle of investments, including approval and impact assessment stages and post-establishment stages, to identify and address issues encountered by investors and affected stakeholders.
- To the extent possible, establish a mechanism to provide interested parties (including the business community and investment stakeholders) with an opportunity to comment on proposed new laws, regulations and policies or changes to existing ones prior to their implementation.
- Promote improved standards of corporate governance.

Action line 6

Establish provisions in IIAs to encourage investment flows, with an emphasis on those that are most beneficial in light of a country's development strategy. Possible mechanisms include, e.g.:

- Encourage home countries to provide outward investment incentives, e.g. investment guarantees, possibly conditioned on the sustainable development

enhancing effect of the investment and investors' compliance with universal principles and applicable corporate social responsibility (CSR) standards.
- Organise joint investment promotion activities such as exhibitions, conferences, seminars and outreach programmes.
- Exchange information on investment opportunities.
- Collaboration on anticorruption in the investment process.
- Ensure regular consultations between investment promotion agencies.
- Outward Investment Agency (OIA) - IPA collaboration as joint investment development agencies.
- Regional investment and business development compacts.
- Explore the possibility of using international benchmarks on a voluntary basis as a reference point for peer dialogue and measuring progress.

Action line 7

Establish an investment ombudsperson/facilitator with a mandate to, e.g.:

- Address suggestions or complaints by investors and their home states.
- Take action to prevent, manage and resolve disputes.
- Provide information on relevant legislative and regulatory issues.
- Promoting greater awareness and transparency on investment legislation and procedures.
- Inform relevant government institutions on recurrent problems faced by investors which may require changes in investment legislation or procedures.

Action line 8

Strengthen promotion activities through an investment promotion partnerships or joint investment promotion bodies. Such bodies could e.g.:

- Identify new investment opportunities.
- Monitor the implementation of specific facilitation measures (e.g. related to the granting of business visas or dismantling bureaucratic/regulatory obstacles).
- Address specific concerns of investors (e.g. based on a report by an ombudsperson).
- Design, implement and monitor progress on thematic work plans (e.g. on green investment, promotion of linkages, issues related to small and medium-sized enterprises (SMEs), GVCs, etc.).

Action line 9

Provide technical assistance to developing host countries to facilitate investment flows.

- Make use of international and regional initiatives aimed at building investment expertise, including information sharing.
- Regulatory and institutional exchanges of expertise.
- Technical assistance to IPAs or relevant authorities on investment promotion strategies, tools and techniques, eRegulation, eRegistration and Business Facilitation Services.
- Capacity building to create expertise in IPAs for investment project proposal development and project appraisal.

- Encourage high standards of corporate governance through cross-border cooperation aimed at promoting international concepts and principles for business conduct.

Action line 10

Establish monitoring and review mechanisms for investment facilitation.

- Benchmark and measure performance of institutions involved in facilitating investment or in providing administrative services to investors, including in line with international good practices.
- Set up an institutional framework under which the Parties (and, where relevant, other IIA stakeholders such as investors, local community representatives etc.) shall cooperate and hold meetings from time to time, to foster the implementation of the agreement with a view to maximising its contribution to sustainable development.

IV. Conclusion: impact

Progress on investment facilitation can have an immediate impact by enhancing transparency, accountability, efficiency, simplicity, and the consistency and predictability of investment administration.

- Transparency: responds to investor interest and enables business decisions.
- Accountability: ensures that tasks are performed correctly and provides businesses with a grievance mechanism (ombudsperson).
- Efficiency: reduces costs for investors and adds to competitiveness for host countries and firms, especially for SMEs with higher barriers to entry.
- Simplicity: speeds up investment processes, ensures issues can be dealt with expeditiously, avoids duplication and double-handling at different levels of government.
- Consistency: enhances certainty to encourage business decisions, enables business to help shape a productive investment environment.
- Predictability: allows business to include prospective changes in planning decisions.

Any investment facilitation initiative cannot be considered in isolation from the broader investment for development agenda. Effective investment facilitation efforts should support the mobilization and channelling of investment towards priority areas for sustainable development, including the build-up of productive capacities and critical infrastructure, and should be an integral part of the overall investment policy framework aimed at maximizing the benefits of investment for host countries and minimizing any negative side effects or externalities.