

UNCTAD's Global Action Menu for Investment Facilitation

Version 3 – 31 May 2016

UNCTAD's Global Action Menu for Investment Facilitation will be discussed at the World Investment Forum 2016 in Nairobi, Kenya on 19 July and at the 63rd session of the UNCTAD Trade and Development Board to be held in Geneva, Switzerland from 13–23 September 2016.

Note to version 3

This version incorporates numerous comments and suggestions received since the first posting of the Action Menu on the Investment Policy Hub in the form of a discussion note on 26 January 2016. We wish to thank all those scholars, international organizations, the private sector, and investment promotion agencies (in particular the World Association of Investment Promotion Agencies, WAIPA), who contributed feedback on the Action Menu, both through the Hub and in other forums. Further feedback is welcome and will be used for subsequent revisions of this "living instrument"; comments can be sent via e-mail to DIAEinfo@UNCTAD.org.

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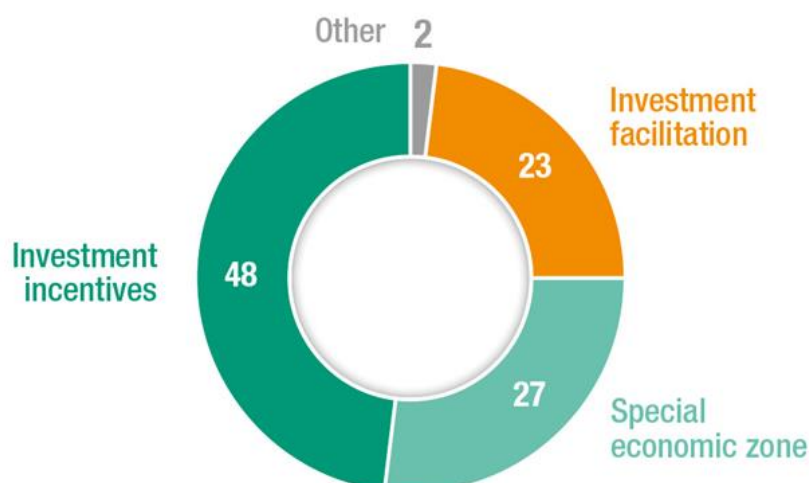
Facilitating investment is crucial for the post-2015 development agenda. To date, national and international investment policies have paid relatively little attention to investment facilitation. UNCTAD's Global Action Menu for Investment Facilitation provides options to adapt and adopt for national and international policy needs. Any investment facilitation initiative cannot be considered in isolation from the broader investment for development agenda.

Facilitating investment is crucial for the post-2015 development agenda, with developing countries facing an annual SDG-financing gap of \$2.5 trillion. Facilitating investment is also one of the five areas of reform outlined in the UNCTAD Road Map.

Investment promotion and facilitation work hand in hand. However, they are two different types of activities. One is about promoting a location as an investment destination (and is therefore often country-specific and competitive in nature), while the other is about making it easy for investors to establish or expand their investments, as well as to conduct their day-to-day business in host countries.

Investment facilitation covers a wide range of areas, all with the ultimate objective of attracting investment, allowing investment to flow efficiently, and enabling host countries to benefit effectively. Transparency, investor services, simplicity and efficiency of procedures, coordination and cooperation, and capacity building are among the 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 lifespan of an investment project. To date, however, national and international investment policies have paid relatively little attention to investment facilitation.

At the national level, many countries have set up policy schemes to promote foreign investment. Between 2010 and 2015, at least 173 new investment promotion and facilitation policies were introduced around the world. Almost half of these measures related to investment incentives, followed by special economic zones and only 23 per cent related to investment facilitation specifically (figure 1).

Figure 1. Categories of promotion and facilitation, 2010–2015 (per cent)

Source: UNCTAD, Investment Policy Monitor.

Overall, the number of investment facilitation measures adopted by countries over the past six years remains relatively low compared with the numbers of other investment promotion measures. In addition, only about 20 per cent of the 111 investment laws analyzed by UNCTAD deal with specific aspects of investment facilitation, such as one-stop shops.

At the international level, in the most common international instruments for investment, 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 efficiency in the operating environment and other factors causing high costs of doing business.

In the overwhelming majority of the existing 3,304 IIAs, concrete investment facilitation actions are either absent or weak. A review of a sample of recent model IIAs and IIAs concluded in 2015 show that investment facilitation provisions are not as prevalent as other major provisions. Even those agreements that explicitly deal with investment facilitation issues use general treaty language. Brazil's new CFIA's are an exception.

It is therefore crucial to expand the investment facilitation dimension of IIAs together with national policy tools, and to target them towards foreign investment that is capable of promoting sustainable development.

To respond to this systemic gap, in January 2016 UNCTAD launched an Action Menu on Investment Facilitation. The Action Menu aims to help countries address ground-level obstacles to investment such as a lack of transparency on legal or administrative requirements faced by investors, a lack of efficiency in the operating environment and other factors causing high costs of doing business. By focusing on these obstacles, the Action Menu aims to complement existing investment policies. It therefore excludes policy measures aimed at the protection of investment, which are well-established in the existing national regulatory frameworks and IIAs. Similarly, the Action Menu does not propose direct investment support measures such as fiscal or financial investment incentives.

The Action Menu consists of actions to support investment facilitation for development in low income countries. Its 10 action lines provide 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 IIAs.

ACTION MENU

Action line 1

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

- Provide clear and up-to-date information on the investment regime.
- Adopt a centralized 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 for providing timely and relevant notice of changes in procedures, applicable standards, technical regulations and conformance requirements.
- Make widely available screening guidelines and clear definitions of criteria for assessing investment proposals.
- Publicize outcomes of periodic reviews of the investment regime.

Action line 2

Enhance predictability and consistency in the application of investment policies.

- Systematize and institutionalize common application of investment regulations.
- Give equal treatment in the operation of laws and regulations on investment, and 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.
- Establish amicable dispute settlement mechanisms, including mediation, to facilitate investment dispute prevention and resolution.

Action line 3

Improve the efficiency and effectiveness of investment administrative procedures.

- Shorten the processing time and simplify procedures for investment and license applications, investor registration and tax-related procedures.

- Promote the use of time-bound approval processes or no objections within defined time
- limits to speed up processing times, where appropriate.
- Provide timely and relevant administrative advice; keep applicants informed about the status of their applications.
- Encourage and foster institutional cooperation and coordination. Where appropriate, establish online one-stop approval authority; clarify roles and accountabilities between different levels of government or where more than one agency screens or authorizes investment proposals.
- Keep the costs to the investor in the investment approval process to a minimum.
- Facilitate entry and sojourn of investment project personnel (facilitating visas, dismantling bureaucratic obstacles).
- Simplify the process for connecting to essential services infrastructure.
- Conduct periodic reviews of investment procedures, ensuring they are simple, transparent and low-cost.
- Establish mechanisms to expand good administrative practices applied or piloted in special economic zones to the wider economy.

Action line 4

Build constructive stakeholder relationships in investment policy practice.

- 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 and responsible business conduct.

Action line 5

Designate a lead agency or investment facilitator with a mandate to, e.g.:

- Address suggestions or complaints by investors and their home states.
- Track and take timely action to prevent, manage and resolve disputes.
- Provide information on relevant legislative and regulatory issues.
- Promote greater awareness of and transparency in investment legislation and procedures.

- Inform relevant government institutions about recurrent problems faced by investors which may require changes in investment legislation or procedures.

Action line 6

Establish monitoring and review mechanisms for investment facilitation.

- Adopt diagnostic tools and indicators on the effectiveness and efficiency of administrative procedures for investors to identify priority areas for investment facilitation interventions.
- Benchmark and measure performance of institutions involved in facilitating investment or in providing administrative services to investors, including in line with international good practices.

Action line 7

Enhance international cooperation for investment facilitation. Possible mechanisms include the following:

- Establish regular consultations between relevant authorities, or investment facilitation partnerships, to
 - Monitor the implementation of specific facilitation measures (e.g. related to dismantling bureaucratic obstacles).
 - Address specific concerns of investors.
 - Design, implement and monitor progress on investment facilitation work plans.
- Collaborate on anti-corruption in the investment process.
- Arrange for regulatory and institutional exchanges of expertise.

Action line 8

Strengthen investment facilitation efforts in developing-country partners, through support and technical assistance to:

- Bolster efforts towards transparent, effective and efficient administrative processes for business and investors, including tools and techniques for the documentation and simplification of procedures (e.g. UNCTAD's eRegulations, eRegistration and Business Facilitation Services).
- Increase capacity in IPAs and relevant authorities on business and investor facilitation services, including support in administrative and compliance processes.
- Build capacity for the preparation or facilitation of regulatory feasibility studies for potential investment projects (including environmental and social impact assessments and regulatory and administrative requirements).

- Maintain mechanisms for regular consultation and effective dialogue with the private sector and investment stakeholders throughout the investment life cycle, including with a view to preventing the escalation of investment disputes.
- Enhance the role of policy advocacy within IPAs or investment authorities as a means of supporting investment climate reforms and of addressing specific problems raised by investors.

Action line 9

Enhance investment policy and proactive investment attraction in developing-country partners, through the following actions:

- Build expertise in IPAs (or relevant agencies) for investment project proposal development and project appraisal, and for the development of pipelines of directly investable projects.
- Build expertise in IPAs (or relevant agencies) for the promotion of sustainable-development-focused investments such as green investments and social impact investments.
- Build capacity to provide post-investment or aftercare services, including for the expansion of existing operations.
- Strengthen capacities to maximize positive impacts of investment, e.g. to
 - Facilitate linkages between foreign affiliates and local enterprises.
 - Promote and support programs for certification and compliance with standards relating to, e.g. product quality or safety, to enable firms to engage in linkages with foreign affiliates.
 - Adopt frameworks to promote responsible business conduct by international investors.

Action line 10

Enhance international cooperation for investment promotion for development, including through provisions in IIAs. Possible mechanisms include the following:

- Encourage home countries to provide outward investment support, e.g. political risk coverage, investment insurance and guarantees, or facilitation services.
- Encourage high standards of corporate governance and responsible business conduct by outward investors.
- Establish regular consultations between relevant authorities, or formal collaboration between outward investment agencies (OIAs) and IPAs.

Source: UNCTAD.

The Action Menu is based on UNCTAD's Investment Policy Framework – which proposed action on investment facilitation in its first edition in 2012 – and the rich experiences and practices of investment promotion and facilitation efforts worldwide over the past decades.

An investment facilitation package could form the basis for formulating a legal instrument, or serve as an informative or guidance instrument, reflecting a collaborative spirit and best endeavour. Importantly, 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 sustainable development, including the build-up of productive capacities and critical infrastructure. It should be an integral part of the overall investment policy framework, aimed at maximizing the benefits of investment and minimizing negative side effects or externalities.