Training course for economies in transition on a new generation of international investment policies

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Revision of model BITs: salient features and global trends

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Outline

1. Importance of having a model BIT
2. Reasons for model BIT revisions
3. Review of substantive provisions in model BITs
4. Best practices in elaborating model BITs
5. UNCTAD's work on model BITs
Importance of having a model BIT

- Prototype investment agreements reflecting the State preference for scope, content and language of their BITs
- Model BITs promote coherence in a country's external investment policy for ongoing and future negotiations
- Enhances the bargaining position of a country during negotiations
- When made public, they may inform investors, tribunals, treaty partners about a state's position on the treatment of foreign investors.
- Until the 1990s mainly capital exporting countries possessed model BITs.

Model BITs change over time to reflect new developments / concerns.
Reasons for Model BITs Revisions

Many factors may prompt a country to reconsider its model BIT:

A- Domestic factors:

- Internal political change
- Focus on development dimension of investment policy
- Changing domestic laws on investment
B- Reaction to international developments

• Reaction to rise of investor-State disputes

• Change of economic conditions and policy environment

• Conclusion or accession to international or regional treaties
Substantive trends in model BIT revisions

1. Strengthen the sustainable development dimension of the model BIT in line with the evolution of international investment law
   • Reference to the protection of health, labour, environmental standards
   • General exceptions (e.g. for protection of human, animal or plant life or health)
   • Not lowering standards clauses
   • Investment promotion provisions

2. Enhance clarity and precision of treaty formulations
   • Narrow definition of investment, detailed clauses on FET or indirect expropriation, exceptions to free transfer of funds.
   • Minimizing exposure to ISDS (e.g. excluding treaty provisions or policy areas from ISDS, limiting time period for submitting claims.

3. Balancing the rights and obligations of States and investors
   - Reflecting investor responsibilities in IIAs

Taking into account the moving geometry of international investment relations: South-North, South-South
Best practices in elaborating model BITs

- Raising awareness about BITs provisions and potential development implications

- Formulating a coherent investment policy vision in line with national development strategies (which type of BIT fits my broader development visions?)

- Inter-agency cooperation within the government

- An inclusive elaboration process with non-governmental Stakeholders

- Transparency
Research and policy analysis

New research project will provide an overview of existing model BITs, with the objective to identify:

- Their main content and core elements
- Innovations
- Similarities (common ground) and discrepancies between different model BITs
- Trends over time (current models vs. earlier models, what are the changes)
UNCTAD's work on model BITs

Technical assistance

• Comprehensive review of the international investment framework of specific countries (BITs, FTAs obligations)

• Review of model BITs (in cooperation with relevant ministries, IPAs)

• Tailor made to the specific needs of each country and in line with development strategies

• UNCTAD has already worked with the following countries / regional groups on model BITs/IIAs (COMESA, SADC, ASEAN, CARICOM, PACER, Guatemala, Dominican Republic, Colombia, Botswana, Ghana, Egypt, Morocco, Turkey, Thailand, Croatia, Bosnia and Herzegovina, Sri Lanka, Nigeria, Comoros)
Thank you

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