

GUIDING PRINCIPLES

FOR INVESTMENT POLICYMAKING

For the
Countries of

the D-8 Organization for
Economic Cooperation

JOINTLY DEVELOPED BY UNCTAD AND THE D-8
ORGANIZATION FOR ECONOMIC COOPERATION





GUIDING PRINCIPLES FOR INVESTMENT POLICYMAKING FOR THE COUNTRIES OF THE D-8 ORGANIZATION FOR ECONOMIC COOPERATION

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1. Background and Rationale

The Guiding Principles come at a time of mounting economic, social and environmental challenges, which highlights the critical need for and role of investment as a driver of equitable and inclusive socio-economic growth. The goals that the D-8 countries have set for themselves, such as the diversification and creation of new opportunities in international trade, enhancing their participation in international decision making, providing a better standard of living for their citizens and the other development objectives, call for policies – at the national and international levels – that effectively attract investment and help harness it for sustainable development.

The Principles, jointly developed by UNCTAD and the D-8 Organization for Economic Cooperation, draw on UNCTAD's Core Investment Principles which form an integral part of its Investment Policy Framework for Sustainable Development (2015). The Principles also build on UNCTAD's ongoing technical assistance and capacity building Programmes to D-8 countries in collaboration with various institutions and on the basis of key D-8 policy documents, notably the Istanbul Declaration of Summit of Heads of State and the D-8 fifth Summit Declaration (Bali, 2006).

The Principles come at a time when sustainable development-oriented reform has entered the mainstream of investment policymaking resulting in a large number of countries reforming their investment policies by adopting new approaches for national level action, developing new models for international treaty making, and concluding international investment agreements (IIAs) with provisions aimed at addressing sustainable development concerns.

It is against this backdrop of a dynamic, changing and challenging investment policy landscape that D-8 countries hereby propose the following non-binding principles:

2. The Guiding Principles

Area	Core Principles
"0" Investment for sustainable development	<ul style="list-style-type: none"> The overarching objective of investment policymaking is to promote investment for inclusive growth and sustainable development within the D-8 countries.
1 Policy coherence	<ul style="list-style-type: none"> D-8 countries' investment policies should be grounded in a country's overall development strategy. All policies that impact on investment should be coherent and synergetic at the national, regional and international levels.
2 Public governance and institutions	<ul style="list-style-type: none"> D-8 countries' investment policies should be developed involving all stakeholders, and embedded in an institutional framework based on the rule of law that adheres to high standards of public governance and ensures predictable, efficient and transparent procedures for investors.
3 Dynamic policymaking	<ul style="list-style-type: none"> D-8 countries' investment policies should be regularly reviewed for effectiveness and relevance and adapted to changing development dynamics.

4	Balanced rights and obligations	<ul style="list-style-type: none"> • D-8 countries' investment policies should be balanced in setting out rights and obligations of States and investors in the interest of development for all.
5	Right to regulate	<ul style="list-style-type: none"> • Each D-8 country has the sovereign right to establish entry and operational conditions for foreign investment, subject to international commitments, in the interest of the public good and to minimize potential negative effects.
6	Openness to investment	<ul style="list-style-type: none"> • In line with each D-8 country's development strategy, investment policy should establish open, stable and predictable entry conditions for investment.
7	Investment protection and treatment	<ul style="list-style-type: none"> • D-8 countries' investment policies should provide protection to established investors. The treatment of established investors should be non-discriminatory in nature.
8	Investment promotion and facilitation	<ul style="list-style-type: none"> • D-8 countries' policies for investment promotion and facilitation should be aligned with sustainable development goals and designed to minimize the risk of harmful competition for investment.
9	Corporate governance and responsibility	<ul style="list-style-type: none"> • D-8 countries should advance investment policies that promote and facilitate the adoption of and compliance with best international practices of corporate social responsibility and good corporate governance.
10	Cooperation among D-8 countries	<ul style="list-style-type: none"> • D-8 countries should cooperate to address shared investment-for-development policy challenges. In light of their shared goals, collective efforts should also be made to avoid investment protectionism among them.

3. Annotations to the Principles

Principle "0" – the premise: Investment for sustainable development

This overarching principle defines the objective of D-8 countries' national and international investment policies, as they embark on implementing the landmark 2030 Agenda for Sustainable Development, the Addis Ababa Action Agenda and the objectives of the D-8 Roadmap. This principle recognizes the need to promote and facilitate investment not only for economic growth as such, but also for equitable, inclusive, balanced and sustainable economic growth and social development. It also calls for the mainstreaming of sustainable development issues in investment policymaking at all levels (national, regional, and international).

Principle 0 also recognizes the important role a dynamic private sector can play in strengthening the competitiveness of D-8 countries, facilitating their progressive integration into the global economy, strengthening trade flows, raising revenues and incomes, and creating jobs.

Principle 1: Policy coherence

This principle recognizes that investment policy should be integrated into an overarching development strategy. It also acknowledges that success in attracting and benefiting from investment depends not only on investment policy but also on a host of other investment-related policy areas including tax and trade policies or social and sectoral policies (e.g. fisheries, tourism, agriculture) which also contribute to creating

a favourable investment climate. It recognizes that these policy areas interact with each other and that therefore there is a need for a coherent approach to make them conducive to sustainable development. Success in coherently integrating investment for development involves, for example, the establishment of special agencies with a specific mandate to coordinate the work of different ministries and government units, including the negotiation of IIAs.

Principle 2: Public governance and institutions

This principle recognizes the importance of good public governance as a key factor in creating an environment conducive to attracting investment. Good public governance refers to the efficiency and effectiveness of government services, including aspects such as accountability, predictability, transparency, rule of law, and the absence of corruption. This principle also stresses the significance of a participatory approach to policy development which also provides an element of transparency and facilitates dialogue between public and private sector stakeholders.

Principle 3: Dynamic policymaking

This principle recognizes that investment policies at the different levels (national, regional, and international) need flexibility to adapt to changing economic and social circumstances, while recognizing that a favourable investment climate requires stability and predictability. For one, different policies are needed at different development stages, an issue of particular importance for the D-8 Group in light of the different social and economic realities within the D-8 countries. The dynamics of investment policies imply a need for D-8 countries to continuously assess the effectiveness of existing instruments, including IIAs, in order to achieve their changing economic and social development goals”.

Principle 4: Balanced rights and obligations

Investment policies need to serve two potentially conflicting purposes. On the one hand, they strive to create attractive conditions for investors by including features of investment liberalization, protection, promotion and facilitation. On the other hand, the overall regulatory framework of the host country has to ensure that any negative social or environmental effects are minimized (e.g. investment in sensitive sectors, such as natural resources and its impact on local communities). Pursuant to this core principle, the investment climate and policies of D-8 countries should strive to strike a balance between these competing goals.

Principle 5: Right to regulate

The right to regulate is an expression of a country’s sovereignty. It is not only a State’s right, but also a necessity. Regulation includes both the general legal and administrative framework of host countries as well as sector- or industry-specific rules. Without an adequate regulatory framework, a country will not be attractive for foreign investors, because such investors seek clarity, stability and predictability of investment conditions in the host country. Such authority to regulate can sometimes be ceded to an international body to make rules for groups of states. However, international commitments can also reduce “policy space”. This principle would encourage D-8 countries to seek to maintain sufficient policy space to regulate for the public good (e.g. for the protection of public health, the environment, public safety, or public morals).

Principle 6: Openness to investment

This principle considers a welcoming investment climate, with transparent and predictable entry conditions and procedures, as a precondition for attracting foreign investment conducive to sustainable development. The term “openness” is not only limited to formal openness as expressed in a country’s investment framework or in its IIAs. It also means the absence of informal investment barriers, such as onerous, unclear and non-transparent administrative procedures. Trade openness can also be of crucial importance, in particular, when the investment significantly depends on imports or exports. The principle also recognizes that countries have legitimate reasons to limit openness to foreign investment, for instance in the context of national security.

Principle 7: Investment protection

This principle acknowledges that investment protection can be an important policy tool for the attraction of investment and therefore is closely linked to the principle on investment promotion and facilitation (Principle 8). Core elements of protection at the national level include, *inter alia*, the rule of the law, the principle of freedom of contract and access to courts. Key components of investment protection frequently found in IIAs comprise the principle of non-discrimination (national treatment and most-favoured nation treatment), fair and equitable treatment, protection in case of expropriation, provisions on movement of capital, and effective dispute settlement.

Principle 8: Investment promotion and facilitation

Most countries have set up promotion schemes to attract and facilitate foreign investment. Such schemes often include the granting of financial incentives, the establishment of special economic zones or “one-stop shops”, or the establishment of special investment promotion agencies (IPAs) to target foreign investors.

The principle contains three components. First, it stipulates, in line with principle “0” that countries should not compromise sustainable development goals, for instance by lowering regulatory standards on social or environmental issues, or by offering incentives that annul a large part of the economic benefit of the investment. Second, the principle acknowledges that, as more and more countries seek to boost investment and target specific types of investment, it could trigger harmful competition such as a race to the regulatory bottom or a race to the top of incentives. Third, the principle acknowledges that investment policies should increase their focus on addressing ground-level obstacles to investment, by means of concrete investment facilitation measures aimed, for example, at improving transparency and availability of information to investors; establishing efficient and effective administrative procedures for investors; ensuring consistency of the policy environment for investors through consultation procedures; increasing accountability and efficiency of government officials; mitigating investment disputes through the use of ombudspersons or similar institutions; encouraging cross-border coordination and collaboration initiatives such as regional investment contacts or links between outward and inward investment promotion agencies; and fostering technical cooperation activities and other specific support mechanisms for investment.

The third aspect, emphasizing the importance of investment facilitation policies, is particularly crucial for “accessing investment”, sustainable development and inclusive growth of D-8 countries. Investment promotion and facilitation are mutually complementary. While the former seeks to promote a location as an attractive investment destination (and is therefore often country-specific and competitive in nature), the latter is about making it easier for investors to establish or expand their investments, as well as to conduct their day-to-day business. Investment facilitation is often considered a systemic gap in both national and international investment policies.

Principle 9: Corporate governance and responsibility

This principle recognizes the increasing importance of corporate governance and corporate social responsibility (CSR) standards in investment policymaking at the national and international levels. This development is reflected in the proliferation and endorsement of standards, including several intergovernmental organization standards of the United Nations, the ILO, the IFC and the OECD, providing guidance on fundamental CSR issues.

CSR standards are voluntary in nature and so exist as a unique dimension of “soft law”. This principle calls on governments to actively promote CSR standards and monitor compliance with them. Promotion also includes the option to adopt existing CSR standards as part of regulatory initiatives, turning voluntary standards into mandatory requirements.



Principle 10: Cooperation among D-8 countries

This principle considers that investment policies touch upon a number of - common - issues that would benefit from more cooperation between D-8 countries. The principle advocates for consensus building, the formulation of common positions on core investment policy elements, or the creation of synergies for specific investment projects.

Unlike the first phase of IIA reform, in which most activities took place at the national level, phase 2 of IIA reform will require countries to intensify collaboration and coordination to address the systemic risks and incoherence of the large body of old treaties. The D-8 organization can provide, or help establish, useful platforms and institutional frameworks for cooperation and consensus building among its members on key investment policies of common interest.

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Some Core Principles relate to a specific investment policy area (e.g. openness to investment, investment protection and promotion, corporate governance and social responsibility) and therefore can be relatively easily traced to specific guidelines and options in the national and international parts of the framework. Other Core Principles (e.g. on public governance and institutions, balanced rights and obligations, the right to regulate) are important for investment policymaking as a whole.

The Core Principles interact with each other. The individual principles and corresponding guidelines therefore must not be applied and interpreted in isolation. In particular, Principle "0" – as the overarching rule within the policy framework – has relevance for all subsequent principles. Integrating investment policies into sustainable development strategies requires a coherent policy framework and hence sound public governance is needed in its design and implementation. Sustainable development is an ongoing challenge, which underlines the importance of policymaking dynamics. An investment policy framework needs to comprise elements of investment regulation and corporate governance, on the one hand, and openness, protection and promotion, on the other, thereby contributing to an investment climate with balanced rights and obligations for investors.