Islamic Development Bank

البنك الإسلامي للتنمية

ICIEC THE ISLAMIC CORPORATION FOR THE INSURANCE OF INVESTMENT AND EXPORT CREDIT

UNITED NATIONS UNCTAD

Non-binding GUIDING PRINCIPLES FOR INVESTMENT POLICIES

JOINTLY DEVELOPED BY
THE IsDB AND THE UNCTAD SECRETARIAT

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1. Context and Justification

The Guiding Principles come at a time of mounting economic, social and environmental challenges, which highlight the critical role of investment as a driver of equitable economic and social growth. Mobilizing investment and ensuring that it contributes to the sustainable development objectives is a priority for all countries and for IsDB Member Countries (MCs) in particular. The challenges IsDB MCs face today, and the development objectives the IsDB has set itself, call for policies – at the national, regional and international levels – that effectively attract investment and help harness it for sustainable development. In line with the priority areas of the IsDB in pursuing the 2030 Agenda as well as the provisions of the IsDB Charter, these Guiding Principles can help develop a coherent, consciously designed and consolidated approach towards investment policymaking.

The design of the Guiding Principles has been inspired by various sources of international law and policy. The Principles, jointly developed by the IsDB and the UNCTAD Secretariat, draw on UNCTAD's Core Investment Principles that form an integral part of UNCTAD's Investment Policy Framework for Sustainable Development (2015). The Principles are in line with the Addis Ababa Action Agenda adopted during the Third UN International Conference on Financing for Development. The Principles benefit from UNCTAD's ongoing technical assistance and capacity development Programmes to IsDB MCs which have, since 2005, provided training to over 600 Government officials from IsDB MCs on key issues of investment policymaking.

The Principles recognize the existence of the Agreement on Promotion, Protection and Guarantee of Investments amongst the Member States of the Organization of the Islamic Conference and build on key IsDB policy documents. The Principles are designed to advance the IsDB's aim to build collaborative partnerships, foster innovative and sustainable solutions to development challenges and boost value chains of developing economies. They have been developed in recognition of the Paris Agreement goals and the IsDB's Climate Change Action Plan[1].

The Principles come at a time when sustainable development-oriented reform has entered the mainstream of investment policymaking. Today many countries are reforming their investment policies by reviewing existing strategies, adopting modern approaches for national level action, developing new models for international treaty making, and by concluding international investment agreements (IIAs) whose provisions are aimed at addressing sustainable development concerns. While some IsDB MCs have undertaken important investment policy reform efforts, others are yet to embark on such a process[2].

The Principles can help inform policy action at a time of increasing engagement in «mega-regional agreements». These developments could affect non-participating third parties and may counter regional efforts aimed at increasing intra-IsDB investment flows, including South-South investment flows that are integral to the development of regional value chains.

It is against this backdrop of a dynamic, changing and challenging investment policy landscape that IsDB MCs hereby propose the following non-binding principles to provide general guidance for investment policymaking :

[1] https://www.isdb.org/climate-change/publications/climate-action-plan-2020-2025

[2] IsDB Member Countries have signed in total 1648 bilateral investment treaties (BITs) (representing almost half of the BIT universe) and 176 treaties with investment provisions (TIPs). Not all of these BITs and TIPs are currently in force.

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2. The Guiding Principles

Area		Core Principles
0	**Investment for sustainable development**	The overarching objective of investment policymaking is to promote investment for inclusive growth and sustainable development within IsDB MCs and their partners.
1	**Policy coherence**	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 as well as between these different levels of investment policymaking.
2	**Public governance and institutions**	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**	Investment policies should be regularly reviewed for effectiveness and relevance and adapted to changing development dynamics.
4	**Balanced rights and obligations**	Investment policies should be balanced in setting out rights and obligations of countries and investors, with the aim of minimizing potential negative effects and pursuing sustainable development for all.
5	**Right to regulate**	Each country has the sovereign right to establish entry and operational conditions for foreign investment, to react to changing circumstances and to regulate in pursuance of sustainable development objectives, including the protection of health and the environment.
6	**Openness to investment**	In line with each country's development strategy, investment policy should establish open, stable and predictable entry conditions for investment.
7	**Investment protection and treatment**	Investment policies should provide adequate protection to investors who contribute to the IsDB's MCs sustainable development. The treatment of established investors should be non-discriminatory in nature.
8	**Investment promotion and facilitation**	Policies for investment promotion and facilitation should be aligned with sustainable development goals and be designed to minimize the risk of harmful competition for investment.
9	**Corporate governance and responsibility**	Investment policies should promote and facilitate the adoption of and compliance with best international practices of corporate social responsibility and good corporate governance.
10	**Cooperation among IsDB member countries**	IsDB Member Countries should cooperate to address shared investment-for-development policy challenges, particularly in least developed countries. Collective efforts should also be made to avoid investment protectionism. Regional Cooperation Organizations (RCOs) of IsDB MCs can play an important role in facilitating such cooperation.
11	**Capacity development in investment promotion and facilitation**	Investment promotion and facilitation should include capacity development programmes – throughout the process of developing and implementing such measures in IsDB Member Countries.

3. Expanded Explanation of the Principles

Principle «0» – the premise: Investment for sustainable development

This overarching principle defines the general objective of IsDB MCs national and international investment policies, as they are embarking on implementing the landmark 2030 Agenda for Sustainable Development, the Addis Ababa Action Agenda, and the Paris Agreement on Climate Change. These Guiding Principles are fully aligned with the second pillar of the IsDB's Regional Cooperation and Integration (RCI) Policy which is "Improving Investment Climate and Competitiveness to Promote Export-Oriented and Cross-Border Investment". The policy clearly states that IsDB will continue its efforts to mobilize and attract FDI, Foreign Portfolio Investment (FPI) as well as domestic resources and investments in its member states as means to promote RCI through its flagship program "Investment Promotion Technical Assistance Program (ITAP).

Principle "0" not only interacts with all the other principles, but it also guides the interaction between the other Principles, which themselves are interconnected and mutually supportive. It clarifies the overriding objective of each core principle and specifies the aim of inclusive growth and sustainable development.

This principle recognizes the need to promote and facilitate investment not only for economic growth as such, but for growth that benefits all, including the poorest. This means investment should exist for equitable, inclusive, balanced and sustainable economic growth and social development. Moreover, the principle is closely related with the concept of special and differential treatment, which applies to international economic policymaking and gives legal expression to the special needs and concerns of developing countries and least developed countries in IIAs and other international economic agreements. Special and differential treatment is based on the notion that IsDB MCs (and third parties), at different stages of development, should not necessarily be bound by the same obligations because they may have different forms of administrative, legislative and judicial systems and may not be able to achieve the same standards at the same time. The "G20 Compendium on Promoting Investment for Sustainable Development (Bali Compendium)" can serve as a policy reference for devising and implementing strategies and programs for attracting sustainable investment under respective international commitments taking into account national sustainable development objectives and priorities.

This principle also recognizes the role of a dynamic private sector as a key factor in strengthening the competitiveness of IsDB MCs, in facilitating their progressive integration into the global economy, strengthening trade flows, raising revenues and incomes and creating jobs. Strengthening private sector development support, including through public-private partnerships, is therefore at the heart of the priorities that are vital for each IsDB MC to attain the development goals it has set for itself.

Principle 1: Policy coherence

This principle recognizes that investment is a means to an end, and that investment policy should thus be integrated in an overarching development strategy. It also acknowledges that success in attracting and benefiting from investment depends not only on investment policy "stricto sensu" (i.e. entry and establishment rules, treatment and protection) but on a host of investment-related policy areas including tax and trade policies, entrepreneurship development, access to finance, infrastructure, access to (renewable) energy and telecommunications, environmental, labour, social or public health policies, as well as sectoral policies (e.g. fisheries, tourism, agriculture). The Principle recognizes that these policy areas interact with each other and that there is consequently a need for a coherent overall approach to make them conducive to sustainable development and to achieve synergies.

As these policies may not always be fully coherent, sustainable development objectives and considerations shall prevail in case of inconsistencies. In addition to coherence at different levels of investment policymaking, the national, regional and international level, it is important to ensure coherence between different levels. Successful experiences with investment for development often involved the establishment of special agencies with a specific mandate to coordinate the work of different ministries, government units and policy areas, including the negotiation of IIAs.

Principle 2: Public governance and institutions

The concept of good public governance refers to the efficiency and effectiveness of government services, including such aspects as accountability, predictability, clarity, transparency, fairness, rule of law, and the absence of corruption. This principle recognizes the importance of good public governance as a key factor in creating an environment conducive to attracting investment. It also stresses the significance of a participatory approach to policy development as a basic ingredient of investment policies aimed at inclusive growth and fairness for all. The element of transparency is especially important, as in and by itself it tends to facilitate dialogue between public and private sector stakeholders, including companies, organized labour and non-governmental organizations (NGOs).

Principle 3: Dynamic policymaking

This principle recognizes that national and international investment policies 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 IsDB MCs, a diverse group that includes least developed, developing, and advanced economies. New factors may emerge on the domestic policy scene, including government changes, social pressures, or environmental degradation. International dynamics can have an impact on national investment policies as well, including through regional integration or through international competition for the attraction of specific types of foreign investment. The dynamic nature of a sustainable development-oriented investment policy implies a need for each IsDB member country to continuously assess the effectiveness of existing instruments, including IIAs. If these instruments fail to achieve the desired results in terms of economic and social development, or do so at too high a cost, they need to be revised.

Principle 4: Balanced rights and obligations

Investment policies need to serve two potentially conflicting purposes. On the one hand, they have to create attractive conditions for foreign investors. To this end, investment policies include 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). Regulation may also be warranted to find appropriate responses to crises (e.g. financial crises, food crises, climate change). Against this background, this principle suggests that the investment climate and policies of a country should be "balanced" as regards the overall treatment of foreign investors. Where and how to strike this balance is an issue for the domestic law of host countries and therefore requires adequate local capacities. International policies vis-à-vis foreign investors likewise play a role and – if not carefully designed – might tilt the balance unduly in favour of foreign investors. The principle does not mean that each individual investment-related regulation of a host country would have to be balanced.

Principle 5: Right to regulate

The right to regulate is an expression of a country's sovereignty. Regulation includes both the general legal and administrative framework of host countries as well as sector- or industry-specific rules. It also entails effective implementation of rules, including the enforcement of rights and obligations. Regulation is not only an State's right, but also a necessity. Without an adequate regulatory framework, IsDB MCs will not be attractive for foreign investors, because such investors seek clarity, stability, and predictability of investment conditions in the host country. Such clarity, stability and predictability, however, does not imply a static legal and policy framework. The right to regulate also covers the IsDB MCs' ability to react to changing circumstances, societal and technological developments and shifting priorities. The principle is, thus, closely connected to Principle 3 on dynamic policymaking.

The authority to regulate can, under certain circumstances, be ceded to an international body to make rules for groups of countries. It can be subject to international obligations that countries undertake; with regard to the treatment of foreign investors this often takes place at the bilateral or regional level. International commitments thus reduce "policy space". This principle advocates that IsDB member countries maintain sufficient policy space to regulate in the public interest such as for the protection of public health, access to social services (including health, water and education), food security, the protection of the environment, public safety, the promotion of cultural diversity, gender empowerment, youth development, the protection of public morals, ethics and Islamic values.

Principle 6: Openness to investment

This principle considers a welcoming investment climate, with transparent and predictable entry conditions and procedures, a precondition for attracting foreign investment conducive for sustainable development. The term "openness" is not limited to formal openness as expressed in a country's investment framework and, possibly, in entry rights granted in IIAs. Equally important is the absence of informal investment barriers, such as burdensome, unclear and non-transparent administrative procedures. In addition, the issue of "openness" reaches beyond the establishment of an investment. Trade openness can be of crucial importance, too; in particular, when the investment significantly depends on imports or exports of goods and services.

At the same time, the principle recognizes that countries have legitimate reasons to limit openness to foreign investment, for instance in the context of their national or regional development strategies or for national security reasons.

Principle 7: Investment protection

This principle recognizes the protection elements already included in the Agreement on Promotion, Protection and Guarantee of Investments amongst the Member Countries of the Organization of the Islamic Conference. It also acknowledges that investment protection, although only one among many determinants of foreign investment, can be an important policy tool for the attraction of investment. This principle, however, does not advocate the protection of any investments. It includes the important step of defining sustainable investments that are in line with the IsDB MCs' national development objectives.

The principle closely interacts with Principle 8 on investment promotion and facilitation. It has a national and an international component. Core elements of protection at the national level include, inter alia, the rule of law, the principle of freedom of contract and access to courts. Key components of investment protection frequently found in IIAs include the principle of non-discrimination and protection in case of (direct) expropriation.

Principle 8: Investment promotion and facilitation

Most countries have set up promotion schemes to attract and facilitate foreign investment. Promotion and facilitation measures often include the granting of fiscal or financial incentives, the establishment of special economic zones or "one-stop shops". Many countries have also set up special investment promotion agencies (IPAs) to target foreign investors, offer matchmaking services and provide aftercare. At the same time, concrete facilitation measures are largely absent in international investment policies.

The principle contains three components. First, the principle acknowledges that investment policies should increase their focus on addressing ground-level obstacles to investment, by means of concrete investment facilitation policies. Such facilitation measures are not concerned with incentives for investors or protection in case things turn sour. Instead, they address concrete difficulties foreign and domestic investors face in establishing, operating and expanding their investment such as the availability of information or procedures to obtain licences[3]. Second, it stipulates that in their efforts to improve the investment climate, 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 for the host country. Third, the principle acknowledges that, as more and more countries seek to boost investment and target specific types of investment, the risk of harmful competition for investment increases; i.e. a race to the regulatory bottom or a race to the top of incentives (with negative social and environmental consequences or escalating commitments of public funds). Investment policies should be designed to minimize this risk. This underlines the importance of international coordination (see Principle 10 below).

The importance of concrete investment facilitation policies is particularly crucial for attracting investment and for the sustainable development and inclusive growth of IsDB MCs. Investment promotion and facilitation work hand in hand. While the former is about promoting a location as an 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 in host countries. To date, however, national and international investment policies have paid relatively little attention to investment facilitation. Investment facilitation can thus be considered a systemic gap in both national and international investment policies. Any investment facilitation initiative cannot be considered in isolation from the broader investment for development agenda.

Principle 9: Corporate governance and responsibility

This principle recognizes that corporate governance and CSR standards are increasingly shaping investment policies at the national and international levels. This development is reflected in the proliferation of standards, including standards developed by several intergovernmental organization such as the United Nations, the ILO, the IFC and the OECD, providing guidance on fundamental CSR issues; dozens of multi-stakeholder initiatives; hundreds of industry association codes; and thousands of individual company codes.

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[3] Investment facilitation policies include improvements in transparency and information available to investors; efficient and effective administrative procedures for investors; consistency and predictability of the policy environment for investors through consultation procedures; increase accountability and effectiveness of government officials and mitigate investment disputes through ombudspersons; cross-border coordination and collaboration initiatives such as regional investment compacts or links between outward and inward investment promotion agencies; and technical cooperation and other specific support mechanisms for investment. The availability of information may extend to recognition of the importance of accurate data for purposes of risk assessments and predictive modelling. Analysis of such data can support mobilizing financing to developing countries and is important to support the sustainable development of fair, transparent and bankable projects in developing countries, especially in least developed countries.

CSR standards are voluntary in nature and thus exist in the form of "soft law". The principle calls on governments to actively promote CSR standards and to monitor compliance with them. This also includes the option to adopt existing CSR standards as part of regulatory initiatives, turning voluntary standards into mandatory requirements.

Principle 10: Cooperation among IsDB member countries

This principle considers that investment policies touch upon a number of issues that would benefit from more cooperation among IsDB countries. The principle also advocates that particular efforts should be made to encourage foreign investment in least developed countries, including through the provision of credit and political risk insurance as integral mechanisms for supporting sustainable investments. Building on the tangible results produced by South-South Cooperation, intra-IsDB cooperation holds considerable potential with respect to investment policymaking for sustainable development. Such coordination can help build consensus in formulating common positions and understanding core investment policy elements. Cooperation is particularly important at a time when a coordinated approach is needed to avoid IIA reform efforts that become fragmented and incoherent (Principle 1). Comprehensive IIA reform requires countries to intensify collaboration and coordination between treaty partners to address the systemic risks and incoherence of the large body of existing old-generation treaties.

Regional Cooperation Organizations (RCOs) of IsDB member countries can play an important role in facilitating cooperation by offering platforms for the exchange of experiences and consensus-building among IsDB MCs. Cooperation mechanisms for investment policymaking among IsDB MCs and among their regions are of particular importance given the diversity of IsDB Member Countries, including their different developmental stages. Regional investment regimes can play a crucial role in this regard.

Principle 11: Capacity development in investment promotion and facilitation

The preceding ten principles will be ineffective without sufficient capacity development and flexibility. Investment promotion and facilitation should include capacity development programmes – throughout the process of developing and implementing investment promotion and facilitation measures – to ensure that economies at different levels of development can participate on an equal footing and that all can benefit from these efforts. This principle, thus, closely interacts with principle 10 on cooperation. Different member countries with different capacities can cooperate and support one another in the implementation of investment promotion and facilitation measures. Moreover, the principle encourages countries to avail themselves of technical assistance and capacity building offered by international and regional organizations such as UNCTAD and the IsDB offering services in this area.' Investment promotion and facilitation should also allow for flexibility in the implementation of commitments for countries across different levels of development.

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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 are therefore connected to specific action IsDB Member Countries can take on the national, regional and international level. Other Core Principles (e.g. on public governance and institutions, balanced rights and obligations, and the right to regulate) are important for investment policymaking as a whole. As a consequence, their implementation will be reflected in the actions of IsDB Member Countries across the entire spectrum of investment policymaking.

The Core Principles interact with each other. The individual principles and corresponding explanations must therefore not be read and applied in isolation. In particular, Principle «0» – setting out the overarching objective of inclusive growth and sustainable development – has relevance for all subsequent guiding principles for investment policymaking. For Countries to integrate investment policies into sustainable development strategies requires a coherent policy framework that takes the different development status of individual IsDB Member Countries into account. Good public governance is needed in its design and implementation. Sustainable development is an ongoing challenge, which underlines the importance of dynamic policymaking and the ability to react to evolving circumstances. A sustainable development-oriented investment policy framework needs to comprise elements of investment regulation and corporate governance, on the one hand, and openness, facilitation, promotion and protection, on the other hand, thereby contributing to an investment climate with balanced rights and obligations for investors and IsDB Member Countries.

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