THE POLICY/LEGAL AND INSTITUTIONAL FRAMEWORK FOR FDI

Workshop on Promotion and Facilitation of Foreign Direct Investment for Sustainable Development in the Islamic Republic of Iran, Tehran, 9-11 October 2018
OUTLINE OF PRESENTATION

- Policy and institutional framework for FDI
- The need for sustainability
- Legal framework for FDI
POLICY AND INSTITUTIONAL FRAMEWORK FOR FDI
SOME BASIC QUESTIONS

- What is investment policy? Complement or substitute for industrial policy?
- What types of investment? For what level of development?
- Who does investment policy, regulation, promotion (required institutional framework)?
- How does national investment policy interact with regional/global policy?
- What is the link between investment policy and investment law(s)? Is there a need for a national investment law?
- How can we rebalance and redirect FDI for sustainable development (i.e. contribution to SDGs)?
- How can we effectively address the global nature of FDI through national/regional level action? OR:
- Is the time ripe for a global agreement on investment?
INVESTMENT POLICY: WHO?

- Central ministry: Ministry of Trade and Industry
- Line ministries (by sector): energy, mining, industry, ICT, telecommunications, transport, etc.
- Involvement of other ministries: social development, environment to ensure sustainability
- Coordination is key! But often lacking
- Strong link between trade and investment policy but also investment and science, technology and innovation (STI)
- Investment promotion agency?
- Labour unions, chambers of commerce, civil society consultations are important
- Iran: Ministry of Economic Affairs and Finance: Foreign Investment Board and Organization for Investment, Economic and Technical Assistance of Iran (OIETA)?
INVESTMENT SCREENING AND PROMOTION: WHO?

- Ministry of Planning/Industry and Trade
- Other line ministries
- Chambers of commerce
- Export Processing Zone authorities
- Central body: Investment Promotion Agency
- Combining Trade and Investment Promotion Agency?
- One-stop shop?

Iran:
- Foreign Investment Board/OIETAI
- What is the role of local authorities?
Elected members of parliament formulate the laws

Relevant ministries/government provide inputs to laws, play a role in overall regulation (often by sector)

Special bodies

Central banks

Consultation with private sector and civil society

Importance of inclusive and transparent process

Essential: implementation and enforcement, rule of law

What is the role of the OIETAI?
KEEP KEY FUNCTIONS SEPARATE

- Investment policy and promotion
- Investment regulation and promotion

Investment policy and regulation is a function of various ministries and law makers, while investment promotion is about marketing and providing information and helping the investor setting up and realizing his investment. These functions require different skills at different level and cannot/should not be combined in one agency.
INVESTMENT POLICY IS CLOSELY LINKED TO:

- Economic and development policy
- Trade policy
- Competition policy
- Privatization policy
- Labour policy (increasing employment)
- Enterprise development and value chain integration (forging linkages)
- STI policy
- Transport policy
- Environment and energy policy
“SMART” FDI POLICY GOALS

- **SPECIFIC**: Break down objectives and expected impact for priority sectors and activities
- **MEASURABLE**: Focused set of quantifiable indicators
- **ATTAINABLE**: Realistic target setting (based on peer review)
- **RELEVANT**: Goals attained and indicators measured should be linked and attributable to FDI
- **TIME-BOUND**: Goals should be achieved within a stipulated time frame for sustainable development: short-term, medium-term, long-term (strategic)

FDI policy should identify priorities and measures to attain goals based on cost effectiveness
WHY YOU WANT TO ATTRACT FDI?
SOME POSSIBLE OBJECTIVES

- diversify economy away from fossil fuels;
- develop the oil refining industry;
- access foreign technologies and skills;
- close the domestic savings-investment gap;
- provide domestic employment;
- undertake privatization in an environment of weak domestic private sector;
- stimulate domestic competition;
- improve sustainable business practices;
- develop domestic infrastructure under public-private partnerships;
- close balance-of-payment deficits;
- close government budget deficits;
- gain or expand access to foreign markets;
- strengthen national competitiveness across the board;
- allow domestic SMEs and other domestic enterprises to effectively integrate into regional or global value chains;
- or any combination of the above.
INVESTMENT POLICY AND PROMOTION CONSIDERATIONS

- Understand FDI determinants!
- Which type (e.g. market? resource? supply-chain? labour-intensive? R&D?)
- Which form (e.g. greenfield, M&A, JV, 100% ownership, HQ?)
- Which location (SEZ, province, port, capital city?)
- Which sectors (agriculture, manufacturing, services?)
- Which source countries?
- Coordination among relevant institutions and ministries
- Sustainability
LIBERALIZATION VS. REGULATION

- Liberalization of what?
  - FDI regime (sectors, ownership, performance requirements, etc.)
  - General business operations/registrations/start up
  - Economy as a whole
  - Land ownership
  - World Bank Ease of doing Business refers
- Pace of liberalization: controlled and sustainable
- Balance with prudential supervision and regulation
- Liberalization for **efficiency** but regulation for **stability**. Both are needed!
- Regulation usually needed to ensure fair competition, sustainability issues, finance and taxes, etc.
- Investment liberalization alone is not sufficient to attract FDI
INVESTMENT LIBERALIZATION NORMALLY MEANS REDUCING:

- Restrictions on sectors in which FDI can be made;
- Restrictions on the value of FDI;
- Restrictions on the level of foreign ownership;
- Compulsory joint ventures with local firms;
- Controls on repatriation of profits;
- Performance requirements, e.g. export requirements, local content requirements, technology transfer requirements, skills development requirements; trade balancing requirements;
- Import restrictions.
Privatization attracts (strategic-asset) FDI as it improves the investment climate.

Privatization stimulates economic growth and financial sector development.

However, many state-owned enterprises operate in sensitive sectors and often as monopolies not open to FDI.

FDI does bring management expertise and capital domestic enterprises may lack.

Privatization best for companies that are subject to competition.

Privatization process needs transparency (open bidding) and be based on the rule of law and due process.

In Iran, privatization is open to foreign investors, including 100% foreign ownership.
SUCCESS FACTORS FOR PRIVATIZATION

- Stable macroeconomic condition;
- Favourable legal framework;
- Sound economic policy;
- Available financial market;
- Multi-benefit objectives;
- Appropriate risk allocation and risk sharing;
- Commitment and responsibility of public and private sectors;
- Strong and good private consortium;
- Good governance;
- Project technical feasibility;
- Shared authority between public and private sectors;
- Political support;
- Social support;
- Well-organized and committed public agency in charge of privatization with proper authority;
- Competitive procurement process;
- Transparent procurement process;
- Government guarantees;
- Thorough and realistic assessment of costs and benefits.
WHAT IS A CONDUCIVE INVESTMENT CLIMATE?

“A good investment climate provides opportunities and incentives for firms - from microenterprises to multinationals—to invest productively, create jobs, and expand.”

“A good investment climate is not just about generating profits for firms - if that were the goal, the focus could be limited to minimizing costs and risks. A good investment climate improves outcomes for society as a whole. That means that some costs and risks are properly borne by firms.”

Quotes by World Bank
CURRENT OBSTACLES TO FDI IN IRAN

- Poor international image. Why? Fake or real?
- Sanctions – what to do?
- Sliding currency and economic growth: sanctions or poor economic management?
- High level of suspicion and lack of trust on both sides
- Complex political system
- FDI may be withdrawn in times of crisis
- High level of state control in the economy (ownership, prices and subsidies)
- Vested interests: economic dominance of state-owned or state/regime affiliated businesses (bonyad)
- Lack of transparency in implementing international regulations
- Insufficient and lack of transparent protection of foreign investors
- Poor enforcement of rules/lack of impartiality of the court system
- High costs of doing business/excessive red tape/corruption
- Inefficient labour market
IRAN INVESTMENT CLIMATE:
NOT THE WORST BUT ALSO NOT THE BEST

- Iran is ranked 124 among 190 economies in the ease of doing business, according to the latest World Bank annual ratings (2018).
- Of particular concern are starting a business (97, up from 102); getting electricity (99) and trading across borders (166).
- The rank of Iran deteriorated from 120 in 2016. Ease of Doing Business in Iran averaged 134.70 from 2008 until 2017, reaching an all time high of 152 in 2012 and a record low of 117 in 2015.
- In 2017, Iran’s corruption ranking was 130 out of 180 (score 30 out of 100) (Transparency International)
THE ISSUE OF COMPETITIVENESS

Porter’s “Diamond”
IRAN’S COMPETITIVE ADVANTAGES

- High and promising economic growth (13.6% in 2016); commitment to reform
- Geographic position as bridge between Central, South and West Asia
- Availability of energy, both fossil based (actual) and renewable (potential: wind and solar)
- Cultural heritage/tourism
- Potentially large market: high and growing population and many young people
- Iranian diaspora
- Low labour costs and high level of education/literacy
- Some advantages in science and technology (e.g. telecom)
IMPROVING INVESTMENT CLIMATE (WORLD BANK)

- Investment climate: the location-specific factors that shape the opportunities and incentives for firms to invest productively, create jobs, and expand
- A good investment climate improves outcomes for society as a whole
- A good investment climate provides opportunities and incentives for firms—from microenterprises to multinationals—to invest productively, create jobs, and expand
- A good investment climate encourages firms to invest by removing unjustified costs, risks, and barriers to competition
- Improving policy predictability can increase the likelihood of new investment by more than 30 per cent
SECTORS IN WHICH IRAN HAS COMPETITIVE ADVANTAGES

- Natural resources: natural gas, oil and value added industries
- Renewable energy: wind and solar
- Agriculture and agro-industry/fruit and nuts
- Mining/minerals (zinc/copper/iron/uranium/lead/cobalt); Iran holds 7% of the world’s total mineral reserves
- Light industry: textiles, garments, food and beverages, carpets, handicrafts, chemical, electronics and IT
- Pharmaceuticals
- Infrastructure (transportation)
- Real estate
- Tourism/hotels
- Other services
Simplify and harmonize trade procedures in accordance with international recommendations such as UN/CEFACT (http://www.unece.org/cefact/recommendations/rec_index.html)

As part of this exercise, adopt paperless trading systems and single window systems. Such single windows can be regionalized within the context of a certain regional integration agreement, such as the ASEAN Single Window

Implement the WTO agreements and provisions related to trade facilitation, in particular the WTO Trade Facilitation Agreement.

Sign ESCAP Framework Agreement on the Facilitation of Cross-Border Paperless Trade (Iran signed but not yet ratified)

Membership of the World Customs Organization (WCO); become party to its various international agreements and conventions and implement its recommendations
Technology and innovation capacity attract FDI
FDI contributes to technology transfer and innovation
The quality of national and subnational innovation systems matter
Governments can promote cooperation among companies through clusters, science and technology parks, incubators and networking among all stakeholders in an NIS, e.g. academia, research institutes, private sector, foreign investors, and government agencies
A strong legal and regulatory framework that promotes competition and protects IPR is also required.
A national innovation system refers to the complex and interactive web of knowledge flows and relationships among industry, government and academia and making them work systematically to sustain innovation and science and technology development efforts.
A SAMPLE NIS
(OECD)
GOVERNMENT POLICIES FOR STI/NIS

- Education and investment in human capital
- Networking (e.g. Silicon Valley)
- Creation and diffusion of technology and promotion of indigenous R&D
- Establishment of world-class metrology, standards, testing, and quality control (MSTQ) infrastructure to ensure that the quality of domestic industrial products meets international standards
- Nurture innovation and entrepreneurship culture
- Promoting and mainstreaming open innovation
- Free flow of national and international knowledge and flexible labour mobility:
- Provide appropriate legal and regulatory framework
- Provide an enabling infrastructure: incubation parks, science and technology or high-tech parks etc. (e.g. MSC)
- Promote technology and innovation financing mechanisms and modalities
- Maintain open trade and investment regimes: Mainstreaming gender in STI
Both vertical (backward and forward linkages) and horizontal linkages: focus is integration into global value chains

Linkages will only be sustained if they are technically viable and commercially profitable for the firms involved

Successful linkages depend on:

- The existence of SMEs which have the potential to meet high TNC standards;
- The TNC corporate strategy (i.e. efficiency-seeking FDI has the highest chance of establishing vertical backward linkages while market-seeking FDI has the highest chance to establish horizontal linkages through joint ventures;
- The existence and efficiency of a set of supporting public policies.
SUCCESS FACTORS FOR JOINT VENTURES

- There is mutual understanding that the IJV is a distinct entity, not a subsidiary or branch of any of the partners.
- There is mutual understanding and alignment of the objective of the IJV and responsibilities of the partners.
- There is a high level of trust, respect and courtesy between the partners.
- The local partner is free from government or political interference (linked to mutual trust).
- The local partner has realistic expectations from gaining access to the foreign partners often superior assets, technology and knowledge and intellectual property. Such access needs to be specified in the IJV legal agreement.
- The IJV is not a product of a “forced marriage” (because of local legislation for instance).
- Both partners are committed to accord the necessary time and resources to make the IJV a success.
- Both partners have undertaken proper research and planning before concluding the IJV.
- There is more or less equal bargaining power and capacity between the partners.
- There is a clear objective and benefit to be derived from the partnership joining partners with different but complementary ownership advantages.
- The foreign partner maintains a certain strategic direction of which the IJV is an important part.
- Disputes between the parties are to be decided in a third country.
POLICY FRAMEWORK FOR LINKAGES

- Information and matchmaking (role of IPA), e.g. Thailand’s BOI BUILD facility

- Enhancing the capacity of SMEs and local suppliers (comprehensive package, focus, targeted including technology, marketing, finance, training)

- Encouraging TNCs to engage in linkages

Linkage programmes should be based on voluntary cluster approaches, not performance requirements
PERFORMANCE REQUIREMENTS: OFTEN PROHIBITED BY INTERNATIONAL LAW

- Performance requirements are largely counterproductive but may be linked to incentives
- WTO-TRIMS explicitly prohibits:
  - Local content requirements
  - Trade balancing requirements
  - Foreign exchange restrictions
  - Export restrictions
  - Quantitative restrictions
  - Requirements that violate national treatment

- Prohibited or conditioned: provisions in free (preferential) trade agreements/economic partnership agreements/international investment agreements (BITs)
PERFORMANCE REQUIREMENTS WHICH COULD BE MANDATORY

- Conform to internationally recognized principles and standards related to responsible business conduct and CSR, including:
  - OECD guidelines for MNEs
  - Guiding principles on business and human rights
  - Global Compact
  - ILO conventions on decent work, including Tripartite Declaration of principles concerning multinational enterprises and social policy (MNE Declaration)
- Environmental assessments and pollution control
- Benefit sharing in natural resources
- Abstain from political meddling and peddling to vested local interests
IMPORTANCE OF REGIONAL COOPERATION

Binding vs. non-binding
- Investment cooperation and facilitation
- Investment promotion
- Investment liberalization
- Investment protection
- Investment agreements

Individual vs. collective actions
Best practice: ASEAN Investment Area and subsequent ASEAN Comprehensive Investment Agreement (ACIA)
REGIONAL COOPERATION ACROSS THE BOARD CAN SUPPORT FDI ATTRACTION

- Regional FDI incentive schemes
- Joint R&D and technology development
- Regional patent filing system
- Regional technical standards
- Joint databases on supporting industries and technology suppliers
- Harmonized competition policies
- Regional credit/insurance guarantee schemes
- Regional linkage systems
- Joint regional investment promotion agency
- Macro-economic and financial policy coordination
- Regional currency alignment schemes
- Regional chambers of commerce (e.g. GMS-Business Forum)
- Regional connectivity in roads, railroads, electricity, broadband etc.
REGIONAL COOPERATION FOR IRAN POSES CHALLENGES
FDI POLICIES: THE NEED FOR SUSTAINABILITY
FDI FOR SUSTAINABLE DEVELOPMENT

As clarified in the Rio+20 Outcome (“the Future we Want”)
Sustainable development covers three dimensions:

- Economic
- Social
- Environmental
MEETING THE SDGs

1. No Poverty
2. Zero Hunger
3. Good Health and Well-being
4. Quality Education
5. Gender Equality
6. Clean Water and Sanitation
7. Affordable and Clean Energy
8. Decent Work and Economic Growth
9. Industry, Innovation, and Infrastructure
10. Reduced Inequalities
11. Sustainable Cities and Communities
12. Responsible Consumption and Production
13. Climate Action
14. Life Below Water
15. Life on Land
16. Peace, Justice, and Strong Institutions
17. Partnerships for the Goals
UNCTAD estimates that investment needs for SDGs amount to $5-7 trillion per year.

At current levels of investment, developing countries face an annual investment gap of $2.5 trillion.

The role of the public sector for investing in SDGs is pivotal.

Private sector contributions are indispensable, and can take two forms:

- Good governance in business practices
- Investment in sustainable development
UNCTAD ACTION PLAN ON INVESTMENT IN THE SDGs
HTTP://UNCTAD.ORG/EN/PUBLICATIONCHAPTERS/WIR2014CH4_EN.PDF.

- Challenge: balancing public development goals with private sector profit
- Establish proper legal and regulatory framework and standards for sustainability
- Enhance private sector governance, commitment, responsibility, accountability and transparency
- Public-private partnerships and division of labour and responsibility: Government matter in providing conducive investment climate and ensuring policy coherence
- Set SDG investment targets
- Reforming IPAs into SDG investment agencies
- SDG-oriented investment incentives and investor targeting
- Promote social and impact investment
- Regional SDG investment compacts (esp. cross-border infrastructure development, and green zones)
- Home and host country IPA partnerships, to promote SDG investment. A multi-agency TA consortium to help assist LDCs
- Launch of innovative financing mechanisms, e.g. dedicated SDG funds and seed financing
- Sustainable stock exchanges
MEASURING IMPACT: 
INDICATORS OF SUSTAINABLE FDI

Economic:
Contribution of FDI to GDP growth, net exports, employment, (gross) capital formation, net capital inflows, government revenue, extent of forging linkages with domestic SMEs, technology transfer and absorption, competition, infrastructure development, etc.

Social:
Contribution of FDI to skills development, community development, women and disadvantaged groups employment, health benefits and pension plans, minimum wage and level of labour conditions (e.g. conformity with ILO labour standards), extent of CSR programmes and their results, number of families lifted out of poverty, accessibility and affordability of goods and services produced.

Environmental:
Level of environmental pollution (air, water, ground), level of GHG emissions, level of energy efficiency and water consumption, level of discharge of waste and recycling, application and transfer of environmentally sound technologies, etc.
NET IMPACT OF FDI ON POVERTY REDUCTION:
THROUGH (LABOUR-INTENSIVE) ECONOMIC/INCOME GROWTH

FDI impact on poverty only indirect, and depends on many factors, e.g.:
– Supporting host country policies other than on FDI
– Tax income from FDI spent on poverty reduction
– Quality of institutions
– Quality of domestic enterprises
– Labour market flexibility
– The quality of the investment project
– The regulatory framework (existence and implementation of necessary laws and regulations, including competition policy)

Qualification: FDI inflows do not reduce income inequalities. It may actually increase inequalities

Reality check: Recently much economic growth is jobless growth
Under the FIPPA, any foreign natural or legal person importing capital in Iran will enjoy the benefits and privileges of this law as long as:

- The investment leads to economic growth, promotes technology, promotes quality of products, increases employment opportunities, increases exports and entering the international markets.

- The investment does not jeopardize national security and public interests or harm the environment or interrupt national economy or disrupt products of domestic investments.

- The investment does not involve the granting of any special rights resulting in a monopoly.

- The value ratio of goods and services produced by aggregate of foreign investments does not exceed 25% in each economic sector and in each economic branch shall not exceed 35%
NEW GENERATION OF INVESTMENT POLICIES
(UNCTAD WIR 2012)

- Investment policies have consequently evolved to a new generation of investment policies that strive to:
  - Create inclusive growth and sustainable development through the benefits of FDI
  - Create synergies with wider economic development goals or industrial policies and achieve seamless integration in development strategies
  - Foster responsible investor behaviour and incorporate principles of corporate social responsibility (CSR)
  - Ensure policy effectiveness in their design and implementation and in the institutional environment within which they operate
UNCTAD’S IPFSD: CORE PRINCIPLES

- Policy coherence
- Public governance and institutions
- Dynamic policymaking
- Balanced rights and obligations
- Right to regulate
- Openness to investment
- Investment protection and treatment
- Investment promotion and facilitation
- Corporate governance and responsibility
- International cooperation
NATIONAL FDI POLICY CHALLENGES
(UNCTAD IPFSD, 2012)

- Integrating investment policy in development strategy
  - Channeling investment to areas key for the build-up of productive capacity and international competitiveness
  - Ensuring coherence with the host of policy areas geared towards overall development objectives

- Incorporating sustainable development objectives in investment policy
  - Maximizing positive and minimizing negative impacts of investment
  - Fostering responsible investor behaviour

- Ensuring investment policy relevance and effectiveness
  - Building stronger institutions to implement investment policy
  - Measuring the sustainable development impact of investment
INTERNATIONAL FDI POLICY CHALLENGES
(UNCTAD IPFSD, 2012)

- Strengthening the development dimension of IIAs
  - Safeguarding policy space for sustainable development needs
  - Making investment promotion provisions more concrete and consistent with sustainable development objectives

- Balancing rights and obligations of states and investors
  - Reflecting investor responsibilities in IIAs
  - Learning from and building on CSR principles

- Managing the systemic complexity of the IIA regime
  - Dealing with gaps, overlaps and inconsistencies in IIA coverage and content and resolving institutional and dispute settlement issues
  - Ensuring effective interaction and coherence with other public policies (e.g. climate change, labour) and systems (e.g. trading, financial)
PROMOTING SOCIALLY RESPONSIBLE INVESTMENT

- United Nations Global Compact principles: [https://www.unglobalcompact.org](https://www.unglobalcompact.org)
- ISO 26000 series on social responsibility: [http://www.iso.org/iso/home/standards/iso26000.htm](http://www.iso.org/iso/home/standards/iso26000.htm)
- Global Reporting Initiative: [https://www.globalreporting.org/Pages/default.aspx](https://www.globalreporting.org/Pages/default.aspx)
- Extractive Industries Transparency Initiative: [https://eiti.org/standard/overview](https://eiti.org/standard/overview)
The OECD Guidelines are recommendations addressed by governments to MNEs operating in or from adhering countries. They provide non-binding principles and standards for responsible business conduct in a global context consistent with applicable laws and internationally recognized standards. The Guidelines are the only multilaterally agreed and comprehensive code of responsible business conduct that governments have committed to promoting. The Guidelines’ recommendations express the shared values of the governments of countries from which a large share of international direct investment originates and which are home to many of the largest MNEs. The Guidelines aim to promote positive contributions by enterprises to economic, environmental and social progress worldwide.

The Guidelines are supported by a unique implementation mechanism of National Contact Points (NCPs), agencies established by adhering governments to promote and implement the Guidelines. The NCPs assist enterprises and their stakeholders to take appropriate measures to further the implementation of the Guidelines. They also provide a mediation and conciliation platform for resolving practical issues that may arise.

Additional due diligence guidelines exist for specific sectors and their supply chains, i.e. minerals, extractive, agriculture, garments and footwear, institutional investors.

OECD Due Diligence Guidance for Responsible Business Conduct provides practical support to enterprises on the implementation of the OECD Guidelines.
Human Rights

- **Principle 1**: Businesses should support and respect the protection of internationally proclaimed human rights;
- **Principle 2**: make sure that they are not complicit in human rights abuses.

Labour

- **Principle 3**: Businesses should uphold the freedom of association and the effective recognition of the right to collective bargaining;
- **Principle 4**: the elimination of all forms of forced and compulsory labour;
- **Principle 5**: the effective abolition of child labour; and
- **Principle 6**: the elimination of discrimination in respect of employment and occupation.

Environment

- **Principle 7**: Businesses should support a precautionary approach to environmental challenges;
- **Principle 8**: undertake initiatives to promote greater environmental responsibility; and
- **Principle 9**: encourage the development and diffusion of environmentally friendly technologies.

Anti-Corruption

- **Principle 10**: Businesses should work against corruption in all its forms, including extortion and bribery.
ISO 26000 provides guidance on how businesses and organizations can operate in a socially responsible way. This means acting in an ethical and transparent way that contributes to the health and welfare of society.

ISO 26000:2010 provides guidance rather than requirements, so it cannot be certified to unlike some other well-known ISO standards. Instead, it helps clarify what social responsibility is, helps businesses and organizations translate principles into effective actions and shares best practices relating to social responsibility, globally. It is aimed at all types of organizations regardless of their activity, size or location.

The standard was launched in 2010 following five years of negotiations between many different stakeholders across the world. Representatives from government, NGOs, industry, consumer groups and labour organizations around the world were involved in its development, which means it represents an international consensus.

ISO 26000 basic training materials exist in the form of a PowerPoint and training protocol guidance.
UN GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS

- A global standard for preventing and addressing the risk of adverse impacts on human rights linked to business activity.

- Three pillars:
  - The state duty to protect human rights
  - The corporate responsibility to respect human rights
  - Access to remedy for victims of business-related abuses
ILO CONVENTIONS

- Declaration on Fundamental Principles and Rights at Work (1998).
- Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)
- Right to Organise and Collective Bargaining Convention, 1949 (No. 98)
- Forced Labour Convention, 1930 (No. 29)
- Abolition of Forced Labour Convention, 1957 (No. 105)
- Minimum Age Convention, 1973 (No. 138)
- Worst Forms of Child Labour Convention, 1999 (No. 182)
- Equal Remuneration Convention, 1951 (No. 100)
- Discrimination (Employment and Occupation) Convention, 1958 (No. 111)
Sustainability reporting is an organization’s practice of reporting publicly on its economic, environmental, and social impacts.

The GRI Standards are the first global standards for sustainability reporting. They feature a modular, interrelated structure, and represent the global best practice for reporting on a range of economic, environmental and social impacts.

The GRI Standards represent global best practice in sustainability reporting. They are designed to be used as a set by any organization that wants to report about its impacts, and how it contributes towards sustainable development.

The GRI Standards are also a trusted reference for policy makers and regulators worldwide; they encourage and enable credible non-financial reporting by the companies under their jurisdictions.

To report with the Standards, all organizations begin with GRI 101: Foundation, which is the starting point for using the set.

There are universal and topic-specific standards.
EXTRACTIVE INDUSTRY TRANSPARENCY INITIATIVE

- The EITI Standard is the international standard for transparency and accountability around a country's oil, gas and mineral resources.

- When implemented, the EITI ensures transparency on how a country's natural resources are governed. This ranges from how the rights are issued, to how the resources are monetized, to how they benefit the citizens and the economy.

- The Standard is composed of two parts. Part I deals with the implementation of the Standard and part II deals with the governance and management of the international EITI.

- The standard is implemented by governments, in collaboration with companies and civil society. Countries implementing the EITI disclose information on tax payments, licenses, contracts, production and other key elements around resource extraction.
PRINCIPLES FOR RESPONSIBLE AGRICULTURAL INVESTMENT THAT RESPECTS RIGHTS, LIVELIHOODS AND RESOURCES (PRAI)

- **Principle 1**: Existing rights to land and associated natural resources are recognized and respected.

- **Principle 2**: Investments do not jeopardize food security but rather strengthen it.

- **Principle 3**: Processes relating to investment in agriculture are transparent, monitored, and ensure accountability by all stakeholders, within a proper business, legal, and regulatory environment.

- **Principle 4**: All those materially affected are consulted, and agreements from consultations are recorded and enforced.

- **Principle 5**: Investors ensure that projects respect the rule of law, reflect industry best practice, are viable economically, and result in durable shared value.

- **Principle 6**: Investments generate desirable social and distributional impacts and do not increase vulnerability.

- **Principle 7**: Environmental impacts of a project are quantified and measures taken to encourage sustainable resource use, while minimizing the risk/magnitude of negative impacts and mitigating them.
KEY ROLE FOR GOVERNMENTS TO PROMOTE SRI

- Regulation and standards
- Facilitation, supporting, catalyzing and incentivizing
- Brokering, promoting dialogue and public-private partnerships
- Warranting and awareness creation, awards, publishing of best practices etc.
SPECIFICALLY, GOVERNMENTS CAN PROVIDE AN ENABLING ENVIRONMENT FOR RBC THROUGH:

- Creating (consumer) awareness and raising public support for RBC and SRI related concepts and practices, including promotion of sustainable production and consumption practices.

- Establishing an RBC/SRI unit/agency as an overall coordinating unit within the government, as effective RBC policy implementation involves many ministries and government agencies.

- Reforming regulatory frameworks to meet international standards.

- Fostering interaction, consultation and dialogue with stakeholders, e.g. business, NGOs and other key stakeholders.

- Assisting and supporting business in adoption responsible business practices through HRD, financial support.
Good governance refers to increasing transparency and predictability of laws and regulations and consistency in their enforcement, improving efficiency of procedures and encouraging higher standards of public service.

It is legitimate for governments to control or even screen investments and investors in their country for reasons such as security, protection of the environment and health, and quality control. This prevents or reduces market failure and relates to the concept of inclusive and sustainable investment policies.

The costs of administrative procedures vary significantly across countries and excessive administrative costs can be a major impediment to investment.

Good governance is about ethical behaviour and adherence to the rule of law.
LEGAL FRAMEWORK FOR FDI
CHARACTERISTICS OF COUNTRIES WITH HIGH SCORES ON LEGAL FRAMEWORK FOR FDI

- Allowing FDI across (and in virtually all) sectors
- Equal treatment of foreign and domestic investors
- Simple and transparent establishment process
- Easy and secure access to and use of land and efficient land acquisition procedures
- Strong arbitration laws
- Conformity to international principles and laws
- Supportive court system and fair trials
- Quality of legal services

In addition (depending on type of FDI):
- Non-restrictive labour laws
- IPR protection
- Easy repatriation of profits
FOREIGN INVESTMENT LAW

- FI Law is a law regulating investments made by foreigners or non-nationals in a specific country
- Why? To address issues related to national security, sovereignty, culture and development
- Definition of investment: assets, technology, knowledge, and any other form of capital that is brought into a country for business purposes
- FI Law specifies when, how, and to what extent foreigners may invest in a country
- FI Law normally regulates ownership and protection, repatriation of profits, rights and obligations of investors vs. right of the state, land and labour use, restrictions, performance requirements and incentives, dissolution and liquidation, FI approval and promotion, registration, arbitration
Do you need it?

Do you need to discriminate between foreign and domestic investment?

Consistency with other laws is very important

Insufficient by itself to establish proper legal regime for FDI
IRAN’S INVESTMENT RELATED LAWS

- Constitution
- Foreign Investment Promotion and Protection Act (FIPPA) or Law on Encouragement and Protection of Foreign Investment (2002)
- Law of Direct Taxation (1992)
- Labour Law (2004, new one under consideration)
- Commercial Code (covering contracts and bankruptcy) (2005)
- Civil Code covers access to property/land by foreigners but there is no specific land law
- Mining Act (1999)
FOREIGN INVESTMENT PROTECTION AND PROMOTION ACT (FIPPA)

- Definitions: not covering portfolio investment (chapter 1)
- General conditions for admission (includes sustainability provisions) (chapter 2)
- Institutional framework: legal basis for Foreign Investment Board and OIETA (chapter 3)
- Equal rights between foreign and domestic investors/protection against nationalization (chapter 4)
- Transfer/repatriation and import of foreign capital (chapters 4/5)
- Dispute settlements: domestic court unless BIT specifies otherwise (chapter 6)
- Final provisions include investment facilitation (visas, permits, etc.) and M&E of OIETA performance (chapter 7)
A UNIQUE IRANIAN INSTRUMENT: THE BUY-BACK

- Iran forbids foreign control over its resources
- However, buy-back is not popular among foreign investors in the oil industry
- Production and price dependent, does not cover long-term risk
- Foreign investors lose control after full production is achieved: this is not what foreign investment is about
- Better to negotiate production or profit sharing agreements
INVESTMENT LAWS: TRADITIONAL CHALLENGES

- Implementation
- Transparency
- Role and mandate of the investment promotion agency
- Role of central and regional government in investment approval
- Investor protection not solid in practice
- No discrimination in theory but in practice it exists
- Provisions on interaction with other laws and international treaties
REQUIREMENTS FOR PROPER LEGAL FDI FRAMEWORK

- Intellectual property law and regulations
- Enterprise (company) or corporate law and regulations
- Contract law and regulations
- Land law and regulations: access/ownership of land (own or lease); land use rights
- Labour law and regulations
- Foreign exchange law and regulations
- Financial laws and regulations
- Insolvency and bankruptcy laws
- Tax laws: consumption, VAT, business, profit, income, etc.
- Trade law and import/export regulations
- Competition law and regulations
- Environmental laws and regulations
- Sectoral laws and regulations (agriculture, defense and security, mining and minerals, real estate and construction; services like telecommunications, transportation, utilities, media, finance, entertainment and tourism, health care, professional and retail; manufacturing sectors)
- Specific issue laws: franchising, SMEs, special economic zones (SEZs), licensing, technology transfer, privatization, M&As, insurance etc.
- Dispute settlement and law enforcement
- National vs. local laws and regulations
IPR PROTECTION: IS IT NECESSARY FOR FDI?

- Depends on host country and industry
- FDI to LDCs generally-speaking not motivated by IPR issues
- Stringent IPR protection is often a burden to LDCs which may results in net development costs
- However, IPR are necessary to develop national R&D and technology development capabilities, essential in strengthening national competitive advantage, which, in turn, attracts higher levels of FDI
- IPR is more important in countries with relatively high imitation capabilities (though licensing may substitute for FDI)
- IPR makes a difference in being able to attract “quality” FDI (i.e. knowledge-intensive, R&D oriented)
- BITs and multilateral obligations diminish IPR as a competitive advantage for attracting FDI
- Openness to trade and overall open economy more important for export-oriented FDI
NEED FOR INTERNATIONAL COMPLIANCE

- Multilateral agreements under WTO: GATS, TRIMS, TRIPS
- Regional and bilateral agreements: IIAs (BITs), RTAs
DO IIAs HELP IN ATTRACTING FDI?

- IIAs can influence a company's decision to invest, but:
  - Role is limited (IIAs alone cannot do the job); economic determinants are more important
  - Impact is generally stronger in the case of FTAs with investment chapters than with regard to BITs
  - Also depends on the kind of FDI
  - The conclusion of IIAs need to be embedded in broader policies covering all host country determinants of FDI
REBALANCING REQUIRED?

- Some criticisms against current agreements
  - Too narrowly focused, addressing only the rights of the foreign investors (and not their obligations)
  - Investment protection provisions strong, investment promotion provisions weak
  - Dispute settlement mechanism has shortcomings (not transparent enough, prone to conflicts of interest)
    - In response, IISD developed in 2005 a “Model International Agreement on Investment for Sustainable Development”
    - UNCITRAL Rules and Convention on Transparency

- At the same time
  - Agreements are about protection of investors and initiated to attract investments by decreasing the risk for investors.
  - The obligations of investors are to follow host country law.
  - How strong can you make promotion provisions, and why?
  - Countries are still more or less following the usual form of agreements, with some modifications (e.g. provisions related to environment & dispute settlement).
HOW CAN IIA$s BE ADAPTED TO CONTRIBUTE TO SUSTAINABLE DEVELOPMENT (UNCTAD IPFSD)?

- Better definitions of “investment”
- Clarifications on MFN/NT (“like circumstances”)
- Strengthening general exceptions/general obligations/investor obligations
- Include reference to international standards of responsible investment and responsible business practices
- Careful definitions of the scope of pre-establishment commitments
- Better define FET
- Insert appropriate social (labour) and environmental clauses that would allow governments to take appropriate measures for inclusive development without fearing a lawsuit
- Include provisions that shield host countries from unjustified liabilities and high procedural costs of ISDS
- Limit the Full Protection and Security provision to “physical” security and protection only and specifying that protection shall be commensurate with the country’s level of development
- Introduce language that draws a line between a compensable indirect expropriation and the adverse effects endured by a foreign investor as a result of bona fide regulation in the public interest
  - e.g. Common Market for Eastern and Southern Africa (COMESA) Common Investment Area (2007)
SUMMARY OF POLICY PRINCIPLES FOR FDI

- Define objective: why do you want FDI? For what purpose?
- Adhere to SMART
- Investment policy needs to address the following questions: who can invest in the country/location, where, and under what conditions
- Consult stakeholders!
- Proper monitoring and evaluation framework
- Proper coordination framework (single agency under head of state)
- Political and economic stability matter!
- Infrastructure and human resources matter!
SUMMARY OF POLICY PRINCIPLES FOR FDI, CONT.

- Improve ease of doing business and cut red tape
- Avoid incentives and reform tax regimes in accordance with the principles of simplicity, predictability and conformity to SDGs
- SEZs can be useful but need to be carefully planned
- Strengthen legal framework for land rights and access
- Improve institutional effectiveness (IPA)
- Keep institutions for investment policy, regulation and promotion separate
- Don’t neglect domestic investment
- Formalize the informal sector
Ownership restrictions vs. establishing nationality

Anticompetitive practices by foreign affiliates

Volatile flows of investment and related payments deleterious for the balance of payments

Tax avoidance and abusive transfer pricing by foreign affiliates (BEPS: Base Erosion and Profit Shifting)

Transfers of polluting activities or technologies

Crowding out local firms and suppressing domestic entrepreneurial development

Crowding out local products, technologies, networks and business practices with harmful socio-cultural effects

Concessions to TNCs, especially in export processing zones, allowing them to skirt labour and environmental regulations

Excessive influence of TNCs on economic affairs and decision-making, with possible negative effects on industrial development and national security

In short: a balancing act between the interests of investors and the host country
QUESTIONS FOR DISCUSSION: POLICIES

- Why does your country attract FDI? In other words, what are the immediate and long-term objectives of attracting FDI?
- Has your country undertaken any economic, financial, trade, investment liberalization initiatives? How have these initiatives helped economic growth and attraction of FDI?
- Does or did your country have a privatization programme? What was the role of FDI in the implementation of this programme? Was it successful?
- How well is FDI integrated in your national development policies, plans and strategies?
- Does your country have a national innovation system? How would you rate the quality of that system? What role does it play in attracting quality FDI? What could you do to improve it and what role could FDI play in this regard?
- Does your country have a business linkage programme to help SMEs integrate into global and regional value chains? What role does the attraction of FDI play in this regard? How successful is this linkage programme and how could you improve it?
- How do you see the role of regional cooperation and integration for attracting FDI?
In light of this presentation, how do you view your national investment law?
Does your country have a negative or positive list approach to allowed sectors?
What land, property and investment ownership restrictions does your country have on foreign investment? Are these restrictions right, too strict or too flexible?
How do you rate your overall rule of law in terms of (a) adequate legal protection for foreign investors; (b) due enforcement. Does your country have a national court and dispute settlement system that meets international standards and expectations?
What other laws does your country have that affects or impacts foreign investors and their investments? For instance in mining, transport, telecommunications, tourism?
Does your country have a proper IPR regime that fits its current development stage? Is it duly enforced? Is there scope for improvement or is this too premature?
How many IIAs (in particular BITs) is your country a contracting party to? Do you think these IIAs have helped attract FDI? Do you agree with a broad or rather narrow definition of investment? Should your country agree to pre-establishment related MFN and NT clauses or should you retain your right to screen investment proposals?
Do you think the current IIA and ISDS regime properly balances investor rights with the state’s duty and need for policy space to pursue sustainable development? How could the regime be improved in its contribution to achieving the SDGs?
At what level do you think FDI should be best regulated: at national, bilateral, regional or global (multilateral) level?
Do you think a Multilateral Framework on FDI and/or the establishment of a World Court on Investment would be necessary or desirable?
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HANDBOOK ON POLICIES, PROMOTION
AND FACILITATION OF FDI FOR SUSTAINABLE DEVELOPMENT:
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Presentation available at:
https://www.unescap.org/events/training-workshop-promotion-and-facilitation-foreign-direct-investment-islamic-republic-iran

Your questions please?