8 Managing Private Investment in Natural Resources

This chapter discusses support to governments to manage private investment in natural resources. The focus is on investment in the primary sector or ENR management areas, including agriculture, forestry, fisheries and extractive industries—a topic of growing interest among international investors and of high economic significance to many developing countries including much of sub-Saharan Africa and South East Asia. Mainstreaming will include adopting and implementing a strategic approach for foreign direct investment within the country's overall development strategy; establishing economic and institutional settings and implementing policies to attract and successfully manage FDI; scrutinizing individual investment proposals and negotiating investment contracts; and monitoring investor compliance with relevant laws and project contracts.

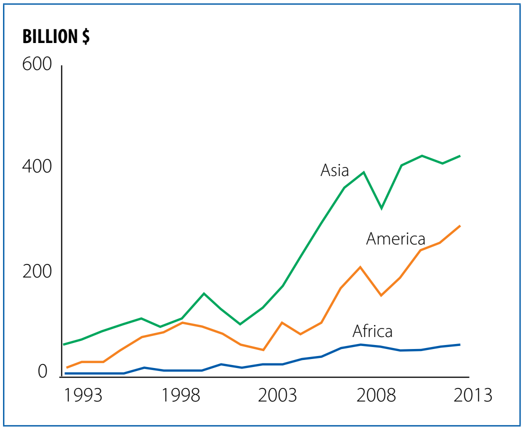


8.1 Impact and Implications of FDI on Host Countries

Flows of foreign direct investment to developing countries have risen steadily over the past two decades (figure 8.1). A large body of evidence shows that FDI can provide economic, social and environmental benefits for host countries. It can increase production capacity, employment, productivity and government revenues. It can be effective in alleviating poverty by driving economic growth, while often providing better wages, working conditions and social security than domestic firms (Dollar and Kraay 2002; OECD 2001; UNCTAD 2006).

From an environmental perspective, FDI may help foreign firms bring production techniques which translate into better environmental performance compared to domestic firms, particularly in low-income countries (Dufey and Grieg-Gran forthcoming). Foreign investors also can introduce more environmentally friendly technologies and consumption patterns (OECD 2001; UNCTAD 1999). On the other hand, without implementation of adequate environmental regulation, FDI-induced economic growth can result in loss of natural resources and environmental degradation (box 8.1), which can exacerbate poverty.

Figure 8.1 FDI Flows to Developing Economies, 1993–2013



Source: UNCTADstat, accessed 6 March 2015.

Note: US$ at current prices and current exchange rates.

The benefits of FDI are not concomitant: ultimately, the outcomes of FDI depend heavily on the nature of the investment and the regulatory environment in the host country (UNDP-UNEP PEI 2011d). These findings have the following implications for host developing countries:

- FDI flows into developing countries are likely to continue to grow, making their management a priority for host governments. The challenge for policymakers is to ensure that FDI contributes to their development goals.
- South-South FDI flows are becoming globally significant, and their growth has a number of social and economic benefits. However, these flows also increase the regulatory responsibility of host governments, as employment conditions and corporate social and environmental responsibility practices of developing country transnational corporations may fall short of those followed by developed country firms.
- Increased investment in primary sectors, including agriculture, forestry, fisheries and extractive industries, creates new growth opportunities for countries with natural resource potential. However, positive social and economic outcomes are by no means guaranteed, and such investment is likely to put greater pressure on the quality and level of the natural resources. This pressure in turn places a greater level of responsibility on regulatory bodies to avoid or reduce negative economic, social and environmental outcomes that include forced evictions and involuntary resettlements, lack of labour standards, land grabbing, deforestation and land degradation.

Box 8.1 Case Study: Indonesian Palm Oil Industry

Indonesia's palm oil industry has been instrumental in driving socio-economic development in the country. Successfully adapted to meet the needs of smallholders, it has been a powerful force in poverty alleviation, positively affecting millions. It has delivered significant improvements in living standards, secured edible oil, and generated large levels of foreign exchange and employment.

However, the industry has been criticized for its impact on the environment. The majority of plantations have been established by converting Indonesia's rainforest and peatland, with negative effects on biodiversity and climate change. Indonesia's forest cover has decreased dramatically in the last 40 years, with conversion to oil palm plantations a contributing factor. The country's natural forest cover has been reduced from 143 million hectares in 1967 to 88.5 million in 2005. Total area for oil palm plantations was 6 million hectares in 2006.

In recent years, several incentives have emerged in Indonesia to halt or slow its conversion practices. Various **public and private sector procurement policies** are requiring that palm oil and/or palm oil products be produced in a sustainable manner. Additionally, the **UN's Reduced Emissions from Deforestation and Forest Degradation (UN-REDD)** mechanism offers developing countries financial incentives to reduce their rates of deforestation and forest degradation. The Indonesian government has been a strong REDD proponent, which has the potential to raise revenues for the country.

Sources: Casson 1999; CIFOR 2006; FAO 2009; ITTO 2009; Reuters 2009; RSPO 2007; Thoenes 2006; USDA 2007, 2009.

These implications suggest that host developing countries need a strategic approach for managing FDI. Investment decisions can have major and lasting impacts on the development goals and pathways pursued by a host country. Host governments need to identify national development priorities in terms of sectors, geographical areas and investment models, and ensure that FDI supports their achievement. Strategic vision and vigorous public debate about development goals and pathways are essential in making sound choices about what is best for the country. Foreign investment should be seen as an element of the national development strategy, and the strategic vision for FDI translated into a policy framework. This is expanded upon in the following sections.

8.2 Establishing an Economic and Institutional Environment and Implementing Policies to Attract and Manage FDI

A supportive economic and institutional context in the host country is the most important factor in attracting FDI at both the national and regional levels. This context includes the following:

- Macroeconomic stability
- Predictable and realistic exchange rates
- Availability of basic infrastructure, such as electricity, roads, transport and communication networks
- Clear division of responsibility between relevant ministries and departments at all levels of government involved in FDI management (national, provincial, district and local), and avenues for effective communication between these bodies

- Unambiguous investment legislation with clear incentives and implementing regulations that is not in conflict with other, sector-specific laws

While economic and institutional settings are essential, government policy can serve to attract FDI or address imbalances in FDI inflows between regions and sectors. The most commonly used policy tool is **fiscal incentives**. For example, in Cambodia, Costa Rica, Malaysia and Viet Nam, investment promotion agencies offer tax incentives in high-technology sectors to encourage technology transfers. Host countries can offer tax and monetary incentives for investments that generate extensive linkages with the local economy (Malaysia), promote renewable energy (Argentina, Ghana, Nicaragua) or involve training for local staff (South Africa). Because tax incentives tend to have a negative effect on public revenues, host governments need to be aware of the wider range of policy options—comprising both direct and indirect measures—available. The key is identifying the underlying causes of low FDI inflows, and pursuing the most cost-effective solutions. Some of the non-tax options available include subsidizing establishment of special economic zones in poorer regions to provide quality infrastructure and services; investing in education, skills training and transport infrastructure; training civil servants in more effective administration of investment regulations; and improving investment marketing (UNCTAD 2008).

International investment agreements aim to promote foreign investment by protecting it against certain political risks in the host country. By binding themselves to such agreements, however, host countries may limit their policy options in regulating foreign investment. International investment agreement provisions on expropriation and "fair and equitable treatment" may enable investors to challenge the adoption of more stringent environmental regulations by the host government, as these may adversely affect the economics of an investment project. Simultaneously, the prospect of having to compensate investors may discourage host governments from implementing stricter environmental regulations. To avoid investor-state disputes with regard to existing international investment agreements, signatory governments should explore policies that help achieve their development objectives without violating commitments already made. Host countries should assess the full implications of various options before signing new agreements and should actively put forward their views during negotiations. Addressing the capacity needs of government officials responsible for international investment agreement negotiation and implementation is crucial in achieving the above objectives (box 8.2).

Box 8.2 Support for Sustainable Development and International Investment Treaties in Myanmar

PEI is providing support to Myanmar government officials in the Directorate of Investment and Company Administration, the Attorney General's Office and supporting line ministries to identify an aspect of the current legal framework that needs improvement to promote sustainable development: international investment treaties. This work will result in a model investment treaty. PEI engaged with multiple stakeholders in a consultative process—including a retreat—on key sustainable development issues related to international investment treaties and their relevance for natural resource investments in Myanmar.

Source: PEI Asia-Pacific.

In addition to promoting FDI, host governments are responsible for maximizing its benefits in economic, social and environmental terms. From a policy point of view, this may require the following:

- Selecting appropriate business and contract models to be promoted from among different types of investor-government contracts (e.g. concessions, production-sharing agreements, or joint ventures) or models that include local farmers (e.g. through incentives for contract farming) (Cotula 2010)
- Strengthening policies that improve the capacity of local businesses and workers to benefit from FDI projects (e.g. capacity building for local industries, skills training for workers)
- Maximizing public revenues and optimizing their distribution over time
- Establishing robust, transparent and accountable mechanisms for the management of these revenues
- Reinvesting revenues from extraction of non-renewable resources into economically sustainable activities to ensure that alternative livelihoods and revenue sources will be available when commercial exploitation comes to an end
- Applying a gender-sensitive approach and identifying best practices to promote women's empowerment within FDI projects
- Establishing robust safeguards for social and environmental risks of FDI projects, including social and environmental impact assessments and management systems, local consultation requirements and redress mechanisms

The economic, social and environmental benefits of FDI projects can be maximized as the example from the mining sector in box 8.3 shows.

8.3 Reviewing Investment Proposals

Flawed investment approval procedures can lead to socio-economic and environmental outcomes that are detrimental to local communities, the host country and investors themselves. Following the procedures outlined below during the project approval process can promote desirable economic, social and environmental outcomes.

Proposal Assessment and Feasibility Studies

Host governments should conduct a careful assessment of investment proposals to identify costs and benefits likely to be generated by a given project. These costs and benefits include public revenues, employment creation, linkages to the local economy, infrastructure development, and social and environmental risks. Feasibility studies are key to ensuring that only economically viable projects proposed by credible investors are allocated rights over natural resources. Governments may need to invest in their own capacity to undertake these tasks.

Social and Environmental Impact Assessments

Proposed investment projects should be subject to comprehensive social and environmental impact assessments (box 8.4). Such assessments should cover all feasible project designs, allowing host governments to make informed decisions if circumstances change and to avoid unexpected environmental and social outcomes. If project circumstances encounter significant change, new feasibility studies should be conducted before deciding to proceed with the new design. Here too, governments may need to invest in their own capacity to scrutinize impact assessments prepared or commissioned by prospective investors.

Box 8.3 Revenues from Responsible Mining Practices Help Communities Lead Better Lives in the Philippines

The province of Surigao del Norte is a mineral hotbed, spanning almost 38,000 hectares. At present, the region hosts eight mining companies and extractive businesses that continue to receive large investments from both domestic and foreign sources. While the government receives revenues from the mining industry, the environmental repercussions of open-pit mining are often realized after a mining project has been completed. As recently as 2012, almost 20 million metric tons of tailings waste, left over from mining, spilled over into the Balong and Ango Rivers in the neighbouring province of Luzon. This resulted in the destruction of once-thriving ecosystems as well as of the subsistence of various fishing communities that lived by the rivers. Indigenous communities that inhabited some of these areas were forced to relocate; in many cases, local communities and villages were not consulted in advance regarding the impacts mining activities could have on their lives and livelihoods.

Since 2011, PEI has been working with the Government of the Philippines to strengthen laws and provide technical assistance in promoting responsible mining practices. One such law was 2012's Executive Order 79, which called for mining activities to follow strict compliance laws, ensure the involvement of all stakeholders, and provide for transparency and accountability on the part of both government and corporate players.

In the province of Surigao del Norte, PEI has focused on helping to put in place systems and processes that better manage and use financial resources. The Electronic Tax Revenue Assessment and Collection System is one such way. Based on studies and analysis of how revenues are estimated and funds transferred, PEI developed a computerized system for the Mines and Geoscience Bureau to document and monitor fees, taxes and royalties paid by mining companies and other stakeholders. Special emphasis was placed on public disclosure and providing citizens with access to information on how funds were reallocated among local governance units. The system represents a big step towards fostering transparency and accountability in public institutions and processes involved in ENR management.

Barangay Taganito is one village that has reaped the benefits of responsible mining activities. Over the years, almost 98 per cent of its income has come from mining company revenues. A share of this revenue has been invested in improving the village's public infrastructure. Mining companies have also been encouraged to invest in public education and have adopted and funded local schools as part of a corporate social responsibility initiative.

The largest mining company in the area, the Taganito Mining Corporation, has been working towards involving and supporting host communities in new ways. Manager Roger Cabautan explains: "We support the host communities where we operate through social development programmes in health, education and cultural development. With indigenous people, we resettled them in a resettlement area and set up a school there worth 10 million PhP. We have provided 120 housing units for 120 families, and they also have a tribal people's medical clinic."

Source: UNDP-UNEP PEI 2014a.

Box 8.4 Environmental and Social Impact Assessment Set to Promote Quality investments in Lao PDR

Lao PDR has risen from a low- to a lower-middle-income economy, with its per capita income doubling since 1990. Key to this growth has been the rapid inflow of FDI, especially in natural resource and affiliated sectors such as agricultural plantations, forestry, mining and mineral resources, hydropower and tourism. However, prospective investors were judged solely on technical and financial aspects, and their impact on environmental protection or poverty alleviation was largely overlooked. Many projects resulted in extended destruction of the environment, land grabs from local communities leading led to relocation and loss of livelihoods, and inequitable distribution of profits with very little compensation for local communities.

As the government became more aware of the negative effects of investments, the potential of such investments to reduce poverty, the duty to protect communities and their rights, the need to preserve the environment and improve local communities' technical skills came to the fore. In 2013, PEI worked with the Ministry of Natural Resource and Environment to develop new ministerial instructions that set out the procedural steps investors and central government authorities should follow in carrying out initial environmental examinations and environmental and social impact assessments for projects they wished to implement. Following up on these assessments, monitoring these investments also became an important priority PEI advocated for. In Oudomxay province, the increase in monitoring of investments has led to exposing 20 projects that were not complying with the law. Four projects were made to stop all operations, 4 more received warnings and 12 were ordered to make improvements to their current operations.

PEI worked to toughen bottom-up development measures by shining a spotlight on citizen involvement in environmental and social impact assessment procedures. The welfare of grassroots communities, which are most directly affected by mining works, hydropower dam construction and plantations, are often compromised in the push and pull between governments and private investors. Taking definitive steps to redress this, PEI, in collaboration with a non-governmental organization, trained over 200 central and provincial environment officials to better understand the importance of public involvement. Officials were sensitized on human rights issues, legal frameworks for involving people, conflict resolution and communication initiatives that could help open platforms for multiway dialogues with host communities.

One such community is the village of Phonesavath, the new home of inhabitants from 16 villages who were relocated during construction of the Nam Ngum 2 Dam on the Mekong River. Their resettlement has been a learning experience for government officials, not only in terms of addressing the resettlement process, but also in creating opportunities for regaining lost livelihoods. As Khamsone Seevongdao, the district head for the Office of Natural Resource and Environment, explains, "We prioritized public involvement in this village. For the people, their main concerns are livelihood and compensation… We are encouraging them to come and choose income-generating activities that suit them, like frog farming, chicken farming or fish farming. Then we hand over the responsibility to the village chiefs and youth unions to go out and promote these activities among the people." These participatory measures aimed at improving the situation and lives of people in a sustainable fashion make the arduous resettlement process less daunting.

The environmental and social impact assessment process in the country is a good example of efforts the government is making to drive pro-poor environmental priorities at the community level as well as at the institutional level.

Source: UNDP-UNEP PEI 2014a.

Consultations and Free, Prior and Informed Consent

Conducting formal consultations with local communities is important in gauging aspirations and priorities, and in ensuring local support for a project within the framework of free, prior and informed consent—which includes the right to veto a project. Lack of effective consultation is likely to lead to investor-community disputes and implementation difficulties, possibly resulting in failed projects. Consultation requirements may also exist outside the framework of impact assessments; in Mozambique, for example, they are built into land and forestry legislation. The effectiveness of consultation can be undermined by poor information flows to communities and by local elites capturing the process.

Policies and institutional mechanisms should hold businesses and local governments accountable to recognize, protect and fulfil the requirement for free, prior and informed consent from indigenous peoples and local communities for the governance, restriction, conservation, and management of common land and resources. This includes allocation of concessions or rights for resource exploitation on community land.

8.4 Negotiating Investment Contracts

Like flawed investment approval procedures, poor negotiations can result in poor outcomes. Host governments can enter into investment contracts with individual investors. The extent to which negotiation of these contracts can shape the investment project varies between countries and sectors. In some countries, national legislation provides detailed rules as well as model contracts to be used as a starting point for negotiation; in these cases, negotiations tend to focus on fiscal matters. At the other end of the spectrum, some contracts are wholly negotiated between the parties and provide much of the legal regime governing the investment.

Host governments need to ensure that project agreements with private investors are structured to maximize benefits for the host countries. Issues that should be addressed include clearly defined and enforceable financial commitments, creation of direct and indirect employment, technology transfer, provision of infrastructure for local communities, revenue generation, local procurement of inputs, environmental protection and dispute settlement mechanisms. At the same time, host governments should be aware of the investor's concerns, in order to avoid a breakdown of negotiations. They should also ensure that provisions of investment contracts are not in conflict with international trade rules, and environmental, labour and international investment agreements to which the country is party.[1]

A clear negotiating strategy by the host government can make a significant difference to the outcome. This strategy should include the following:

- Identification of the key sustainable development objectives to be pursued
- Identification of likely expectations of the other party
- Identification of areas where concessions and compromises are possible

[1] These aspects are covered in a 2010 International Institute for Environment and Development guide on negotiating investment contracts to maximize sustainable development outcomes (Cotula 2010).

- A plan for the flow of negotiations and negotiation tactics (Cotula 2010)

In order to negotiate a successful contract with private investors, officials need sound legal expertise and negotiation skills (box 8.5).

Transparency in project approval and contract negotiation, along with public disclosure of government contracts, can increase accountability and reduce the likelihood of future disputes. Sierra Leone has established transparency as a core principle for the development of its extractive sector. A centrepiece of this effort is a state-of-the-art online mining cadastre that provides information on natural resources that are held in public trust. In addition, compelling companies to compete openly through contract bidding processes can result in fairer pricing and more beneficial terms for the state. This consideration is especially critical in the forestry, mining, oil and gas sectors, where poor contract terms can get locked in for decades. Legally protected public access to government-held information is essential.

Transparency in contracting and in multi-stakeholder dialogue can be improved by industry-specific schemes. For example, the global Extractive Industry Transparency Initiative (EITI) requires member companies and governments to publish figures on revenues generated by extractive industry projects.[2] From a host country perspective, joining initiatives like this one can improve the investment climate by sending a clear signal to investors and international donors about its commitment to transparency. It can also strengthen accountability and good governance, and promote greater economic and political stability.

Box 8.5 Contract Negotiation in Liberia

The 2006 renegotiation of a number of mining and agricultural concessions in Liberia illustrates the advantage that investing in the government's capacity to negotiate can confer. An independent evaluation of this renegotiation noted significant improvements in the terms of the contracts over the originals—namely, an increase in public revenues; requirements to source labour, goods and services locally; and the relocation of certain processing activities to Liberia. Determined political will at the highest level, a clear negotiating strategy, a strong negotiating team within an influential government institution, and world-class external legal and other advice contributed to this outcome.

Source: Kaul, Heuty and Norman 2009.

8.5 Monitoring Investor Compliance with Relevant Laws and Contracts

Investment projects can have negative economic, social and environmental outcomes if relevant laws and regulations are not enforced and monitoring is neglected by host countries. Outcomes can include forgone government revenue, inadequate benefits to local communities, high incidence of disputes between local communities and investors, and undue negative impact on ENR.

A number of factors can cause shortcomings in project monitoring and law enforcement. These factors include ineffective coordination between different agencies responsible for law enforcement and monitoring, high levels of government corruption, lack of resources and technical capacity of government departments,

[2] www.eiti.org, accessed 18 October 2014.

lack of clear laws and regulations, and non-application of sanctions for non-compliance.

Measures to address these various factors are context specific; some options are presented below.

Improving Regulatory Structures

Establishing dedicated host government units is one option for improving project monitoring and law enforcement. These units must have strong expertise and high-level political backing for managing investment contracts, collecting revenues, monitoring implementation and penalizing non-compliance. Improving the performance of existing regulatory agencies is another option. For example, a national environmental protection agency can monitor compliance with environmental legislation, but only if it has a clear mandate to do so, as well as adequate resources to access required information and sanction violations (Cotula 2010). Establishing a clear division of responsibilities between monitoring authorities and improving information sharing (particularly between different levels of government) is important. It is also important to protect monitoring agencies from regulatory capture. For instance, if a national oil company has both regulatory functions and commercial duties (e.g. as an equity holder in an oil project), it might not scrutinize the project as thoroughly as it should. Separating its commercial and regulatory functions may be a useful way of addressing this problem (Cotula 2010).

Addressing Lack of Resources and Human Capacity

Monitoring authorities need technical skills to review the content of environmental and social assessments prepared by investors. They also need financial, physical and human resources to conduct on-site audits and handle disputes. Measures to address any shortage in these resources include increasing the budgets of the relevant authorities and improving the performance of domestic educational institutions.

Ensuring Application of Sanctions for Non-Compliance

National laws commonly enable the host government to impose sanctions if the investor does not comply with investment plans. Sanctions can include fines and suspension or withdrawal of land or resource rights. For example, under Mozambique's Land Act of 1997, land allocations are subject to compliance with the investment plan within two years (for foreign investors) or five years (for domestic investors); non-compliance entails termination of the land lease, while compliance guarantees a definitive—and renewable—title for 50 years. And in fact, Mozambique did cancel a land lease for a 30,000-hectare biofuel project for failing to deliver on its promises (Nhantumbo and Salomão 2010). Such an action is all the more remarkable because provisions of this kind are rarely enforced. There are many reasons for non-enforcement, including the host government's lack of capacity to monitor investor compliance, lack of a clear mandate for any particular agency to enforce sanctions, or fear of discouraging other investors or facilitating investment withdrawal (Pommier 2009).

Since the 1990s, voluntary third-party certification has emerged in several primary industries as an alternative to government monitoring. Well-known international initiatives in this regard include the Forestry Stewardship Council and the Programme for Endorsement of Forest Certification Schemes, the Roundtable on Sustainable Palm Oil, and the Marine Stewardship Council certifying fisheries. This effort has primarily been driven by non-governmental organizations and consumers in developed countries, in response to what they perceive to be inadequate labour and environmental regulation in producer countries. In addition, certification has been embraced by certain transnational corporations seeking to ensure desirable characteristics of their products (including quality, environmental friendliness, safety, reliability and efficiency). Compliance with social and environmental standards stipulated by certification schemes has a number of potential costs and benefits for producers.

- Depending on the certification standard in question, producer benefits may include securing market segments by targeting environmentally and socially conscientious consumers, rationalization of production, increased productivity and reduced input cost, improved management of the supply chain, improved corporate image, improved management of natural resources, and improved relations with the local community and worker unions.

- Costs depend on the certification requirements and the initial mode of production. These may include increased labour input and lower yields (if switching to organic farming); increased overhead costs in developing internal control systems, undertaking record keeping, and employing extra accounting and management staff (Liu 2009); increased overhead costs in complying with additional environmental requirements such as non-conversion of primary forests and integrated pest management and waste management; and the cost of the certification process (including of audits by the certification body).

Host governments need to consider these factors as they apply to the industry in question before taking any steps in promoting certification. Furthermore, the voluntary nature of third-party certification means that it should not replace government efforts to improve the quality and enforcement of its environmental and labour laws.

Ensuring Equitable Benefit-Sharing

Countries have a higher risk of violent conflict when the benefits of resource exploitation are not equitably distributed across different groups or regions. Winner-takes-all politics increase horizontal inequalities and ethnic tensions—a premise that applies not only to direct revenues but also to access to the employment and basic services that result from resource extraction. When benefits are distributed in a manner that appears inequitable, tensions can emerge among stakeholders who feel unfairly treated. This tension can be exacerbated by human rights violations, substandard employment practices or low salaries. The government should therefore ensure that benefits are shared horizontally across the country, in particular among different ethnic groups as well as within producing regions and host communities. The government should also aim to reduce vertical inequalities by providing direct benefits to the population through its participation in the extraction or value-added industry. Côte d'Ivoire, for example, is taking important steps to maximize the benefits from its natural resources by promoting local sourcing and adopting local content provisions to increase local processing and transformation of its raw materials.

Quick Reference Checklist:
Managing Private Investment in Natural Resources

Establishing an economic and institutional environment and implementing policies to attract and manage FDI

- ☐ Does the host government have the ability to provide a supportive economic and institutional environment, which is the most important factor in attracting FDI? This includes the following:
  - ✓ Macroeconomic stability
  - ✓ Basic infrastructure
  - ✓ Clear and well-enforced regulatory framework
- ☐ Have the most cost-effective policy measures been pursued by the host government to address the imbalance in FDI inflows between regions and sectors, and to what extent? Measures may include the following:
  - ✓ Subsidizing the establishment of special economic zones in poorer regions
  - ✓ Investing in education, skills training and transport infrastructure
  - ✓ Training civil servants in more effective administration of investment regulations
  - ✓ Improving investment marketing
- ☐ Has the host government considered the risks and opportunities before engaging in the international investment agreement process?
- ☐ Does the host government have the capacity to successfully negotiate and implement international investment agreements?
- ☐ Is the host government pursuing measures to maximize the benefits of FDI in economic, social and environmental terms, and to what extent? Measures may include the following:
  - ✓ Promoting appropriate business and contract models
  - ✓ Improving the capacity of local businesses and workers to benefit from FDI projects
  - ✓ Maximizing public revenues and optimizing their distribution over time
  - ✓ Establishing robust, transparent and accountable mechanisms for the management of these revenues
  - ✓ Re-investing natural resource revenues into economically sustainable activities that benefit men and women equally
  - ✓ Establishing robust safeguards for social and environmental risks of FDI projects

Reviewing investment proposals

- ☐ Has the host government undertaken the following procedures during the project approval process to promote economic, social and environmental outcomes?
  - ✓ Proposal assessment and feasibility studies
  - ✓ Social and environmental impact assessments
  - ✓ Formal consultations with local and affected communities with equal participation of women and men

Negotiating investment contracts

- ☐ Has the host government taken the following into consideration to ensure that project agreements with private investors are structured to maximize benefits for the host country?
  - ✓ Well-defined and enforceable financial commitments
  - ✓ Creation of direct and indirect employment
  - ✓ Technology transfer
  - ✓ Provision of infrastructure for local communities that also addresses the needs of marginalized groups
  - ✓ Revenue generation
  - ✓ Local procurement of inputs
  - ✓ Environmental protection and dispute settlement mechanisms
- ☐ Has the host government taken the following into consideration in developing a negotiating strategy?
  - ✓ Identification of the key sustainable development objectives to be pursued
  - ✓ Identification of likely expectations of the other party
  - ✓ Identification of areas where concessions and compromises are possible
  - ✓ A plan for the flow of negotiations and negotiation tactics

Monitoring investor compliance with relevant laws and contracts

- ☐ Have factors contributing to shortcomings in project monitoring and law enforcement been identified? Factors may include the following:
  - ✓ Ineffective coordination between different agencies responsible for law enforcement and monitoring
  - ✓ High levels of government corruption
  - ✓ Lack of resources and technical capacity of government departments
  - ✓ Lack of clear laws and regulations
  - ✓ Non-application of sanctions for non-compliance
- ☐ Has the host government considered measures to address the lack of law enforcement and monitoring? Measures may include the following:
  - ✓ Improving regulatory structures
  - ✓ Addressing lack of resources and human capacity
  - ✓ Ensuring application of sanctions for non-compliance
  - ✓ Ensuring equitable benefit sharing