AfCFTA Policy Brief

Investment facilitation under the AfCFTA Protocol on Investment

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Executive summary

The Investment Protocol to the Agreement Establishing the African Continental Free Trade Area (AfCFTA) is the only continent-wide instrument dedicated to the development, promotion, facilitation and protection of international investment. The Investment Protocol has strategic importance in achieving the AfCFTA's broader objectives.

The Investment Protocol contains several provisions providing for investment facilitation, including a dedicated Article 7 (see below). The Protocol is designed to spur sustainable investment across Africa and to make the continent an attractive investment destination, by way of:

- a series of obligations to facilitate investment and streamline investment processes, including easing business entry by foreign investors
- commitment to supporting the establishment of businesses and ease of doing business through streamlined administrative procedures and mechanisms such as one-stop shops
- establishment of National Focal Points to assist and provide local support to foreign investors
- transparency obligations, to lessen the asymmetry of information between states and investors
- specific provisions to facilitate and promote investments in strategic fields, such as in public health, or to assist in the fight against climate change
- provisions aimed at favouring investment retention and expansion, for instance through better dispute prevention mechanisms
- a constant focus on enhancing investment flows throughout the continent, in an approach that sees investment facilitation policies as mutually beneficial for all African State Parties and
- establishment of the Pan-African Trade and Investment Agency as an institutional framework for the facilitation of Africa-wide investments.

1 The role of intra-African investment flows

The creation of an environment that fosters intra-African investment flows is of paramount importance for the future of the continent's economies. Such an environment will serve as a cornerstone for sustainable growth, development and the alleviation of poverty across Africa. Achieving this objective will hinge on the implementation of robust, durable and comprehensive investment facilitation policies.

Besides attracting capital, these policies will ensure Africa attains and maintains the favourable business and investment environment required to enhance intra-African investment flows to contribute meaningfully to the region's overarching development goals.

These policies are needed to secure the growth of foreign direct investment in the African region.

Box 1 Protocol on Investment, Article 7(1)

1 State Parties shall, subject to their respective laws and regulations, facilitate investments that contribute to sustainable development.

- The key to facilitate investments lies in removing the main barriers that prevent foreign investors and sources of capital deploying their business ventures in Africa. This includes policies aimed at streamlining and clarifying the steps needed for foreign investors to launch new activities abroad, as well as transparency obligations (Article 10) and state-to-state cooperation.
- Investments should contribute to sustainable development, in line with the United Nation's 2030 Agenda and other global norms. Under the Investment Protocol, investments that foster sustainability can even receive dedicated incentives (Article 8), highlighting their importance.
- Since sustainability is a cornerstone of enduring economic growth, states have a key role to play in ensuring investment compliance with welfare-inducing norms, so as to achieve a balanced, mutually beneficial relationship between local authorities and foreign investors.

2 What is investment facilitation?

Investment facilitation requires handholding foreign investors through a friendly investment experience that minimises hurdles and difficulties in establishing, conducting or expanding their business in host African countries. Too often, bureaucratic red tape, unclear regulations or cultural barriers can stymie potential growth and collaboration.

Facilitation also encompasses measures that bridge the information gap between local actors and foreign investors. By providing clear channels of communication and resources, such measures foster an environment in which foreign investors and local actors can seamlessly collaborate and contribute to economic progress.

3 The global outlook on investment facilitation

As policy-makers across the world recognise, facilitation is key when attempting to foster an environment conducive to greater investment. In the past 10 years alone, dozens of national laws and international instruments have been adopted with manifold provisions seeking to boost investment facilitation, promotion and protection.

In Africa alone, at least 20 new investment acts and codes have been enacted since 2011, not to mention the numerous international instruments that African countries have signed up to in the period. The recent adoptions of the Economic Community of West African States Common Investment Code and the Common Market for Eastern and Southern Africa Common Investment Area Agreement, which both include provisions on facilitation, testify to the regional trend towards greater attention to this notion.

The African Continental Free Trade Area (AfCFTA) Protocol on Investment has been inspired by this wealth of approaches and has introduced a new breed of African innovations while respecting each state’s distinct policy choices on how to attract, facilitate and retain investments.

At the multilateral level, the World Trade Organization has led negotiations on an instrument on Investment Facilitation for Development. The forthcoming adoption of this tool will offer yet another reason to fully implement the Investment Protocol.

4 The role of National Focal Points

Article 9 of the Investment Protocol obliges State Parties to designate National Focal Points (NFPs), in a pivotal move likely to bolster foreign investments across the continent.

The responsibilities of NFPs all pertain to investment facilitation. They will notably play an informational role, providing comprehensive insights into the existing legal, policy and institutional landscape that governs investments in their home state. They will further offer clarity on the various requirements, procedures, fees and financial incentives, ensuring investors have a clear roadmap to navigate their investment journey and making the process more transparent and accessible.

Well-established NFPs should also gather all relevant practice and administrative units in a single entity with the power to steer and support the development of foreign investments and of the regulatory framework.

Under the Investment Protocol, NFPs are mandated to collaborate, ensuring a harmonised approach across the continent and making it easier for investors to expand their operations across multiple countries. NFPs thus play a crucial role in knitting together a cohesive investment framework for the entire continent.

Box 2 Protocol on Investment, Articles 7(2) and 7(3)

2 State Parties shall, subject to their respective laws and regulations, facilitate the granting of visas and permits to foreign workers, employees and consultants as designated by the investor.

3 State Parties are encouraged to streamline investment administration procedures and requirements and establish mechanisms for business entry facilitation including setting up One Stop Shops, aftercare services and digitalisation of business facilitation procedures.

- One key brake on international investments is the proverbial ‘red tape’ that engulfs would-be projects in bureaucratic mazes. Recognising this, the Investment Protocol urges states to simplify their administrative processes and make them more efficient and transparent. Streamlining these procedures can substantially boost investor confidence and encourage foreign investments.

- An effective way to showcase a host state's favourable environment and assist would-be investors is to institute a one-stop shop (OSS), designed to offer investors a single interlocutor that will assist them with most, if not all, enquiries related to their investment. An effective OSS signals to potential investors that the host state is not only open for business but also committed to facilitating a seamless investment journey. Digitalisation, meanwhile, is a requirement for any modern economy.
- Whether for initial setup, ongoing management or specific consultancy roles, foreign personnel play a crucial role in the success of investments abroad. This is why the Investment Protocol emphasises the importance of facilitating the movement of such personnel – ensuring they can enter, reside and work, without undue hassle.

5 The paramount importance of transparency

Article 10 of the Investment Protocol accentuates the need for transparency in the realm of international investments. By mandating the publication and accessibility of all pertinent laws, regulations and international agreements, the article facilitates a clear and predictable regulatory environment for investors.

This transparency not only empowers investors with the knowledge to navigate the African investment landscape but also fosters trust between State Parties and foreign investors.

Moreover, the article's emphasis on timely responses to formal requests underscores the commitment of State Parties to collaborative dialogue and information-sharing, instilling a culture of openness and cooperation among member states.

Box 3 Investment Protocol, Articles 7(4)–7(6)

4 State Parties are encouraged to establish a framework for cooperation and coordination between relevant and competent national regulatory authorities with a view to facilitating investment flows.

5 State Parties may cooperate on policies and other related issues that encourage and facilitate the use of 'special purpose vehicles' to increase the participation of the private sector in the development programmes of State Parties.

6 State Parties are encouraged to cooperate in the provision of aftercare services for cross-border investments to encourage retention and expansion of investment in the continent.

- The private sector is instrumental in driving economic growth and innovation, bringing forth vital resources, expertise and efficiencies that public entities may lack. Private investors thus can not only bolster economic prospects but also play a pivotal role in shaping sustainable and inclusive development trajectories for nations.
- Through cooperation and coordination among regulatory authorities, states can craft investment policies that amplify gains

for all involved parties, in a continent-wide approach that stresses mutually beneficial relationships.

- Aftercare is key to ensuring the retention and potential expansion of investments and is meant to foster a nurturing environment that encourages long-term commitment and growth within the host country. Given the international nature of modern investment, the Investment Protocol recognises the key role of state-to-state cooperation in this respect.

6 The Pan-African Trade and Investment Agency

The establishment of the Pan-African Trade and Investment Agency (PATIA), as outlined in Article 42 of the Investment Protocol, will mark a seminal moment in the quest for a harmonised investment environment across Africa.

The Agency is meant to play a transformative role in investment and trade promotion on the continent as well as to expand the dimension of investment facilitation in Africa. It will serve as a crucible for policy advocacy and capacity-building, assisting State Parties in implementing investment strategies designed not only to boost intra-African investments but also to increase exports.

Moreover, PATIA is set to become a hub for dialogue and information-sharing among NFPs, investment promotion agencies and other stakeholders. This coordinated approach will enable peer learning and the dissemination of good practices and will be conducive to an overarching unity in investment and trade policies.

Upon its operationalisation, and together with the efforts and assistance of all State Parties, the Agency has the potential to drastically streamline and harmonise investment facilitation measures across the continent, thereby elevating Africa’s standing in the global investment arena.

7 Recommendations

The AfCFTA Protocol on Investment represents not just a policy document but also a true ‘new deal’ for State Parties and investors in Africa, marking the beginning of a transformative era that could reshape the continent’s investment landscape. The Protocol promises to bridge gaps in existing frameworks, provide clarity on investment obligations for all stakeholders and provide the bedrock for a friendly investment environment for the attraction, retention and expansion of sustainable investments.

However, the realisation of these promises hinges not just on the enactment of the Protocol but also on the active and synergistic involvement of all stakeholders in its implementation. This includes:

For State Parties

- Rapid digitisation of investment procedures. Not only will this streamline the investment process but also it will cater to the expectations of global investors accustomed to digital interfaces. This transition will further position Africa as a modern and forward-thinking investment destination. In particular, procedures should be geared towards facilitating business entry and administrative procedures.
- Regular reviews and updates of the NFP system. The NFP system serves as the linchpin for successful investor–state interactions. Regular reviews will ensure it remains updated, functional and responsive to the evolving needs of investors and State Parties alike.
- Capacity-building initiatives. Investing in capacity-building is key to ensuring the long-term success of the Investment Protocol. State Parties should consider regular training programmes for officials in investment promotion agencies, customs and regulatory bodies, to stay abreast of the latest best practices in investment facilitation.

For investors

- Regular consultations with NFPs. Active engagement with NFPs will ensure investors are always in the loop regarding any policy changes, incentives or other relevant updates. This proactive approach will mitigate risks and align investor activities with state objectives.

- Active participation in the development of sustainable investment initiatives. Investors are encouraged not just to invest but also to be part of sustainable initiatives that align with public goals. This will not only enhance the return on investment in the long run but also contribute to the holistic development of the continent.
- Proactive measures for dispute prevention. Engaging in early consultations and due diligence, understanding local laws and norms, and setting up dispute resolution mechanisms from the onset of the investment operation can go a long way in pre-empting and resolving any conflicts that may arise, to ultimately promote investment retention and expansion. States will also designate competent bodies to serve as interlocutors with investors in order to defuse any possible dispute.