

Title	Asia-Pacific Workshop on UNCTAD's Phase 3 of IIA Reform: Improving Investment Policy Coherence and Synergies
Purpose	Training on UNCTAD's IIA Reform package with a focus on Phase 3 of IIA Reform, UNCTAD's IIA Reform Accelerator
Subject areas	Foreign direct investment, international investment agreements and investor-State dispute settlement
Type	Virtual training
Participants	{30} for closed sessions.
Venue	Online via Webex virtual platform
Dates	28-30 April 2021

1. BACKGROUND

In partnership with the United Nations Conference on Trade and Development (“UNCTAD”), the International Institute for Trade and Development (“ITD”) previously conducted two workshop in Bangkok, Thailand on UNCTAD's Reform Package for the international investment regime. UNCTAD's International Investment Agreement (“IIA”) Reform roadmap addresses systemic challenges of the IIA regime. This roadmap is premised on six pillars, namely, to harness IIAs for sustainable development, target critical reform areas, adopt a multi-level approach, sequence actionable solutions, create an inclusive and transparent reform process and strengthen the multilateral support structure.

Conceptually, UNCTAD's IIA reform guidance is structured in three phases, but is designed to be considered jointly as divisions are substantive not sequential. The Phase 1 reform proposals involve an assessment on the direction and strategic choices for IIA reform, and Phases 2 and 3 provide options for improving coherence, consistency and interaction between investment policies at the different levels. The reform options involve multi-level and multilateral engagement with intra-national and international dimensions. UNCTAD's IIA Reform places emphasis on a comprehensive review of procedural and substantive standards of treaty

protections of current and future IIAs, creating an inclusive and transparent reform agenda, and aligning IIAs with sustainable development objectives.

Phases 1 and 2 of UNCTAD's IIA Reform focused on critical areas of reform and modernizing the existing stock of old-generation treaties respectively. In particular, Phase 1 identified priority areas for reform; such as, safeguarding the host state's right to regulate in the public interest, reforming dispute settlement procedures, promoting and facilitating investment and ensuring responsible investment. Phase 2 of IIA Reform placed emphasis on modernizing the existing stock of old-generation treaties to reduce the so-called "bite" as evident in the number of ISDS claims these treaties gave rise to. Phase 2 reform identified 10 policy options: (1) jointly interpreting treaty provisions; (2) amending treaty provisions; (3) replacing "outdated" treaties; (4) consolidating the IIA network; (5) managing relationships between coexisting treaties; (6) referencing global standards; (7) engaging multilaterally; (8) abandoning unratified old treaties; (9) terminating existing old treaties; and (10) withdrawing from multilateral mechanisms.

The third phase of the reform roadmap goes beyond IIAs. It emphasizes the interaction of national and international dimensions of investment policymaking for sustainable development. This in turn results in coherence, consistency and interaction between policies at the national and international levels. The objective is not however to create uniform IIAs.

The Phase 3 reform options rather aim to mitigate risks associated with ISDS cases by way of nationality planning and MFN clauses. Whereas, maintaining a patchwork IIA network debilities investment policy planning and implementation and potentially reduces the predictability of ISDS outcomes. Maximizing synergy to align with outcomes for Phase 3 reform includes strengthening cooperation between national and international policymakers, creating mutually beneficial interaction to ensure cross-fertilization between the two regimes for a mutually supporting and sustainable development-oriented investment policy regime. Phase 3 reform therefore consolidates three areas of potential policy disjunct: (a) ensuring internal consistency within a state's IIA network; (b) maximizing synergy between IIAs and the national legal framework for investment, both domestic and foreign; and (c) managing the interaction between IIAs and other international law instruments relating to investment. Policy coherence and synergy results from adopting individual, bilateral, regional and multilateral reform steps.

UNCTAD's roadmap for IIA Reform has been adopted by states as reflected in the recent IIAs concluded in 2019. Data from the World Investment Report 2020 states 14 out of 15 IIAs concluded in 2019 contain at least 7 reform features, 12 out of 15 IIAs contain at least 8 reform

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features, and 10 out of 15 include at least 9 reform features. The most prevalent areas for reform were to the preservation of a state's regulatory space as well as to dispute settlement and sustainable development.

This third workshop on IIA Reform based on UNCTAD's roadmap and UNCTAD's IIA Reform Accelerator, co-hosted by ITD, UNCTAD, IISD, MFA of Thailand provides technical training on Phase 3 reform by building on the earlier two workshops. This third workshop on IIA reform is also an opportunity to engage with states to take stock of investment policy challenges as well as recent policy developments.

2. OBJECTIVES

The objectives of this workshop are to:

- Equip stakeholders and state representatives with guidance, policy options and tools in accordance with UNCTAD's IIA Reform Package with a focus on Phase 3 reforms.
- Share expertise and best practices in order for candidates to critically assess national and international investment policy, and identify areas for policy coherence and synergy to inform the reform direction.
- Enhance public understanding of UNCTAD's IIA Reform roadmap generally as well as Phase 3 reform.
- Deepen the knowledge of UNCTAD's IIA Reform Accelerator as a concrete tool for investment policymakers and IIA negotiators.
- Provide actionable options through the outcome report for state participants.
- Provide a secure virtual platform for state representatives to discuss and share with one another investment policies, reform priorities and experiences.
- Track outcomes of the Phase 2 IIA Reform training by UNCTAD-ITD on 19-23 February 2018 as well as receive feedback from states to loop back into the research and policy analysis in this area.

3. ELIGIBLE PARTICIPANTS & PARTICIPATING STATES

Closed-door sessions available for any nominated person by their government in the Asia Pacific region who have been working in the area of IIAs, investor-state dispute settlement, foreign direct investment or related subjects. {30 state representatives}.

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4. FORMAT

Virtual training workshop over {three days}. The training will have closed-door sessions of the program will only be accessible to state representatives approved by ITD.

The virtual training platform hosted by ITD will be {Webex}.

5. LANGUAGE

Training will be conducted in the English language and no translation will be available.

6. OUTCOME

The outcome from this training program will be:

1. Greater understanding and knowledge of UNCTAD's IIA Reform Roadmap Phase as well as IIA Reform Accelerator that are most in need of reform of the substantive provision of IIAs.
2. Guidelines for policymakers in formulating investment policies and negotiating investment agreements
3. A recommendation report on comprehensive analysis of the Phase 3 of IIA Reform and IIA Reform Accelerator training.

7. HOW TO APPLY

State representatives selected for the closed-door sessions must submit a completed ITD Application Form along with a letter of nomination from their respective governments before the deadline on 23 April 2021

For open sessions, any interested participant must register through ITD's online registration form.

8. SELECTION

ITD reserves the right to conduct final selection.

9. DEADLINE

The deadline for ITD to receive the completed applications is 23 April 2021

10. FURTHER DETAILS

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