United Nations
Economic Commission for Africa

High Level International Investment Agreements Conference 2017

Lunch Side Event on

"The Pan African Investment Code and the Investment Chapter of the CFTA: Opportunities for Rationalizing Investment Regulation in Africa"

Tuesday 10 October 2017, 13:15 - 14:45,
Palais de Nations (Room XXVI)

Background

Bilateral Investment Treaties (BITs) and Double Taxation Treaties (DTT) have been an integral part of African policymakers' strategy to counter the perception of risk and promote more inward FDI. A recent ECA report noted that African countries have signed over 1000 BITs and more than 400 DTTs. As a result, the regulatory environment is generally biased in favor of foreign investors, who tend to enjoy greater privileges than their African or domestic counterparts when investing in Africa. This generally comes at the expense of countries' ability to formulate and pursue autonomous development policies, and has not proven to attract more investment into the continent.

In addition, host countries also find themselves exposed to the risk of legal disputes. By April 2017, 128 arbitration cases had been brought against African countries. In the current investor-to-State dispute settlement system (ISDS) which governs many of the BITs African countries are signatories to, disputes arising are often subject to discretionary interpretations on the part of international tribunals, which adds an element of uncertainty around the potential liability of African States. Furthermore, when found liable, African countries are often subject to hefty fines, which put a further strain on scant government resources and narrow the policy space when designing policies with touch on investment.

In recent years, regional efforts to regulate investment have been spearheaded by several regional economic communities (RECs). Some have concluded regional agreements or developed model laws pertaining to investment, such as the Protocol on Finance and Investment in the Southern African Development Community (SADC), the Supplementary Act on the Common Investment Rules in the Economic Community of West African State (ECOWAS), the Investment Agreement for the Common Investment Area in the Common Market for Easter and Southern Africa (COMESA), the East African Model Investment Code in the East African Community (EAC).

These regional initiatives seek to promote investors rights as well as to harmonize national investment policies and regulations in their respective subregions and can present an opportunity to dismantle regulatory barriers, further enhance Africa's attractiveness as an investment destination and forestall a self-defeating regulatory "race to the bottom" for investment among African countries.

At Pan-African level, we are also witnessing efforts to consolidate investment regulation at a continent-wide level. In light of the proposed pan-African Investment Code and the prospective African investment agreement being negotiated as part of the CFTA, African countries could have an opportunity to bring in greater coherence across the existing layers of investment regulation and thereby promote greater intra-Africa investment as well as foreign direct investment from outside the continent.

Objective

The session will assess how continental initiatives such as the Pan-African Investment Code and the proposed Continental Free Trade Area (CFTA) investment chapter may contribute to the consolidating the regulatory investment environment in Africa. It will assess the opportunities the PAIC and the CFTA could provide in terms of enhancing investment attractiveness, safeguarding autonomy of African countries and levelling the playing field between African and foreign investors.

Format

The session will take the form of a moderated panel discussion session. The session will commence with interventions from the panelists, followed by an interactive debate.

- Mr. Stephen N. Karingi, Director, United Nations Economic Commission for Africa
- Mr. Mustaqeem De Gama, Counsellor, South African Permanent Mission
- Ms. Elsie Kanza, Head of Regional Strategies – Africa, World Economic Forum
- Mr. Moïse Makane Mbengue, Professor, University of Geneva
- Mr. James Zhan, Director, United Nations Conference on Trade and Development