ICC GUIDELINES FOR INTERNATIONAL INVESTMENT

INTERNATIONAL CHAMBER OF COMMERCE
The world business organization

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ICC GUIDELINES FOR INTERNATIONAL INVESTMENT

A FRAMEWORK FOR ENHANCING CROSS-BORDER INVESTMENT IN THE 21ST CENTURY.

ICC GUIDELINES FOR INTERNATIONAL INVESTMENT

2016 print edition—Part of ICC's World Trade Agenda initiative supported by Qatar Chamber

ACKNOWLEDGEMENTS

ICC appreciates the key contributions received from members of the ICC Guidelines for International Investment Drafting Group for this update, and especially:

> Stephen Canner, United States Council for International Business, United States

> Shaun Donnelly, United States Council for International Business, United States

> Herbert Oberhänsli, Nestlé, Switzerland

> Jukka Seppälä, Metso Corporation

> Nicolle Graugnard (Drafting Group Secretary), Andrea Bacher, Jeffrey Dombrowski, Ayesha Hassan, Francesca Mazza, Camilla Pagnetti, Viviane Schiavi, Daphne Yong-d'Hervé, ICC International Secretariat

We also thank the many ICC members and national committees from different regions who contributed their valuable comments and ideas for this update.

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CONTENTS

PREFACE

In light of the recent adoption of the United Nations Sustainable Development Goals (SDGs), the International Chamber of Commerce (ICC) is pleased to re-launch its 2012 ICC Guidelines for International Investment to the global business community, government officials, intergovernmental organizations, and other stakeholders who help to shape global economic policy. ICC believes that investment broadly, and FDI specifically, can play a critical role towards realizing the SDGs. The Addis Ababa Action Agenda places significant emphasis on mobilizing private finance to support implementation of the SDGs. UNCTAD estimates the annual investment gap in key development sectors for developing nations to be approximately US$2.5 trillion.[1] The private sector will be an essential partner in realizing the SDGs by 2030 by helping bridge the financing gap in key areas.

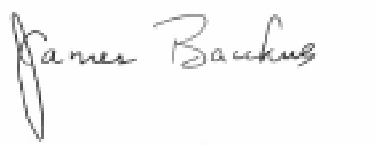
Foreign direct investment (FDI) can play an important supportive role in any economy. The increasing level and expanding nature of international investment flows and associated transactions speak to the recognition by host governments—including in developing and emerging markets—of the contributions international investment make to their sustainable development.

Given the varying complexity and extent of coverage of the international investment agreement regime, global business actively engages with other relevant stakeholders in discussing how investment should be governed in the decades to come. While ICC fundamentally considers international investment agreements to be an important policy tool that serves the protection and attraction of FDI by helping create a stable and predictable business climate, ICC also supports the current reorientation of investment policymaking towards sustainable development.

Historically, the promotion of foreign direct investment has been a priority for the ICC, beginning with the publication of its first International Code of Fair Treatment for Foreign Investments in 1949. Evolving from that initial code, ICC published the first edition of the Guidelines for International Investment in 1972. ICC undertook a comprehensive revision of the 1972 Guidelines and released the 2012 edition of the Guidelines for International Investment at UNCTAD's World Investment Forum in Doha, Qatar. The 2012 Guidelines retain the structure of the 1972 edition, setting forth separately the respective responsibilities of the investor, the home government, and the host government relating to international investment. Several useful changes have been made.
An introduction sets out the contemporary investment context and there are significant updates. For example, there are substantive revisions of the chapters on labour and fiscal policy reflecting the contemporary environment for international investment, and there are new chapters on competitive neutrality and on corporate responsibility.

This edition of the 2012 Guidelines seeks to highlight the positive role the private sector will play in achieving the SDGs. In sum, the 2012 Guidelines represent a comprehensive effort on the part of ICC to produce a forward-looking document that will become a global business reference on cross-border investment for a global audience.

John Danilovich
Secretary General
International Chamber of Commerce



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1 United Nations Conference on Trade and Development, *World Investment Report* 2014 (Geneva: UNCTAD, 2015), p. xi

INTRODUCTION

In the past decade, the value of cross-border direct investment has grown substantially, to the point where global inward investment flows now approach $1.2 trillion USD; sales of affiliates worldwide are just under $30 trillion USD, far in excess of world trade flows and there are more than 2800 bilateral investment treaties, many of them "south-south".[2]

The increasing level and expanding nature of international investment flows and associated transactions speak to the recognition by host governments—particularly in the developing markets—of the contribution international investment makes to their sustainable development. Businesses and governments in developing countries, as well as developed countries, are keenly aware of the importance of investment as a driver of growth. Following years of liberalization of investment regulations and an increase in the negotiation of bilateral investment treaties, foreign investment inflows to developing and transition economies now constitute 52% of total global inflows, nearly double the percentage of 2007.

Outward investment also conveys benefits to companies and home governments that frequently may be overlooked. It enables all firms to establish a presence in global markets, particularly the fast growing markets of emerging countries. Moreover, outward investment increasingly enables emerging market firms to establish themselves in industrialized economies. For many global companies, it is not unusual for 50-60% of their total sales and profits to be derived from their affiliates abroad. Outward investment also establishes linkages between domestic and foreign entities, enabling companies to expand their activities and create new jobs at home through exports, and to harness efficiencies on a global scale. Indeed, for some countries, nearly 50% of total exports are accounted for by intra-company exports of parent firms to their foreign affiliates invested in global markets.

Notwithstanding the growth of foreign investment flows and associated economic activity, there are reasons for international investors to be concerned about recent developments and policies—or the lack thereof—that dampen an enabling environment for international investment. These concerns, which are addressed in greater detail in the Guidelines, can be "clustered" into three categories.

1. Business confidence regarding sovereign debt policies, macro-economic imbalances, taxation, and regulatory uncertainty

Hardly a day passes when one does not read or hear of how business uncertainty is holding back corporate decisions to invest either domestically or internationally. There is real uncertainty over the ability of many countries to develop meaningful and market-convincing measures to deal with their debt problems. Equally, there is uncertainty about economic policies. In many developed countries, stimulus programmes, while they may have helped prevent much worse economically, have yet to deliver on the expectation of encouraging firms to invest and create jobs. Moreover, governments are unclear as to the mix of tax and expenditure policies they will need to adopt to diminish their budget deficits while also spurring needed economic growth.

Further current account imbalances among developed and developing countries do not augur well for long-term growth and investment. Deficit countries have yet to adopt policies that switch expenditures from consumption to investment, both foreign and domestic, while surplus countries have yet to adopt policies that shift expenditures from domestic and outward investment to consumption and imports.

These structural changes will take time to be implemented. But unless and until there are clear commitments from governments to undertake these changes, business will continue to confront an overhang of uncertainty, with adverse consequences regarding future decisions to invest at home and abroad.

2 *World Investment Report* 2011: Non-Equity Modes of International Production and Development, United Nations Conference on Trade and Development, Geneva, p. 100.

2. Re-regulation of foreign investment

Business is especially concerned with the trend toward re-regulation of cross-border investment. According to the 2011 World Investment Report, 32% of all investment regulations were classified as "restrictive" in 2010, compared to 2% in 2000. "Liberalizing" regulations were 68% of the total in 2010, compared to 98% in 2000.[3] Clearly this trend is cause for concern.

A number of reasons help to explain this adverse trend, which is most apparent among developed countries. The protection of "strategic" industries and national security interests has gained momentum in recent years, as has forced localization. Government reviews of foreign investments for national security reasons, while proclaimed to be limited to national security, in practice exhibit several instances that may be drifting towards the protection of "national champions". Some countries, which for long openly welcomed foreign investment, are now setting more stringent standards for foreign investors, such as forced localization, and giving more weight to the impact of such investment on domestic competitors and on environmental and social concerns.

3. State-owned enterprises (SOEs) & Sovereign Wealth Funds (SWFs)

Over the past decade, a new class of companies has pushed its way into the global marketplace: enterprises that are owned, controlled, or closely aligned with their home governments. Between 2004 and the beginning of 2008, 117 state-owned and public companies from Brazil, Russia, India, and China appeared for the first time on the Forbes Global 2000 list of world's largest companies (measured by sales, profits, assets, and market value).[4] During this same period, 239 US, Japanese, British, and German companies fell off the list.

The home governments of these SOEs convey benefits to and protect them from competition in their home markets and in third markets, enabling them to distort the market despite having made trade- liberalizing commitments. Similarly, accumulation of capital in these countries in many instances is invested abroad through their SWFs. This new dynamic of "state capitalism" enables governments to obtain monopolistic economic advantages and political power over private competitors in the global marketplace. SOEs' mode of operation undermines the fundamental workings of a market-based system where individuals and companies engaged in trade, investment, and finance compete freely, fairly, and on equal and non-discriminatory terms, and are mutually constrained by accepted rules to act according to commercial considerations.

Few adequate and effective international disciplines now exist to deal with this problem.

Conclusion

The increase in number of bilateral investment treaties, particularly south-to-south treaties, is a recognition of the importance that countries attach to legally binding instruments to protect investors.

These Guidelines are a needed update reflecting the shared global experience of four decades of economic development since 1972. Above all, they are a reaffirmation of the fundamental principles for investment set out by the business community in 1949 as essential for further economic development. It is hoped that these Guidelines will be useful for investors and governments alike in creating a more enabling environment for cross-border investment and in understanding more clearly their shared responsibilities and opportunities in fulfilling the vast potential of cross-border investment for shared global growth.

3 *World Investment Report* 2011: Non-Equity Modes of International Production and Development, United Nations Conference on Trade and Development, Geneva, p. 94.

4 www.forbes.com

I. INVESTMENT POLICIES

1. The investor[5]

a. Should ensure, in consultation with the competent authorities, that the investment complies with the laws of the host and home country.

b. Should be prepared to enter into discussions with the host government regarding the nature of the investment, in appropriate cases, where the government of the host country so wishes.

c. In response to the interest shown by the public of the host country in its activities, should take steps to provide relevant information about the operations of the enterprise, subject to any exclusions necessary for competitive reasons.

d. Should assess environmental impacts, in the host country and elsewhere, before starting a new activity or project and before decommissioning a facility or leaving a site.

2. The government of the investor's country

a. Should recognize the contribution of inward and outward investment to the economic well-being of its economy and its citizens.

b. In the formulation or modification of policies that affect foreign investments by its nationals, should take the fullest possible account of the need of investors for stability, transparency, non-discrimination, continuity, and growth in their operations as well as of the general interests of the host country.

c. Should seek to enter into binding obligations under international law with other governments either on a bilateral or multilateral basis, in respect of the reciprocal treatment to be accorded to the property, rights, and interests of its nationals.

d. Either nationally or through participation in an international investment insurance agency, should offer guarantee facilities against non-commercial risks encountered by the investor.

e. Should examine the possibility of providing tools and technical assistance that may facilitate private investment of significance to the economic development of the host country.

3. The government of the host country

a. In the formulation and implementation of policies that affect foreign investments, should take the fullest possible account of the need of investors for stability, non-discrimination, and transparency of its rules and regulations.

b. Should make known to prospective investors its rules, regulations, policies, relevant official bodies, and general conditions that it wishes to apply to incoming direct private investment in a timely and transparent manner.

c. Should make known the process it will apply to change any such rules, regulations, and policies.

d. Understanding the right to accord special treatment to any investor, whether domestic or foreign-owned, should not discriminate on the grounds of its foreign ownership in the treatment accorded to the investor in the interest of national security when done consistently with its international treaty obligations.

e. Should, in appropriate cases and where the foreign investor so wishes, be prepared to enter into contractual arrangements with the investor concerned.

f. Should be prepared to enter into binding obligations under international law with other governments either on a bilateral or multilateral basis, in respect of the reciprocal treatment to be accorded to the property, rights, and interests of nationals of the other state or states and of appropriate dispute resolution mechanisms to enforce those rights.

5 Wherever the circumstances are such that a recommendation addressed to "the Investor" falls for implementation to the enterprise operating in the host country, it should be regarded as addressed to that enterprise.

II. OWNERSHIP AND MANAGEMENT

1. The investor

a. Should ensure that its investment complies with the laws and regulations of the host country pertaining to ownership and management of the enterprise.

b. Where appropriate and compatible with long-term economic interests of the enterprise, should consider opportunities for equity investment by local investors.

c. Should encourage local participation in the management of the enterprise, promoting well-qualified nationals to posts of increasing responsibility and providing the training and experience that are a prerequisite for such promotion as a means to enhance the value of the undertaking.

2. The government of the investor's country

Through appropriate means, should support financial, educational, and other institutions, including those providing managerial training, thus preparing the ground for more local private participation in the financing and management of enterprises established in developing countries.

3. The government of the host country

a. Once the details of the implementation of an investment project have been accepted and the ownership and management structure of the enterprise has been established, should respect and uphold such arrangements.

b. Should recognize that joint ventures are much more likely to be successful if they are entered into voluntarily and if the terms of the contracts are left to the free negotiation of the parties. There may be cases where investments that deserve high priority are only feasible on the basis of total foreign ownership.

c. Should take appropriate measures to facilitate the purchase of equity in domestic and foreign-owned enterprises by local interests, principally by encouraging the creation or development of an effective capital market.

d. Should rely on economic, fiscal, and commercial policy measures applying to all business operations, national and foreign, for the exercise of controls in the public interest rather than seek to do this through compulsory governmental participation in the equity or management of enterprises.

e. Consistent with international treaty obligations, should liberalize and generally permit the delivery of services relating to investment by foreign service providers.

f. Should respect well-established international rules and practices for the use of performance requirements relating to foreign investment, including those requiring local content, equity caps, technology transfer, domestic sales limitations, and the mandatory use of indigenous technology.

g. Should not rely unnecessarily or unjustifiably on national security as a reason for imposing restrictions on foreign investment.

h. Should encourage non-equity modes of production and development arising from contractual arrangements such as franchising, licensing, management, and outsourcing contracts.

i. Should not discriminate in government procurement or in other government measures or actions in favour of state-owned or other domestic enterprises over foreign investors.

j. Should have recourse to expropriation of property of a foreign investor only for a public purpose in accordance with due process and as a last resort.

III. FINANCE

1. The investor

Should be cognizant of and comply with all laws and regulations regarding transfers of capital, disclosure of financial information, and access to capital markets in both the investor's and the host countries.

2. The government of the investor's country

Should remove as speedily as possible any existing restrictions on the outflow of capital in the form of direct investment by companies and should refrain from introducing new restrictions.

3. The government of the host country

a. Should generally permit the free flow of capital internationally.

b. Consistent with its international obligations, should place no restrictions on the remittance of loan interest, redemption payments, service and advisory fees, license fees, royalties, and similar payments.

c. Should allow the investor liberty to remit his profit, in particular avoiding the imposition of restrictions, and should respect any engagements entered into with the investor.

d. If faced with balance of payments difficulties that justify the temporary imposition of restrictions, should follow the principles of the International Monetary Fund and the World Trade Organization.

e. Should, in devising any special exemptions or incentives aimed at attracting foreign investment or encouraging new investment in general, have regard to the need to avoid undue distortion of competition between enterprises operating within its territory, whether domestic or foreign.

f. Where restrictions on local borrowing are necessary, should make them equally applicable to all enterprises without any discrimination as between foreigners and nationals, so as to maximize efficiency in allocating capital.

IV. FISCAL POLICIES

1. The investor

a. Should comply with the tax laws and regulations of the countries in which they operate. Tax compliance includes such measures as providing to the relevant authorities timely information that is relevant for purposes of the correct determination of taxes to be assessed in connection with their operations and conforming transfer pricing practices to the arm's length principle.

b. Should have an internal control framework in place enabling provision of correct and timely information to the relevant authorities.

c. Should preferably support an Enhanced Relationship framework, where feasible, to obtain earliest certainty on tax treatment and to enable correct, lowest-cost and efficient compliance with tax laws and regulations.

2. The government of the investor's country

a. Should encourage foreign direct investment by tax laws and regulations that are stable and predictable.

b. Should have effective agreements in place to avoid double taxation and also a framework to eliminate double taxation expeditiously whenever Revenue or other relevant authorities of the countries involved in the dispute cannot agree to a common treatment of the tax issue resulting.

c. Should implement a system that relieves double taxation, preferably by providing an exemption for foreign source income, alternatively to provide an appropriate credit for foreign taxes paid or accrued.

d. Should implement tax laws and regulations such that individuals residing in the investor's country are not taxed twice on same income earned when working abroad.

e. Should align transfer prices for goods and services in a Corporate Income Tax system and in a Customs and Excise system.

f. Should adopt and offer to investors the possibility to work based on the Enhanced Relationship framework.

g. Should operate based on the rebuttable premise that investors try to allocate fairly income and costs to each country in which they do business, but given complexity and globalization, run the increased risk of friction taxation.

3. The government of the host country

a. Should encourage investment from abroad by tax laws and regulations that are stable and predictable.

b. Should have effective agreements in place to avoid double taxation but also a framework to eliminate double taxation expeditiously whenever Revenue or other relevant authorities of the countries involved in the dispute cannot agree to a common treatment of the tax issue resulting.

c. Should follow agreed international principles in determining when the presence in the host country is sufficient to justify imposition of tax for both enterprises and individuals.

d. Should follow the arm's length principle in determining the amount of net income.

e. Should allow only taxation on income that is sufficiently connected with the country and allow those expenses to be deducted that can reasonably be allocated to the business operations.

f. Should not impose on enterprises, which are wholly or partially foreign-owned, taxes or conditions relating to taxes that are other or more burdensome than those to which purely domestic enterprises are subject.

g. Should adopt and offer investors the possibility to work based on the Enhanced Relationship framework.

h. Should operate based on the rebuttable premise that investors try to allocate fairly income and costs to each country in which they do business, but given complexity and globalization, run the increased risk of friction taxation.

V. ANTI-CORRUPTION

1. The investor

a. Should respect rules and regulations of the investor's and host country as well as international treaties, such as the UN Convention Against Corruption and the OECD Anti-Bribery Convention.

b. Should establish comprehensive standards of conduct for its employees and management, such as ICC Rules on Combating Corruption, to embrace and implement high standards of anti-corruption in its commercial and investment transactions.

c. Provide appropriate training to its employees and agents to reject any attempt to bribe and to immediately report such requests to the appropriate authorities in the investor's and host country.

2. The Government of the Investor's Country

a. Should work with investors to promote a cooperative undertaking to enhance the fight against corruption, particularly on the demand side and with new actors in international investment, to include state-owned enterprises.

b. Should take into account the provision of 'safe harbours' for companies who detect corruption and take the initiative to self-report to the appropriate authorities.

3. The government of the host country

a. Should vigorously enforce its laws and, if having not already done so, ratify and implement international conventions such as the UN Convention Against Corruption and the OECD Anti-Bribery Convention.

b. Should make clear that it will not tolerate its public officials and civil servants demanding a bribe.

c. Should take appropriate and immediate action against those government employees who demand a bribe when it has been demonstrated beyond reasonable doubt that such a demand was made.

VI. THE LEGAL FRAMEWORK

1. The investor

a. Should respect the national laws, policies, and regulations of the host country in the same way as would a good citizen of that country; abide by legal commitments given to the government of the host country in connection with the investment.

b. Should be willing to utilise the orderly dispute resolution mechanisms available to investors for the peaceful resolution of any dispute with the government of the host country and should consider mediation, for example under the ICC ADR Rules.

2. The government of the investor's country

a. Should not seek to interfere with the legal order of the host country by extending the application of its national laws, directives, and regulations to the investor's operations in the host country.

b. Should seek to enter into agreements with the government of host country for the protection of its investors' rights. Such agreements should include appropriate mechanisms for the resolution of disputes through binding dispute resolution mechanisms, in particular:

- Equal access for foreign investors to adjudication before an independent judiciary in accordance with the rule of law; and,
- The right for foreign investors to pursue international arbitration, for example under the ICC Rules of Arbitration, or other recognized investor-state dispute settlement mechanisms.

Also consider mediation, for example under the ICC ADR Rules.

3. The government of the host country

a. Should respect the recognized principles of international law, reflected in many international treaties regarding the treatment of foreign property and investment.

b. Should establish and enforce a body of laws and regulations that create an enabling environment for international and domestic investment, in particular:

- Fair and equitable treatment of such investment;
- The avoidance of arbitrary, unreasonable and discriminatory measures;
- The observance of contractual and other undertakings given to the investor; and,
- In the event of expropriation or nationalization the effective payment of just compensation without undue delay.

c. Should provide for and give effect to the resolution of disputes through binding dispute resolution mechanisms, in particular:

- Equal access for foreign investors to adjudication before an independent judiciary in accordance with the rule of law; and,
- The right for foreign investors to pursue international arbitration, for example under the ICC Rules of Arbitration, or other recognized investor-state dispute settlement mechanisms.

Also consider mediation, for example under the ICC ADR Rules.

d. Should provide in its national laws for suitable protection for minority share-holdings in those cases where appropriate provisions do not as yet exist.

e. Should ensure the publication and transparency of all national laws, regulations, and administrative practices relating to foreign investment in a timely manner.

VII. LABOUR POLICIES

1. The investor

a. Should comply with all applicable national labour laws, even where they are not effectively enforced by the national government, and give due consideration of local labour practices.

b. Should respect the principles concerning fundamental rights set out in the International Labour Organization (ILO) Declaration on Fundamental Principles and Rights at Work.

c. Should strive to provide employment opportunities, occupational development, promotion, and advancement for local personnel.

d. Should provide wages, benefits, and conditions of work not less favorable than those offered by comparable employers of the host country.

e. Should take all practicable steps to ensure occupational health and safety in their operations.

f. Should provide employees with reasonable notice of changes in operations that will have significant impacts on employment levels.

g. Should educate, train, and motivate employees to conduct their activities in an environmentally responsible manner.

h. Should encourage business partners and suppliers to follow the above recommendations.

2. The government of the investor's country

a. Should consider providing capacity building assistance to help the governments of host countries establish the institutions and processes necessary to consistently implement and effectively enforce their national labour laws.

b. Should work through multilateral organizations, particularly the International Labour Organization (ILO), to ensure that the governments of the host country gives effect to the international labour standards it has ratified.

c. Should consider providing assistance for education, skills development, and vocational training of local personnel in the host country.

3. The government of the host country

a. Should consistently implement and effectively enforce all national labour laws in their jurisdictions and give effect to the international labour standards they have ratified.

b. Should respect, promote, and realize principles concerning fundamental rights set out in the ILO Declaration on Fundamental Principles and Rights at Work.

c. Should ensure access to labour courts or other judicial remedies to effectively and efficiently resolve labour disputes that may arise.

d. Should provide free, universal primary education, as well as opportunities for higher education, vocational training, and other programmes to ensure a well-educated and skilled workforce.

e. Should provide clear and consistent national laws and procedures for high-skilled business migration that investors need to attract, retain, and deploy key talent globally.

VIII. TECHNOLOGY

1. The investor

a. Where possible, voluntarily assist in the development of the technological capacity of the host country, particularly if it is a developing country, for example by the training of local staff, assistance to educational institutions, and, provided that conditions for efficient research so allow, by establishment of suitable research activities in the host country.

b. Should, if it chooses to grant a license for the use of its intellectual property or when otherwise voluntarily entering into agreements to transfer technology, do so on a market basis.

c. Should support its investment with appropriate services and advice to ensure the full contribution of the investment to the development of the economy of the host country.

d. Should cooperate with the government of the host country in examining the impact of its operations on the environment, based on accepted norms, and take steps to minimize damage so far as is economically and technically practical in the local situation.

e. Should, where possible and practicable, give preference in local operations to environmentally-sound technologies and operational practices, and extend same standards to local partners.

2. The government of the investor's country

Should, if not having already done so, accede to relevant international treaties relating to the support for intellectual property rights, and seek to conclude bilateral agreements that will safeguard the voluntary transfer of technology by private enterprises in return for appropriate remuneration.

3. The government of the host country

a. In the formulation of its policies, should provide within domestic law for a high degree of protection for intellectual property rights, and avoid the development of policies that infringe upon those rights.

b. Should refrain from engaging in trade practices that impair intellectual property rights and licensing of technology should be based on market forces and business incentives; governments should avoid regulations designed to force the investor to license its intellectual property, transfer its technology, or require local operation of facilities as a condition for doing business or transferring data.

c. Should avoid influencing the level of compensation, which is awarded to those investors that voluntarily seek to license or transfer their technology, by ensuring the freedom of contract for licensing.

d. Should, if wishing to encourage the investor to establish research facilities in its territory, take account of the need for adequate scientific and educational infrastructure.

e. Should promote innovation and the development of domestic skills and financial markets that support emerging technologies and business models of the information society.

f. Should not impose withholding taxes on license fees, royalties, and payments for services and advice at such a level that they materially increase the cost of the technology, make its transfer difficult, or even prevent it altogether.

g. Should enact and enforce laws that fully uphold high standards for intellectual property rights in accordance with its international treaty obligations.

h. Should, if not having already done so, accede to relevant international treaties relating to intellectual property, and seek to conclude bilateral agreements that safeguard the voluntary transfer of technology by private enterprises in return for appropriate remuneration.

IX. COMMERCIAL POLICIES

1. The investor

a. Should not seek undue protection from competition from imports nor new investors in the same market.

b. Should seek to develop the enterprise in the most efficient manner, compatible with the laws and rules of the host country.

c. Should comply with relevant laws and regulations for goods and services in dealings with associated companies and take into consideration with the tax, customs, and competition regulations of the countries involved.

2. The government of the investor's country

Should respect the investor's global supply chain and refrain from extending the application of its national laws, directives and regulations to restrict the activities of the enterprise from the host country to any third market.

3. The government of the host country

a. Should cooperate in worldwide and regional initiatives towards liberalization of international investment and trade to drive economies to achieve their highest levels of development, efficiency, and competitiveness. In particular, should reduce non-tariff barriers to imported goods and services necessary to the investor, and minimize bureaucratic burdens to foreign investors.

b. Should not impose export obligations on the investor beyond those required for national security.

c. Should permit the investor to import the equipment, spare parts, components, and materials that are required for the efficient production of goods and services, without undue formalities and without excessive customs and other duties.

X. COMPETITIVE NEUTRALITY

1. The investor

a. Should be aware of the ownership structure of its competitors, particularly with regard to the nature and extent of state ownership and influence as well as the unfair advantages that the state may convey to domestic firms.

b. Should encourage government officials and international institutions to acknowledge and adopt models of ownership that are competitively neutral, and that create an incentive structure for the enterprise to act in a commercial manner.

c. Should engage the governments of the investor's and host countries to constrain the advantages that state-owned or state-favored enterprises (SOEs) may enjoy with regard to cross-border investments and foster an environment of competitive neutrality in the state's home market and third markets.

2. The government of the investor's country

a. Should confirm that the form of ownership for an enterprise is a matter for a sovereign decision, though the manner in which it is treated or influenced should be competitively neutral, and that it is operated in a commercial manner.

b. Should seek to advance internationally accepted norms designed to foster an environment of competitive neutrality for cross-border investment and as a "standing" component of free trade area agreements and appropriate recourse where those norms are not met.

3. The government of the host country

a. Should be transparent and act in a manner with respect to the enactment and enforcement of its laws, regulations, and administrative guidance to avoid impairing conditions necessary to achieve competitive neutrality within the market.

b. Should ensure through auditing practices that its SOEs and SWFs act in a commercial manner in its market and abroad, and that the governments structure of its SOEs and sovereign wealth funds (SWFs) be transparent and subject to external review.

c. Should refrain from using SOEs and SWFs as vehicles to achieve geopolitical objectives.

d. Should operate SWFs in accordance with the agreed International Monetary Fund (IMF) Santiago Principles.

e. Should engage with the government of the investor's country and international institutions to establish competitive neutrality norms and appropriate forms of recourse.

XI. CORPORATE RESPONSIBILTY

1. The investor

a. Should seek to create shared value by developing business opportunities that contribute to the economic, social, and environmental progress of the host country.

b. Should support sustainable economic growth by considering the financial, environmental, and social impacts of its investment in the host country at the outset of planning and during operation.

c. Should respect the human rights of those affected by their activities, consistent with the UN Guiding Principles on Business and Human Rights.

d. Should establish a values-based approach to business, articulate company values, principles, and policies to all employees, business partners, and key stakeholders and work consistently to put them into practice.

e. Should establish governance systems and clear lines of accountability to implement corporate responsibility goals, and communicate results externally.

f. Should use as reference applicable internationally-recognized guidelines or standards.

g. Should engage with relevant stakeholders and consider their views in decisions that affect them.

h. Should work in partnership with local organizations or other actors to address common objectives.

i. Should use due diligence in selecting and working with business partners and suppliers and encourage them to follow the above recommendations.

2. The government of the investor's country

a. Should encourage and support the investor to contribute to the economic, social, and environmental progress of the host country.

b. Should direct its diplomatic representation in the host country to work with the investor to communicate any known challenges to operating responsibly and to identify possible solutions.

c. Should consider providing capacity-building assistance to help the host country establish the policy framework, institutions, and processes necessary for environmental protection, human rights, and social development.

d. Should work through multilateral organizations to ensure that the government of the host country gives effect to its international obligations to protect human rights.

e. Should encourage and support the investor to comply with local laws and, where appropriate, respect international principles on environmental protection, human rights, and social development.

3. The government of the host country

a. Should consistently implement and effectively enforce national laws and provide an operating environment that encourages responsible business conduct.

b. Should encourage domestic and foreign investors in the host country to adopt company policies for responsible business conduct.

c. Should respect, protect, and promote human rights in their jurisdictions and urgently address any existing threats to peace and security, including armed conflict or widespread violence.

d. Should ensure access to courts, mediation, arbitration or other appropriate remedies to effectively and efficiently resolve disputes that may arise.

e. Should encourage and support companies operating in their jurisdiction to contribute to the economic, social, and environmental progress of the country.

f. Should ensure that any state-owned enterprises operate responsibly and follow the above recommendations in section 1.

INTERNATIONAL CHAMBER OF COMMERCE (ICC)

The International Chamber of Commerce is the world's largest business organization with a network of over 6.5 million members in more than 130 countries. We work to promote international trade, responsible business conduct and a global approach to regulation through a unique mix of advocacy and standard setting activities—together with market-leading dispute resolution services. Our members include many of the world's largest companies, SMEs, business associations and local chambers of commerce.

We are the world business organization.
www.iccwbo.org

ICC WORLD TRADE AGENDA

The ICC World Trade Agenda is an initiative to enable global business leaders define multilateral trade negotiation priorities and help governments set a trade and investment policy agenda for the 21st century that contributes to economic growth and job creation. The initiative actively promotes a robust post-Bali trade and investment policy agenda in relevant forums, including the Business 20 and G20 discussions, and in particular at the WTO in the lead-up to and during its next Ministerial Conference.

ICC COMMISSION ON TRADE AND INVESTMENT POLICY

As trade and investment are consistently top priorities for global business, the Commission on Trade and Investment Policy represents ICC's main working body on multilateral trade and investment policy issues. The Commission examines issues that will facilitate cross-border trade and investment by business to sustain the economic recovery, job creation and sustainable development.

The mandate of the Commission is to break down barriers to international trade and investment so that all countries can benefit from improved living standards through increased trade and investment flows. The commission has 186 members from over 30 countries. They comprise trade policy specialists from ICC member companies and business representative organizations.

Senior trade policy experts from the staff of intergovernmental organizations such as the WTO, UNCTAD, and the OECD are frequently invited to address commission meeting. The Commission provides a forum for business experts to examine trade and investment policy issues and draw up policy recommendations for governments.

QATAR CHAMBER OF COMMERCE AND INDUSTRY

Qatar Chamber is a strategic partner of the ICC Business World Trade Agenda initiative. It is dedicated to promoting Qatar's burgeoning economy and assuring that the interests of the business community are well represented. By providing key support services, networking opportunities and leadership, the chamber has helped oversee one of the most dynamic and fastest-growing economies in the world.

INTERNATIONAL CHAMBER OF COMMERCE

The world business organization

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