Columbia Center on Sustainable Investment
A JOINT CENTER OF COLUMBIA LAW SCHOOL AND THE EARTH INSTITUTE, COLUMBIA UNIVERSITY

Columbia FDI Perspectives

Perspectives on topical foreign direct investment issues
No. 221 March 12, 2018
Editor-in-Chief: Karl P. Sauvant (Karl.Sauvant@law.columbia.edu)
Managing Editor: Matthew Schroth (mas2443@columbia.edu)

Sustainable FDI for sustainable development*

by
Karl P. Sauvant and Howard Mann**

Meeting the UN's Sustainable Development Goals (SDGs) requires substantial resources, including substantially higher FDI flows. However, the issue is not only more FDI, but commercially viable investment that makes a maximum contribution to the economic, social and environmental development of host countries and takes place in the framework of fair governance mechanisms—"sustainable FDI."

What, precisely, is sustainable FDI? It is investment that exhibits certain "sustainability characteristics": the economic, social, environmental, and governance contributions that governments expect multinational enterprises (MNEs) to make to the development of host countries, and that MNEs (or their organizations) themselves say they seek to make to host countries' development. These contributions can be gleaned from 150 (mostly recent) instruments that define the interaction between host countries and MNEs: international investment agreements, voluntary intergovernmental instruments, host country laws, home country policies, intergovernmental organization standards, voluntary business and industry codes, private institutional investor standards, and company codes. These instruments represent eight principal stakeholder groups.

A wide range of contributions emerge, strongly representing all four sustainability dimensions.

More importantly, a number of sustainability characteristics are contained in half or more of the instruments involving half or more of the stakeholder groups: low carbon footprint, labor rights, workplace safety, non-discrimination, human rights, resettlement, transparency, supply-chain standards, stakeholder engagement, and legal compliance. These are defined as "common FDI sustainability characteristics." For example, at least half of the instruments categorized as home country standards, international organization standards, private institutional investor standards, and MNE codes contain the characteristic "low carbon footprint."

If one takes a lower threshold of one-third of the instruments involving at least one-third of the stakeholder groups, 20 “emerging common FDI sustainability characteristics” appear.[1] For example, one-third or more of the voluntary intergovernmental instruments, home country instruments and MNE codes contain “local linkages” as a desirable contribution. Quite conceivably, a number of these emerging common sustainability characteristics may “graduate” to become common FDI sustainability characteristics in a few years. It is also likely that new FDI sustainability characteristics will emerge, as countries implement the SDGs, reflecting the dynamic and evolving relationship between new investment and sustainable development needs.

Crucially, there is a remarkable overlap in the types of contributions governments expect MNEs to make to host countries’ sustainable development, and MNEs themselves expect to make toward this objective. And these contributions go beyond “do no harm”: they involve active contributions to sustainable development (e.g., creating linkages).

This overlap is also quite visible if one compares the Guidelines of the International Chamber of Commerce with the principal (albeit voluntary) intergovernmental instruments in this area, the ILO MNE Declaration, the UN Guiding Principles and the OECD MNE Guidelines.[2]

Significantly, this convergence suggests an expanding international consensus across a wide range of stakeholders, from various geographic regions, as to what sustainable FDI entails, reflected in the common and emerging common FDI sustainability characteristics. Intergovernmental instruments underpin this consensus.

This convergence should have a strong signaling effect for all stakeholders seeking to promote sustainable FDI for sustainable development. It should also make it easier for them to include sustainability characteristics in the instruments they negotiate or adopt, especially by providing guidance on what is generally acceptable.

This convergence is also relevant for the WTO discussions on facilitating FDI flows. Any instrument emerging from these discussions should pay attention to facilitating sustainable FDI.

But primary action needs to take place at the national and sub-national levels. There, a change in mindset is needed: investment promotion agencies (IPAs) need to switch from “more” FDI to “sustainable FDI.” This is difficult, as IPAs are typically evaluated on the basis of the number of projects, amount of capital and/or the number of jobs generated. These criteria remain relevant, but must be augmented by equally important sustainability criteria reflecting the characteristics described above. This requires action at the highest levels of government, bolstered by incentives and IPAs working in alliances with investors to improve their sustainability profile in the context of individual investments.

The sustainability characteristics are relevant when designing international investment agreements (perhaps even by defining “investment” as “sustainable investment”) before governments consider any particular investments, for legislating nationally on FDI, for applying admission criteria to particular proposals that may require approval, and in the development of local sustainable development benefit agreements where these are needed to enhance an investment. They are relevant for the entire life-cycle of investments in their relationships with host countries.

However, it is not only host countries and MNEs that need to take action. Home countries too have opportunities, e.g., when supporting their firms investing abroad. Such support can be linked to sustainability considerations, as is done by, e.g., Belgium.[3]

Helping to achieve the SDGs through sustainable FDI is a shared responsibility of host and home countries and MNEs—and it is in their common interest. A broadly accepted indicative list of sustainability characteristics, constructed around the common and emerging common FDI sustainability characteristics, can help, as it lends credibility to such an effort and gives it direction in terms of both legal and policy-oriented development.

** Karl P. Sauvant (karlsauvant@gmail.com) is Resident Senior Fellow, Columbia Center on Sustainable Investment, a joint center of Columbia Law School and the Earth Institute, Columbia University; Howard Mann (howardlmann@gmail.com) is Senior International Law Advisor at the International Institute for Sustainable Development. This *Perspective* is based on Karl P. Sauvant and Howard Mann, "Towards an indicative list of FDI sustainability characteristics," available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3055961. The authors are grateful to Andreas Dressler, Persa Economou and Rob van Tulder for their helpful peer reviews.

1 Ibid., p. 12.

2 Ibid., p. 14.

3 Belgian Corporation for International Investment, "Our mission," http://www.bmi-sbi.be/en/.

For further information, including information regarding submission to the *Perspectives*, please contact: Columbia Center on Sustainable Investment, Matthew Schroth, mas2443@columbia.edu.

The Columbia Center on Sustainable Investment (CCSI), a joint center of Columbia Law School and the Earth Institute at Columbia University, is a leading applied research center and forum dedicated to the study, practice and discussion of sustainable international investment. Our mission is to develop and disseminate practical approaches and solutions, as well as to analyze topical policy-oriented issues, in order to maximize the impact of international investment for sustainable development. The Center undertakes its mission through interdisciplinary research, advisory projects, multi-stakeholder dialogue, educational programs, and the development of resources and tools. For more information, visit us at http://www.ccsi.columbia.edu.

Most recent *Columbia FDI Perspectives*

- No. 220, Roel Nieuwenkamp, "Responsible FDI is no longer optional," February 26, 2018.

- No. 219, Julien Chaisse and Matteo Vaccaro-Incisa, "The EU investment court: challenges on the path ahead," February 12, 2018.
- No. 218, Guillaume Beaumier and Richard Ouellet, "Europe's new investment policy faces an uncertain future," January 29, 2018.
- No. 217, Mouhamadou Madana Kane, "The Pan-African Investment Code: a good first step, but more is needed," January 15, 2018.
- No. 216, Kenneth J. Vandevelde, "IIA provisions, properly interpreted, are fully consistent with a robust regulatory state," January 1, 2018.

All previous *FDI Perspectives* are available at http://ccsi.columbia.edu/publications/columbia-fdi-perspectives/.