



**INVESTMENT FRAMEWORKS
AND RESPONSIBLE LAND-
BASED INVESTMENTS:**
Illustrating points of contact

A GUIDE

APRIL 2026



Acknowledgements

This guide was written by Jesse Coleman and Anna Bulman.

The authors thank Emily Polack, Lorenzo Cotula, Nyaguthii Maina, Olivia Costa and Thierry Berger for their invaluable input throughout the drafting and review process for the guide. The guide builds on work advanced by many researchers and practitioners, including Esther Akwii, Grace Brennan, Kaitlin Cordes, Lorenzo Cotula, Lise Johnson, Sam Szoke-Burke, Sarah Brewin, Thierry Berger and Rumbidzai Maweni. The authors are grateful for these and other colleagues' contributions to the field.

Suggested citation

Coleman, J and Bulman, A (2026) Investment frameworks and responsible land-based investments: illustrating points of contact. IIED, London. www.iied.org/TBC.

ALIGN: Advancing Land-based Investment Governance

ALIGN supports governments, civil society, communities and peoples, and other relevant actors in strengthening the governance of land-based investments. The project is implemented by a consortium led by the International Institute for Environment and Development (IIED), the Columbia Center on Sustainable Investment (CCSI) and Namati, and is funded with UK International Development from the UK government. This material has been produced as part of ALIGN by IIED, however the views expressed do not necessarily reflect the official views or policies of ALIGN partners or the UK government.



Published by IIED, April 2026
ISBN: 978-1-83759-192-3

This publication may be shared and republished in accordance with the Creative Commons Attribution-NonCommercial-NoDerivatives 4.0 International Public License (CC BY-NC-ND 4.0). Get more information via www.iied.org/about-publications.

IIED is a charity registered in England, Charity No.800066 and in Scotland, OSCR Reg No.SC039864 and a company limited by guarantee registered in England No.2188452.

Design and layout by Porto Dg – Design Grafico Ltda

Cover photo credit: [Dan Roizer](#) on [Unsplash](#)

CONTENTS

Acknowledgements	1
Introduction	3
1. What are ‘investment frameworks’?	4
1.1 How do investment frameworks relate to other sources of RLBI law and policy?	5
1.2 What are essential elements of an investment life cycle?	5
2. How do investment frameworks interact with the RLBI life cycle?	8
2.1 Establishing conditions and safeguards for investment	9
Example 1. Supporting responsible investment models.....	9
Example 2. Protecting legitimate tenure rights	11
2.2 Determining assessment of proposed investments	11
Example 1. Screening proposed investments	12
Example 2. Informing expectations and shaping investor conduct	14
2.3 Implementing and monitoring investments	15
Example 1. Responding to evolving context and needs	16
Example 2. Monitoring and enforcing investor obligations	17
2.4 Managing project closure or exit	18
Example 1. Addressing land grievances	18
3. Looking ahead	21
Appendix: Links and resources	22
Guides and publications	22
Research tools and databases	22
Links for supporting investment framework reviews and assessments	22
Databases for and commentary on investor–state dispute settlement (ISDS)	22
Investor–state contract databases	23
Support providers	23
References	24
1. Literature	24
2. International treaties and instruments	26
Treaties on trade and investment	26
Environmental treaties and instruments	26
International guidance	26
3. Cases	26
Endnotes	27

INTRODUCTION

Land-based investments are governed by a tangled web of domestic and international rules that overlap with one another. This guide illustrates how investment frameworks — an influential subset of these rules — interact with responsible land-based investment (RLBI). It highlights key elements of investment frameworks and outlines the opportunities and barriers these frameworks present for realising responsible investment. By mapping points of contact between investment frameworks and RLBI, the guide highlights how these frameworks interact and points to specific entry points for reform that can facilitate RLBI outcomes.

The guide does not map all points of contact between investment frameworks and RLBI. It provides examples of how investment treaties, national investment laws and investor–state contracts interact with key moments of the RLBI life cycle. Through illustrating these points of contact, the guide aims to demystify the core connections that are most important for better understanding and shaping the interactions between a state’s investment obligations and responsible investment objectives.

HOW TO USE THIS GUIDE

This resource is designed for policymakers, civil society and intergovernmental actors who aim to promote responsible land-based investment.

Section 1 **introduces investment frameworks** and how they relate to other areas of law and policy relevant to responsible land-based investment.

Section 2 **illustrates points of contact** between investment frameworks and essential elements of the responsible land-based investment life cycle.

Section 3 summarises **key takeaways** relevant to policymakers and other actors seeking to realise responsible land-based investment.

Appendix 1 includes supporting resources, including research databases covering investment treaties, national investment laws, investor–state contracts and investor–state dispute settlement claims.

A note on word choice¹

In this guide, we use the following terms in the following ways:

‘Communities’ includes “individuals, families, and households who collectively live within or have strong historical ties to a specific territory with definable boundaries and are governed by a shared set of Indigenous, customary, or state governance structures”.² This guide acknowledges the distinct legal status of Indigenous Peoples and Afro-descendant peoples.

‘Investors’ includes natural and legal persons from one country making or seeking to make an investment in another country.

‘Investment frameworks’ refers to investment treaties, national investment laws and investor–state contracts.

‘Land-based investment’ includes investments with a substantial land footprint, ranging from agribusiness plantations to infrastructure, extractives and manufacturing.

‘Safeguards’ refers to rules, policies and procedures for identifying and mitigating risks associated with proposed or operational investments.

1

WHAT ARE ‘INVESTMENT FRAMEWORKS’?

In this guide, the term ‘investment frameworks’ refers to investment treaties, national investment laws and investor–state contracts.

Investment treaties are international agreements concluded between two or more states concerning the treatment of covered investment. Most investment treaties currently in force contain broad substantive protections for covered investors and investments. Most treaties also include procedural protections that enable investors to bring claims directly against states before international arbitral tribunals for breaches of an applicable treaty, under a system known as **investor–state dispute settlement (ISDS)**. Claims are decided by an arbitral tribunal consisting of three party-appointed arbitrators. Proponents of investment treaties and ISDS argue that these treaties promote inward investment; however, available empirical evidence does not support this conclusion (see **Box 1**). On the other hand, the mechanism has been used to seek compensation for a range of regulatory measures and related conduct, including host state action taken to promote objectives related to RLBI, such as on climate change, environmental protection or the rights of Indigenous Peoples and local communities.

Data indicates that ISDS is primarily used by large companies and wealthy individuals from developed economies.³ Data also shows that most claims are brought by investors in developed economies against developing economies.⁴ Fossil fuel companies have brought a substantial share of publicly known claims, obtaining more than US\$80 billion in awards and settlements by the end of 2023.^{5,6} ISDS is expensive: legal costs generally amount to US\$5 million on each side⁷ and the average amount awarded to investors between 2014 and 2023 was US\$256 million.⁸ Average amounts claimed and awarded have surged in recent years.⁹

National investment laws are challenging to define, as investment is usually governed by many different frameworks at the national level. Some countries opt for regulation of investment through general frameworks that are not specific to investment — including through constitutions, environmental laws, land laws, labour laws and other relevant instruments. For the purposes of this guide, we use UN Trade and Development’s (UNCTAD) definition of national investment laws to refer to laws that are specifically focused on the regulation of investment by (1) establishing the basic legal framework applicable to investment and (2) including key investment-related provisions.¹⁰

Some national investment laws allow investors to bring claims directly to ISDS. A recent survey of 117 national investment laws found that 89 refer to ISDS; 25 of these include consent to ISDS on a case-by-case basis, while 22 laws — in place mostly in African countries — include general (advance) consent to ISDS.¹¹ No developed economy has consented in their national law to investors bringing claims directly to ISDS.¹² Influence of external actors on the content of developing economy investment laws appears to have contributed to this asymmetric outcome.¹³

Investor–state contracts are agreements concluded between investors as private entities and the host state. These agreements are used in some countries to govern larger-scale investments. Many such contracts include clauses that allow the parties to bring disputes to ISDS. Investor–state contracts can play a significant role in defining the terms applicable to an investment and who bears the risk associated with a project.^{14,15}

BOX 1. DO INVESTMENT TREATIES PROMOTE INCREASED INVESTMENT INFLOWS?

A review of available empirical research found no conclusive evidence that signature of investment treaties causes an increase in inward investment for treaty parties.¹⁶ Empirical research conducted over the past decade does not show that investment treaties shape decisions about whether and where to invest,¹⁷ or that they significantly affect investment retention.¹⁸ While investment treaties may shape how investors structure their investments to take advantage of treaty protections (much like how companies take advantage of tax treaties to obtain favourable tax treatment), there is inconclusive evidence that investment treaties are shaping decisions about whether and where to invest.¹⁹

1.1 How do investment frameworks relate to other sources of RLBI law and policy?

Land-based investments are governed by multiple sources of applicable obligations and guidance.²⁰ These overlapping frameworks operate at national, regional, transnational and international levels.

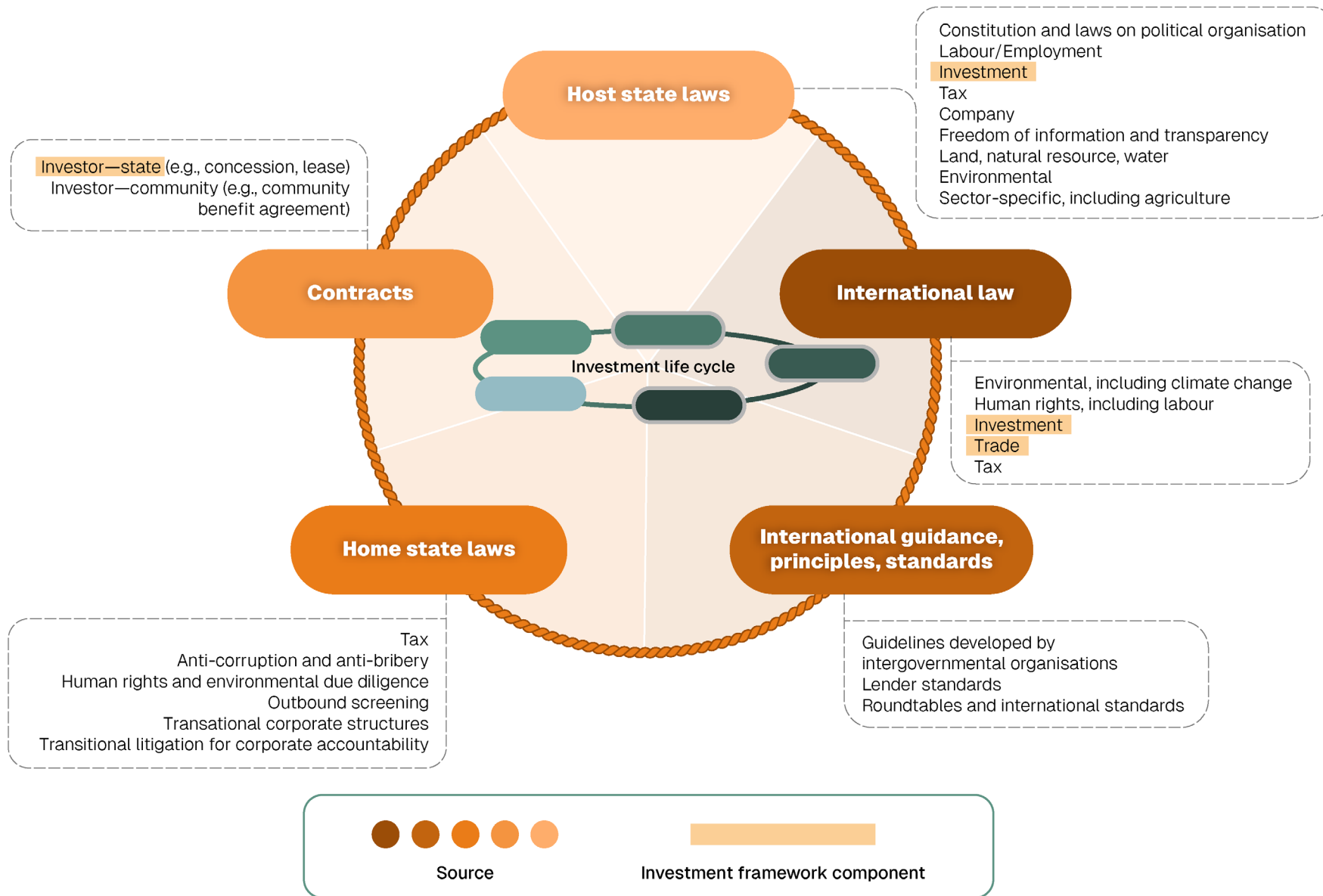
Figure 1 illustrates the ecosystem of rules and guidelines that may apply to land-based investments. It shows how obligations relevant to investment relate to one another and are interlinked and intertwined. Some obligations may reinforce one another. An obligation in a contract that requires compliance with national laws may help to bolster application of those national laws to a specific investment. Other obligations may exist in tension with or undermine one another. An obligation to approve an investment within a defined short period may conflict with an obligation to ensure meaningful participation by communities in decision making concerning the proposed project. Investment-related obligations can also elevate other obligations. For example, certain investment treaty protections require states to adhere to their contractual commitments, a requirement some tribunals have upheld even in circumstances where those commitments were found to be invalid under national law.²¹

1.2 What are essential elements of an investment life cycle?

Figure 2 depicts the key phases of an investment life cycle for a proposed large-scale agricultural investment, with essential elements outlined for each phase. Investment frameworks can interact with and shape every element of an investment life cycle: from establishing conditions and safeguards to shaping admission of investment, to operation, monitoring and closure of investment projects.

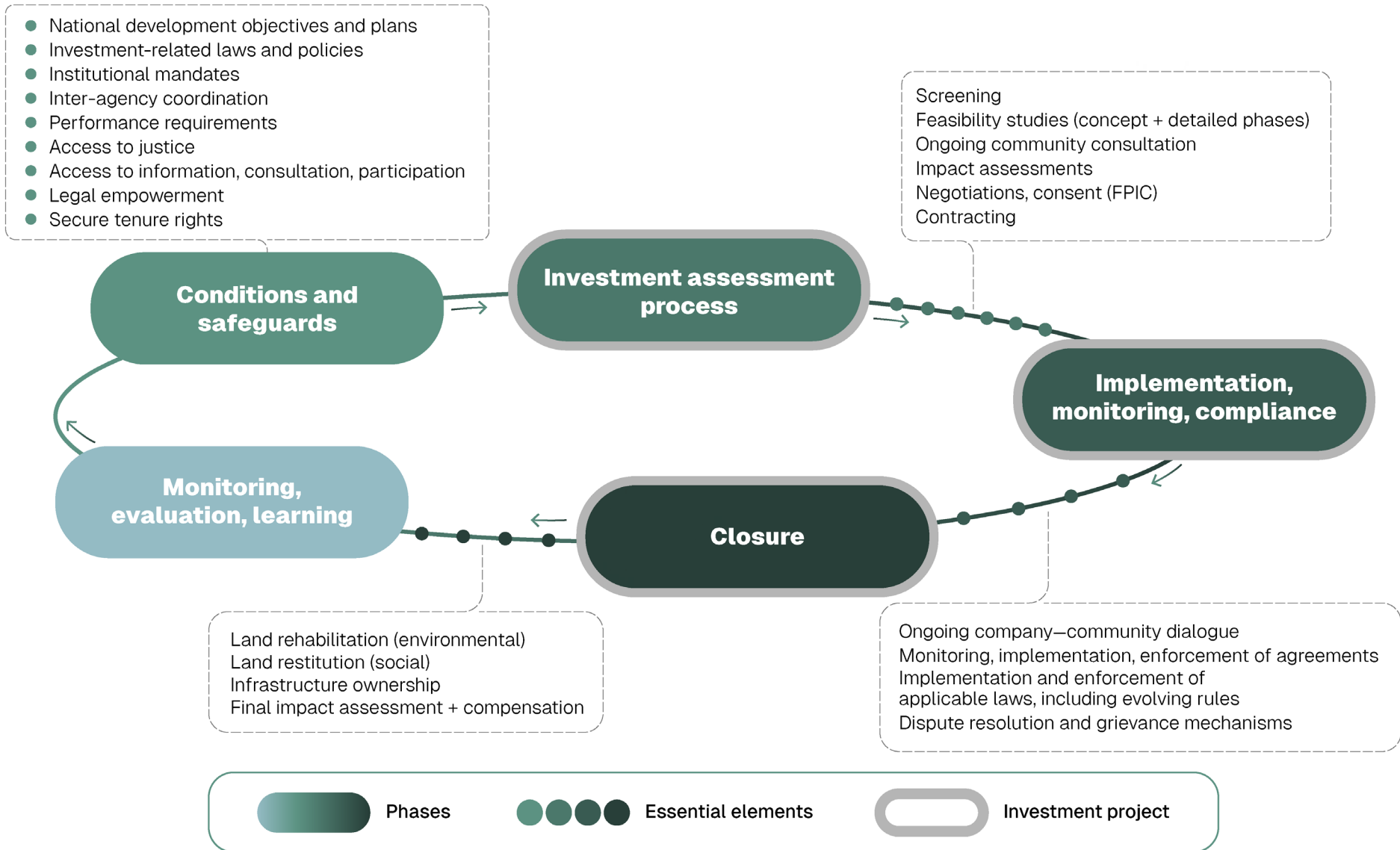
Many different government entities are involved in overseeing the application of the frameworks highlighted in Figure 1 to phases of the RLBI life cycle illustrated in Figure 2. Intra-governmental coordination between entities responsible for managing oversight of different phases of the investment life cycle — and oversight of different sources of law and guidance — is crucial for coherent and effective governance of land-based investment.

Figure 1. Overlapping sources of law and guidance for land-based investments



Source: Adapted from Cotula, L (2016) Foreign investment, law and sustainable development: A handbook on agriculture and extractive industries. IIED, London.

Figure 2. A responsible large-scale agricultural investment life cycle



Source: Adapted from Bulman, A, Coleman, J, Merrill, E, Akwii, E, Songy, M and Fiedler, Y (2024) Screening for responsible investment in agriculture and food systems: Guidance and tools for government officials. FAO, Rome.

2

HOW DO INVESTMENT FRAMEWORKS INTERACT WITH THE RLBI LIFE CYCLE?

Investment frameworks — investment treaties, national investment laws and investor–state contracts — interact with essential elements of the RLBI life cycle in various ways. In this section we describe points of contact between investment frameworks and the RLBI life cycle, highlighting both opportunities and barriers that investment frameworks present for realising responsible investment in land-related sectors.

Spotlight 1. ISDS and policy space for RLBI

An important overarching consideration for all the points of contact illustrated in the following subsections is that investment frameworks can affect policy space for states to take measures to advance RLBI objectives. Investors have relied on host state obligations in investment treaties — including obligations to provide ‘fair and equitable treatment’, not to discriminate between investors and investments, to provide ‘full protection and security’, and not to unlawfully directly or indirectly expropriate investments — to challenge a range of new or modified measures adopted to advance responsible investment objectives. Measures that have been challenged include:

- Suspension of operations until human rights obligations are complied with, including those concerning meaningful consultation with communities
- Prohibitions on specific extractive activities identified as particularly harmful for water resources and the environment
- Prohibitions on extractive activities in protected areas, including forested and marine areas
- Prohibitions on production or use of certain types of toxic chemicals with detrimental health impacts, and
- Requirements to comply with new domestic laws seeking to address historical socio-economic injustices created during the apartheid regime.

In each of these instances, investors relied on ISDS to bring claims against host states regarding the imposition of these measures. Host states either paid damages to the investor claimant or changed their approach as part of an agreed settlement with the investor claimant. As noted above in Section 1, ISDS claims can result in very large awards, and the average amounts claimed and awarded have surged in recent years.²²

ISDS tribunals do not have the power to require states to abandon or change challenged measures. However, experience shows that the prospect of expensive compensation bills can influence host state behaviour and outcomes for affected stakeholders — for example, by chilling or otherwise modifying state action due to potential claims and associated financial or reputational costs.²³ These risks may dissuade policymakers from taking necessary action and may otherwise limit, dilute or slow progressive measures, thereby affecting policy space needed to advance responsible investment.²⁴

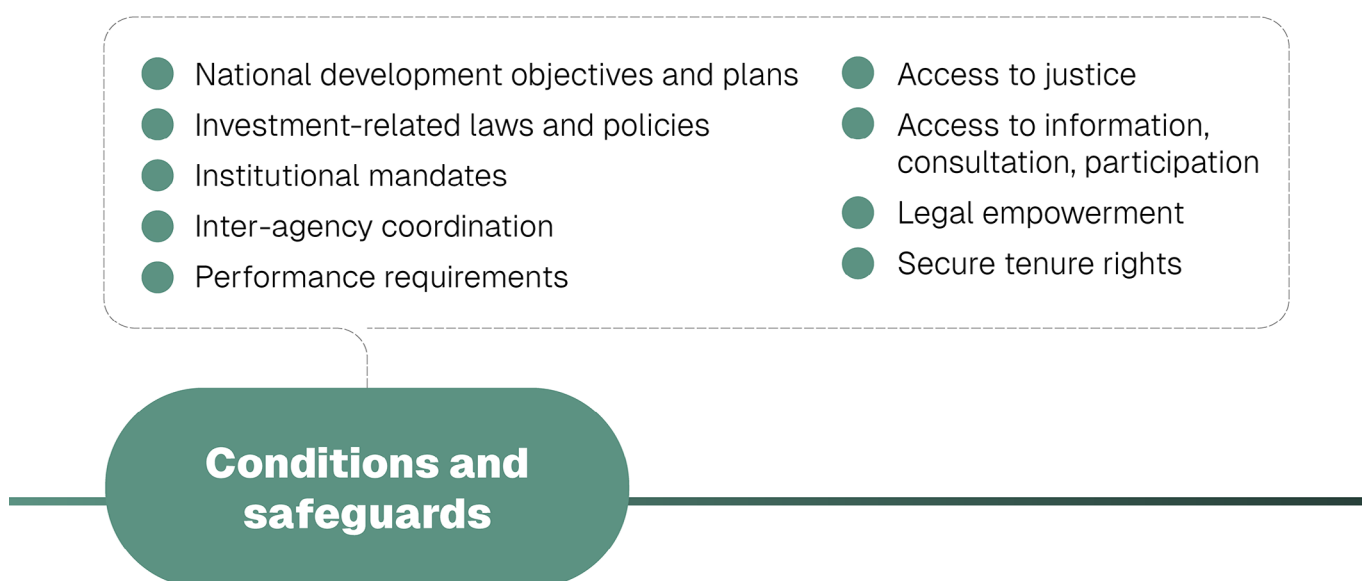
2.1 Establishing conditions and safeguards for investment

Responsible investment requires certain conditions and safeguards to be in place to shape proposed projects (Figure 3). Governments can do this by:

- Designing and aligning investment policies and frameworks with national and sustainable development objectives
- Identifying and supporting investment models that are aligned with these objectives, and
- Setting out laws and processes to ensure that rights affected by investment are respected and that environmental and social safeguards relevant to investment are applied.

Implementing each of these steps requires technical and financial resources. It also requires policy space — that is, the ability of government entities responsible for various elements of investment governance to calibrate their national laws and policies to local, often evolving, context and needs.²⁵ Investment frameworks interact with policy space, at times restricting the ability of governments to establish necessary conditions and safeguards for responsible investment (see Spotlight 1 above, and Examples 1 and 2 below). However, there are opportunities for investment frameworks to be supportive of policy space required to advance responsible investment.

Figure 3. Essential elements of establishing conditions and safeguards for a responsible large-scale agricultural investment



Example 1. Supporting responsible investment models

Land-based investments — including investments in agriculture and extractives, infrastructure, and manufacturing — can take many different forms and be structured in a variety of different ways. When establishing conditions and safeguards for investment, governments can evaluate investment models that are aligned with their national development objectives and consider which types of investments to support through legal and policy measures. In the case of large-scale agricultural investments, for example, governments may choose to support inclusive approaches that require meaningful partnerships with smallholders, including with respect to decision making concerning the broader business and related operations.²⁶

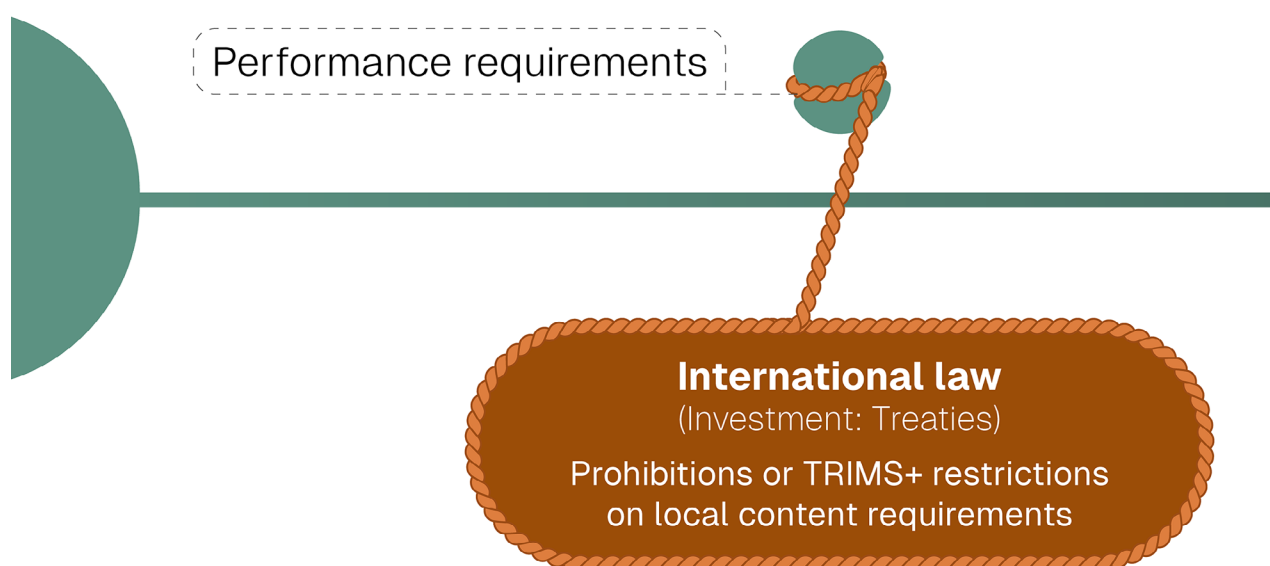
Governments can draw on legal and policy tools to shape and support responsible investment models. Among these, well-designed and effectively implemented performance requirements can play an important role.

Voluntary and mandatory requirements can be used to encourage or require investors to, for example:

- Provide training to strengthen capacity of local workforce or suppliers
- Hire a minimum number of local employees into roles of a specific quality or promote employment for women
- Transfer technology and knowledge to the host country, and
- Use local services in their operations.

In practice, application of performance requirements can be constrained by existing international trade and investment obligations (**Figure 4**). For example, the World Trade Organization (WTO) Agreement on Trade-Related Investment Measures (TRIMs) prohibits (1) measures that require use of local goods and (2) quantitative restrictions on imports and exports of goods. Some investment treaties expand the scope of substantive investor and investment protections to the ‘pre-establishment’ phase — that is, the phase during which a proposed investor is **seeking** to invest and a host state is determining admission of investment — and include more expansive prohibitions on performance requirements that go beyond TRIMs.²⁷ Recent treaties have included prohibitions on: hiring a given number of local employees; requiring appointment of local employees to senior positions; requiring use of local services (in addition to goods, restricted by TRIMs); and requiring operations to be located in a given area within the host state. Disputes concerning WTO-covered measures can only be brought by states. By contrast, investment treaties provide investors with direct access to challenge state measures such as regulation and use of performance requirements (see Section 1).²⁸

Figure 4. How investment frameworks can restrict use of performance requirements to shape responsible investment



It would be possible to develop alternative configurations of international agreements on foreign investment that support sustainable industrialisation.^{29,30} For example, treaties could be used to encourage inter-state collaboration and coordination around *quality* investment priorities, including investments in industries and technologies to support climate measures.³¹ Capacity-strengthening measures could be built into coordination efforts along with commitments by developed economies to support technology transfer in developing economies.³² The Convention on Biological Diversity (1992) and the Kyoto Protocol to the UN Framework Convention on Climate Change (UNFCCC, 1997) both include provisions about developed country parties promoting technology transfer and know-how to developing country parties.³³ Investment treaties could reaffirm and support coordination and implementation of these commitments.

Example 2. Protecting legitimate tenure rights

Protection of legitimate tenure rights is a core element of RLBI. Where legitimate tenure rights are not secure either in law or practice, the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGT) — a comprehensive soft-law instrument endorsed by the UN Committee on World Food Security — calls on states to pursue a combination of measures to record, recognise and protect those rights.³⁴

Investment frameworks can interact with safeguards necessary to protect legitimate tenure rights, as new or modified rules could change the circumstances applicable to existing investments. Obligations contained in investment treaties, investment laws and investor–state contracts can require host states to compensate covered investors for changing the regulatory framework that applies to investments, even where those changes did not intend to expropriate an investment and do not result in a loss of property for an investor.³⁵ Host states are not precluded from pursuing the new or changed measure but may incur financial costs if an investor brings a claim based on an investment treaty, national investment law or investor–state contract (see Section 1).

Again, it is possible to consider alternative configurations whereby international agreements on investment reinforce application of those conditions and safeguards. The Investment Protocol to the African Continental Free Trade Area (AfCFTA) Agreement, for example, requires that investors “respect legitimate tenure rights to land, water, fisheries, and forests in accordance with relevant laws and regulations” (AfCFTA Investment Protocol, art. 35(2)). National investment laws can also play an important role by reinforcing safeguards, and investor–state contracts (where used) can be drafted to integrate those safeguards into specific investment projects.

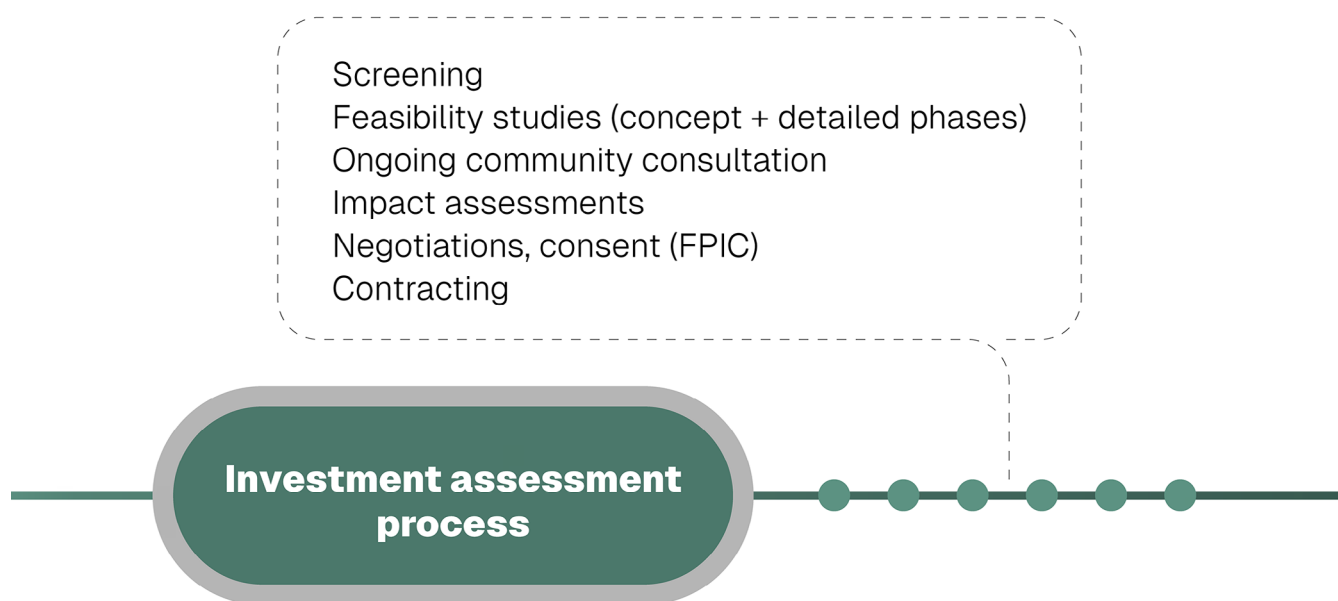
Strategy tip 1. Review and reassess existing investment frameworks

Shaping responsible investment requires policy space and alignment of investment frameworks with responsible investment objectives. A comprehensive review of existing investment frameworks can help your government to understand whether and to what extent existing rules achieve this. This type of review can contribute to your government’s discussions and eventual policy regarding reform of existing and future investment-related obligations at national and international levels. It also provides an opportunity for meaningful engagement with stakeholders — including civil society — on the content of existing and future investment frameworks.

2.2 Determining assessment of proposed investments

Investment assessment processes — a crucial phase within the broader life cycle — include the full range of requirements that investors must meet for proposed investments to operate.³⁶ **Figure 5** outlines key stages in an investment assessment process for a large-scale agricultural investment. Country-specific context will determine what investment assessment processes look like and how they operate in practice. The sector in which an investment is being made will also affect specific processes that apply to an investment. Steps applicable to a large-scale investment in agriculture, for example, will differ from those applicable to a mining or renewable energy project.

Figure 5. Essential elements of an investment assessment process for a responsible large-scale agricultural investment



Investment frameworks affect essential elements of most investment assessment processes. Examples included below highlight two core points of contact between this phase of the investment life cycle and investment treaties, national investment laws and investor–state contracts.

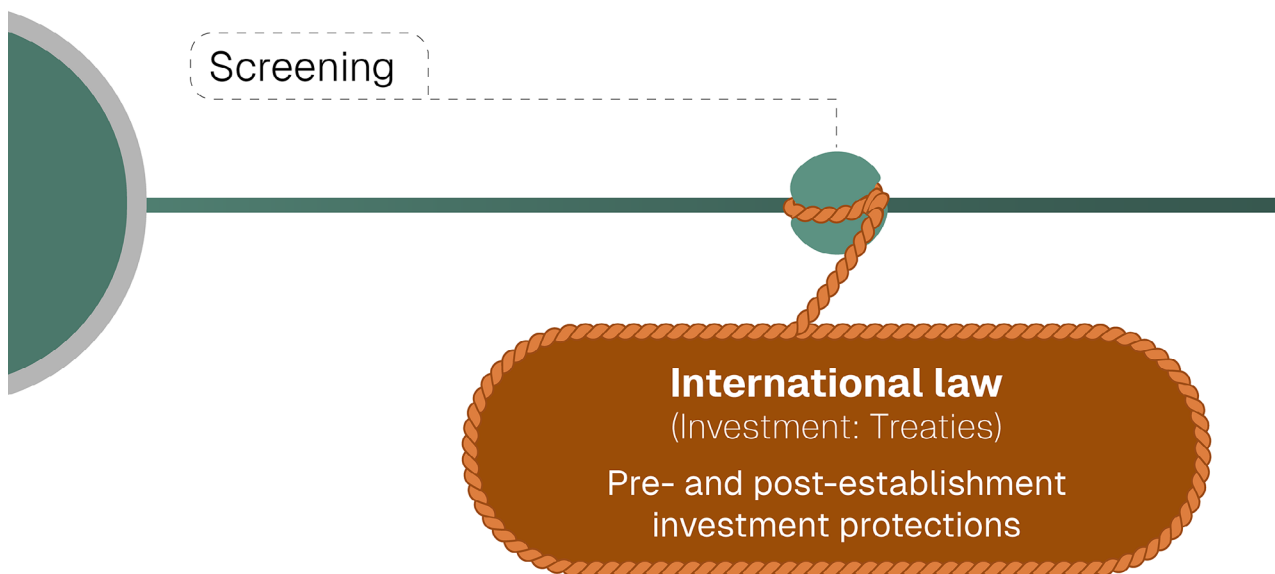
Example 1. Screening proposed investments

Screening involves the early or initial evaluation of proposed investments based on legal or other criteria, such as international guidance or soft-law standards.³⁷ This step in a broader investment assessment process may include evaluation of a proposed project against admission requirements contained in national laws. It may also, or otherwise, involve evaluation of the project against national or sustainable development criteria or principles for responsible investment. Due diligence is conducted during screening to evaluate a proposed investment and investor prior to deciding whether a project will advance to the next step in an investment assessment process.³⁸

Effective screening processes can help governments to identify and avoid — or at least to mitigate — risks associated with investments. Screening processes also support identification of projects that are more likely to be responsible and lead to positive outcomes. Screening can, for example, be used to identify the impacts of a proposed project on climate objectives and make decisions about whether the project is sufficiently aligned with climate mitigation or adaptation measures (see Strategy tip 2, below).³⁹ Screening can also lay the groundwork for informed expectations and decision making about a proposed project (see Example 2, below). Put simply, screening enables a government to shape the types of investments it admits. Although trade and investment liberalisation policies during the 1990s resulted in removal or reduction of screening measures in many economies, some states are now reintroducing investment screening.⁴⁰

The application of pre- and post-establishment investment protection standards contained in investment treaties can have a direct bearing on investment screening (**Figure 6**). For example, pre-establishment obligations may restrict a government’s ability to decline admission of investment based on screening criteria linked to investor nationality or compliance with certain performance requirements.⁴¹ With effective

Figure 6. How investment frameworks can restrict use of screening processes to shape responsible investment



legal expertise, governments can identify and manage the impact of pre-establishment obligations on the screening process. Meanwhile, post-establishment obligations may make it more difficult for a government to turn down a project once it has advanced further in the investment assessment process due to protection of ‘legitimate expectations’ that the project would obtain full approval and become operational (see Example 2, below). This makes the screening phase of the investment life cycle particularly important.

Spotlight 2. Overcoming barriers to climate action

Some climate policies focus on reducing demand for resources that contribute to temperature increases beyond the 1.5°C threshold. Others focus on reducing supply — in other words, keeping the resources in the ground. This supply-side approach is particularly relevant to fossil fuels considering their outsized contribution to past, current and future emissions. The International Energy Agency has been clear since 2021 that development of fossil fuel resources is incompatible with achieving net zero emissions by 2050.^{42,43} Governments can design and apply a range of measures in their investment assessment processes — from screening to impact assessments — to operationalise supply-side climate policies that help to phase out investments that are most harmful for the climate.

Investment protection treaties currently in force may create obstacles for implementing supply-side climate measures. ISDS tribunals have required states to compensate investors for ‘lost future profits’, awarding compensation based on *expected* net cash flow (expected revenue minus costs, discounted to present value) generated by the proposed investment over its life cycle if the investment treaty had not been breached.^{44,45,46} This approach has been applied even to investments that were not operational and had not secured all permits required to operate.

An IIED study exploring states’ exposure to ISDS claims for coal plant phase-outs found that at least 75% of foreign-owned coal power plants with a reasonable risk of being phased out were covered by at least one investment protection treaty with ISDS. The authors noted that a deeper analysis of ownership structures would likely reveal a higher percentage of investment treaty coverage.⁴⁷ Subsequent research estimated that the cost of ISDS claims concerning oil and gas projects in response to government measures seeking to curb fossil fuel production could reach US\$340 billion, with low- and middle-income economies being most at risk of such claims.^{48,49}

Strategy tip 2. Integrate climate change considerations into investment assessment

Land-based investments — including investments in agriculture, renewables, mining, manufacturing and infrastructure — are substantial sources of greenhouse gas emissions *and* are vulnerable to the impacts of the climate crisis. Integrating climate considerations into assessment of proposed investments is fundamental for achieving net-zero greenhouse gas emissions by 2050. ALIGN has produced comprehensive step-by-step guidance for policymakers on integrating climate change considerations into investment assessment⁵⁰ and adopting an integrated approach to environmental and social impact assessments.⁵¹

Example 2. Informing expectations and shaping investor conduct

Investments often bring expectations for all stakeholders — including government, communities and investors. When expectations are not met, relationships break down and projects can stall or fail entirely. Considerable legal risks can also arise for host states. Investors may form expectations regarding proposed projects based on explicit assurances or other government conduct. Arbitral tribunals have held that the investment treaty standard of ‘fair and equitable treatment’ protects the legitimate expectations of covered investors, even if these are not recognised as legal rights under national law.⁵²

The pre-establishment phase of the investment life cycle is also a crucial time for governments to shape investor conduct regarding a proposed investment — including conduct that will follow during implementation and closure of the proposed project. Government entities responsible for regulating investment should be clear from this early stage about the conduct that is expected and required from investors operating in the host economy as this can help them to proactively shape outcomes during the pre- and post-establishment phases of the investment life cycle. This clarity about expected conduct may help to reduce the risk of challenges arising further down the line, including mismatched expectations and investment-related grievances.

Investment protections enshrined in investment treaties, as interpreted and applied by investor–state tribunals, can undercut state efforts to shape responsible investor conduct. Arbitral tribunals have applied investment protection standards and awarded damages to investors even in situations where proper due diligence on the part of the investor during the project design phase could have identified and addressed the issues that ended up affecting the investment. Investors have also obtained compensation for investments that lacked necessary approvals for operation (see Spotlight 3). This approach risks incentivising investors to proceed with proposed projects without proper due diligence on applicable regulatory, administrative or permitting requirements.

Reconfigured investment treaties and investor–state contracts could instead be used to complement and bolster application of investor obligations derived from national law and other applicable international instruments, including those concerning human rights, labour rights, the environment and taxation (see also Strategy tip 5).

Spotlight 3. Managing expectations and shaping investor conduct during investment assessment

Investors have relied upon investment treaty protections to challenge or obtain compensation for delays in granting proposed project approvals. Purported delays in investment assessment or permitting processes were at issue in *Bear Creek v. Peru*, *Eco Oro v. Colombia*, and *Rockhopper v. Italy*, all of which concerned proposed natural resource investments. In each case, the arbitral tribunal (or a majority of the tribunal) determined that the respondent state had breached the applicable investment treaty. Delays associated with assessment processes contributed to these findings. In *Rockhopper*, the delay formed the primary basis for the tribunal’s determination (Arcuri et al., 2024).⁵³

In these cases, the expectations of investors that projects would proceed, along with either informal or formal assurances given by some government actors, influenced the outcome of the ISDS tribunals' determinations. These findings were made despite investor claimants in all three cases being at the exploration — not exploitation — phases of their proposed projects, and despite all three investor claimants not having secured other necessary approvals for exploitation. Arbitrator Philippe Sands issued noteworthy partial dissents in *Bear Creek v. Peru* and *Eco Oro v. Colombia*, highlighting the challenges that the majority's approach posed for governments seeking to regulate investment.

Strategy tip 3. Withhold and condition initial approval

Any kind of government assurance or conduct that could be interpreted as initial approval of a proposed project, whether formal or informal, is best withheld at least until after screening has taken place. Any such approval is best conditioned upon compliance with (1) applicable rules, including host *and* home state laws (to encourage compliance with highest possible standards of conduct on the investor's part) and (2) subsequent steps in the applicable investment assessment process.⁵⁴ Taking these steps can help to inform realistic expectations for all stakeholders.

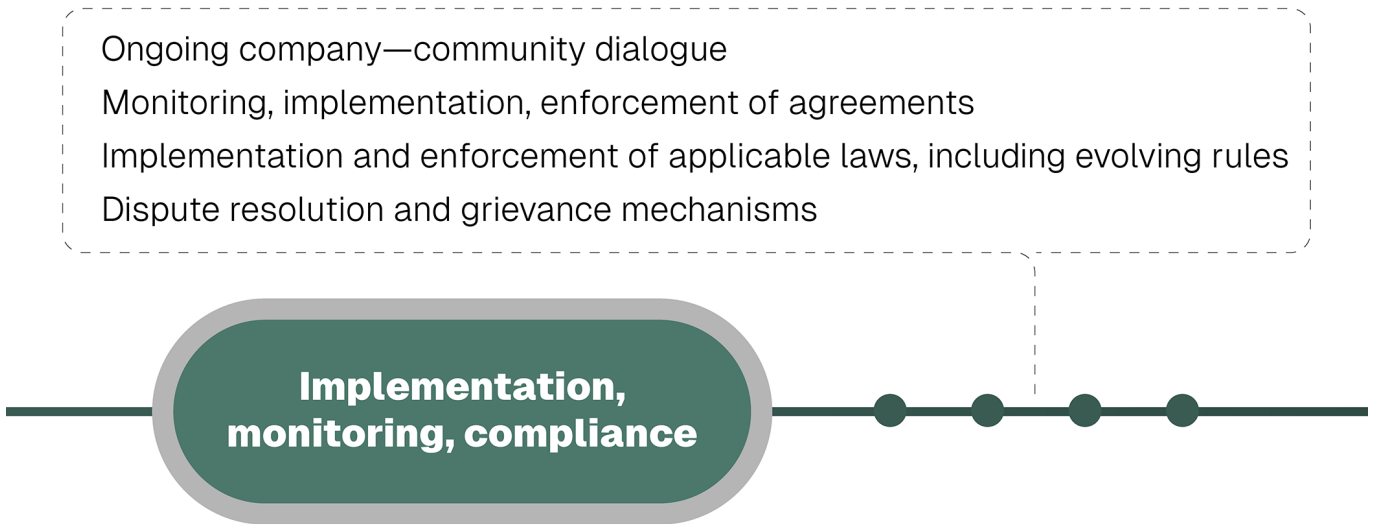
If the investment you are reviewing is owned or controlled by a foreign entity, consider checking whether your country has concluded any investment treaties with the home country of the foreign investor, including home countries of any parent companies and shareholders. If your country has concluded such treaties, seek legal guidance on how to manage any treaty obligations that may affect investment admission. Where you find that existing obligations — under investment treaties or national law — unduly restrict the government's ability to effectively screen and shape responsible investment, consider steps that the government can take to review and reform the content of relevant frameworks (see Strategy tip 1, above).

2.3 Implementing and monitoring investments

Governments are responsible for monitoring and enforcing the ecosystem of overlapping rules that apply to land-based investments (see Figure 1), including at the implementation stage of an investment's life cycle (**Figure 7**). This responsibility is time and resource intensive — it presents challenges even for well-resourced governments.⁵⁵

Investment frameworks can support effective and coherent governance of investment at this stage of the life cycle, particularly when they serve to clarify and reaffirm application of the ecosystem of obligations to specific investments. However, existing investment frameworks often fall short of this — and at times create parallel or siloed systems of operation for covered investors that can undermine efforts to promote responsible investment and responsible investor conduct.

Figure 7. Essential elements of implementing and monitoring a responsible large-scale agricultural investment

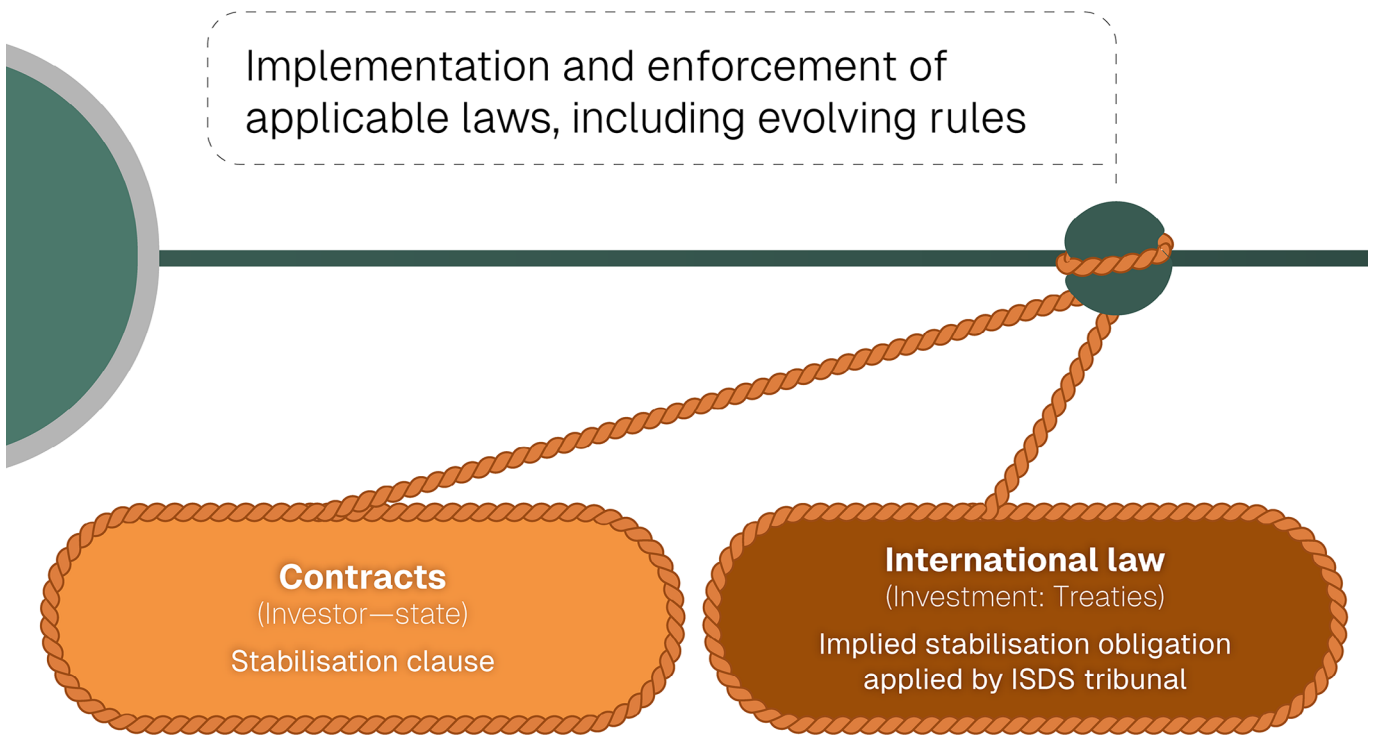


Example 1. Responding to evolving context and needs

Land-based investments — particularly large-scale investments — can be operational for many years. All stakeholders should reasonably expect that applicable rules will evolve during those periods in response to changing context or needs. Investment frameworks can support effective monitoring and enforcement of applicable rules by making clear from the outset of the investment life cycle that applicable rules, including new and changed rules, will apply to the project. Making this clear during early stages of project design and assessment helps to clarify investor expectations about how investments will be regulated once operational.

Where included, certain types of provisions in investment frameworks can hinder enforcement of new or changed rules (**Figure 8**). Stabilisation clauses in investor–state contracts, for example, may seek to ‘freeze’ the rules that applied to a project on the day the applicable investor–state contract was signed, or another specified date, so that subsequent measures covered by the clause would not apply to the project.⁵⁶

Figure 8. How investment frameworks can restrict implementation and enforcement of applicable laws, including evolving rules, to shape responsible investment



Use of stabilisation clauses in investor–state contracts has been discouraged by intergovernmental organisations due to their potential impact on necessary rules concerning the environment, human rights, climate change, labour rights, and other areas of public interest (OECD Guidelines for Multinational Enterprises, 2023).⁵⁷ The UN Principles for Responsible Contracts make clear that stabilisation clauses should not interfere with states’ ability to implement non-discriminatory rules to meet international obligations (UN Principles for Responsible Contracts, Principle 4).

Even when applicable investor–state contracts do not contain a stabilisation clause, some ISDS tribunals have interpreted investment protection standards in investment treaties or clauses in investor–state contracts to create implied commitments to stability and predictability of legal and business environments applicable to protected investments.⁵⁸ This approach creates risk of liability for governments seeking to ensure compliance with new rules that may directly or indirectly affect the performance of protected investments.

Strategy tip 4. Avoid stabilisation provisions

To realise responsible investment, governments must be able to respond to evolving context and needs. Stabilisation provisions undermine the policy space required to effectively and responsibly govern investments. A comprehensive review of existing frameworks can help your government to identify whether existing stabilisation commitments are in effect and create a strategy for managing them. Avoiding stabilisation provisions in future agreements will help to preserve necessary policy space for effective governance of RLBI.

Example 2. Monitoring and enforcing investor obligations

For an investment to be responsible, investors must comply with applicable obligations regarding their conduct during the implementation of the investment. The domestic laws of host and home states are best placed to provide for effective regulation of investor conduct. International soft-law instruments — including the VGGT, the UN Committee on World Food Security, Principles for Responsible Investment in Agriculture and Food Systems, and UN Guiding Principles on Business and Human Rights — also set important standards for RLBI. These and other soft-law instruments have shaped domestic and regional legal frameworks, including transnational due diligence obligations relevant to RLBI. Where a state chooses to use national investment laws and investor–state contracts, these frameworks can be used to clarify and reaffirm the application of relevant domestic and transnational obligations — including those concerning environmental impacts, use of land and water resources, labour rights, meaningful consultation with communities and free, prior and informed consent (FPIC) — to investments. Future investment treaties, reimagined to align with sustainable development objectives, could also serve the same reaffirming function.

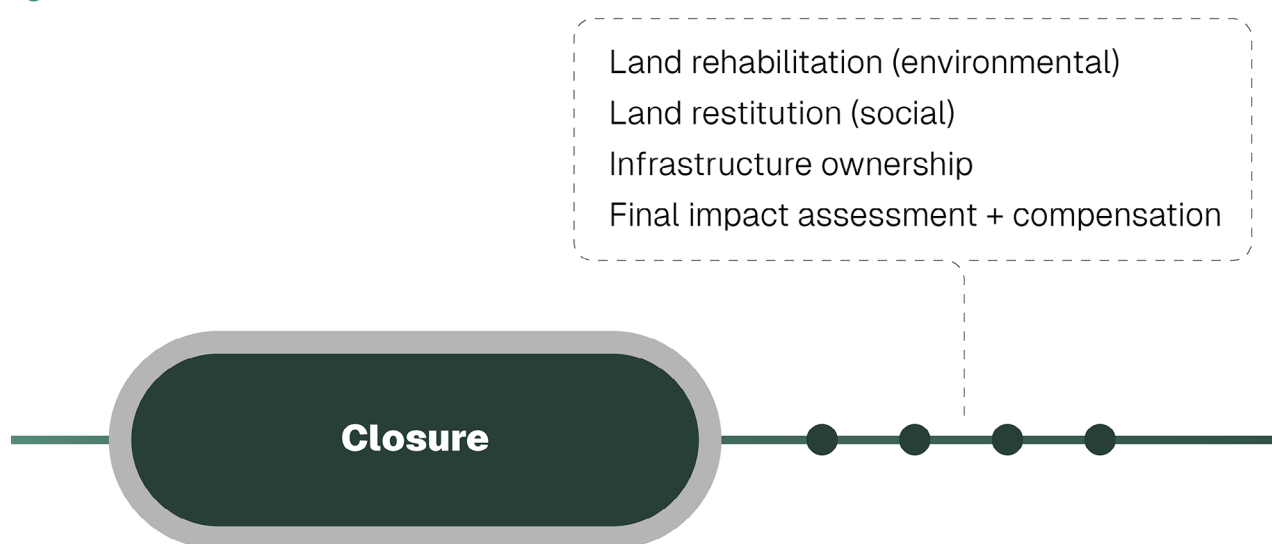
Most investment protection treaties currently in force either do not include investor obligations or include voluntary or ‘best efforts’ provisions rather than mandatory obligations. These treaties do not require covered investors to comply with minimum standards of responsible conduct to benefit from treaty protections.^{59,60} Moreover, the substantive provisions included in most investment treaties, coupled with access to ISDS, have enabled investors to secure compensation even if they breached standards of responsible conduct. These interpretive approaches disincentivise responsible business conduct.⁶¹

2.4 Managing project closure or exit

Investments enter the closure or exit stage (**Figure 9**) for a variety of reasons, some planned and others not. Triggers for project closure or exit include the investment arriving at a planned end date, an unplanned divestment of funds, and the project failing or being cancelled due to unforeseen circumstances. Project closure or exit brings with it complex issues regarding rehabilitation of land that was used, restitution to legitimate tenure rights holders, and redress for any harms that may have arisen during project implementation or closure.

As with other phases of the investment life cycle, investment frameworks can interact with essential elements of this phase and shape outcomes for stakeholders. Opportunities exist for investment frameworks to support responsible outcomes — but many current frameworks fall short of opportunities, instead serving as potential barriers to responsible governance of project closure or exit.

Figure 9. Essential elements of managing project closure of or exit from a responsible large-scale agricultural investment

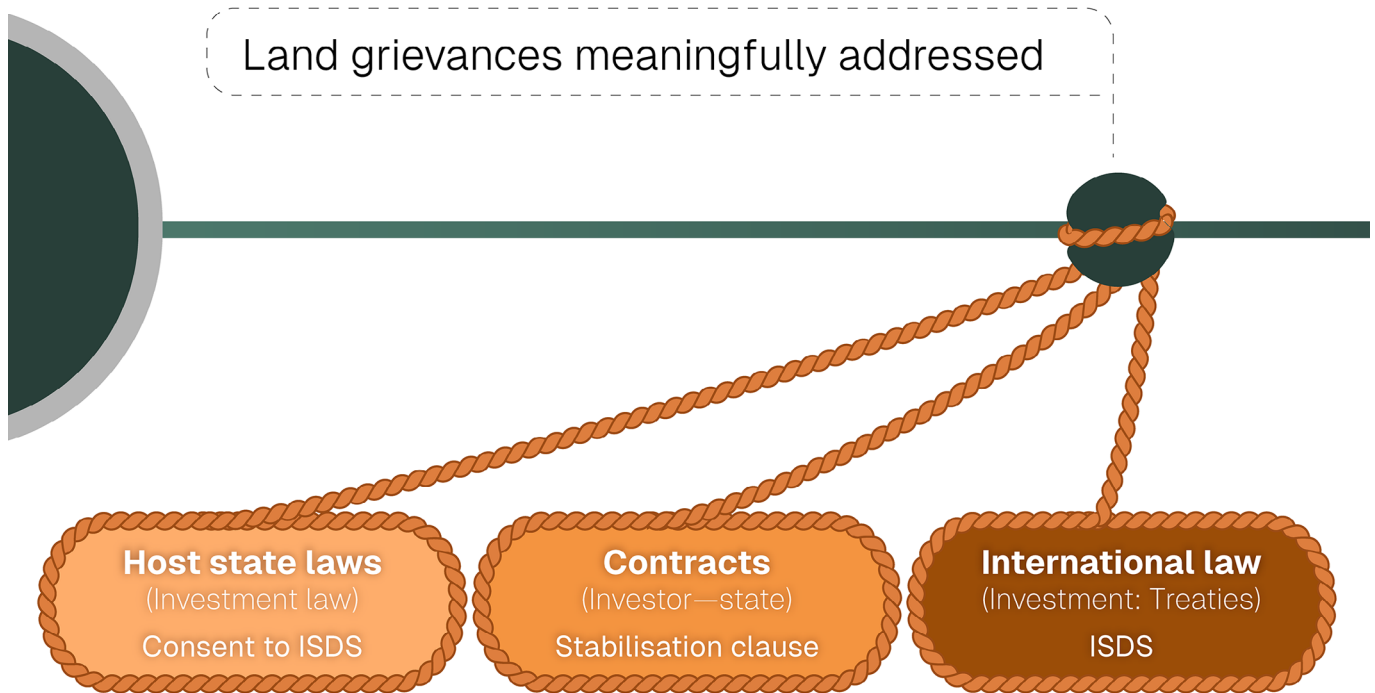


Example 1. Addressing land grievances

Land-based investments can create or exacerbate considerable grievances for individuals and communities. The range of grievances associated with land-based investments are well-documented. Examples include: displacement and loss of lands; loss of essential resources and related impacts on livelihoods; impacts on rights to participation in decision making, including FPIC; environmental degradation, including pollution of resources and resulting impacts on health; corruption and associated impacts; and violence, including assaults and killings⁶² and gender-based violence. These grievances can arise at *any* phase during an investment life cycle — they are not exclusive to the project closure or exit phase.

Investment frameworks that provide investors with access to ISDS affect the ability of host states to meaningfully address land grievances experienced by other stakeholders (**Figure 10**). The high costs associated with ISDS, coupled with the ability to enforce awards in domestic courts of most countries around the world, give the dispute settlement mechanism considerable weight, tipping the scales in favour of investors able to access it. Third parties, including individuals and communities affected by investments at issue in a claim, are excluded from meaningfully intervening in ISDS proceedings as complex multi-actor disputes (involving the community, state and investor) are limited by ISDS to being heard in a bilateral setting (involving only the investor and the state).⁶³ Investors have also used ISDS to shield themselves from liability for determinations made by domestic courts regarding harms affecting communities (see Spotlight 4, below). These aspects directly impact pathways to accountability and remedy, which are essential elements of RLBI.

Figure 10. How investment frameworks can restrict how land grievances are meaningfully addressed in responsible investments



Investment frameworks could instead focus on bolstering avenues to remedy for individuals and communities harmed by investments. Where national investment laws and investor–state contracts are used, they could clarify and reaffirm investor obligations regarding remediation of harms and access to effective remedy. International investment treaties can also provide a space to establish clear investor obligations. Excluding or limiting ISDS, or requiring tribunals to dismiss or reframe investor claims if they impinge on third-party rights, would help to reduce the extent to which these agreements undermine the ability of states to address land grievances.

Spotlight 4. ISDS and access to justice for communities

Investors have relied on ISDS to challenge or undermine remedies sought by communities affected by land-based investments.⁶⁴ ISDS claims have been used by investors to: (1) preclude enforcement of domestic awards granted in favour of communities in domestic cases brought against investors; (2) seek relief from proceedings brought by communities against the state that resulted in negative consequences for investors, such as withdrawal of permits; and (3) initiate bilateral disputes between investors and states, excluding communities that have relevant competing legal claims.

ISDS does not provide a mechanism for communities to intervene in investor–state disputes. While communities can request to make a submission as *amicus curiae* or ‘friend of the court’, these submissions are granted at the discretion of the ISDS tribunal and are designed to assist the tribunal in making their determination. *Amici* submissions do not provide for meaningful or effective participation. This approach contrasts with how domestic jurisdictions and some regional and international systems of dispute settlement manage third party intervention. Most domestic legal systems recognise and provide for meaningful third party rights of intervention. Similarly, regional and international fora have developed more meaningful mechanisms for third party participation (see the CCSI, IIED and IISD Submission to UNCITRAL WGIII⁶⁵).

Strategy tip 5. Provide meaningful access to justice for investment-related harms

If pathways to justice for communities in your country are constrained by ISDS, explore terminating or withdrawing from investment treaties that create these constraints. Investment frameworks can also be used by your government to bolster avenues to remedy for all rather than for one group of claimants. Where used, national investment laws and investor–state contracts can clarify and reaffirm investor obligations regarding remedy for harms caused or exacerbated by their operations.

3

LOOKING AHEAD

Investment frameworks are complex and unpacking the many overlapping rules can be overwhelming. In the context of land-based investments and investment governance more broadly, it is worth the effort to unwind the web of applicable rules and closely interrogate their impacts. Left as they are, existing investment frameworks can operate to constrain, chill, and drain government capacity and policy space. With proactive redesign, policy coherence and effective implementation, investment frameworks can instead be crafted to facilitate responsible investment.

This guide is illustrative and not exhaustive. It highlights points of contact between investment frameworks and key phases of the RLBI life cycle. Context-specific analysis can support deeper evaluations of how specific countries' investment laws, contracts and investment treaty obligations interact with RLBI. The illustrative examples included in the guide highlight key takeaways that can apply broadly to the work of RLBI stakeholders in developed and developing economies:

- Investment frameworks — including investment treaties, national investment laws and investor–state contracts — can shape outcomes at each phase of the land-based investment life cycle. There are deep connections between these frameworks and RLBI, meaning that stakeholders seeking to realise RLBI need to be concerned not only with legal frameworks and policies directly related to RLBI but also wider frameworks that can affect policy space for development, adoption and implementation of RLBI measures.
- Key elements of *current* investment frameworks — including expansive investor protections, ISDS and stabilisation provisions in contracts or laws — constrain policy space that may be necessary for RLBI measures. This does not mean that RLBI measures should be delayed or diluted due to concerns about impacts of investment frameworks. Rather, it is crucial for RLBI stakeholders — including policymakers — to be aware of investment frameworks and work to align existing and future frameworks with sustainable development, climate change objectives and other aspects of responsible investment to ensure that investment frameworks are supportive of RLBI.

How can RLBI stakeholders — policymakers in particular — achieve this? Experience and research regarding investment frameworks suggest that governments:

1. Seek context-specific advice and technical support on how the investment framework/ RLBI interface operates in specific country or regional contexts
2. Explore terminating, withdrawing from or deeply reforming outdated investment treaties, and
3. Work with other relevant actors to reshape investment frameworks — at national and international levels — to align them with sustainable development, climate change and other responsible investment objectives.

With coordination, sustained engagement, resources and support, investment frameworks can be harnessed for national benefit and responsible outcomes.

APPENDIX: LINKS AND RESOURCES

Guides and publications

- Akwii, E, Brennan, G, Hannay, L, Brauch, MD and Mardirossian, N (2024) [Incorporating climate considerations into investment assessment processes: Guidance for national and local governments](#). CCSI.
- Bonnitcha, J, Nikièma, S and St John, T (2023) [Rethinking National Investment Laws](#). IISD.
- Coleman, J, Brewin, S and Berger, T (2018) [Agricultural investments under international investment law](#). CCSI, IIED, IISD.
- Cotula, L (2016) [Foreign investment, law and sustainable development: A handbook on agriculture and extractive industries](#). IIED, London.
- Cotula, L (2018) [Raising the bar on responsible investment: what role for investment treaties?](#) IIED.
- Cotula, L (2023) [Climate change in impact assessments: towards an integrated approach](#). IIED.
- Mehranvar, L and Dietrich Brauch, M (2024) [Breaking Free: Strategies for Governments on Terminating Investment Treaties and Removing ISDS Provisions](#). CCSI.
- Ostránský, J and Bonnitcha, J (2024) [Rethinking investment treaties: A roadmap](#). IISD.
- UNCTAD (2015) [Investment Policy Framework for Sustainable Development](#).

Research tools and databases

Links for supporting investment framework reviews and assessments

- Electronic Database of Investment Treaties (EDIT): <https://edit.wti.org/document/investment-treaty/search>
- FAOLEX legislative and policy database: www.fao.org/faolex/en
- UNCTAD Investment Policy Hub: <https://investmentpolicy.unctad.org/>
- UNCTAD Investment Policy Framework: <https://investmentpolicy.unctad.org/investment-policy-framework>
- UNCTAD Investment Policy Review: <https://investmentpolicy.unctad.org/investment-policy-review>
- UNCTAD Investment Laws Navigator: <https://investmentpolicy.unctad.org/investment-laws>
- UNCTAD International Investment Agreements Navigator: <https://investmentpolicy.unctad.org/international-investment-agreements>

Databases for and commentary on investor–state dispute settlement (ISDS)

- Afronomicslaw: www.afronomicslaw.org
- IA Reporter: www.iareporter.com
- ICSID Case Database: <https://icsid.worldbank.org/cases/case-database>
- Italaw: www.italaw.com
- Jus Mundi: <https://jusmundi.com/en/coverage/investment-arbitration>
- UNCTAD Investment Dispute Settlement Navigator: <https://investmentpolicy.unctad.org/investment-dispute-settlement>

Investor–state contract databases

- OpenLandContracts: www.openlandcontracts.org
- ResourceContracts: www.resourcecontracts.org

Support providers

A range of organisations, including IIED, offer technical support to review, reform and align investment frameworks with responsible investment objectives. For further information and to connect with providers, reach out to IIED (lorenzo.cotula@iied.org) and the authors (jesse@change-collective.co and anna@change-collective.co).

REFERENCES

1. Literature

- Akwii, E, Brennan, G, Hannay, L, Brauch, MD and Mardirossian, N (2024) [Incorporating climate considerations into investment assessment processes: Guidance for national and local governments](#). CCSI, New York.
- Akyüz, Y (2008) [Global Rules and Markets: Constraints over policy autonomy in developing countries](#). Working Paper No. 87. International Labour Office, Geneva.
- Arcuri, A, Tienhaara, K and Pellegrini, L (2024) Investment law v. supply-side climate policies: Insights from Rockhopper v. Italy and Lone Pine v. Canada, *International Environmental Agreements: Politics, Law and Economics*, 24, pp.193–216.
- Basedow, R (2017) Business preferences in international investment policymaking: Does European business lobby for international investment agreements? EUI Working Papers MWP 2017/06. European University Institute.
- Berge, TL and St John, T (2020) Asymmetric diffusion: World Bank “best practice” and the spread of arbitration in national investment laws, *Review of International Political Economy*, 28(3), pp.584–610.
- Bonnitcha, J and Brewin, S (2020) [Compensation under investment treaties: What are the problems and what can be done?](#) IISD, Geneva.
- Borga, M, Ibarlucea Flores, P and Sztajerowska, M (2020) [Drivers of divestment decisions of multinational enterprises - A cross-country firm-level perspective](#). OECD Working Papers on International Investment, No. 2019/03. OECD Publishing, Paris.
- Brada, J, Zdenek, D and Iwasaki I (2020) Does Investor Protection Increase Foreign Direct Investment? A Meta-Analysis. CEI Working Paper Series No 2020-4. Center for Economic Institutions, Institute of Economic Research, Hitotsubashi University.
- Bulman, A, Coleman, J, Merrill, E, Akwii, E, Songy, M and Fiedler, Y (2024) [Screening for responsible investment in agriculture and food systems: Guidance and tools for government officials](#). FAO, Rome.
- Bulman, A, Berger, B and Knight, K (2026) [Enhancing Women’s Meaningful Participation in Community Engagements: Toolkit](#). CCSI and IIED.
- Coleman, J, Brewin, S and Berger, T (2018) [Agricultural investments under international investment law](#). CCSI, IIED, IISD.
- Coleman, J, Johnson, L, Güven, B, Cotula, L and Berger, T (2019) [Third-party rights in investor-state dispute settlement: Options for reform \(Submission to UNCITRAL Working Group III on ISDS Reform\)](#). CCSI, IIED, IISD.
- Cordes, KY Johnson, L, Szoke-Burke, S and Maweni, R (2019) [Legal frameworks and foreign investment: A primer on governments’ obligations](#). CCSI, New York.
- Cordes, KY, Johnson, L and Szoke-Burke, S (2016) [Land deal dilemmas: Grievances, human rights, and investor protections](#). CCSI, New York.
- Cordes, KY, Johnson, L and Szoke-Burke, S (2017) At the intersection of land grievances and legal liability: The need to reconsider contract rights and expectations at the supranational level, *Loyola University Chicago Law Journal*, 49, pp.516–567.
- Cotula, L (2010) [Investment contracts and sustainable development: How to make contracts for fairer and more sustainable natural resource investments](#). IIED, London.
- Cotula, L (2015) [Land rights and investment treaties: exploring the interface](#). IIED, London.
- Cotula, L (2016) [Foreign investment, law and sustainable development: A handbook on agriculture and extractive industries](#). IIED, London.
- Cotula, L (2018) [Raising the bar on responsible investment: what role for investment treaties?](#) IIED, London.
- Cotula, L (2023) [Climate change in impact assessments: towards an integrated approach](#). IIED, London.

- Cotula, L and Schröder, M (2017). [Community perspectives in investor-state arbitration](#). IIED, London.
- Cotula, L and Knight, R (2021) [Protecting legitimate tenure rights: From concepts to practice](#). FAO, Rome.
- Cotula, L and Perrone, NM (2024) Seeing Santurbán through ISDS: A sociolegal case study of Eco Oro v. Colombia, *Leiden Journal of International Law*, 37(2), pp.440–461.
- Di Salvatore, L, Cotula, L, Nanda, A and Wang, C (2023) [Investor-state dispute settlements: a hidden handbrake on climate action](#). IIED, London.
- Hamby, C (2016) [The secret threat that makes corporations more powerful than countries](#), *BuzzFeed*, 30 August.
- International Energy Agency (2021) [Net Zero by 2050: A Roadmap for the Global Energy Sector](#).
- Johnson, L (2016) [Space for local content policies and strategies: A crucial time to revisit an old debate](#). GIZ.
- Johnson, L, Sachs, L and Lobel, N (2019) Aligning international investment agreements with the Sustainable Development Goals, *Columbia Journal of Transnational Law*, 58(1), pp.58–120.
- Knight, R, Nguiffo, S, Kobusingye, D and Teresa, E (2024) [Rapid Response Mechanisms: supporting resolution of community-investor conflicts related to Land-Based Investments](#). IIED, London.
- Mehranvar, L and Sasmal, S (2022) [The role of investment treaties and investor-state dispute settlement in renewable energy investments](#). CCSI, New York.
- OECD (2022) [FDI Qualities Policy Toolkit](#). OECD Publishing, Paris.
- Ostřanský, J and Bonnitcha, J (2024) [Rethinking investment treaties: A roadmap](#). IISD, Geneva.
- Pohl, J (2018) [Societal benefits and costs of International Investment Agreements: A critical review of aspects and available empirical evidence](#). OECD Working Papers on International Investment, No. 2018/01. OECD Publishing, Paris.
- Tienhaara, K (2011) Regulatory chill and the threat of arbitration: A view from political science, in Brown, C and Miles, K (eds) *Evolutions in Investment Treaty Law and Arbitration*. Cambridge University Press, pp. 606–628
- Tienhaara, K (2018) Regulatory chill in a warming world: The threat to climate policy posed by investor-state dispute settlement', *Transnational Environmental Law* 72(2), pp. 229-250.
- Tienhaara, K and Cotula, L (2020) [Raising the cost of climate action? Investor-state dispute settlement and compensation for stranded fossil fuel assets](#). IIED, London.
- Tienhaara, K, Thrasher, RB, Simmons, A and Gallagher, KP (2022) Investor-state disputes threaten the global green energy transition, *Science*, 376(6594), pp.701–703.
- Tienhaara, K, Thrasher, RB, Simmons, A and Gallagher, KP (2023) [Investor-state dispute settlement: Obstructing a just energy transition](#), *Climate Policy*, 22(9), pp.1197–1212.
- UNCTAD (2024) [Compensation and damages in investor-state dispute settlement proceedings](#).
- UNCTAD (2025) [A practitioner's guide to investment laws](#). New York, Geneva.
- Van Harten, G (2016) [Who has benefited financially from investment treaty arbitration? An evaluation of the size and wealth of claimants](#). Osgoode Legal Studies.
- Van Harten, G and Scott, DN (2016) [Investment treaties and the internal vetting of regulatory proposals: A case study from Canada](#). Osgoode Legal Studies.

2. International treaties and instruments

(by date of signature/adoption, most recent top)

Treaties on trade and investment

Protocol on Investment to the Agreement Establishing the African Continental Free Trade Area, signed 19 February 2023. <https://investmentpolicy.unctad.org/international-investment-agreements/treaties/tips/5114/afcfta-protocol-on-investment-2023->

Agreement Establishing the African Continental Free Trade Area, signed 21 March 2018, entered into force 30 May 2019. <https://investmentpolicy.unctad.org/international-investment-agreements/treaties/tips/5109/afcfta-2018->

Agreement on Trade-Related Investment Measures (TRIMs). Annex 1A to the Agreement Establishing the World Trade Organization, signed in Marrakesh on 15 April 1994, into force 1 January 1995. www.wto.org/english/docs_e/legal_e/18-trims.pdf

Environmental treaties and instruments

Kyoto Protocol to the United Nations Framework Convention on Climate Change, adopted 11 December 1997, entered into force 16 February 2005. <https://unfccc.int/process-and-meetings/the-kyoto-protocol>

Convention on Biological Diversity, opened for signature on 5 June 1992, into force 29 December 1993. www.cbd.int/convention/text/

International guidance

OECD Guidelines for Multinational Enterprises. 2023 Edition. Organisation for Economic Co-operation and Development (OECD), Paris. www.oecd.org/en/publications/2023/06/oecd-guidelines-for-multinational-enterprises-on-responsible-business-conduct_a0b49990.html

Principles for Responsible Investment in Agriculture and Food Systems, endorsed Committee on World Food Security October 2014. www.fao.org/cfs/policy-products/rai/en

Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security, endorsed by the Committee on World Food Security on 11 May 2012. www.fao.org/nr/tenure/voluntary-guidelines/en

Guiding Principles on Business and Human Rights: Implementing the United Nations 'protect, respect and remedy' framework. Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises (John Ruggie). 21 March 2011, UN Doc. A/HRC/17/31. United Nations. <https://digitallibrary.un.org/record/720245?ln=en&v=pdf>

Principles for Responsible Contracts: Integrating the management of human rights risks into state-investor contract negotiations. Guidance for negotiators. Addendum 3 to the UN Guiding Principles on Business and Human Rights. 25 May 2011, UN Doc. A/HRC/17/31/Add.3. www.ohchr.org/Documents/Issues/Business/A.HRC.17.31.Add.3.pdf

3. Cases

Bear Creek Mining Corporation v. Republic of Peru, ICSID Case No. ARB/14/21, www.italaw.com/cases/2848

Eco Oro Minerals Corp. v. Republic of Colombia, ICSID Case No. ARB/16/41, www.italaw.com/cases/6320

Rockhopper Italia S.p.A., Rockhopper Mediterranean Ltd, and Rockhopper Exploration Plc v. Italian Republic, ICSID Case No. ARB/17/14, www.italaw.com/cases/5788

Cargill, Incorporated v. United Mexican States, ICSID Case No. ARB(AF)/05/2, www.italaw.com/cases/223

ENDNOTES

- 1 These definitions have been adapted from Knight, R, Nguiffo, S, Kobusingye, D and Teresa, E (2024) [Rapid Response Mechanisms: supporting resolution of community-investor conflicts related to Land-Based Investments](#). IIED, London.
- 2 Bulman, A, Berger, B and Knight, K (2026) [Enhancing Women’s Meaningful Participation in Community Engagements: Toolkit](#). CCSI and IIED.
- 3 Van Harten, G (2016) [Who has benefited financially from investment treaty arbitration? An evaluation of the size and wealth of claimants](#). Osgoode Legal Studies.
- 4 UNCTAD (2024) [Compensation and damages in investor-state dispute settlement proceedings](#).
- 5 Di Salvatore, L, Cotula, L, Nanda, A and Wang, C (2023) [Investor-state dispute settlements: a hidden handbrake on climate action](#). IIED, London.
- 6 See note 4.
- 7 Pohl, J (2018) [Societal benefits and costs of International Investment Agreements: A critical review of aspects and available empirical evidence](#). OECD Working Papers on International Investment, No. 2018/01. OECD Publishing, Paris.
- 8 See note 4.
- 9 See note 4.
- 10 UNCTAD (2025) [A practitioner’s guide to investment laws](#). New York, Geneva.
- 11 See note 10.
- 12 Berge, TL and St John, T (2020) Asymmetric diffusion: World Bank “best practice” and the spread of arbitration in national investment laws, *Review of International Political Economy*, 28(3), pp.584–610.
- 13 See note 12.
- 14 Cotula, L (2016) [Foreign investment, law and sustainable development: A handbook on agriculture and extractive industries](#). IIED, London.
- 15 Cordes, KY Johnson, L, Szoke-Burke, S and Maweni, R (2019) [Legal frameworks and foreign investment: A primer on governments’ obligations](#). CCSI, New York.
- 16 See note 7.
- 17 See, for example, a 2020 meta-analysis of 74 empirical studies, which found the effect of investment treaties on foreign direct investment to be “so small as to be considered zero”; Brada, J, Zdenek, D and Iwasaki I (2020) Does Investor Protection Increase Foreign Direct Investment? A Meta-Analysis. CEI Working Paper Series No 2020-4. Center for Economic Institutions, Institute of Economic Research, Hitotsubashi University). A 2018 OECD study found that no existing study concluded that the existence of investment treaties caused increased FDI flows; Pohl, J (2018) [Societal benefits and costs of International Investment Agreements: A critical review of aspects and available empirical evidence](#). OECD Working Papers on International Investment, No. 2018/01. OECD Publishing, Paris. A 2017 study of European businesses found that “business takes little interest in IIAs [investment treaties]”; Basedow, R (2017) Business preferences in international investment policymaking: Does European business lobby for international investment agreements? EUI Working Papers MWP 2017/06. European University Institute.
- 18 Borgia, M, Ibarlucea Flores, P and Sztajerowska, M (2020) [Drivers of divestment decisions of multinational enterprises - A cross-country firm-level perspective](#). OECD Working Papers on International Investment, No. 2019/03. OECD Publishing, Paris.
- 19 Mehranvar, L and Sasmal, S (2022) [The role of investment treaties and investor-state dispute settlement in renewable energy investments](#). CCSI, New York.
- 20 See note 14.
- 21 Cordes, KY, Johnson, L and Szoke-Burke, S (2017) At the intersection of land grievances and legal liability: The need to reconsider contract rights and expectations at the supranational level, *Loyola University Chicago Law Journal*, 49, pp.516–567.
- 22 See note 4.
- 23 See, for example, Tienhaara, K (2011) Regulatory chill and the threat of arbitration: A view from political science, in Brown, C and Miles, K (eds) *Evolutions in Investment Treaty Law and Arbitration*. Cambridge University Press, pp. 606–628; Van Harten, G and Scott, DN (2016) [Investment treaties and the internal vetting of regulatory proposals: A case study from Canada](#). Osgoode Legal Studies; Tienhaara, K (2018) Regulatory chill in a warming world: The threat to climate policy posed by investor-state dispute settlement’, *Transnational Environmental Law* 72(2), pp. 229–250.
- 24 In 2018, for example, the threat of ISDS claims from mining companies and lobbyists resulted in Indonesia granting exemptions from a new environmental law prohibiting open-pit mining in protected forest areas: Tienhaara2018 (note 23); Hamby, C (2016) [The secret threat that makes corporations more powerful than countries](#), *BuzzFeed*, 30 August. Experience of losing a previous ISDS claim informed this decision: Hamby, C (2016) [The secret threat that makes corporations more powerful than countries](#), *BuzzFeed*, 30 August.

- 25 See Akyüz, Y (2008) [Global Rules and Markets: Constraints over policy autonomy in developing countries](#). Working Paper No. 87. International Labour Office, Geneva, cited in Cotula, L (2016) [Foreign investment, law and sustainable development: A handbook on agriculture and extractive industries](#). IIED, London.
- 26 See, for example, Cotula, L (2016) [Foreign investment, law and sustainable development: A handbook on agriculture and extractive industries](#). IIED, London.
- 27 See for example, Cotula, L (2016) [Foreign investment, law and sustainable development: A handbook on agriculture and extractive industries](#). IIED, London; Johnson, L (2016) [Space for local content policies and strategies: A crucial time to revisit an old debate](#). GIZ.
- 28 See also note 14, pp. 68–69.
- 29 Johnson, L, Sachs, L and Lobel, N (2019) Aligning international investment agreements with the Sustainable Development Goals, *Columbia Journal of Transnational Law*, 58(1), pp.58–120.
- 30 Ošťanský, J and Bonnitcha, J (2024) [Rethinking investment treaties: A roadmap](#). IISD, Geneva.
- 31 See, for example, Cotula, L (2016) [Foreign investment, law and sustainable development: A handbook on agriculture and extractive industries](#). IIED, London; Johnson, L, Sachs, L and Lobel, N (2019) Aligning international investment agreements with the Sustainable Development Goals, *Columbia Journal of Transnational Law*, 58(1), pp.58–120; OECD (2022) [FDI Qualities Policy Toolkit](#). OECD Publishing, Paris.
- 32 See for example Johnson, L, Sachs, L and Lobel, N (2019) Aligning international investment agreements with the Sustainable Development Goals, *Columbia Journal of Transnational Law*, 58(1), pp.58–120, noting approach adopted in WTO Agreement on Trade-Related Aspects of Intellectual Property Rights article 66.2.
- 33 See note 29.
- 34 Cotula, L and Knight, R (2021) [Protecting legitimate tenure rights: From concepts to practice](#). FAO, Rome.
- 35 See, for example, Cotula, L (2015) [Land rights and investment treaties: exploring the interface](#). IIED, London; Cordes, KY, Johnson, L and Szoke-Burke, S (2016) [Land deal dilemmas: Grievances, human rights, and investor protections](#). CCSI, New York.
- 36 Bulman, A, Coleman, J, Merrill, E, Akwii, E, Songy, M and Fiedler, Y (2024) [Screening for responsible investment in agriculture and food systems: Guidance and tools for government officials](#). FAO, Rome.
- 37 See note 36.
- 38 See note 36.
- 39 Akwii, E, Brennan, G, Hannay, L, Brauch, MD and Mardirossian, N (2024) [Incorporating climate considerations into investment assessment processes: Guidance for national and local governments](#). CCSI, New York.
- 40 See note 14.
- 41 Where included, pre-establishment obligations often require treaty parties to treat covered investors “no less favourably” than domestic investors and other foreign investors, i.e. not to discriminate between investors. These obligations may prohibit both intentional and unintentional discrimination. A government may intentionally decide to discriminate among potential investors to encourage nascent industries, support historically marginalised groups, or otherwise support development of strategic sectors through targeted policy and legal measures. Investor claimants have challenged these types of measures and been successful through ISDS, even when challenged measures have been applied to entire sectors (including both domestic and foreign companies). See for example *Cargill v. Mexico (2005)* ICSID Case No. ARB(AF)05/2.
- 42 International Energy Agency (2021) [Net Zero by 2050: A Roadmap for the Global Energy Sector](#).
- 43 See note 5.
- 44 Tienhaara, K and Cotula, L (2020) [Raising the cost of climate action? Investor-state dispute settlement and compensation for stranded fossil fuel assets](#). IIED, London.
- 45 Bonnitcha, J and Brewin, S (2020) [Compensation under investment treaties: What are the problems and what can be done?](#) IISD, Geneva.
- 46 Arcuri, A, Tienhaara, K and Pellegrini, L (2024) Investment law v. supply-side climate policies: Insights from *Rockhopper v. Italy* and *Lone Pine v. Canada*, *International Environmental Agreements: Politics, Law and Economics*, 24, pp.193–216.
- 47 See note 44.
- 48 Tienhaara, K, Thrasher, RB, Simmons, A and Gallagher, KP (2022) Investor-state disputes threaten the global green energy transition, *Science*, 376(6594), pp.701–703.
- 49 Tienhaara, K, Thrasher, RB, Simmons, A and Gallagher, KP (2023) [Investor-state dispute settlement: Obstructing a just energy transition](#), *Climate Policy*, 22(9), pp.1197–1212.
- 50 See note 39.
- 51 Cotula, L (2023) [Climate change in impact assessments: towards an integrated approach](#). IIED, London.
- 52 See note 21.
- 53 The award in *Rockhopper v. Italy* was annulled in early 2025 due to failure by the claimant-appointed arbitrator to disclose a prior criminal prosecution. In July 2025, Rockhopper announced its intention to refile a claim.

- 54 See note 36.
- 55 See note 21.
- 56 See, for example, Cotula, L (2010) [Investment contracts and sustainable development: How to make contracts for fairer and more sustainable natural resource investments](#). IIED, London; Cordes, KY, Johnson, L and Szoke-Burke, S (2017) At the intersection of land grievances and legal liability: The need to reconsider contract rights and expectations at the supranational level, *Loyola University Chicago Law Journal*, 49, pp.516–567.
- 57 See note 21.
- 58 See note 21.
- 59 Cotula, L (2018) [Raising the bar on responsible investment: what role for investment treaties?](#) IIED, London.
- 60 See note 53.
- 61 See note 53.
- 62 Cordes, KY, Johnson, L and Szoke-Burke, S (2016) [Land deal dilemmas: Grievances, human rights, and investor protections](#). CCSI, New York.
- 63 Cotula, L and Perrone, NM (2024) Seeing Santurbán through ISDS: A sociolegal case study of Eco Oro v. Colombia, *Leiden Journal of International Law*, 37(2), pp.440–461.
- 64 See, for example, Cotula, L and Schröder, M (2017). [Community perspectives in investor-state arbitration](#). IIED, London.
- 65 Coleman, J, Johnson, L, Güven, B, Cotula, L and Berger, T (2019) Third-party rights in investor-state dispute settlement: Options for reform (Submission to UNCITRAL Working Group III on ISDS Reform). CCSI, IIED, IISD.

