Towards a Common Investment Area in the African Continental Free Trade Area (AfCFTA)

Levelling the Playing Field for Intra-African Investment

VISUAL SUMMARY

United Nations Economic Commission for Africa
FOREIGN DIRECT INVESTMENT IN THE ERA OF AfCFTA

- Responsible investments creating jobs
- Taxes to reinvest in the local economy
- Complying with domestic regulations
- Promoting corporate social responsibility

AfCFTA: Integrated African market
- GDP $2.5 trillion
- Official launch in Kigali
- 44 AU Member States signed the agreement
- Phase I: Development of protocols on trade in goods, trade in services and dispute settlement

2019
- Down 10.3% from 2018
- $45.4 billion = 2.9% of global FDI
- Intra – African investment services and manufacturing
- Extra – African investment natural resources

2020
- Increased protectionism and stiffened competition among countries seeking investment
- New and alternative financing is required
- Africa requires out-of-the-box thinking for development financing

AfCFTA comes into force
Operational phase launched
Trading under AfCFTA begins
Phase II and III: Finalise protocols on investment, competition, intellectual property and e-commerce

2021
Investment is the entry point for considering competition, intellectual property and digitalization.

**COMPETITION**
Coherent competition rules and regulatory approaches can stimulate and attract investment to achieve inclusive growth and sustainable development.

Fewer than 50% of Africa’s national economies have competition laws and effective authorities to enforce them.

**INTELLECTUAL PROPERTY**
Protocol on IP must seek to balance the generation of knowledge or innovation and distributing the resulting benefits or profits.

Strong IP regimes + Innovation & Technology transfer

Attracts more FDI

Excessive IPR laws can obstruct home-grown innovation, industrialization and slow sustainable development.

**DIGITAL ECONOMY**
Enabling internet penetration is essential for a digital economy to emerge.

E-government is another avenue for investment.

**DIGITAL TRANSFORMATION STRATEGY FOR AFRICA (2020 - 2030)**
A continental digital market associated with specific industrial policies.

Economies of scale and low transaction costs from digitalization.

Regional integration and cooperation to bridge the digital divide.

**KEY DETAILS OF AfCFTA PROTOCOLS**

**INVESTMENT**
Encompassing investment promotion and facilitation, investment protection, investor obligations, and state commitments.

**COMPETITION**
Fair competition across all continental markets.

**INTELLECTUAL PROPERTY**
Balance attracting international investment through a protection regime with incentivizing home-grown innovation.

**E-COMMERCE**
Promotion of e-commerce adoption and harmonized rules on digital transactions, data privacy, consumer protection, and cyber security.
The AfCFTA Investment Protocol will bring investment policymaking in Africa to a new stage, shaped by the Pan-African Investment Code. It will foster the continent’s structural transformation, harness private initiatives’ business potential, and ensure sustainable outcomes for host communities.

**OBJECTIVES**

1. Foster the continent’s structural transformation
2. Harness private initiatives’ business potential
3. Sustainable outcomes for host communities

**INVESTMENT PROTOCOL PILLARS**

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<th>01.</th>
<th>INVESTMENT PROMOTION AND FACILITATION</th>
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<td>Reduces the transaction costs of identifying investment opportunities and taking advantage of those opportunities</td>
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<th>02.</th>
<th>INVESTMENT PROTECTION</th>
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<td>Boosts investor confidence by reducing political risks</td>
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<th>INVESTOR OBLIGATIONS</th>
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<td>Regulate key aspects of business behaviour, including human rights, labour standards, environmental protection, taxation and anti-corruption laws and principles</td>
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<th>04.</th>
<th>OTHER STATE COMMITMENTS</th>
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<td>Ensure international obligations on states to prevent a damaging race to the bottom</td>
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**REGULATIONS**

Treaty drafters must determine the relation between the AfCFTA Investment Protocol and existing or future regional and bilateral investment agreements.

**DOMESTIC INVESTMENT LAW**

The most important and immediately applicable source of law to investors, both foreign and domestic.

- Promote foreign investment by providing incentives and property rights guarantees
- Control foreign investment through restrictions and obligations
- Promote economic development

**NATIONAL INVESTMENT POLICIES**

The AfCFTA Investment Protocol will build on the body of rights and obligations accumulated for integration in the regional economic communities (RECs) to set up a pan-African single market.
The elimination of tariffs and nontariff barriers under the AfCFTA will open opportunities for competition to a wider continental market.

**Open trade + Investment policies**

**COMPETITION**

**COMPETITION POLICIES DO’s and DON’Ts**

- Efficient markets
- Prevention of private market abuses
- Competition enforcement
- Increased competition
- Foster entry of more efficient firms
- Efficient use of resources
- Promote innovation
- Economic growth
- Improved customer welfare

- Fixing of price or margins
- Restrict output to provoke price increase
- Divide the market between firms
- Boycotting providers
- Exclusive restraints requiring single dealers
- Excessive/predatory pricing
- Tying the purchase to other undesired products
- Mergers of companies in the same market

Competition policy needs to complement digital policy, and policies should address the market imperfections that are worsened by e-commerce.

**Over 70%** of African countries rank in the bottom half on the intensity of local competition measure and on the existence of fundamentals for market-based competition.

The number of African jurisdictions with competition regimes has expanded from 17 in 2000 to 30+ in 2017.

Five RECs have enacted competition laws, and they are at different stages of implementation.
THE AfCFTA INTELLECTUAL PROPERTY RIGHTS PROTOCOL

Establish a regional system to prevent fragmentation of the market
Set up a platform for WTO-compliant regional provisions on IPRs
Protect African interests in areas of traditional knowledge, genetic resources and traditional cultural expressions

PROTOCOL RECOMMENDATIONS

1. Establish a regional system to prevent fragmentation of the market
2. Set up a platform for WTO-compliant regional provisions on IPRs
3. Protect African interests in areas of traditional knowledge, genetic resources and traditional cultural expressions

Research and development
Technology transfer and Fourth Industrial Revolution
Food and medicine at affordable prices
Development of competitive markets and local industries
Value-added exports

African inventions are mostly related to engines, turbines, pumps, machines, chemistry, civil and mechanical engineering

13,380 Non-resident patents
3,120 Resident patents

African countries should spend at least 1% of GPD on research and development
Through the AfCFTA negotiations on the E-commerce Protocol, African countries can develop common positions on e-commerce and harmonized digital economy regulations.

### AfCFTA can support:

- Consumer protection
- Electronic transactions
- Cyber security
- Data protection and privacy

### E-COMMERCE INVESTMENT

- Access to the internet
- Strong legislative frameworks
- Efficient payment and logistics systems

Countries where e-commerce is well developed tend to attract investment.

### E-COMMERCE START-UPS

- **18%** EAST AFRICA
- **27%** SOUTHERN AFRICA
- **7%** OTHERS
- **48%** WEST AFRICA

A simple copy-and-paste transfer to Africa of existing business models in developed countries does not work.

- less than **50%** of the population over age 15 has an account at a financial institution or mobile money operator
- Cash on delivery (CoD) remains the only option for many online shoppers but electronic fund transfers (EFT) are also increasingly being used
- over **50%** of online shoppers in Africa are in just three countries—Kenya, Nigeria and South Africa

Nigeria is the largest e-commerce market in both revenue and number of shoppers.
**COMPLEMENTARY AND FLANKING POLICIES**

**FISCAL POLICY**
- Dictates what government budgetary allocations can be secured for and what taxes and other impositions can be derived from each economic activity.

**FISCAL POLICY**
- Its effectiveness and efficiency can be enhanced through digitalization.
- When geared to investment can enhance the interlinkages with IP policy.

**DIGITAL TECHNOLOGY**
- Can increase fiscal revenue by 3%-4%.
- Can strengthen government capacity.
- Can promote greater fiscal discipline in public expenditure.

**INVESTMENT**
- Must establish a relationship with investment in the digital economy.

**COMPETITION**
- Should consider competition policy in a market where several countries’ economies are integrated.

**INTELLECTUAL PROPERTY**
- Must respect intellectual property rights (IPRs) and enforcement across borders.

**PRIVATE SECTOR DEVELOPMENT POLICY**
- To support industrialization.

**INDUSTRIALIZATION**
- Requires large capital expenditure on productive assets.
- Regional integration could create regional value chains.
- African countries must support their tech entrepreneurs in developing scalable products.

- Employment
- Purchasing power
- SMEs development
- Companies specialization

Policies for the complementary andflanking sectors:
- Complement policies in the study’s central sectors.
- Maximize positive outcomes.
- Minimize negative outcomes.
COVID–19 AND INVESTMENT IN AFRICA

The health consequences of COVID–19 are tragic for the continent, but it’s impact goes further.

- **ECA estimated GDP growth** to drop from **3.2%** (2019) to **1.8%** (2020)
- **Demand and supply shocks** reduce MNE earnings
- **Uncertain business outlooks** and heightened risks
- **IMF revised its 2020 GDP growth** forecast for Africa (excluding North Africa) to **−3%**
- Investors adjusted their portfolios towards **safer assets**
- Firms operating at **less than half capacity**

Africa can take advantage of its experience with COVID–19 to better prepare for a world increasingly at risk of pandemics, natural disasters, economic crises and environmental catastrophes.

**INVESTMENT POLICIES AFTER THE PANDEMIC**

1. Africa needs to develop regional value chains and reduce its external economic dependence
2. Investment policies can play a critical role in protecting supply chains and strengthening the continent’s readiness to respond to future crises
3. The AfCFTA must be at the forefront of Africa’s economic recovery
4. The Investment Protocol will boost FDI inflows by harmonizing rules and creating a level playing field for investors
5. COVID–19 has catalysed changes that present Africa with a unique opportunity to capture the benefits of e-commerce and digitalization