



International Investment  
Agreements Negotiators  
Handbook:  
APEC/UNCTAD MODULES  
  
(IIA Handbook)

**APEC Committee on Trade and Investment  
Investment Experts Group**

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## ABBREVIATIONS

<b>ASEAN</b>	Association of South East Asian Nations
<b>BIT</b>	Bilateral Investment Treaty
<b>CAFTA-DR</b>	Central America - Dominican Republic Free Trade Agreement
<b>CARIFORUM</b>	Caribbean Forum
<b>CECA</b>	Comprehensive Economic Partnership Agreement
<b>CEFTA</b>	Central European Free Trade Agreement
<b>CEPA</b>	Closer Economic Partnership Agreement
<b>COMESA</b>	Common Market for Eastern and Southern Africa
<b>CRS</b>	Corporate and Social Responsibility
<b>EFTA</b>	European Free Trade Association
<b>EPA</b>	Economic Partnership Agreement
<b>FET</b>	Fair and Equitable Treatment
<b>FDI</b>	Foreign Direct Investment
<b>FTA</b>	Free Trade Agreement
<b>GATT</b>	General Agreement on Trade and Tariffs
<b>GATS</b>	General Agreement on Trade in Services
<b>IIA</b>	International Investment Agreement
<b>ICSID</b>	International Centre for Settlement of Investment Disputes
<b>IPFSD</b>	Investment Policy Framework for Sustainable Development
<b>ISDS</b>	Investor-State Dispute Settlement
<b>MFN</b>	Most Favoured Nation
<b>NAFTA</b>	North American Free Trade Agreement
<b>NT</b>	National Treatment
<b>OECD</b>	Organisation for Economic Cooperation and Stability
<b>PR</b>	Performance Requirements
<b>REIO</b>	Regional Economic Integration Organization
<b>TRIMs</b>	Trade-Related Investment Measures

<b>TRIPS</b>	Trade Related Aspects of Intellectual Property Rights
<b>UNCITRAL</b>	United Nation Commission on International Trade Law
<b>WIR</b>	World Investment Report
<b>WTO</b>	World Trade Organization

# Introduction

## Purpose

The Handbook aims to provide practical and user-friendly information to negotiators of International Investment Agreements (IIAs) in order to assist them in the decision-making process towards concluding IIAs compatible with national policy objectives. For experienced negotiators, the Handbook offers a quick and practical reminder of the main policy options, issues and implications at stake. For less experienced negotiators and other government officials, it helps to better understand IIAs. Written in plain language, it may also serve as an educational tool for capacity building.

The Handbook is divided into 26 sections (modules), each dedicated to a specific provision or issue commonly encountered in IIAs.<sup>1</sup> Each module identifies main approaches and policy options accompanied by sample treaty formulations from existing IIAs. Importantly, it also sets out main implications of each policy option in order to assist negotiators in making an informed choice.

The Handbook is not designed to meet specific needs, nor does it aim to present any sort of consensus or international benchmarking. It may not be seen as offering legal advice or a recommendation of any kind. Thanks to its “checklist” approach, it is simply a quick reference tool that should go some way in helping the user to understand the rationales for, and implications of, various policy options. The Handbook’s content and the various examples of existing IIA practice, provided here Handbook, are indicative and could be considered by the negotiators as a useful element.

While the Handbook features key variations of the elements commonly found in existing IIAs, it is not comprehensive, in that some treaties may cover matters not treated in the Handbook or – with respect to those elements that are included in the Handbook – may adopt approaches and formulations different from those mentioned here. At the same time, every effort was made to identify and analyze the principal and most wide-spread policy approaches.

In developing IIA clauses, negotiators would be well-advised to consult more detailed literature, arbitral practice<sup>2</sup> and other relevant sources of information in order to make considered and thought-out decisions. Such decisions are not necessarily limited to what is already “out there” and may require negotiators to creatively develop and formulate treaty rules according to their objectives. The Handbook is thus an input, among many others, that could be used in this process.<sup>3</sup>

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<sup>1</sup> The expression “commonly encountered” should be taken with a grain of salt. In many aspects IIAs have reached a certain degree of uniformity, in others they have become increasingly diverse. Indeed, there is a substantial gap between a typical 6-page bilateral investment treaty of the 1990s and most recent IIAs that can take 40-50 pages or even more. To a large extent, this increase in length is due to the increasing level of detail found in the rules and standards (e.g. *Transfer of Funds* or *ISDS*), although in some instances new types of rules have emerged (e.g. *Denial of Benefits*, *Investor Responsibility*, *General Exceptions*).

<sup>2</sup> For information on relevant arbitration awards see UNCTAD database of treaty-based investor-State dispute settlement cases at <http://iiadbcases.unctad.org/>

<sup>3</sup> For further information, please also see UNCTAD’s Investment Policy Framework for Sustainable Development (IPFSD), which offers a comprehensive guide for national and international investment

It is hoped that the Handbook will serve as a convenient support tool for the conduct of effective and high-quality IIA negotiations, with a view to creating a network of IIAs that effectively fosters foreign direct investment.

### **How to use the Handbook**

Each module follows the same basic structure and consists of the following elements:

- (1) Brief introduction explaining the general meaning and purpose of the relevant provision.
- (2) The structure of the provision, in the form of a checklist of elements commonly covered in the provision concerned. With respect to each element, one or more policy choice is indicated.
- (3) The explanation of specific policy options under each element, and the main implications of choosing a specific policy option.
- (4) One or more examples of treaty formulations illustrating each policy option.
- (5) A separate list of “other approaches” (if any), i.e. those that are less commonly encountered in IIAs but could still be considered.
- (6) An indicative list of other treaty provisions, if any, with which the provision concerned closely interacts.

The ultimate shape of an IIA is to a large extent determined by the interaction between selected policy options. For example, an agreement’s “protective strength” stems not only from the standards of protection, but also from the breadth and variety of categories of investors and investments it covers. Substantive treaty standards should be viewed together with flexibilities and exceptions (e.g. for national security and public policy objectives) and so on. In other words, each treaty element should be considered not only on its own but also in combination with other provisions and elements.

It should be kept in mind that a specific policy objective can be pursued by different treaty elements. For example, a country that wishes to preserve regulatory space for policies aimed at ensuring access to essential services can opt for (i) excluding investments in essential services from the scope of the treaty; (ii) excluding essential services policies from the scope of specific provisions (e.g. national treatment); (iii) scheduling reservations (for national treatment or the prohibition of performance requirements) for specific (existing and/or future) essential services policies; and/or (iv) including access to essential services as a legitimate policy objective in the IIA’s general exceptions. .

### **Role of the Most-Favoured-Nation (MFN) principle**

预览已结束，完整报告链接和二维码如下：

[https://www.yunbaogao.cn/report/index/report?reportId=5\\_6814](https://www.yunbaogao.cn/report/index/report?reportId=5_6814)

