

# Anchoring Sustainable Development in the UNIDROIT–ICC Instrument on International Investment Contracts

## A call to stakeholders to engage in the public consultation

July 2026

In 2023, the International Institute for the Unification of Private Law (UNIDROIT)<sup>1</sup> and the International Chamber of Commerce (ICC) launched a joint project aiming to develop a “guidance to foster the modernization and standardization of international investment contracts,” including through principles and model clauses. The first working group meeting of the project took place on October 25, 2023.

The UNIDROIT–ICC project has now developed a draft Instrument on International Investment Contracts (the draft Instrument), which is entering a public consultation phase. [Open for 12 weeks from June 24 to 15 September 15, 2026](#), the consultation offers an important opportunity for governments, investors, civil society, project-affected communities, practitioners, and academics to assess whether the draft reflects the priorities and needs of those who may use it or be affected by it. This is a pivotal moment. Indeed, because the text was developed primarily within the Working Group,<sup>2</sup> this is the first time it has been exposed to the wider community whose input will be essential to its legitimacy, balance, and practical value.

The International Institute for Sustainable Development (IISD) encourages all interested stakeholders, in particular, developing and emerging economies whose negotiating practice the draft Instrument is intended to inform, to take an active part in the consultation. Given the short window, early and meaningful engagement will be key to ensuring that the draft

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<sup>1</sup> UNIDROIT is an independent intergovernmental organization that studies needs and methods for modernizing, harmonizing and coordinating private law (in particular commercial law) between states and groups of states. It also formulates uniform law instruments, principles, and rules to achieve those objectives.

<sup>2</sup> The Working Group is the body established by UNIDROIT for the purpose of drafting the Instrument. Co-chaired by the President of the UNIDROIT Governing Council and the Chair of the ICC Institute of World Business Law, it is otherwise composed of private lawyers and academics for the most part specialized in international arbitration, selected by UNIDROIT and the ICC-IWBL “for their expertise in international investment law and contract law” (UNIDROIT, 2023, paras. 18–19).



Instrument is coherent, balanced, and firmly anchored in sustainable development goals. UNIDROIT notes that “the Working Group on IICs will consider the feedback received at its ninth session, between 19-21 October 2026. It is anticipated that the Principles and Model Clauses for ICCs will be finalized and published at the end of 2026” (UNIDROIT, n.d.-a).

## Background

The project on international investment contracts (IICs) was launched following a proposal by the ICC Institute of World Business Law (IWBL) and was included with high priority in UNIDROIT’s 2023–2025 Work Programme by decision of its General Assembly. Its objective is to develop guidance that “fosters the modernization and standardization of IICs, taking account of recent developments in international investment law, including the increasing focus on sustainability, and exploring the interaction between the UNIDROIT Principles of International Commercial Contracts (UPICC) and common provisions in IICs” (UNIDROIT, n.d.-b). Since the first Working Group session in October 2023, the project, in partnership with ICC, has progressed through eight Working Group sessions, parallel work by sub-groups, regular engagement with a consultative committee, and the input of observers.

IISD has participated as an observer in the Working Group since January 2024, engaging through written submissions and oral contributions to raise concerns, propose solutions, and advocate for an outcome that reflects sustainable development priorities.

## Public Consultation as an Inflection Point to Align the Draft Instrument With Sustainable Development

UNIDROIT’s public consultation on the draft Instrument is more than a procedural step. It creates an opportunity for stakeholders who were not represented in the Working Group or the UNIDROIT Governing Council<sup>3</sup> to review the draft, test its assumptions, and assess whether it reflects their priorities, concerns, and needs.

This matters for many governments of developing and emerging economies, project-affected communities, civil society, and academics and practitioners working at the intersection of investment and sustainable development. As with several previous UNIDROIT instruments, the draft instrument is intended to be used worldwide as a reference point for the negotiation or renegotiation of IICs across sectors and jurisdictions. Input from a wide range of stakeholders will therefore be crucial to ensure that the final version of the Instrument adequately addresses their unique contexts. If this is not ensured, the Instrument could prove counterproductive and negatively impact negotiating positions and outcomes.

For that reason, all interested stakeholders should use the consultation to review the Instrument and share their views. For governments in particular, this will require internal coordination among relevant ministries and agencies so that submissions reflect the country’s

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<sup>3</sup> The Governing Council is the body within UNIDROIT responsible for drawing up UNIDROIT’s work program and approving the annual report on UNIDROIT’s activities, among other functions. It consists of a president appointed by the Italian government and 25 members appointed by UNIDROIT’s General Assembly; see [UNIDROIT Statute](#), Arts. 6 and 11.



broader sustainable investment policy and the role of investor–state contracts within it. This may include ministries responsible for justice, investment, trade, industry, environment and climate, human rights, finance, as well as the office of the attorney general, among others. Because the Instrument addresses sustainability in a broad sense and does not have a sectoral focus, it cannot be reviewed through the lens of only one ministry, sector, or policy objective.

At the same time, stakeholders will need adequate time to review a complex and detailed draft, coordinate internally, and formulate input; the Working Group, in turn, will need sufficient time to assess, discuss, and integrate those inputs before the Instrument’s finalization, currently anticipated for the end of 2026.

## Key Considerations for Stakeholders

Stakeholders should review the draft against the model Instrument’s ambition, which is to provide a modern framework for IICs that support sustainability. Three issues are particularly important for stakeholders’ input.

### **First, consider whether the draft’s different objectives are coherent and compatible.**

On the one hand, the draft Instrument seeks to embed sustainability, human rights, and a more balanced allocation of rights and obligations. On the other hand, it also seeks to provide contractual mechanisms that offer investors protections functionally comparable to those found in old-generation investment treaties.

IISD’s view is that the final instrument should prioritize sustainable development and serve as a tool to help states and investors structure contracts that can deliver sustainable development outcomes for host states and their people. This means that the burdens of the contractual obligations must be equitably allocated, providing each party and affected third parties with access to appropriate remedies in the event of breach.

### **Second, assess whether the sustainability provisions are sufficiently operational.**

The draft Instrument seeks to place sustainability at the heart of the framework, defining it broadly to encompass environmental protection, climate change mitigation and adaptation, social responsibility, and human rights. It contains promising building blocks, including an integrated approach to sustainability due diligence across the life cycle of the contract; model clauses on investor sustainability obligations covering human rights, social commitments, local sourcing, environmental and climate commitments, community development, public health in some provisions, and anti-corruption; and recognition of remedies for non-compliance with sustainability obligations. This is real progress and signals an understanding that sustainability cannot be compartmentalized or treated as an afterthought in modern investment contracting.

IISD considers it essential that the sustainability provisions be framed in a way that delivers their full potential, providing processes to operationalize them and ensure compliance. At present, the draft casts many sustainability commitments in aspirational or best-efforts terms, including where binding international standards already exist. In these cases, the final Instrument should express them as binding obligations, so that sustainability is treated as an operational feature of the contract.



**Third, assess whether the investor protection standards provided in the draft Instrument can be reconciled with the objective of creating a sustainable development-oriented Instrument.** In particular, if they adequately reflect the state’s duty and right to regulate in the public interest in practice and are aligned with the Instrument’s sustainability provisions.

The draft Instrument purports to provide “a level of protection for investors that is functionally comparable to that traditionally provided by IIAs and BITs,”<sup>4</sup> while “avoid[ing] the asymmetries that have sometimes characterized treaty-based investment protection.”<sup>5</sup> It includes a variety of protections susceptible to a wide range of judicial and arbitral interpretations. It contains principles applied by investment treaty tribunals as subsets of the contentious “fair and equitable treatment” standard (Sarmiento & Nikièma, 2022)—notably the protection against arbitrary and unreasonable conduct—and the state assistance principle. The draft also contains protection against indirect (and not only direct) expropriation and stabilization clauses.

IISD’s view is that the final instrument should refrain from perpetuating the problematic practice of incorporating open-ended protection standards drawn from investment treaty law and broad concepts of public international law into investor–state contracts, to the detriment of the rules already provided by the project-specific contractual clauses and the applicable governing law of the contract. In this sense, provisions on compensation and damages, choice of law, and dispute settlement equally deserve close review and assessment in light of the Instrument’s sustainability objectives.

## Leveraging UNIDROIT’s Sustainable Development Workstream to Strengthen the Model Instrument’s Coherence

The public consultation also offers an opportunity for the Working Group to take stock of its accomplishments and consider whether it would benefit from closer alignment with UNIDROIT’s broader work on sustainable development.

UNIDROIT’s own work plan points to a potential path forward through the Sustainable Development Workstream established under the organization’s Centenary Work Programme. As this Workstream aims to assess “how sustainability may be met synergically” (UNIDROIT, n.d.-c) within UNIDROIT instruments and projects, drawing on that work would likely help the draft Instrument adopt a more streamlined and coherent structure. It would also likely help ensure that the draft Instrument is better aligned with its sustainability objective and positioned to become an authoritative and trusted reference point for states, investors, and other affected stakeholders.

Waiting for, or drawing directly on, the outputs of the Centenary Work Programme may require additional time and resources. However, for an initiative of this significance, a

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<sup>4</sup> [Draft Instrument dated June 2026](#), para. 7.

<sup>5</sup> [Draft Instrument dated June 2026](#), para. 8.



carefully sequenced process would be justified if it helps produce a more coherent and durable Instrument.

## Conclusion

The UNIDROIT–ICC project is an ambitious effort to bring international investment contracting closer to the requirements of sustainable development. The Working Group, Drafting Committee, and Consultative Committee deserve recognition for the effort invested and the progress achieved.

The quality of the final Instrument will depend on the depth and diversity of stakeholder engagement and on the Working Group’s ability to reflect that engagement meaningfully in the final text. Governments and other stakeholders need time to review a complex and detailed draft, coordinate internally, and formulate considered inputs. The Working Group, in turn, needs time to assess those inputs and incorporate them where appropriate. A timeline that compresses both stages risks undermining the value of the exercise.

The final Instrument should make sustainability the main objective and make it operational throughout the text. Instead of incorporating broad and open-ended concepts from investment treaties, the final Instrument should allocate rights and obligations equitably. These are the benchmarks against which the final text should be measured.

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