



INTERNATIONAL ENERGY CHARTER ROUNDTABLE

*A side- event to the
UNCTAD World Investment Forum 2016: investing in sustainable development*

TRANSPARENT MARKETS FOR SUSTAINABLE ENERGY INVESTMENTS: *policy options for sustainable development investment strategies*

“Sustainable development according to the SDGs will require global investment of \$5 trillion to \$7 trillion per year” [2014 Report, Intergovernmental Committee of Experts on Sustainable Development Financing]

DATE: Wednesday, 20 July 2016
HOURL: from 10:00 am until 11:30 am
PLACE: UNCTAD Investment Village
Kenyatta International Convention Center
Nairobi (Kenya)

Invited Speakers

Matteo Barra	International Energy Charter
Nathalie Bernasconi	International Institute for Sustainable Development
Patrick Obath	Associate Director, Adam Smith International Africa Limited
Elisabeth Tuerk	UNCTAD

Please, address any questions/comments related to the roundtable to Dr Matteo Barra (tel. +32 496 69 78 21, e-mail: matteo.barra@encharter.org), to Dr Monica Emmanuel (tel. +32 465 54 56 13, e-mail: monica.emmanuel@encharter.org) and to Ms Victoria Nalule (tel. +44 74 90 39 53 99, e-mail: victoria.nalule@encharter.org) at the Energy Charter Secretariat.

Suggested points for discussion

Sustainable development equation: universal access and clean energy transition

Energy is an essential component of the sustainable development equation. In pursuit of UN sustainable development goal ‘**Ensure access to affordable, reliable, sustainable and modern energy for all**’ (UNSDG7) shall be among the major challenges and opportunities that the world and governments face today¹. **Climate change is the other essential component of the sustainability equation.** The Paris Agreement responded to the climate change challenge with a firm commitment to transition towards a low-carbon economy. Transition to low carbon energy will contribute to reduce 78% of global emission originated from the energy sectors².

Investment needs: understanding the trillions

Current energy investment flows are insufficient to achieve the ambitious objectives of universal access to energy and of clean energy transition. Projections estimate that total investment of more than **\$1 trillion** would be required to achieve universal energy access by 2030. It is also estimated that **\$7 trillion** global investments in renewable energies and \$8 trillion in energy efficiency are needed in the climate change policy scenario to 2040³.

Strong policy demand for mobilising sustainable energy investments

This scenario strengthens the **political demand to mobilise sustainable energy investments** both domestic and cross-border. States enjoy the **sovereign right to regulate sustainable energy investments**. At a time of slow investments, budgetary constraints and low oil prices, governments have **limited public finance** to spur energy investments. Effective alternatives should be considered to **attracting, establishing, retaining, creating linkages to sustainable energy investments**.

Reducing costs and mitigating risks: enabling factors

Investors need to **mitigate** legal and regulatory **investment risks** and to **reduce** the costs of **doing business**. Governments can respond by ensuring **predictable rules** and a **favourable investment climate**. The **solid implementation** of the **rule of law** provides investors with **predictable regulatory and legal frameworks** and with **effective remedies** in case of unlawful losses. Reliance on these principles is the factor that enables sound investment decisions⁴.

An integrated investment and sustainable development strategy in the energy sector

In the 2015 IPFSD, UNCTAD recommends that investment policies are made an integral part of a comprehensive ‘**investment and sustainable development**’ strategy. **In the energy sector**, IEA estimates that **improvements in predictable investment conditions** are required. The 2015 **G20 Energy Access Action Plan** supports developing countries in attracting energy access-related investments by **reforming policy, legal and regulatory frameworks**. Keywords are **regulatory stability** and **market confidence** in the energy sector⁵.

¹ <http://www.un.org/sustainabledevelopment/energy/>. The UN Sustainable Development Goals build economic growth and addresses a social needs including education, health, social protection, job opportunities, while tackling climate change and environmental protection.

² The Intergovernmental Panel on Climate Change (IPCC), *5th Assessment Report Third Working Group*, at 6.

³ See <http://www.worldenergyoutlook.org/resources/energydevelopment/energyaccessprojections/>. The full implementation of climate pledges will require the energy sector to invest \$13.5 trillion in energy efficiency and low-carbon technologies from 2015 to 2030, representing almost 40% of total energy sector investment. IEA, *World Energy Outlook 2015 Special Briefing Energy and Climate Change*, at p. 4.

⁴ OECD, 2015 Investment Policy Framework, at 19-23; World Bank, *World Development Report 2005: A Better Investment Climate for Everyone*, at 23-24; MIGA, WIPR World Investment and Political Risk 2013, *World Investment Trends and Corporate Perspectives; The Political Risk Insurance Industry: Breach of Contract*, at 22.

⁵ UNCTAD, *2015 Investment Policy Framework for Sustainable Development (IPFSD)*; IEA, 2015 World Energy Outlook, at 130; G20 Energy Access Action Plan, at point 1.

Policy options to mobilise sustainable energy investment

Policy options that preserve the enabling factors for sustainable energy investments are available at different levels of an integrated investment and sustainable development strategy: implementation of the rule of law, regulation of cross-border investments, investment facilitation and regulatory cooperation and regulation of clean energy investments.

Policy options to mobilise sustainable energy investment in an integrated investment and sustainable development strategy

Solid implementation of the **rule of law in the energy sector**⁶:

- predictability, transparency, regulatory stability and market confidence;
- **national energy strategy, law and regulations** – including energy market structure and prices - should also be **transparent and comprehensive** as well as **properly implemented at all levels**;
- **responsibilities** of public authorities should be clearly defined and **enforceable** against crime and corruption;
- governments should **avoid direct and indirect intrusions** in business management and respect the freedom of operations of private companies;
- criteria for granting investment rights should be **transparent, reasonably stable and enforceable**, without unnecessary bureaucratic complexities and delay;
- investors should have an **access to register titles to land in a secure, effective and timely** manner to facilitate access to debt finance.

Regulation of **cross border** investments⁷:

- restrictions on foreign investors should be **transparent, specific and clearly specified**;
- restrictions on foreign ownership should be **proportional, monitored and reviewed periodically**, and **implemented** according to **pre-established and objective criteria**;
- quantitative restrictions, screening, control on ownership or on shareholder power should be **justified by legitimate national policy objectives** (national security, strategic natural resources, sensitive infrastructures, public service obligations, health and environment protection, national development strategic objectives);
- local performance requirements should be **used sparingly as necessary** to achieving productive capacity building: human resources development, technology transfer, local infrastructure and enterprise development.

Investment facilitation and regulatory cooperation:

- Poor implementation, lack of transparency, excessive bureaucracy create unnecessary **burdens** to investors and prevent sound business decisions;
- National **investment promotion agencies** and their networks can improve the overall investment climate and contribute to the **solid implementation** of the factors that enable sustainable energy investments;
- **Energy regulation per se facilitates infrastructure development and efficient market functioning** (market design, market access, market competition): National Regulatory Authority (NRA) and regional regulatory associations contribute to **facilitate energy investments, promote public interests and support political choices**;
- **Regulatory cooperation** at a regional level contributes to the implementation of the principles of predictability, transparency, regulatory stability and market confidence.

Regulation of **clean energy** investments⁸:

- **stable and predictable** investment environment for foreign investment in clean-energy generation is critical
- predictability concerns in the first place access to domestic **support policies** and specific performance requirements (minimum investment, local content) as well as the **enforcement of intellectual property rights, contract and land right**;
- investment **incentives** to be reoriented toward clean energy according to **long-term goals**, to **streamline licensing** of renewable energy projects and to ensure **policy coherence**, coordination and monitoring;
- **restrictions** are likely to result in sub-optimal flows of investment.

⁶ UNCTAD, [2015 Investment Policy Framework for Sustainable Development \(IPFSD\)](#), National Investment Policy Guidelines at 1.1 “Strategic investment policy priorities” at 1.2 “Investment policy coherence for productive capacity building”, Geneva 2015.

⁷ UNCTAD, [2015 Investment Policy Framework for Sustainable Development \(IPFSD\)](#), National Investment Policy Guidelines at 2.1 “Entry, establishment and operations of foreign investors”; at 2.2 “Treatment and protection of investors”; at 3. “Investment-related policies”. In the sense that pre-investment rules require consideration of the policy trade-offs implications and the range of possible alternatives, see: IIED, [Investment treaties and sustainable development: investment liberalization](#), London 2014.

⁸ OECD, [Policy Guidance for Investment in Clean Energy Infrastructure](#), Paris (2015), available under <http://www.oecd.org/environment/policy-guidance-for-investment-in-clean-energy-infrastructure-9789264212664-en.htm>

The speakers

Matteo Barra, is Senior Investment Expert at the Energy Charter Secretariat (Bruxelles, Belgium). Dr. Barra acts as expert on the promotion and dispute settlement of international energy investments under the Energy Charter Treaty. His main tasks include technical assistance to governments (Mongolia, Morocco, Armenia, Latvia, Cyprus, Tajikistan), cooperating with international organizations (IEA, IRENA, UNCTAD, OECD, ICSID, SCC, PCA) and promoting dialogue with energy industry (Energy Charter Industry Advisory Panel). He provides policy analysis in relation to investment dispute settlement and to energy investment strategies. Prior to joining the Secretariat, Matteo was associated with a large international arbitration in Geneva. He acted in investment and commercial arbitrations concerning, among others, electricity, gas and oil industry. He advised and defended cases under public international law and under EU law in connection to foreign investment, expropriation, energy regulation and competition, sovereignty over natural resources, international trade and transportation, border delimitation. Dr. Barra holds a Ph.D. in International Economic Law (Bocconi) and an LL.M. in International Energy Law and Policy (CEPMLP).

Nathalie Bernasconi, is a senior international lawyer and heads the Economic Law & Policy work of the International Institute on Sustainable Development (IISD). She has advised over 20 developing country governments across Africa, Asia and Latin America in relation to bilateral and regional investment treaty negotiations, investor-state contracts, model investment treaties and foreign investment laws. She previously worked as an attorney at the Center for International Environmental Law in Washington and Geneva, where she also managed the office. She also worked in Hanoi, Vietnam, for a legal reform project of the United Nations Development Programme (UNDP) and for the Australian law firm Phillips Fox. In Switzerland she is admitted to the Bar of Basel and has worked for the Justice Department, Berne, in the Section for International Law.

Patrick Obath, is the Associate Director at the Adam Smith International Africa Ltd. He is also the Partner at Eduardo and Associates, the Chairman of the Board of African Alliance Investment Bank Kenya Limited, an independent director at Standard Chartered Bank (k) Ltd., and the Chairman of PZ Cussons EA Ltd. He previously held Director positions at the Kenya Private Sector Alliance, the African Alliance Kenya Investment Bank Limited, and the Kenya Power and Lighting Company Limited. He holds a BSc. in Mechanical Engineering from Nottingham University and is a Member of the Energy Institute (UK), the Petroleum Institute of East Africa and the Institution of Engineers in Kenya.

Elisabeth Tuerk, is the Officer in Charge (OiC) of the Section on International Investment Agreements (IIAs) in UNCTAD's Division on Investment and Enterprise (DIAE). She leads the Section's work across three pillars of UNCTAD activities, encompassing research and analysis, capacity-building and consensus-building. Prior to joining UNCTAD, she worked a staff attorney for the Trade and Investment Program of the Center for International Environmental Law (CIEL, Geneva, Switzerland). She holds a Magistra Degree in Law and a Magistra Degree in International Management from the Karl-Franzens University, Graz, Austria as well as a Masters Degree (MILE, Masters of International Law and Economics) from the World Trade Institute (WTI) in Bern, Switzerland.

The organisers

The [Energy Charter Treaty](#) is a multilateral international treaty concluded in 1994 currently in force among 54 contracting parties from Europe, Central Asia, South Caucasus and East Asia. The Treaty offers a multilateral cooperation platform for the promotion and protection of energy investments. The Energy Charter Secretariat offers its technical assistance to contracting parties, observer and third states by means of energy investment country reports, policy recommendations, model agreements, regional cooperation, seminars and training programs, private sector dialogue. On 21 May 2015, the [International Energy Charter](#) was adopted in The Hague by more than 75 countries from Africa, Middle East, Latin America, South and East Asia, besides China and the United States of America to share the political objectives development of trade and investment in energy, cooperation, energy efficiency and environmental protection.

[UNCTAD](#), which is governed by its 194 member States, is the United Nations body responsible for dealing with development issues, particularly international trade – the main driver of development. Its work can be summed up in three words: think, debate, and deliver. Reflection on development is at the heart of UNCTAD's work. It produces often-innovative analyses that form the basis for recommendations to economic policymakers. The aim is to help them take informed decisions and promote the macroeconomic policies best suited to ending global economic inequalities and to generating people-centred sustainable development. UNCTAD is also a forum where representatives of all countries can freely engage in dialogue and discuss ways to establish a better balance in the global economy. In addition, UNCTAD offers direct technical assistance to developing countries and countries with economies in transition, helping them to build the capacities they need to become equitably integrated into the global economy and improve the well-being of their populations.