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Screening for Responsible Investment in Agriculture and Food Systems: Guidance and Tools for Government Officials

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Food and Agriculture
Organization of the
United Nations

Screening for responsible investment in agriculture and food systems

Guidance and tools for government officials



Columbia Center
on Sustainable Investment
A JOINT CENTER OF COLUMBIA LAW SCHOOL
AND COLUMBIA CLIMATE SCHOOL

Screening for responsible investment in agriculture and food systems

Guidance and tools for government officials

by

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Abbreviations

BIT	bilateral investment treaty
CDC	Commonwealth Development Corporation
CFS-RAI	The Committee on World Food Security's <i>Principles for Responsible Investment in Agriculture and Food Systems</i>
EIA	environmental impact assessment
ESIA	environmental and social impact assessment
FDI	foreign direct investment
FPIC	Free, Prior, and Informed Consent
IAP	investment assessment process
IFC	International Finance Corporation
ISDS	investor–state dispute settlement
KPI	key performance indicator
OECD	Organisation for Economic Co-operation and Development
SEZ	special economic zone
SME	small- and medium-sized enterprise
SSF Guidelines	<i>The Voluntary Guidelines for Securing Sustainable Small-Scale Fisheries in the Context of Food Security and Poverty Eradication</i>
TIP	treaty with investment provisions
UNCTAD	United Nations Conference on Trade and Development
UNFCCC	United Nations Framework Convention on Climate Change
UNGPs	<i>United Nations Guiding Principles on Business and Human Rights</i>
VGGT	<i>The Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security</i>

Glossary

The definitions in this glossary have been adapted from an e-learning on creating an enabling environment for responsible investment in agriculture and food systems, developed by CCSI and FAO. The e-learning is accessible here: <https://ccsi.columbia.edu/content/enabling-and-encouraging-responsible-investment-agriculture-and-food-systems>.

- **Agriculture and food systems:** The range of activities required to produce, process, market, retail, consume, and dispose of agricultural goods. This includes not only food and non-food products, forestry, livestock, and fisheries, but also the goods needed and produced along each step of these processes. Food systems involve a wide range of stakeholders and institutions, as well as the socio-political, economic, and natural environments in which these activities take place.¹
- **Committee on World Food Security Principles for Responsible Investment in Agriculture and Food Systems (CFS-RAI):** An international soft law instrument developed through an inclusive multistakeholder process that consists of 10 principles for achieving investments that are responsible, contribute to food security, and promote sustainable development. Elements of the CFS-RAI reflect binding obligations enshrined in international law.
- **Communities and peoples:** This term refers to local communities affected or potentially affected by land-based investments, especially vulnerable or marginalized communities, and to Indigenous Peoples, whose internationally recognized human rights are (or risk being) affected by a proposed project.²
- **Due diligence:** An information-gathering and analysis process. In the context of government screening of a proposed investment, "due diligence" is the process government entities undertake to investigate and evaluate a proposed investment and investor prior to deciding whether or how to advance the proposed project to the next steps in the investment assessment process. Due diligence is also a method of risk identification, analysis, and avoidance or mitigation.
- **Enabling environment:** The set of factors, conditions, and safeguards that encourage investment generally and responsible investment specifically.
- **Food security:** Sufficient supply of – and economic and physical access to – the appropriate food over time, in spite of external shocks, as well as the ability of people to use the nutrients of food – which involves access to clean water and healthcare. (See also "right to food.")
- **Foreign direct investment (FDI):** An investment made from an individual or enterprise resident in one economy ("home" country) in an enterprise resident in another economy ("host" country). The investment must generally reflect "a lasting interest and control" by the foreign investor.³

¹ Adapted from the Committee on World Food Security. 2014. Principles for Responsible Investment in Agriculture and Food Systems . Rome, Italy. CFS. (also available at: <http://www.fao.org/3/au866e/au866e.pdf>).

² This definition is adapted from the definition of "project-affected communities" in Dolton-Zborowski, S. & Szoke-Burke, S. 2022. *Respecting the human rights of communities - A Business guide for commercial wind and solar project deployment*. ALIGN, Columbia Center on Sustainable Investment.

³ UNCTAD. 2019. *Fact Sheet #9: Foreign Direct Investment, UNCTAD Handbook of Statistics 2019 - Economic Trends*, UNCTAD.

- **Investment:** The commitment of capital (whether financial, physical, intellectual, or other) to something with the expectation of accumulating additional income or benefits in the future.
- **Investment assessment processes:** These include a full range of legal and institutional frameworks and associated processes that establish the requirements an investor must meet in order to operate their proposed project in a country, starting from an initial expression of interest through to a granting of full approval to operate the project. Also referred to in other guidance and literature as “investment approval processes.”
- **Investment Promotion Agency (IPA):** A public agency that focuses primarily on attracting inward FDI into a country or subnational region. Some IPAs may also focus on promoting or attracting domestic investments and/or on other related mandates, such as innovation promotion or export promotion.
- **Investor:** An individual or private enterprise that commits capital with the expectation that this will lead to additional income or other benefits. This guidance focuses primarily on individuals and private sector enterprises that invest in larger-scale agriculture and food systems projects.
- **Key performance indicator (KPI):** Measurable values that are used to track performance.
- **Non-agricultural land-based investments:** These include investments in sectors outside the agricultural sector but nevertheless require use of land, such as investments in renewable energy.
- **Responsible investment in agriculture and food systems:** Contributes to sustainable development, enhances food security and nutrition, and respects human rights.
- **Right to food:** The right of all human beings to either produce the food that feeds them or to earn a livelihood that allows them to purchase food for themselves. Its four components are adequacy, availability, accessibility, and sustainability (OHCHR, n.d.).
- **Screening:** For the purposes of this guidance, “screening” is the early or initial evaluation of a proposed investment on the basis of criteria enshrined in law and other sources, such as policy or international principles or standards. For example, screening may include an evaluation on the basis of entry requirements contained in national laws that restrict the admission of foreign investment (see examples in Section 1.3.1). It may also include an evaluation by government entities on the basis of internal criteria or against relevant principles for responsible investment.
- **Sustainable Development Goals:** Seventeen goals adopted unanimously in 2015 by UN Member States as part of the Agenda 2030 for sustainable development that lay out an integrated blueprint for achieving socially inclusive, environmentally sustainable economic growth, and to end poverty, address climate change, strengthen global institutions, and promote peace.

Executive summary

Governments are the gatekeepers to investments. They can, in consultation with stakeholders, decide which investors are allowed to conduct business in their country and what types of investments are permitted. This gatekeeping role is essential in a context where global experience of especially larger-scale, land-based investment has shown that not all investment necessarily leads to net beneficial outcomes. Some investments have had severe negative impacts on communities, society, and the environment and have led to substantial financial losses for investors, governments, or other affected stakeholders. And yet, larger-scale investment in agriculture and food systems has the potential to contribute to sustainable development – provided it is responsibly designed, regulated, and operated.

Investment screening is an important policy mechanism that governments can use in their role as gatekeepers to ensure that investment is responsible, essentially asking the questions:



Do we want this particular investor to invest or operate in our country?



Do we want this particular investment in our country?

Strong screening processes help to identify and avoid or mitigate risks associated with larger-scale investments in agriculture and food systems at the early stage of the investment assessment process before any commitment has been made, costs incurred, or harms suffered. They can also enable governments to identify and shape responsible projects, establish a country's credibility as an investment destination with an effective enabling environment for responsible investment, establish good government – community – investor relationships, and lay the foundations for informed expectations and decisions about a proposed project.

This guidance seeks to unpack the what, why, and how of screening. Sections 1, 2, and 3 make up the guidance component of the publication and annexes A and B contain a series of adaptable tools.



SECTION 1

Introduces the concept of screening, defining it as:

The early or initial evaluation of a proposed investment on the basis of criteria enshrined in law and other sources, such as policy or international principles or standards. For example, screening may include an evaluation on the basis of entry requirements contained in national laws that restrict the admission of foreign investment. It may also include an evaluation by government entities on the basis of internal criteria or against relevant principles for responsible investment.

The section expands upon the importance of screening, outlining the risks and harms involved with irresponsible investment in agriculture and food systems, and explains how screening can help advance investment that is responsible. It shows how screening works in practice, detailing how countries determine which investment proposals to screen, when to screen them, who should be involved in the screening process, and some of the barriers to uptake and implementation that must be overcome in order for screening to be most effective.

SECTION 2

Introduces the topics that governments can screen for and the information they can seek in order to make informed decisions about whether or not to admit particular investors and investments or grant other approvals. The screening topics have been developed based on existing guidance and expanded to incorporate the Committee on World Food Security's *Principles for Responsible Investment in Agriculture and Food Systems* (CFS-RAI). They include the following:



Investor topics
Contact details
Experience and expertise
Financing
Ownership and management
Reputation
Stated commitment to sustainable development and responsible business conduct
Track record



Investment topics

Business plan and project feasibility and financial viability
Climate change
Community participation and consent
Culture, diversity, and innovation
Gender equality and economic empowerment
Monitoring, evaluation, and project closure
National and sustainable development objectives
Natural resource use and management
Project concept
Site suitability (geographical and infrastructure)
Site suitability (tenure impacts)
Youth economic empowerment

The information required to investigate these screening topics can be obtained by conducting due diligence. Due diligence is likely to involve information provided by the investor, coupled with independent investigation by government officials to supplement and verify the information provided by the investor. Section 2 introduces these concepts, feeding into the tools in Annex A.

SECTION 3

Considers how governments evaluate the information unearthed during screening in order to reach screening decisions. It examines some of the test thresholds that countries have developed, meaning the tests that proposed investors and investments have to satisfy in order to be granted initial approval or permitted to proceed to the next stage in the investment assessment process. The section looks at how governments weigh up information in order to reach screening decisions and warns against imposing tight timelines on screening procedures so as not to restrict this critical process.

ANNEXES A AND B

Comprise the “tools” component of the publication. **Annex A** contains tools that are designed to be adaptable to country contexts and workflows and can be used to develop questionnaires for investors, guidance for officials conducting verification, and scorecards and key performance indicators. The tools are not exhaustive lists. They provide a starting point for government entities who are engaged in conducting due diligence to build from when strengthening existing or future due diligence workflows. Annex A contains the following tools:



Tool 1: Questions about the proposed investor – Sets out lists of questions for the investor topics that can be drawn from and adapted to country contexts and workflows to support screening for responsible investments in agriculture and food systems as per the CFS-RAI.



Tool 2: Questions about the proposed investment – Sets out lists of questions for the investment topics that can be drawn from and adapted to country contexts and workflows to support screening for responsible investments in agriculture and food systems as per the CFS-RAI.



Tool 3: Documentation and resources to support due diligence processes – Links the topics outlined in Tools 1 and 2 to examples of supporting documentation and resources (online platforms and offline sources) that can provide avenues for (a) examining and verifying information provided by investors and, more broadly, (b) searching for information about investors during the due diligence process.



Tool 4: Sample CFS-RAI KPI – Sets out sample key performance indicators (KPIs) based on the CFS-RAI.



Tool 5: Sample investor scorecard – Provides a sample investor scorecard, leaving it to governments to determine what an acceptable “pass” rate is for investors, whether it be full marks or otherwise.



Tool 6: Sample investment evaluation tool – Provides a sample investment screening evaluation tool formulated into a “traffic light” system whereby responses can be categorized into colour-coded columns and a corresponding action attached, such as: red = do not proceed; amber = request clarification and/or revision; green = response meets criteria.

Annex B provides further details regarding when to address each topic – recognizing the variations that exist in countries’ investment assessment processes – through mapping two general types of screening processes: those where screening occurs in at least two instances (Scenario 1) and those where screening occurs in only one instance (Scenario 2). The scenarios only capture the early stages of an investment assessment process, even though entry points do arise in practice in later stages. The scenarios show how the screening topics developed in this guidance can be adapted in either scenario, suggesting the point(s) at which it may be appropriate for each topic to be addressed. The scenarios are not exhaustive. They are indicative of general trends observed and seek to show that, in spite of the differences between investment assessment processes, multiple entry points for screening exist in practice, along with opportunities to cover all screening topics presented in this guidance.



1. Understanding why, how, and when to screen

Global experience of larger-scale investment in agriculture and food systems has shown that not all investment is necessarily good investment. Some investments have had severe negative impacts on communities, society, and the environment and have led to substantial financial losses for investors, governments, or other affected stakeholders. Sugarcane plantations in Asia that forcibly evicted smallholders have triggered multi-jurisdictional legal battles; rubber plantations in Africa have been linked to civil unrest and turmoil; and privileged routes to remedy for foreign investors have resulted in hundreds of millions of dollars paid to investors by South American states in connection with agribusiness projects (Coleman, Brewin and Berger, 2018; Inclusive Development International, undated; Miller and Jones, 2014). And yet, larger-scale investment in agriculture and food systems has the potential to contribute to feeding the world's growing population in a sustainable manner that is consistent with human rights—provided it is responsibly designed, regulated, and operated.

Governments play a key role in ensuring that investment in agriculture and food systems is responsible. Investment that is **responsible** does not occur in a vacuum. It requires a strong enabling environment that “sets the scene” by providing clear rules, processes, and mandates. A particularly important role in establishing and sustaining this environment is that of gatekeeper. Governments, in consultation with stakeholders, can choose whether or not to permit certain investors and investments to operate in their countries. By acting as gatekeepers on behalf of their constituents, governments are essentially asking the questions: Do we want this particular investor to invest or operate in our country? Do we want this particular investment in our country?

Investment screening is one policy mechanism governments can use to pursue these questions.⁴ When screening an investment proposal, governments can conduct due diligence on the proposed investor and investment to gather information and analyse whether the proposal will lead to responsible investment in agriculture and food systems.

⁴ As is discussed in Box 5, screening mechanisms in Organisation for Economic Co-operation and Development (OECD) countries have been strengthened in recent years due to the issuance of the European Union's March 2019 Regulation establishing a framework for the screening of foreign direct investments into the Union. The Regulation has been attributed with having contributed to “broader availability and application of investment screening mechanisms, [...] improved co-operation and co-ordination among Member States in this area, and [...] better informed screening decisions”: (Pohl, Rosselot and Novak, 2022). Full details of the Regulation: Regulation (EU) 2019/452 of the European Parliament and of the Council establishing Framework for the Screening of Foreign Direct Investments into the Union, PE/72/2018/REV/1 < <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02019R0452-20200919> > (hereafter EU Screening Framework).

This guidance introduces screening for responsible investment in agriculture and food systems. It sets out tools that can be adapted to country contexts and provides suggestions on how to address practical challenges that arise when screening investment proposals. Section 1 explains why and how screening and due diligence are important policy instruments for governments seeking to attract, promote, facilitate, approve, and regulate responsible investment in agriculture and food systems – and how to avoid investments that cause or contribute to harm. Section 2 provides guidance on designing robust screening tools and processes that will help governments identify proposed investments that are aligned with the *CFS Principles for Responsible Investment in Agriculture and Food Systems* (CFS-RAI). Section 3 examines how governments can use the information unearthed through due diligence to reach a decision upon completion of the screening process.

It is not always possible, or even necessary, for a country to overhaul its existing investment policy approach and redesign it based on contemporary good practice. Recognizing this, this guidance seeks to strike a balance between suggesting a redesign of investment assessment processes and adapting existing systems so that screening processes are strengthened.



Note regarding country examples: The guidance refers to country examples throughout. Some of the examples included were developed based on desk research alone, while others were developed based on a combination of desk research and interviews with key stakeholders. In each section where a country example is included, only the element of the example that is relevant to that particular section is discussed. The reader can turn to different sections to find further details.

Box 1

What do we mean by responsible investment in agriculture and food systems?

This guidance uses the CFS-RAI – which build on and incorporate other important guidance such as the *Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security* (VGGT) – as a framework for understanding what is meant by responsible investment in agriculture and food systems. The guidance seeks, in its entirety, to demonstrate how responsible investment can be implemented in practice in the specific context of screening.

The CFS-RAI consist of 10 principles that responsible investments in food and agriculture should achieve:



Principle

Contribute to food security and nutrition.



Principle

Foster gender equality and women’s empowerment.

Box 1 (Cont.)



Principle

Contribute to sustainable and inclusive economic development and the eradication of poverty.



Principle

Engage and empower youth.



Principle

Respect tenure of land, fisheries, and forests, and access to water.



Principle

Conserve and sustainably manage natural resources, increase resilience, and reduce disaster risks.



Principle

Respect cultural heritage and traditional knowledge and support diversity and innovation.



Principle

Promote safe and healthy agriculture and food systems.



Principle

Incorporate inclusive and transparent governance structures, processes, and grievance mechanisms.



Principle

Assess and address impacts and promote accountability.

A responsible investment in agriculture and food systems contributes to sustainable development, enhances food security and nutrition, respects human rights, and safeguards against environmental damage and the dispossession of legitimate tenure rights holders, while also ensuring a return on investment for the investor. A responsible investment hence generates a triple "P" performance in terms of: profits (for the investor), people (positive socio-economic impact), and planet (protects and uses natural resources in a sustainable way). Responsible investment creates financial and non-financial value (FAO, APIA, INRAT, 2023).

The CFS-RAI are applicable to all sectors at all stages of investment in agriculture and food systems and to all the stakeholders involved. The intended users include governments, financing institutions, business enterprises, smallholders, civil society, workers and their organizations, and communities, among several others. Some of the CFS-RAI reflect binding international human rights law. Others acknowledge international guidelines on responsible investment and developmental goals.

Government entities can assess investments against the CFS-RAI and other guidelines on responsible investment at multiple stages of the assessment process, including at the screening stage.

Source: FAO, APIA and INRAT. 2023. Fact sheet: *Responsible investment in agriculture and food systems. Understanding responsible investment in agriculture and food systems (RAI) - an increasingly critical concept.* FAO

1.1 Who is this guidance for?

This guidance is designed for government entities involved in the assessment of agricultural and food systems investment proposals. The guidance will be especially useful for those engaged during the early stages of investment assessment but also those whose countries apply due diligence processes at later stages in the investment assessment process. Relevant government entities are examined further in Section 1.3.3. Beyond government entities, the guidance provides a helpful introduction to screening and due diligence processes for other stakeholders involved in or affected by the assessment of agricultural investments, local and national civil society organizations, and international organizations working on responsible investment.

The guidance focuses on **larger-scale** investments in agriculture and food systems. Investors making such project proposals may be foreign or domestic. How each country chooses to define what is “larger scale” may depend on physical size (e.g., tract of land, volume of resource), the value of the investment, or other factors and is a matter for national discussion. Although the focus is on larger-scale investments, this guidance could also be useful for government entities engaging in the promotion or facilitation of investments by small and medium-sized enterprises (SMEs) – for example, in the context of investment incentives.⁵

While the guidance will apply mainly to assessments by government entities of larger-scale investments in agriculture and food systems, it may also be relevant to government entities for the assessment of **non-agricultural investments in land**, including proposed forestry, renewable energy, and natural resource projects. It is up to those with a responsibility to screen and approve projects to determine which factors are generally applicable to the assessment of all investments (irrespective of investment or sector type) and which are for specific types of investments and sectors. A screening authority may choose to develop separate forms to be used in their general application process that are relevant to specific investments (such as land-based investments) or sectors.

1.2 What is screening? Why does it matter?

1.2.1 What is screening?

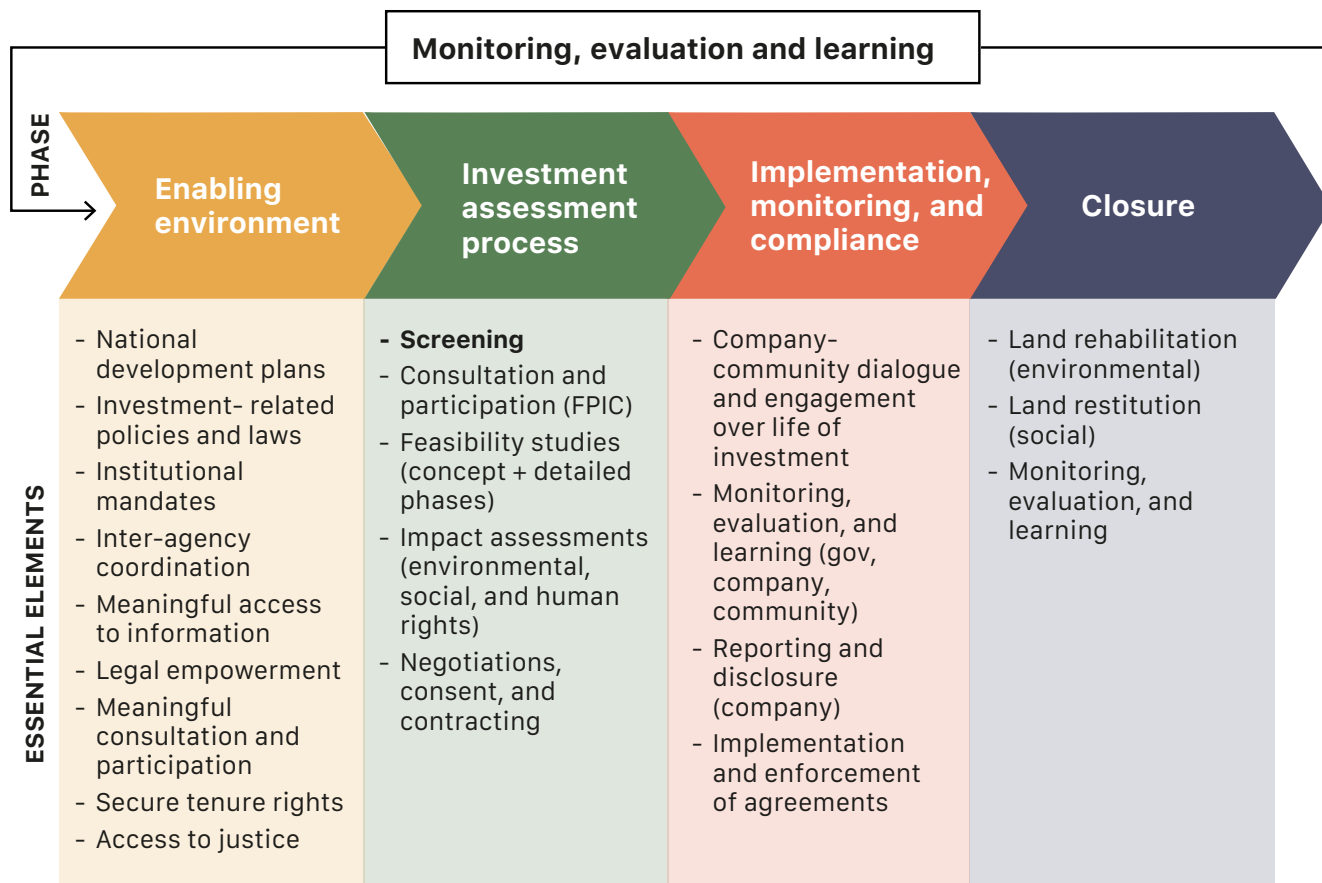
Investors and proposed investments are screened in the context of investment assessment processes. **Investment assessment processes** include the full range of legal frameworks and associated processes that establish the requirements investors must meet in order to be allowed to operate their proposed project in a country, starting from an initial expression of interest through to a granting of approval to operate the project (Food and Agriculture Organization of the United Nations [FAO], 2015).

When it comes to actually dealing with an investment application, the steps that are involved – including screening, right up to and including negotiation and contracting – constitute the investment assessment process. Projects that are approved are implemented and monitored for compliance until they close, when another set of processes are used to make sure closure takes place in a responsible manner. Monitoring and evaluation are

⁵ For guidance on investment incentives and responsible investment in agriculture and food systems see (Bulman *et al.*, 2021).

conducted at each phase so that learnings can in turn be fed into improving the enabling environment and strengthening investment facilitation and regulation throughout the entire investment life cycle. **Figure 1** sets out an agricultural, food systems, and other land-based investment life cycle.

Figure 1. An agricultural, food systems, and other land-based investment life cycle



Source: Adapted from Landesa RIPL project visual.

For the purposes of this guidance, **“screening”** is the early or initial evaluation of a proposed investment on the basis of criteria enshrined in law and other sources, such as policy or international principles or standards.⁶ For example, screening may include an evaluation on the basis of entry requirements contained in national laws that restrict the admission of foreign investment. It may also include an evaluation by government entities on the basis of internal criteria or against relevant principles for responsible investment.

Due diligence is a practice used by multiple actors in the investment context (FAO, 2015). It is an information-gathering and analysis process. The term also carries specific meaning and consequences in certain contexts.⁷ In the context of government screening of a proposed investment, **“due diligence”** is the process government entities undertake

⁶ NB: The definition of screening adopted in this guidance is broader than some and goes beyond requirements enshrined in law. See e.g., the narrower definition in (Nicolás, 2021).

⁷ For example, human rights due diligence under the United Nations Guiding Principles on Business and Human Rights involves “[a]n ongoing risk management process... in order to identify, prevent, mitigate and account for how [a business] addresses its adverse human rights impacts.” It includes four key steps: assessing actual and potential human rights impacts; integrating and acting on the findings; tracking responses; and communicating about how impacts are addressed (Investor Alliance for Human Rights, 2022).

to investigate and evaluate a proposed investment and investor prior to advancing the proposed project to the next steps in the investment assessment process. The information-gathering and analysis processes inform a government's decision about whether or not to advance a proposed investment to the next stage in the investment assessment process. Due diligence is also a method of risk identification, analysis, and avoidance or mitigation.⁸

1.2.2. Why does screening matter?

SECTION SUMMARY

- Not all investment is good or likely to lead to positive outcomes. Irresponsible investments in agriculture and food systems can result in significant economic, political, social, and environmental harms that, in turn, impose substantial costs on all stakeholders.
- Strong screening processes can be used to identify and avoid or mitigate risks associated with larger-scale investments in agriculture and food systems at the early stage of the investment assessment process. They can also enable governments to identify and shape responsible projects, establish a country's credibility as an investment destination with an effective enabling environment for responsible investment, establish good government – community – investor relationships, and lay the foundations for informed expectations and decisions about a proposed project.
- Investment approval of any kind, even informal or initial approval, is best withheld until after screening has taken place and best conditioned upon subsequent (or parallel) steps in the investment assessment process.
- Check to see if your country has any active investment treaties with the home country of the proposed foreign investor(s). If it does, a lawyer can examine whether the treaty imposes any obligations that may affect your government's ability to screen the foreign investor whose application you are reviewing or to otherwise sufficiently shape the investment in order to optimize potential benefits and avoid or minimize negative impacts associated with the proposed project.
- Where existing legal frameworks limit the regulatory space necessary for government entities to conduct adequate screening and advance responsible investments, states can engage in processes to redesign the content of their domestic and international investment frameworks.

Responsible investment in agriculture and food systems can lead to good outcomes. Such investment can improve food security and nutrition by increasing agricultural yields and food production. It can also provide jobs and a living income that enable workers

⁸ The definitions of screening and due diligence used in this guidance have been adapted from the use of those terms and explanations of due diligence in (FAO, 2015).

to purchase food (economic access) or access healthcare (important for nutrition). Investment that supports the development of local markets can lead to increased availability of – and access to – food and, in turn, enhance food security and nutrition. Beyond contributing to food security and nutrition objectives, responsible investments in agriculture and food systems can create jobs (Fitawek and Hendriks, 2021; Mirza *et al.*, 2014; Zhan, Mirza and Speller, 2015), help to reduce poverty and inequality, provide access to markets (Mirza *et al.*, 2014; Speller *et al.*, 2017), enable technology transfer (Mirza *et al.*, 2014; Speller *et al.*, 2017), provide infrastructure (Mirza *et al.*, 2014; Speller *et al.*, 2017; Zaehring *et al.*, 2021), and advance a range of other interrelated sustainable development objectives (Fitawek and Hendriks, 2021; Mirza *et al.*, 2014; Speller *et al.*, 2017; Zaehring *et al.*, 2021; Zhan, Mirza and Speller, 2015).

But these outcomes are far from guaranteed. Rigorous screening of proposed investments in agriculture and food systems matters because not all investment is responsible or likely to contribute to positive outcomes. Indeed, much of the analysis conducted on larger-scale investments in agriculture and food systems highlights the many ways in which **irresponsible** investments have harmed people and planet and failed to meet their purported objectives. **Table 1** lists some of the economic, political, social, and environmental harms uncovered in the literature. Large-scale investments thus warrant careful scrutiny through screening processes.



Costs of harms

The harms listed in **Table 1** can, in turn, impose costs on all stakeholders. For example, the costs to the state of such harms can include:

- Opportunity costs, as land could have been used more responsibly and efficiently.
- Social costs arising from community protest and conflict, along with resources diverted to address grievances and conflict.
- Substantial financial costs, where potential liability arises or is enforced under domestic or international investment law.
- Environmental costs, where land is degraded and site restoration is inadequate.
- Public disenchantment with elected political leaders.
- International reputational costs that deter potential investors because the state becomes known for failed investments as opposed to successes.



Table 1

Examples of harms caused by irresponsible investment

<p>Economic</p>	<p>Project or local level:</p> <ul style="list-style-type: none"> • Financial and operational failure; a loss for all involved, including investor, government, and local communities. • Substantially increased operating costs due to tenure-related risk. • Project delays and stoppages, with significant costs, due to social risks and community conflict. • Diversion of human and financial resources and accompanying opportunity costs arising from conflicts with local communities. • Significantly increased incidence of material credit events (such as halts to operations, regulator inquiries or enforcement actions, lawsuits/legal issues, and labour-related announcements) for companies that rate poorly on respect for the human rights of Indigenous Peoples. • Economic externalities that detract from the net economic benefit of projects. • Harm to local economies and livelihoods through loss of grazing, crop, and grass lands, as well as access to firewood and water. • Debt bondage and reliance on non-living wages. • Unmet expectations of decent jobs. • Increased local inequality due to higher income and assets for those employed as a result of the investment, contrasted against a drop in income for those still farming due to increased local labour prices and issues of land access. • Crowding-out of smallholders. <p>National level:</p> <ul style="list-style-type: none"> • Exposure to constraints or liability under international investment law, including outsized payments to investors as a result of investor–state dispute settlement awards¹, even if the investment turns out to be bad (discussed further in Box 2). • Exposure to constraints or liability under domestic investment law (discussed further in Box 2).
<p>Political</p>	<ul style="list-style-type: none"> • Negative impacts on international credibility if investments fail or disputes around larger-scale investments are common. • Disappointed constituents if there is overpromise and under-delivery.

Table 1 (Cont.)

<p>Social</p>	<ul style="list-style-type: none"> • Loss of community lands and resources. • Disputes with and among local communities over loss of tenure rights. • The growth and neglect of informal settlements. • Increase of household malnutrition by diverting land from food to cash crop production without due regard for gender and associated age impacts, including child nutrition. • Tension with local (including resettled) communities and governments over land allocated to investors that is not developed. • Exacerbated gender discrimination and increased vulnerability of women – for example, where statutory law does not adequately protect women’s rights and so perpetuates discriminatory customary norms that fail to recognize women’s legitimate tenure rights. • Internal displacement and forced evictions. • Lack of or inadequate resettlement and compensation in the case of displacement from land. • The use of Indigenous, tribal, and other lands without consent. • Exclusion of communities from decision-making. • Changes in smallholder land use (types of crops, and use of technologies or practices) due to reduced water availability, water pollution, and loss of land. • Unsatisfactory working conditions and risks to health of workers – for example, through exposure to chemicals with inadequate safety gear, infections, wildlife attacks, chronic pain, operating faulty machinery or machinery without adequate training, dehydration, respiratory difficulties, and kidney disease. • The risk of direct or indirect contribution to child labour.
<p>Environmental</p>	<ul style="list-style-type: none"> • Exploitation of environmentally sensitive areas and facilitation of informal exploitation of such areas through project roads. • Lack of biodiversity corridors. • Excessive use of pesticides. • Intensive production of one or two crops, contributing to degradation and depletion of land and water resources, and a loss of biodiversity. • Airborne pollution and water contamination. • Vegetation cover cleared. • Local water resources depleted. • Soil degraded. • Deforestation.

Notes:

* This is a non-exhaustive list of examples.

¹ As of the end of 2017, agricultural investors with known successful claims had been awarded an average of almost USD 100 million through investor–state dispute settlement: (Coleman, Brewin and Berger, 2018). The average amount awarded in all publicly known, treaty-based claims as of June 2021 is USD 437.5 million (Columbia Center on Sustainable Investment, 2021).

Sources: See References.

Box 2

Exposure to constraints and liability under investment law

Investment treaties are binding international agreements concluded between two or more states regarding the governance of international investment. They may take the form of bilateral investment treaties (BITs, concluded by two states) or treaties with investment provisions (TIPs, concluded by two or more states). TIPs include trade agreements with investment chapters or provisions. BITs and TIPs impose obligations on states regarding the treatment of covered investors and investments.

Investment treaties with other states can expose your country to constraints or liability in the context of the assessment, approval, or operation of investments that fall within the scope of the treaty. Investment screening decisions and mechanisms may be affected by both **pre-and post-establishment obligations** enshrined in applicable treaties. The content of each treaty will vary and should be closely examined by appropriate legal experts for details. This Box provides an overview of common trends and considerations for policymakers and technical staff.

While there are few known investor–state claims relating to the operating of investment screening processes, it is prudent for states to consider this risk and government conduct that might inadvertently increase that risk.

Pre-establishment obligations

Pre-establishment obligations impose obligations on host states regarding the admission and establishment of foreign investments in their territories. They can require host states to admit covered investors and investments under certain conditions and may therefore limit the ability of those states to screen foreign investments or to condition approval upon specific parameters. When they are included in investment treaties, they are typically incorporated into non-discrimination provisions (**national treatment and most-favoured nation** provisions) by using wording that makes these equal-market-access provisions apply to all investors, including foreign investors, before an investment has even been approved (Bonnitcha, 2020; Cotula, 2014; Nikièma, 2017; Southern African Development Community, 2012).

Pre-establishment obligations are currently the exception rather than the rule – being preferred by states such as the United States, Canada, and Japan – but their prevalence is increasing, especially in trade agreements with investment chapters (Cotula, 2016; Johnson, 2016). They are a risk that can be addressed as part of the screening process and, more broadly, in designing (or redesigning) investment policies that advance rather than undermine responsible investment. With each proposed investment, it is important to check if your government has concluded any investment treaties with the host country of the proposed investor(s) that are applicable to the proposed project and in force. A legal expert can examine whether applicable treaties impose any pre-establishment obligations that may restrict or otherwise affect your government’s ability to screen the foreign investor whose proposed project you are reviewing. If a legal expert determines that pre-

Box 2 (Cont.)

establishment obligations are applicable, they could advise on avenues to avoid or minimize constraints placed upon screening by such provisions and limit any exposure to potential liability that may arise from the investment assessment process. For example, a legal expert could advise on whether the screening measures your government seeks to apply are applicable to all investors and investments (irrespective of nationality) and would therefore not fall within the scope of applicable treaty provisions regarding admission of foreign investment.

Post-establishment obligations

Post-establishment obligations concern the treatment of investors and investments once proposed projects have been established in the host state's territory – in other words, they concern the operational phase of the investment life cycle. These types of obligations can also create constraints on screening and expose states to liability.

For example, if a proposed investment is given an indication of approval by a government entity (even prior to being screened by the responsible government entity), the state may be "locked in" to that project and no longer able to turn down the proposed project without the risk of a claim being brought against it on the basis of vague and far-reaching investment treaty standards (including the **fair and equitable treatment** obligation). This includes informal approvals, such as a government minister or official making representations to a proposed investor that a project will go ahead or has been effectively "green lit." It is therefore critical that screening is carried out thoroughly and outcomes are clearly indicated to avoid misunderstandings that may lead to investor–state disputes at a later stage.

Umbrella clauses commit treaty parties to upholding commitments or obligations made by the state to the investor (see e.g., IISD, undated).

The **indirect expropriation** standard has been relied upon by at least one tribunal in concluding that an investor had a right to seek a right to invest in and pursue its project and that this "*right to seek*" could itself be expropriated, despite the investor in that case not having obtained many of the approval permits necessary to operate its proposed investment (Johnson, Cordes and Coleman, 2016).¹

This potential exposure to liability for approval of any kind underscores that such approval, even informal or gateway (i.e., initial) approval, is best withheld until after screening has taken place and best conditioned upon completion of subsequent (or parallel) steps in the investment assessment process.

Prohibitions on the imposition of **performance requirements** can also limit the effectiveness of screening processes. Such clauses can apply at the screening stage when a government attempts to impose a condition on the approval – for example, regarding local employment or sourcing practices – of a proposed project (see discussions in Bonnitcho, 2020; Cotula, 2014). Awareness of such constraining clauses will assist governments in assessing whether a particular project is likely to be responsible and ultimately benefit the country or if opportunities to benefit from the proposed project are significantly constrained by the inability to shape the proposed investment and align it with national development objectives.

Box 2 (Cont.)

Investor–state dispute settlement

Investor–state dispute settlement (ISDS) is a mechanism by which foreign investors can allege treaty breaches and bring legal claims directly against states through ad hoc arbitration (Columbia Center on Sustainable Investment, 2021). Party-appointed and-paid private lawyers make up the arbitration tribunal and have the power to make findings and orders, including remedies and costs. Only investors can bring claims against states, and investors have been either successful or walked away with a settlement in half of the publicly known treaty-based claims at the time of writing. The average amount states have been required to pay in awards to investors in successful treaty-based claims has been USD 437.5 million if outliers are included and USD 169.5 million if outliers are excluded (Hodgson, Kryvoi and Hrcka, 2021). Tribunals do not have to follow any precedent and, generally, there is no requirement to exhaust domestic avenues before pursuing the matter in ISDS (Columbia Center on Sustainable Investment, 2021b). The amount awarded to successful investor claimants has been increasing in recent years: between 2017 and 2020, tribunals ordered respondent states to pay an average of USD 315.5 million (Columbia Center on Sustainable Investment, 2021b; Hodgson, Kryvoi and Hrcka, 2021). These awards can and have consumed considerable portions of low- and middle-income economies' annual budgets.

The risks posed to screening processes by pre- and post- establishment protections increase significantly where applicable investment treaties provide access to ISDS. Where applicable treaties do not provide access to this dispute settlement mechanism, or where pre-establishment obligations are carved out from ISDS, this reduces the risk of ISDS claims concerning screening measures or processes being brought on the basis of these standards. Importantly, rigorous screening processes may also help to limit the risk of investor–state disputes arising with respect to proposed or operational projects.

Revising investment treaty policy

To protect regulatory space required to conduct adequate screening, states may decide to revise their investment treaty policy. This revision should form part of a broader review of the costs and purported benefits associated with their treaties and investment policy.^{II} States may decide to terminate concluded treaties that do not support the realization of development objectives (Columbia Center on Sustainable Investment, 2018b).

Domestic investment law

While this Box has primarily focused on constraints and liability that arise under investment treaties, obligations enshrined in domestic investment laws may also undermine the effectiveness of screening measures. For example, at least 42 states have adopted domestic investment laws that include advance consent to ISDS (Berge and St. John, 2021). These laws generally enable covered investors to bring investor–state arbitral claims even in the absence of an applicable treaty (though they may also choose to rely on an applicable treaty in the claim). Undertaking a review of domestic investment laws to ascertain whether and how they interact with (i.e. are supportive or restrictive of) screening processes can also support the design and implementation of effective processes.

Notes:

^I Bear Creek Mining Corporation v. Republic of Peru, ICSID Case No. ARB/14/21, Award, 30 November 2017.

^{II} Guidance for conducting such a review can be found in: (Columbia Center on Sustainable Investment, 2018).

Sources: See References.

1.2.3. How can screening help advance responsible investments?

SECTION SUMMARY

Strong due diligence processes can help facilitate responsible investments while avoiding irresponsible investments by:

- Establishing your country's credibility as an investment destination with an effective enabling environment for responsible investment.
- Identifying and avoiding or mitigating substantial risks that can be detected from the outset. It is in the interests of all parties involved – government, investors, and communities alike – to avoid the economic, political, social, and environmental harms and flow-on costs outlined in Section 1.2.2.
- Identifying the right kinds of investors and investments and shaping projects that are aligned with national development objectives and domestic laws, international human rights obligations, and international principles on responsible investment such as the CFS-RAI and VGGT.
- Establishing a good relationship with rightsholders potentially affected by the proposed investment, and with the proposed investor, that facilitates information flow and awareness raising of applicable laws and processes.
- Laying the foundations for informed expectations and decisions, including those of the general public and rightsholders potentially affected by proposed investments, about a proposed project so that expectations and decisions are realistic.
- Establishing a project baseline that can be used as a measure to later analyse impact once the investment is underway (if it is approved).

Effective screening of proposed larger-scale investments is an essential component of investment policies that enhance responsible investment in agriculture and food systems.⁹ The following demonstrates how strong due diligence processes can help advance responsible investments and avoid irresponsible ones.

Establishing your country's credibility as an investment destination with an effective enabling environment for responsible investment

Clear, efficient, and rigorous screening processes can serve to establish a country's credibility as an investment destination with an effective enabling environment for responsible investment.¹⁰ These processes demonstrate a government's active concern for positive investment outcomes. Having set processes that are consistently followed and that limit or preclude opportunities for intentional or accidental deviation by relevant

⁹ For example, international organizations and development banks advise that screening mechanisms be in place: (UNCTAD and World Bank, 2018a, 2018b; Vhugen *et al.*, 2016).

¹⁰ For information on what constitutes an enabling environment, see e.g., Figure 1 in this guidance and (FAO, 2015).

stakeholders demonstrates stability and transparency. Further, evidence from the relatively recent European Union (EU) screening framework (discussed in Box 5) shows that “the entry into effect of the EU framework has not significantly changed processes or outcomes of investment screening in Member States” and that “security implications of transactions are now more comprehensively assessed and decisions better informed, and that occasionally slightly longer processing times are likely offset by a gain in security and public order in the Union” (Pohl, Rosselot and Novak, 2022).

Identifying and avoiding or mitigating risks

The “**business case**” for a proposed investment is important for both investors and governments. Responsible investors want to know that the government is as concerned about the success of the proposed investment as they are. Similarly, government authorities responsible for regulating investment want to have confidence that the investors know what they are doing and are as concerned about the potential costs of failure as the government. In short, it is of mutual interest to avoid the economic, political, social, and environmental harms – and flow-on costs – of failed or irresponsible projects, as outlined in Section 1.2.2.

As one important component of a broader framework necessary for good governance, due diligence conducted at the screening stage can **identify and prevent or mitigate risks** associated with larger-scale investments in agriculture and food systems. This prevention or mitigation function is particularly effective when the result of screening processes includes the option to say no to inadequate investors and investments. Even where such processes do not empower specific government entities to reject proposed investments (either in law or practice), screening processes can provide essential tools to, at the very least, **shape** investments to improve outcomes.

Many of the negative outcomes associated with larger-scale agriculture and food systems investments may be avoided or mitigated with careful scrutiny – and the potential rejection – of the proposed project at the outset. For example, the risk of tension with local communities and governments over land that is allocated to investors can be avoided or mitigated with due diligence that evaluates whether investors have the capacity and expertise to develop the land as expected (Tyler and Dixie, 2013), as well as whether any existing claims to the land may overlap with the area the investor is seeking to use. The risk of operational or financial difficulty and failure can be avoided or mitigated with due diligence that investigates “investors’ financial strength (for instance, capital structure and who are its backers), technical abilities, approach to Environmental and Social Impact Assessments (ESIAs) and consultations, and commitments for benefits to the host country” (Tyler and Dixie, 2013). Moreover, a rigorous screening process that filters out irresponsible investors and risky projects may also reduce the risk of investment disputes being initiated by investors through ISDS during subsequent stages of the investment life cycle (**see Box 2** in page 10).



A study by the World Bank of 179 Commonwealth Development Corporation (CDC) investments in commercial smallholder and estate agriculture and agro-processing in sub-Saharan Africa and Southeast Asia and the Pacific between 1948 and 2000 found that 49 per cent of projects were failures or moderate failures in **financial** terms (Tyler and Dixie, 2013).¹¹ In the majority of cases (61 per cent), that was due to the concept being “fatally flawed,” i.e. located in the wrong place, funding investment in the wrong crop, or involving assumptions – such as around costs and revenues – at the planning stage that were overly optimistic (Tyler and Dixie, 2013). Around two thirds of those could have been detected at the **approval stage** (Tyler and Dixie, 2013). The study also found that some **country policies** hindered effective screening by promoting certain types of investments without considering relevant suitability criteria, such as agronomics and logistics (Tyler and Dixie, 2013). In terms of **development failures**, the majority were attributable to “human error,” which included “inadequate or misguided planning, for instance locating projects in sub-optimal agro-climatic zones” (Tyler and Dixie, 2013). Again, this was something that could have been identified and addressed during screening and throughout the investment assessment process.

Strong screening processes function as tools for risk identification, avoidance, and mitigation. They have the power to shape more economically, environmentally, and socially sustainable investments. Without adequate screening, problems materialize further down the road in the investment life cycle when it may be too late (or is much more expensive) to address them.

Identifying responsible investors and investments and shaping proposals towards mutually beneficial outcomes

The screening stage of the investment assessment process offers the first concrete opportunity to ascertain whether a proposed project is, or with some tweaking could be, responsible. This includes ascertaining, at least on a preliminary basis, whether the proposed investment is aligned with national development objectives and domestic laws, obligations under international human rights and environmental law, and international principles on responsible investment, such as the CFS-RAI and VGGT.

National development objectives and domestic laws are context-specific and require country-by-country analysis.

States are bound by international human rights law. In the agriculture and food systems investment context, this means that governments must respect people’s human rights (e.g., not allow an investment that would unlawfully evict Indigenous Peoples from their lands), protect people’s human rights (e.g., take action if a waterway is being polluted by an investment), and fulfil people’s human rights (e.g., facilitate investments that offer meaningful employment or market connectivity, providing opportunities for a living income). Screening affords an opportunity to select and shape investment projects that are responsible. It contributes to the regulatory space that governments require to comply with human rights obligations throughout a project’s life cycle. Investors also have responsibilities regarding human rights, including to respect them. The issue of human rights is discussed further in Section 1.4.

States also have obligations under international environmental law. Since the ratification of the United Nations Framework Convention on Climate Change (UNFCCC) in 1992, every state has been committed to an evolving set of binding greenhouse gas emissions

¹¹ Failures were classified as “total or substantial project collapse during implementation or shortly after completion” and moderate failures were “some positive achievements, but far fewer than planned.” See further classification details on page 20 of the cited report.

reduction goals and other climate-related measures.¹² At present, states are committed to achieving net zero global greenhouse gas emissions by 2050 and avoiding 1.5°C of warming. This evolving set of environmental obligations is increasingly shaping understandings of the types of investments that are responsible. Screening can help governments to determine whether an investment supports its climate commitments or undermines them, including by ascertaining what climate impacts that proposed investment may have.

International principles for responsible investment can be integrated into screening decision-making processes in a number of ways.¹³ Applying international legal principles may or may not be a separate consideration from national development goals and laws, depending on how closely those goals and laws align with the international principles.

The CFS-RAI contain important guiding principles for investments in agriculture and food systems. In deciding whether or not to approve an investment proposal, governments can select those investments that promote the principles and avoid those proposals that undermine them. For example, to focus on Principle 3, “Foster gender equality and women’s empowerment,” when screening a proposed investment, a government can examine the proposal to see if it makes provisions for decent employment opportunities for women, detailing the types – including senior and leadership opportunities – and number of jobs that will be reserved specifically for women. An investment proposal that fails to articulate meaningful employment opportunities for women and overlooks the specific challenges women may face in accessing those roles – for example, a lack of available quality childcare – might raise alarm bells for the investigating government. The same logic applies to screening investors. If due diligence reveals that the investor has engaged in gender-based discrimination at work or failed to take action on sexual abuse, a government might be reticent to grant initial approval to that investor, not least without a comprehensive plan and commitment to avoid such abuse in the current project. By contrast, an investor that can demonstrate a successful existing or prior investment that has provided leadership programmes targeted at women, as well as initiatives to support quality childcare, with women filling managerial positions within the operation, might be a more appealing investor that the government may be more likely to advance to subsequent stages of the investment assessment process. These approaches to screening proposed investments and investors on the basis of the CFS-RAI are explored further in Section 2 and Annexes A and B.

The VGGT are also likely to be relevant for the vast majority of larger-scale investment proposals that involve the use or transfer of land, including larger-scale investments in agriculture and food systems.¹⁴ **Box 3** explores legitimate tenure rights and their relevance to large-scale investments in agriculture and food systems. In the context of screening proposed projects, this is the first opportunity for governments to investigate the alignment of the proposed project and project proponent with relevant aspects of the VGGT, such as whether the proposal anticipates or identifies relevant legitimate tenure rightsholders, whether it demonstrates how the proposed project will engage with those rightsholders and respect those rights, and whether it includes risk management systems to prevent and address adverse impacts on legitimate tenure rightsholders, among other key issues. It is also often the first concrete opportunity to conduct due diligence on whether the investor has a history of violating or respecting tenure rights.

¹² Additional international agreements and institutions that impact international law as it relates to climate change include the World Trade Organization, the G-8 and G-20, the Human Rights Council, and the World Bank Group (Gerrard and Freeman, 2014). In addition to international agreements that address climate change specifically, there are several international agreements related to environmental preservation more broadly that similarly inform responsible investment in agriculture and food systems, namely the Convention on International Trade in Endangered Species of Wild Flora and Fauna (CITES) and the Convention on Biological Diversity (CBD).

¹³ Note to reader: This section only explains the relevance of such principles to screening; it does not offer an exhaustive illustration of their interconnection. Please refer to **Tools 1 and 2** in **Annex A** of this guidance, where the CFS-RAI, VGGT, and other relevant international principles have been incorporated into questions for investors and investments.

¹⁴ CFS-RAI principle 5 incorporates the VGGT.

Box 3

What are legitimate tenure rights?

“Tenure” refers to “the relationship, whether legally or customarily defined, among people, as individuals or groups, with respect to land,” as well as with respect to fisheries and forests (FAO, 2002). “Land tenure systems” define and regulate how individuals, groups, and communities can gain access to and use land and other natural resources, including for how long and under which conditions (FAO, 2002). The VGGT recognize that “legitimate tenure rights” can exist even when not formally recorded or documented – they include customary or informal rights recognized as legitimate within the communities in which they are held or practiced. That is, a person does not require formal legal recognition in order to be a legitimate tenure rights holder (see Cotula and Knight, 2021). These rights apply not only to ownership of land but also to the rights to undertake other uses of land and resources, including gathering, foraging, or pastoralist practices (FAO, undated).

The VGGT encourage states to recognize, respect, and safeguard “all legitimate tenure rights holders and their rights” and provide access to justice for individuals or communities when these rights have been violated.¹ Secure land tenure refers to the certainty that a person’s rights to the land will be recognized, protected, and enforceable if challenged by others (Columbia Center on Sustainable Investment and Land Portal, 2016). Formal documentation of a property right may sometimes be a component of tenure security, but documentation alone is not sufficient to understand whether a person enjoys tenure security.

Acknowledging and protecting legitimate tenure rights is particularly important in the context of investment in agriculture and food systems, as such investments may have significant impacts on land, fisheries, or forests that would threaten the legitimate tenure rights of those who live or rely on the land, fisheries, or forests. The requirement to safeguard against the dispossession of legitimate tenure rights has a number of implications for governments, investors, and other stakeholders. For example, for investors acquiring land to comply with the VGGT and CFS-RAI, they must go beyond traditional due diligence of legal title holders to also assess whether any legitimate tenure right holders whose rights are currently not protected by the law have claims to the land in question.

Notes:

¹ VGGT, paras. 3.1, 12.4. See also (Vhugen *et al.*, 2016).

Sources: See References.

There exist other international principles and frameworks that may be useful for governments to draw from when creating their own screening and other investment assessment tools. For example, the *United Nations Guiding Principles on Business and Human Rights* (UNGPs) provide guidance on how to ensure the adequate protection of and respect for human rights in the context of business activity. Other, sometimes sector-specific, documents also exist.¹⁵ One such sector-specific example that provides some guidance on screening processes is the General Fisheries Commission for the Mediterranean's draft guidelines for the streamlining of aquaculture authorization and leasing processes, discussed in **Box 4**.

Box 4

General Fisheries Commission for the Mediterranean's guidelines for the streamlining of aquaculture licensing and leasing processes

The General Fisheries Commission for the Mediterranean, a regional fisheries management organization that adopts and implements binding recommendations for fisheries and aquaculture in the Mediterranean and Black Sea, has released guidelines for the streamlining of aquaculture licensing and leasing processes (guidelines) (FAO, 2022). The guidelines are one of the first sector-specific standards that builds directly on the CFS-RAI. The guidelines provide insights on the following areas, which are discussed later in this guidance.

The guidelines emphasize the importance of information provision by the investor during the pre-application stage. The rationale is that "the pre-application phase is essential to the consenting process and should help investors better explain to the authorities the nature and expected performance of their investment" (General Fisheries Commission for the Mediterranean, 2017).

The guidelines recommend that processes include "a detailed description of the required information to be provided by an investor for the full application." The suggested required information includes technical information (e.g., farming system and characteristics, species and cycles, production capacity, feed consumption, etc.), environmental information (e.g., "bathymetry, temperature, salinity, current speed, benthic community, sensitive habitats, etc."), geographical information, economic feasibility and integrity of the project, (e.g., budget estimates, planning projections, operating costs, etc.), and socioeconomic information and benefits (e.g., job opportunities) (FAO, 2022).

Sources: FAO. 2022. *Guidelines for streamlining aquaculture licensing and leasing processes*. General Fisheries Commission for the Mediterranean. Rome.

¹⁵ For example, the *FAO Code of Conduct for Responsible Fisheries*, the *Voluntary Guidelines for Securing Sustainable Small-Scale Fisheries in the Context of Food Security and Poverty Eradication*, the *United Nations Forest Instrument*, the *Guiding Principles on Large Scale Land Based Investments in Africa*, *Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security*, *Large-Scale Land Acquisitions and Leases: A Set of Core Principles and Measures to Address the Human Rights Challenge*, and *PRI's Guidance for Responsible Investment in Farmland*, among others.

Establishing a strong and transparent relationship between your government and other stakeholders

Strong relationships between investors, governments, and other stakeholders such as local community members are important for the success and longevity of larger-scale agricultural and food systems investments. These relationships are best established at the outset of the investment assessment process, where all stakeholders can share and shape expectations and goals (see e.g., Food and Agriculture Organization of the United Nations, 2015). Governments can provide clear indications about the desirability of the proposed investment and required project adjustments or conditions to investors. Proposed investors can be clear about desired investment outcomes. If screening indicates that the investor may proceed with further planning and assessments, sharing the results of the screening can help community members to better understand the proposal and its risks, enabling communities to identify and assert their rights and interests with respect to the proposed investment.

Understanding and shaping expectations about an investment project

The promise of a larger-scale investment can bring with it great excitement and expectation – or concern. The hopes of governments, residents, workers, legitimate tenure rightsholders, and the general population more broadly (if the proposed project is very large) can be raised if the proposal is not evaluated and (if it proceeds to next step) shaped early on (see e.g., FAO, 2015), with considerable risks for all parties involved if the proposal does not meet such expectations. Governments may anticipate significant economic benefits, local communities may expect substantial and meaningful employment opportunities, and tenure rightsholders may anticipate certain levels of compensation or tenure retention and increased market access, among other opportunities. If expectations are outsized and not ultimately met, this can lead to negative outcomes, such as sour relations with the government, informal settlements of expectant casual labour, conflict, protests, project delays, and even project shutdown. The information flow that occurs between government–community–investor in effective screening processes is imperative for shaping and managing expectations so that they are realistic from the outset and ultimately met.

Establishing a project baseline

Screening prior to approval also affords an opportunity to establish a baseline for the proposed project (if it proceeds), which is essential for future monitoring, evaluation, and learning of the project. In the context of this guidance, this may involve collecting pre-investment data – such as local employment, land use, and environmental health – that can later be compared to data that are collected once the investment is underway and (where relevant) when investors seek renewal of relevant licences or permits. It is also an ideal time for internal coordination between investment assessment entities and other relevant ministries and entities.

1.3 Context matters: When and how investments can be screened

SECTION SUMMARY

- Screening is most effective when it occurs at the outset of investment assessment processes, i.e., before any initial “approval” is given to proceed with the investment planning and assessment process and when those responsible have a sufficiently clear mandate to amend or reject an investment proposal.
- Opportunities for conducting due diligence on a proposed investment and investor can still arise later in the investment assessment process and remain a useful mechanism for evaluating and shaping proposed investments.
- Practical and political barriers may undermine the meaningful uptake and implementation of screening processes, even if those processes are well designed. Identifying these hurdles and defining strategies to address them will be important for government entities seeking to advance effective screening for responsible investment.

The most effective time to screen a proposed investment is at the outset of the investment assessment process before any approvals (formal or informal) have been granted. Among other benefits, this gives governments the opportunity to first decide whether an investment idea fits within their development goals and national priorities.

There is no uniform procedure for investment assessment that is followed universally. The nature of the steps and processes involved vary across jurisdictions, as do the timing and order of those steps and processes. For example, in some countries, proposed investors first approach the community where they are interested in investing before they have contact with the government. In other countries, due diligence on the investor may be conducted early on, with or without an initial investment proposal, with a more fleshed out investment proposal required only at a later stage.

Irrespective of these differences, there are multiple **entry points** or opportunities for screening within any given investment assessment process. This guidance focuses on entry points that arise during the initial stage of an investment assessment process, before any indication from government is given that an investment proposal will be accepted or advanced in the assessment process and before the investor has committed capital to the development of the project.

Importantly, due diligence processes remain relevant *after* the initial stages of an investment assessment process. Due diligence processes should not be limited to only one instance of assessment (i.e., early screening); they are most effectively employed at multiple assessment stages, depending on what approval is sought and what implications that will have for the investment. For example, they should be used to conduct a more in-depth review of a substantiated investment proposal. They can also be tied to monitoring and evaluation mechanisms as a means for governments to hold investors accountable for the benefits they promised in the initial application.

1.3.1 Determining which investment proposals to screen

Governments decide which investment proposals should be subjected to screening. Certain investor characteristics or the nature of the investment generally tend to “trigger” screening processes. Common triggers, which may operate in isolation or in combination with one another, include (Bonnitcha, 2020):

- Monetary value of the investment.
- Physical size of the investment.
- Sector.
- Whether the investor is foreign or domestic (noting the discussion in Box 2 about international investment law).
- Whether the investor is government or non-government.
- Type of asset being acquired (e.g., land or business enterprise).
- The extent of interest in a business enterprise, the nature of the enterprise (new or existing), and the share of the market that would be controlled by the enterprise if the transaction went ahead.

Box 5 considers the evolution of screening mechanisms in different regions and highlights some of the triggers and legal requirements of those laws.

Box 5

The evolution of screening mechanisms in different regions

The favourability of screening as a policy mechanism has waxed, waned, and waxed again in the past few decades. The 1990s and early 2000s saw a move away from screening (OECD, 2020a; Cotula, 2016), but recent years have witnessed its re-emergence, especially with regard to foreign investors. This uptick in screening mechanisms has been particularly noticeable in higher-income countries (UNCTAD, 2019; OECD, 2020b). The COVID-19 pandemic further accelerated this upward trend in 2020 due to concerns around public health and economic impacts (OECD, 2020b, Fig. 1, Fig. 2), leading to more than 75 per cent of OECD countries having an investment screening or review mechanism in place by the end of that year (OECD, 2020b, Fig. 2). This shows a recognition that the *quality* and benefits of foreign investment should be prioritized over *quantity* (Bonnitcha, 2020).

The more recently adopted screening mechanisms have tended to focus on national security considerations, strategic industries, and critical infrastructure, but they have also included references to environmental protection and the protection of

Box 5 (Cont.)

public health within conceptions of “national security” (UNCTAD, 2019; Bonnitcha, 2020; Napolitano, 2020). The European Union’s March 2019 Regulation establishing a framework for the screening of foreign direct investments into the Union^I also focuses primarily on national security but lists food security as one of the many factors that Member States may consider when screening inward investments.^{II} Other, more comprehensive investment screening tests are discussed as country examples throughout this guidance, including in Section 3.1.

In spite of the (growing) prevalence of screening mechanisms in higher-income countries, lower-income countries remain under pressure to *remove* such policy tools. There may be a few reasons for this trend, which deserves further study. The first is a legacy of structural adjustment-era policies advanced by international financial institutions. In spite of World Bank advice to the contrary (UNCTAD and World Bank, 2018b, 2018b), there is some evidence that some in-country technical assistance and guidance provided in the recent past through or by the World Bank discouraged the development of screening mechanisms (see e.g., International Finance Corporation, 2018; World Bank Group, 2010). A second may be internal political economy dynamics, where performance of (for example) investment promotion agencies and their staff is evaluated on the basis of the quantity of investment inflows, resulting in projects being approved with no or limited assessment (resulting in a range of costs, rather than benefits, for the government and other stakeholders, as discussed in Box 2) (Hudson and Marquette, 2015; Mebratu-Tsegaye and Kazemi, 2020).^{III} Finally, any mechanisms that are in place may be undermined by pressure from investors to push on with their projects quickly, without allowing governments the chance to properly screen (UNCTAD and World Bank, 2018b). Whatever the reasons, the takeaway is clear: richer countries think screening inward investment is in the public interest. The same logic should apply in lower-income countries, where investment must also be sustainable and not irresponsible.

Notes:

^I Regulation (EU) 2019/452 of the European Parliament and of the Council establishing Framework for the Screening of Foreign Direct Investments into the Union, PE/72/2018/REV/1 <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02019R0452-20200919>>; (hereafter EU Screening Framework).

^{II} EU Screening Framework, art. 4.1(c). For example, Denmark, Italy, and Malta include reference to food security in their screening framework. (Pohl, Rosselot and Novak, 2022).

^{III} A similar phenomenon of counterproductive incentives has been observed in different but analogous institutional and substantive contexts. International finance institution staff have admitted to responding to professional incentives to get projects operationalized and funding allocated even if that means sacrificing attention to the performance and outcomes of these projects or funding allocations (see e.g., Hudson and Marquette, 2015). Similarly, employees of extractives companies have observed the influence of reward schemes on the behavior of management to “drive production and deliver projects on time and on budget in accordance with project plans” at the expense of engaging in proper community consultation and consent procedures (Mebratu-Tsegaye and Kazemi, 2020).

Sources: See References.

1.3.2 Entry points for screening

Across the broad range of investment assessment processes that exist, there are many different early-stage opportunities or instances at which governments screen proposed investors and investments. This guidance refers to these as “entry points” and explores them in this subsection. This subsection steps through some of the “entry points” for screening, that is, the various instances of evaluation, highlighting country examples to demonstrate the significant variations in approach that exist. The subsection considers the following entry points:

- expression or registration of intent to invest;
- application for consent or approval;
- application for company registration;
- application for compulsory investment licence;
- application for investor benefits, such as incentives;
- application for licence to take a resource; and
- application to invest in special economic zones, including agricultural growth poles.

The final point discussed in this subsection is that of evaluating compliance with commitments made during screening. Each entry point is now discussed in turn.

Expression or registration of intent to invest

When investors are interested in investing in a country, they may be required by law or otherwise expected by the government to express or register their intent to invest. The process for registering intent to invest will vary from jurisdiction to jurisdiction. It may involve approaching the relevant government body by telephone or email, submitting a form, or entering details through an online database. This step does not constitute a full investment application; rather, it enables initial contact between a host government and investor and may range in specificity from discussing potential investment options to submitting an initial investment proposal (FAO, 2015).

Registration of intent to invest offers a prime opportunity to screen proposed investors and investments. Government officials can use it as a chance to essentially ask: Is this the kind of investor that we want to have a significant presence in our country? Is this the kind of investment that will contribute to sustainable development? A more in-depth investigation of both investor and investment occurs later, provided the proposal passes this preliminary phase and progresses further.



Screening at this stage – as a first step in a broader investment assessment process – is ideal. It allows governments to:

- Weed out high-risk investors and investments before expectations are generated.
- Dialogue with the investor and, where applicable, community to work together to shape responsible investment from the outset.
- Clearly communicate relevant laws, practices, and national development strategies and priorities to the proposed investor from an early stage in the investment process to maximize the opportunity for a project to be aligned with (rather than deviating from) those frameworks.
- Manage expectations – for example, where communities have been visited by proposed investors without government input and local expectations have been raised for something that may never even eventuate (FAO, 2015).
- Maximize transparency and stability and reduce the risk of corruption (FAO, 2015).
- Kick off a series of investment assessment steps, whereby more detailed information, especially about the investment, is gathered and evaluated as the project progresses (FAO, 2015).

It allows proposed investors to:

- Explore whether a proposed project falls within the scope of a government's investment priorities without expending too much capital on the proposed project, particularly if it is worked out early on that the investor or investment is not likely to receive approval due to a significant issue that is discovered.
- Avoid misinformation – for example, where they have already visited areas of interest and received incomplete or inaccurate information about laws and national priorities from unofficial sources (FAO, 2015).





Country examples of screening at registration of interest or intent to invest

The draft Agribusiness Investment Approval Process (AIAP) for Sierra Leone, which was developed by a working group comprised of representatives of the Government of Sierra Leone and FAO but never approved for implementation, applies a “Know Your Customer” check upon initial contact between the Sierra Leone Investment and Export Promotion Agency (SLIEPA) and the proposed investor.¹⁶ The Know Your Customer check is a questionnaire issued by SLIEPA to the proposed investor, with the aim of learning more about both investor and investment (SLIEPA, undated). The findings enable SLIEPA to prioritize those investors with high-rated potential and devote less time to those with lower ratings.

Investments over USD 10 million in **Liberia** require a concession agreement (National Investment Commission, 2021). To initiate this process, proposed investors should “present a written communication with an outline proposal to the National Investment Commission (NIC) or the Concession entity expressing desire to invest in a sector” (National Investment Commission, 2021). The National Investment Commission screens these expressions of interest using internally formulated due diligence processes.¹⁷ FAO currently supports the NIC in aligning its investment and investor screening policies with the CFS-RAI.

In **Canada**, prior to investment implementation, or no more than 30 days after, any non-Canadian investor establishing a new Canadian business or acquiring an existing one must file a Notification through the Ministry of Innovation, Science and Economic Development. The minister then determines whether or not the investment will be subject to review.¹⁸ Investments with proposed assets in excess of CAD 5 million¹⁹ are automatically subject to review.

In **Ghana**, after incorporation and before commencement of operations, foreign investors are required to register with the Ghana Investment Promotion Centre (GIPC).²⁰ Local investors may choose to do so in order to be eligible for benefits and incentives.²¹ Registration provides authorities with an opportunity to screen against legislative minimum capital requirements as well as to screen against questions contained in the investor registration form. Foreign investors must renew their registration every two years.²²

¹⁶ NB: Due to changes in the governance structure applicable to investment assessment and approval, the approval and implementation of the AIAP was put on hold and a new entity (the National Investment Board) was established.

¹⁷ Key informant interviews, May–June 2022.

¹⁸ Investment Canada Act (2020), Part III.

¹⁹ Additional factors that may automatically qualify an investment as “reviewable” can be found under Part IV of the Investment Canada Act (2020).

²⁰ Ghana Investment Promotion Centre Act, 2013 (Ghana), s 24.

²¹ Ghana Investment Promotion Centre Act, 2013 (Ghana), s 25.

²² Ghana Investment Promotion Centre Act, 2013 (Ghana), s 24(3).

Application for consent or approval

Several countries require consent or approval to be granted in order for an investment to be able to proceed to subsequent stages in the investment assessment process. Such countries tend to screen applications for consent in order to decide whether they meet the country's predetermined criteria.



Country example of screening applications for consent or approval

In **New Zealand**, overseas investments in both farmland that exceeds five hectares and in the fishing quota require consent from the relevant ministers or the Overseas Investment Office under ministerial delegation.²³ Foreign investors seeking to invest in farmland that exceeds five hectares must pass the "investor test" and "benefit to New Zealand test." Foreign investors seeking to invest in a fishing quota must pass the "investor test" and demonstrate that the granting of consent is in the "national interest."²⁴

Non-government foreign investors who meet certain value thresholds (monetary and percentage of ownership) in agribusiness and agricultural land in **Australia** are required to obtain approval from the Foreign Investment Review Board. Foreign government investors must obtain approval for acquiring any value of interest in Australian land. The Australian Treasurer has the authority to block or approve (conditionally or unconditionally) proposals. Transactions should not proceed until consent has been obtained (Australian Government Treasury, 2019).

Canada requires certain investors to submit an Application for Review to the Investment Review Division (IRD) of the Ministry of Innovation, Science and Economic Development (ISED). Typically, a non-Canadian investor is subject to review where its proposed assets exceed CAD 5 million.²⁵ All investments deemed "reviewable" under the Act or by the Minister of ISED must undergo a screening process and receive authorization from the minister prior to implementation.²⁶ The IRD performs an analysis as part of the screening process known as the "net benefit" test. The test considers the effect of investment on economic activity in Canada (including employment, productivity, and innovation), its effect on competition, and its compatibility with domestic policy, among other factors. Following the screening process, the IRD makes a recommendation to the minister as to whether the investment will be of "net benefit" to Canada. Upon investment authorization, the minister may request more information or carry out an evaluation 18 months following project implementation.²⁷ If the investment is not performing as expected, a follow-up may be scheduled.

In **Peru**, if a desired investment location is within 50 kilometres of the Peruvian border, a project authorization must be obtained to exercise property rights over resources (United Nations Conference on Trade and Development, 2001).

²³ Fisheries Act 1996 (NZ) ss 57B, 57C.

²⁴ Fisheries Act 1996 (NZ), 57G.

²⁵ Investment Canada Act (2020), s 14(3). Additional thresholds for review are outlined under Part IV of the Investment Canada Act.

²⁶ Investment Canada Act (2020), s 16(1).

²⁷ Investment Canada Act (2020), s 25.

The application²⁸ requires approval from the minister holding the presidency of the Council of Ministers, the minister of the sector to which the investment corresponds, and the favourable opinion of the Joint Command of the Armed Forces. Approval of this authorization is evaluated based on national security criteria.²⁹

Investments in food processing in **Suriname** require 19 approvals or clearances from 16 government entities before the proposed project can be implemented (World Bank, 2018). The Ministry of Trade, Industry and Tourism conducts a final review of the guidelines from the regulatory agencies, and, if satisfactory, will draft and send a licence to the Permanent Secretary who shares it with the minister for final approval. The licence is then sent to the Business Chamber of Commerce where the applicant will be able to receive its business registration and manufacturer's licence (World Bank, 2018).

Application for company registration

In many countries, company registration is an essential step for investment – one that offers governments another opportunity to screen.



Country examples of screening at application for company registration

In **Ghana**, an early step in the investment assessment process is the establishment and registration of enterprises. The enterprise should first be incorporated or registered in accordance with the Companies Act and then registered with the Ghana Investment Promotion Centre before commencing operations, at which point information about the proposed project is provided and reviewed in a form of screening.³⁰

Application for compulsory investment licence

Some investment project application processes will involve the issuing of an investment licence or certificate. In such jurisdictions, this licence may be a compulsory requirement for the operation of all or certain investments or investors. In other cases, a licence is sought and granted in exchange for benefits available under a domestic investment law; this type of licensing process is addressed later in the next sub-heading.

²⁸ Decreto Supremo N° 162-92-EF (Peru), Anexo III.

²⁹ Decreto Supremo N° 162-92-EF (Peru), Título I Artículo 3.

³⁰ Ghana Investment Promotion Centre Act, 2013 (Act 865).



Country examples of screening at application for investment licence

Uganda requires all foreign investors and those domestic investors above the minimum investment capital threshold (USD 50 000 for domestic investors and USD 250 000 for foreign investors) to apply to the Uganda Investment Authority for registration (Uganda Investment Authority, undated).³¹ The Uganda Investment Authority can either grant an investment certificate where the application satisfies the requirements of the Code – imposing any terms or conditions as it “deems fit” – or refuse to grant the certificate.³²

Certain types of investments – including agricultural investments on more than 1 000 acres of land and investments over USD 20 million requiring land use or property rights, among others³³ – require a permit in order to be able to operate in **Myanmar**. Applications for an investment permit in Myanmar are made to and screened by the Myanmar Investment Commission, who has the power to review, seek amendments, reject, or approve applications.³⁴

Application for investor benefits, such as investment incentives

Certain benefits – such as investment incentives³⁵ and other protections or guarantees – are sometimes offered to eligible investors but contingent upon application by those investors. Application processes that precede the granting of such benefits at times offer opportunities to screen, to varying degrees (both in law and practice) in different jurisdictions. Countries commonly administer the benefits through non-compulsory investment licences or other forms of certification.

An investment incentive is a “targeted measure provided by a government to or for the benefit of an investor (including small-scale producers) for a new or expanded investment with the goal of influencing the size, location, impact, behaviour, sector, or other character of such investment” (Bulman *et al.*, 2021). States hence invest financial resources (either directly in the form of financial incentives and human resources, or indirectly when renouncing government revenues through the provision of tax incentives) to foster national sustainable development. Therefore, stringent eligibility criteria and particularly careful screening processes should be applied whenever states decide to offer incentives to prospective investors so as to ensure that incentives are granted to those investors and investments that are most likely to contribute to those development goals.

³¹ The Investment Code Act, 2019 (Uganda), sections 15, 16(1), 19(1).

³² The Investment Code Act, 2019 (Uganda), section 16(2), 22(2). Also called “investment licence” at (Uganda Investment Authority, undated).

³³ Myanmar Investment Rules, Chapter II 3 (a) – (g).

³⁴ Myanmar Investment Law, Chapter VI, 25 (a) – (n).

³⁵ For an in-depth analysis of the efficacy or otherwise of investment incentives in agriculture and food systems, see (Bulman *et al.*, 2021).



Country examples of screening at application for investor benefits

In **Senegal**, domestic and foreign investments that are valued over CFA 100 million³⁶ and concern a new enterprise or an extension of an investment may apply for an investment licence in order to benefit from incentives and protections under the domestic investment law (ACILP and CCSI, undated). The application for an investment licence affords an opportunity to examine the proposed project through the investor's provision of a technical file and decide whether it should receive the desired benefits.³⁷

Kenya offers eligible domestic and foreign investors³⁸ who are investing the requisite amounts of capital certain licensing and permit benefits if they apply for and are granted an investment certificate.³⁹ In deciding whether to grant the certificate, the Kenya Investment Authority conducts due diligence to examine whether the investment and the activity related to the investment are lawful and "beneficial to Kenya."⁴⁰

The Board of the **Ghana** Investment Promotion Centre offers special incentives to certain "strategic" sectors, including agriculture and agribusiness investments, that invest at least USD 50 million. Investors submit an application when applying for these incentives, which is then subject to a screening review.⁴¹

Agricultural businesses in **Liberia** that have already registered with the Liberia National Business Registry and are dealing with investments in the range of USD 50 000 to USD 10 million can apply for accreditation with the Ministry of Agriculture, which then screens the applications.⁴² Accreditation affords businesses legitimacy through recognition by the Minister of Agriculture of the investment in the agriculture sector. Once accredited, businesses are included in a database and kept informed about future investment opportunities every time a project is floated.

The National Investment Commission of **Liberia** receives and screens applications for short- and long-term incentives.⁴³ Relevant sectors include agriculture, poultry, agricultural food crop cultivation, and rubber and oil palm cultivation and processing.⁴⁴ Eligibility involves a minimum capital requirement of USD 500 000 for foreign and domestic investors (National Investment Commission, undated).⁴⁵ The Ministry of Agriculture also screens applications

³⁶ Unless otherwise allowed by decree.

³⁷ Article 9 of Decree 2004-627 (2004) lists the information and accompanying documents that applicants seeking an investment licence are required to provide.

³⁸ Investment Promotion Act 2004 (Kenya) s 3.

³⁹ Investment Promotion Act 2004 (Kenya) ss 12, 13.

⁴⁰ Investment Promotion Act 2004 (Kenya) s 4(1).

⁴¹ Ghana Investment Promotion Centre, "Special Incentives for Strategic/Major Investments."

⁴² Information on this entry point was taken from key informant interviews conducted May–June 2022.

⁴³ Process set out in the *Liberia Revenue Code* (as amended), s 16. Copy available at <https://revenue.lra.gov.lr/wp-content/uploads/2021/08/REVENUE-CODE-LIBERIA-REVENUE-CODE-AMENDEMENT-2020-min.pdf>.

⁴⁴ Republic of Liberia, Ministry of Finance and Development Planning and Development Planning, Administrative Regulation No. 1.16-1/MFDP/FAD/RTPD/06/06/2017.

⁴⁵ Liberia Revenue Code (as amended), s 16(2)(B).

for sector incentives that are offered to agricultural businesses between USD 500 000 and USD 9.9 million.⁴⁶

Foreign investors who qualify may, through **Chile's** InvestChile, apply for a Foreign Investor Certificate (InvestChile, 2017), which would permit them to take advantage of incentives and other benefits under Law 20 848.⁴⁷ If granted, the certificate⁴⁸ confers certain protections on the foreign investor(s) (InvestChile, 2022).

Application for licence to take a resource

Some countries screen applications for a licence to take a resource, such as fish.



Country examples of screening at application for a licence to take

In **Fiji**, an application for a tuna longline fishing licence requires the provision of an investment proposal along with supporting company and vessel documentation.⁴⁹

Application to invest in special economic zones, including agricultural growth poles

Special economic zones (SEZs) are geographic areas where applicable laws can diverge from those that apply in the rest of a country, at times creating zones of “exemption” from national rules and safeguards (Cotula, 2018). Agricultural growth poles are an agriculture-specific example of an SEZ (Cotula, 2018). Many governments set up special laws, regulations, and institutions to establish these sites to attract investment (Picard, Coulibaly and Smaller, 2017). To the extent that laws and specialized government entities are created to administer and manage SEZs and have investment assessment processes that deviate from the standard application process, such entities can screen proposed investors and investments in those zones in the same instances described above, such as registration of intent to invest and other application processes (Picard, Coulibaly and Smaller, 2017).

Compliance, renewal, and expansion

While screening is a preliminary exercise that takes place early on in an investment assessment process, there are other opportunities later in the investment life cycle to evaluate compliance with commitments that are made at the screening stage.⁵⁰

⁴⁶ Key informant interview, May–June 2022.

⁴⁷ Marco Para la Inversión Extranjera Directa 2015 (Chile).

⁴⁸ Application for the certificate is here: (InvestChile, 2018).

⁴⁹ At least, pursuant to the 2018-2019 *Fisheries Sector Investment Guide*.

⁵⁰ For example these tools developed by the World Bank and UNCTAD set out processes for checking compliance with screening requirements: (UNCTAD and World Bank, 2018b, 2018a).

For example, requirements to renew investment licences offer an opportunity to re-examine the now operational investment against the baseline established at the outset of the investment assessment process and to re-assess whether to continue to allow the investor to operate on the same terms or revised terms or to not grant the renewed licence. The same applies to the expansion of existing projects. In the case of non-compulsory licences to obtain benefits, government entities can similarly use renewal as an opportunity to track progress and decide whether the investor is still deserving of the associated benefit.



Country example of compliance

In **Ghana**, investors are required to apply for renewal of their investment licence every two years. In theory, this should enable the Ghana Investment Promotion Centre to review and compare the outputs projected in the original licence application submitted before commencing operations to the actual outputs once the investment has become operable.⁵¹

1.3.3 Key stakeholders – roles, responsibilities, rights

Government entities

Investment assessment can be – and, in practice, is – conducted by a wide range of government entities. Focusing on early-stage screening, as this guidance does, does not necessarily narrow down the list of entities. Although an application may be lodged with a single entity, others are usually involved behind the scenes in the screening process. The “one-stop-shop” mandate of investment promotion agencies, as well as agencies devoted to dealing with foreign investments, often means that early-stage screening is conducted by those agencies as the first port of call for interested investors. Revenue authorities or finance ministries may be involved in or in charge of screening applications for incentives. Sector ministries, such as agriculture, may also be involved in or in charge of early-stage screening. Screening may also be conducted by interagency government entities (e.g., the Committee on Foreign Investment in the United States) or coordinated by a lead agency in conjunction with other relevant government entities.

⁵¹ Sections 24, Ghana Investment Promotion Centre Act, 2013 (Act 865).





Country examples of government entities involved in screening

Some investment proposals in **Canada** are screened by the Ministry of Innovation, Science and Economic Development, including the minister themselves.

Registrations of intent to invest by foreign investors in **Ghana** are lodged with and screened by the Ghana Investment Promotion Centre (GIPC).⁵² GIPC screens information about proposed projects when the enterprise incorporates in accordance with the Companies Act and then registers with the GIPC.⁵³ Applications for special incentives are also submitted to the GIPC, which then consults with the Strategic Consultation Committee (consisting of representatives from Ghana Revenue Authority, Ministry of Finance, Environmental Protection Authority, and other relevant agencies).⁵⁴ The Committee forwards recommendations to the Board of the GIPC, which forwards them to the Ministry of Finance for Parliamentary approval.⁵⁵

In **Liberia**, the National Investment Commission screens letters of interest regarding agricultural concessions⁵⁶ and applications for special incentives.⁵⁷ The Ministry of Agriculture screens applications for accreditation with the ministry and for sector incentives for investments in agricultural businesses between USD 50 000 and USD 9.9 million.⁵⁸

Foreign applications for consent to invest in farmland over 5 hectares and in the fishing quota in **New Zealand** are made through the Overseas Investment Office (OIO).⁵⁹ Consent decisions are made by relevant ministers or the Overseas Investment Office under ministerial delegation.⁶⁰

Foreign investors seeking consent to invest in agribusiness and agricultural land in **Australia** seek approval from the Foreign Investment Review Board. The Australian Treasurer has the power to block or conditionally or unconditionally approve proposals. (Australian Government Treasury, 2019)

Senegal's Agency for the Promotion of Investments and Major Works (APIX) screens applications for an investment licence in order to benefit from incentives and protections under the domestic investment law (ACILP and CCSI, undated).

⁵² Ghana Investment Promotion Centre Act, 2013 (Ghana), s 24.

⁵³ Ghana Investment Promotion Centre Act, 2013 (Act 865).

⁵⁴ Ghana Investment Promotion Centre, "Special Incentives for Strategic/Major Investments."

⁵⁵ Ghana Investment Promotion Centre Act, 2013 (Act 865), s 26(4); Ghana Incentives Inventory, Ghana Investment Promotion Centre, 34.

⁵⁶ Key informant interviews, May–June 2022.

⁵⁷ Process set out in the Liberia Revenue Code (as amended), s 16.

⁵⁸ Key informant interviews, May–June 2022.

⁵⁹ Applications for land investments can be completed through an online form. Fishing quota applications cannot occur online and must be done in contact with the OIO. For details see <https://oio.lin.govt.nz/sites/default/files/2021-07/Information%20required%20for%20consent%20application.pdf>. See also templates available at <https://www.lin.govt.nz/overseas-investment/applying-for-consent-purchase-new-zealand-assets/preparing-your-application-oio/our-application-templates> (under the Sensitive Land section). Fisheries Act 1996 (NZ), 57B.

⁶⁰ Fisheries Act 1996 (NZ) ss 57B, 57C.

In deciding whether to grant an investment certificate, the **Kenya** Investment Authority conducts due diligence to examine whether the investment and the activity related to the investment are lawful and beneficial to Kenya.⁶¹

The **Myanmar** Investment Commission or Region and State Committees may be involved in screening applications for investment permits, depending on the nature of the application.⁶² The Ministry of Agriculture, Livestock and Irrigation receives and screens applications for approvals for those investment activities that fall under the list of restricted activities.⁶³

Investors who wish to benefit from **Chile's** Foreign Investor Certificate (InvestChile, 2018) apply to InvestChile for investor benefits (InvestChile, 2017).

To be approved for a permit within 50 km of **Peru's** national borders, proposed projects must go through the application for approval process governed by the minister that exercises the Presidency of the Council of Ministers, Minister of the Corresponding Sector, and the Joint Command of the armed forces.⁶⁴

To receive a business licence in **Suriname**, fruit processors must submit the appropriate documentation to the Suriname Business Chamber of Commerce, which commences the screening process through 16 different regulatory entities before receiving final approval from the Ministry of Trade, Industry, and Tourism (MTIT) (World Bank, 2018). The entities include the Suriname Business Chamber of Commerce; Tax Registration Department; Commercial Bank; Ministry of Finance; MTIT; District Commissioner's Office; Economic Control Division; Ministry of Public Works; Water, Gas, Electricity and other relevant utility departments; Fire Department; National Institute for Environment and Development in Suriname (NIMOS); Bureau of Public Health; Labour Inspectorate; Customs; Ministry of Agriculture; and Bureau of Standards.

Applications for compulsory investment certificates in **Uganda** are made to the Secretariat of the Uganda Investment Authority,⁶⁵ with decisions whether or not to grant the certificate made by the Authority.⁶⁶

⁶¹ Investment Promotion Act 2004 (Kenya) s 4(1).

⁶² Myanmar Investment Rules, Chapter XIV 155, 151 – 158. Myanmar Investment Law, Chapter I 2(e), (j), Chapter IV; Myanmar Investment Rules, Chapter VI, 41 (a).

⁶³ Specifically, activities related to "fisheries resources and fish species, marine fishing, commercial livestock farming, poultry, genetic research, importing, production, domestic marketing and re-exporting of seed; importing, production and distribution of varieties of plant, research on agriculture and agricultural products and production of seasonal crops" (Myanmar Investment Commission, 2017).

⁶⁴ Decreto Supremo N° 162-92-EF (Peru), Título I.

⁶⁵ The Investment Code Act, 2019 (Uganda), s 21(1).

⁶⁶ The Investment Code Act, 2019 (Uganda), s 22.

Communities and peoples

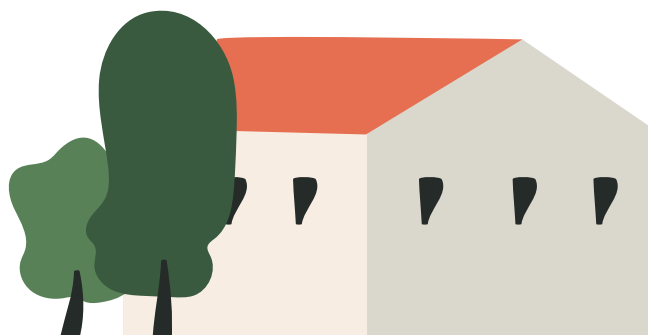
This guidance focuses primarily on the relationship between governments and investors and how the former can conduct due diligence on the latter in order to screen proposed investments in agriculture and food systems. However, larger-scale investment projects will almost inevitably have some impact on local communities and peoples. This may be for several reasons: because the proposed project is slated for land or water that is owned or used by locals; it would affect the natural environment on- and off-site; the business model is based on local suppliers; or it may involve the construction of infrastructure that affects communities living nearby. Affected communities and peoples have legal rights to meaningful participation in investment assessment processes. These rights derive from the human rights law requirement of Free, Prior and Informed Consent (FPIC) and the right to meaningful consultation.⁶⁷

FPIC is the provision of consent without coercion, manipulation, or intimidation and with complete, objective, accurate, and understandable information relating to the proposed investment prior to approval (Dudine and Szoke-Burke, 2020). Under international law, the requirement of FPIC applies to Indigenous and tribal peoples, but it is increasingly being applied by some international treaty bodies, industry and multi-stakeholder initiative standards, and countries through domestic legislation more broadly to project-affected communities (Dolton-Zborowski and Szoke-Burke, 2022; Dudine and Szoke-Burke, 2020; Szoke-Burke and Cordes, 2020).⁶⁸

Even where FPIC is not strictly required, **meaningful consultation** certainly is. The right to consultation, like FPIC, is iterative and ongoing and involves meaningful two-way communication and information sharing, community participation and influence over decisions regarding the investment, adequate allocation of time and resources to the community to facilitate decision-making, and culturally appropriate meetings with accessible information, with attention to marginalized sub-groups (Szoke-Burke and Cordes, 2020).

⁶⁷ International "hard" and "soft" law sources for FPIC include: International Labour Organization, Convention (No. 169) Concerning Indigenous and Tribal Peoples in Independent Countries, art 16, 1989; International Covenant on Civil and Political Rights, arts. 1, 27, opened for signature Dec. 16, 1966, 999 U.N.T.S. 171 (entered into force Mar. 23, 1976); International Covenant on Economic, Social and Cultural Rights, art. 1, opened for signature Dec. 16, 1966, 993 U.N.T.S. 3 (entered into force Jan. 3, 1976); G.A. Res 61/295, United Nations Declaration on the Rights of Indigenous Peoples, arts. 10, 19, 32 (Oct 2, 2007); CFS-RAI; VGGT; IFC Performance Standards on Environmental and Social Sustainability (PS 7). Certain domestic jurisdictions also provide legal bases for these rights. See for example the South African judgment of *Baleni v Minister for Natural Resources 2019 (2) SA 453 (GP (S. Afr.))*. International hard and soft law sources for the right to consultation include: right to information and freedom of expression (ICCPR, art. 19), which includes freedom to seek, receive and impart information and ideas of all kinds; right to participation in public affairs (ICCPR, Art. 25; ICERD, Art. 5(c); UNDROP; VGGT; UN Guiding Principles on Business and Human Rights; IFC Performance Standards on Environmental and Social Sustainability (PS 1).

⁶⁸ The "communities and peoples" referred to in this section and the guidance more generally include Indigenous Peoples and other local communities, particularly those communities that are especially vulnerable or marginalized and whose international human rights are, or risk being, affected by a proposed investment (adapted from Dolton-Zborowski and Szoke-Burke, 2022). FPIC does not just mean engaging with local officials and community leaders. Instead, it recognizes that project-affected communities are made up of a diverse range of individuals and groups, including frequently marginalized groups such as women and people with disabilities, and that all members must be able to participate and weigh in on the ultimate decision.



In the context of screening, FPIC and consultation are relevant to how screening processes are **designed**, as well as their **content** and **implementation** (see Dudine and Szoke-Burke, 2020):

Stage	How
Design	Designing strong investment assessment processes, including screening, is an important part of creating an enabling environment for responsible investment, and it should involve representatives from communities and civil society. See details in Box 6 below.
Content	<p>Incorporating FPIC and consultation into screening processes is important for alignment with the CFS-RAI. One of the topics that proposed investments should be screened on is community participation and consent, namely, whether the investor has and would engage meaningfully with communities throughout the investment life cycle, including by respecting FPIC.</p> <p>Proposed investors can also be screened to check their record of implementing FPIC and consultation in previous or existing investments. In terms of what strong FPIC and consultation processes might look like, they should be accessible and adaptable for local contexts, designed to target all members – including marginalized groups within communities – and should require parties to respect communities’ decisions regarding proposals, including by withholding consent. They may also involve businesses paying into an independent basket fund for community support (see Columbia Center on Sustainable Investment, 2019).</p>
Implementation	When implementing screening processes in accordance with the requirement of FPIC and the right to consultation, governments should make publicly available, including in areas where the proposed project might occur, information about the proposal and receive and incorporate input from affected groups and civil society into decision-making processes.

Beyond meeting international obligations, incorporating FPIC enhances investment assessment processes. Communities and peoples provide critical local insights that improve the design of a proposed project. They can explain local customary rights and usage, identify culturally and environmentally significant areas, communicate their expectations regarding outcomes, and help design effective grievance mechanisms, among other valuable information (Colchester and Chao, 2014). Close coordination with affected communities from the outset will increase the chances that the investment will be successful.

Box 6

Participatory design of investment assessment processes

Recognizing the diversity of stakeholders involved in investment assessment processes – including the range of relevant national and subnational government entities, as well as communities and peoples – it is important that the design of investment assessment processes is inclusive and participatory. This design will facilitate the development of tools that reflect local needs, preferences, and goals and contribute to the selection of projects that are responsible. This process will involve coordinating with a broad range of relevant government entities and receiving input from other (non-government) stakeholders, including affected communities and peoples, civil society, and non-governmental organizations. By communicating their priorities and concerns, these stakeholders can help in tangible ways, such as deciding which topics deserve the greatest emphasis during screening and developing national benchmarks for scorecards and key performance indicators that reflect the country's interests.

For participation to be meaningful, it will likely involve technical support to – and awareness raising with – stakeholders with fewer resources, an exploration of the risks and benefits of the proposed investment model, broad inclusion of relevant groups (specifically minorities or the underrepresented), mechanisms for receiving and dealing with relevant information, and the presentation of outcomes for approval (FAO, 2015; Jull, 2016).

Sources: See References.

Investors

Investors also have a responsibility to respect human rights that complements governments' obligations regarding affected people and communities. The responsibility to respect is set out in the UNGPs and involves a responsibility to identify and prevent risk and remedy any harm to people directly or indirectly affected by their operations.⁶⁹ One aspect of companies' responsibility to respect is identifying the social, environmental, and economic impacts of a proposed project on people. This is reflected in the CFS-RAI and VGGT. Investors often carry out their own due diligence on a proposed project to assess feasibility and risk. Some countries have chosen to formalize the risk identification aspect of the responsibility to respect through mandatory human rights and environmental due diligence laws that impose legal obligations on companies to incorporate measures to identify, prevent, mitigate, and account for actual and potential human rights and environmental impacts in company due diligence procedures (see, e.g. European Coalition for Corporate Justice, 2021; European Commission, undated; European Parliament, 2022). Importantly, a company's due diligence in a proposed project is a separate process from a government's due diligence into that company and screening of the proposed investment.

A forthcoming agribusiness self-screening tool from FAO and the International Institute for Sustainable Development will provide further explanation of company human rights responsibilities and obligations and explains how these are applied in the associated company due diligence tool.

⁶⁹ The responsibility to respect is also backed up by mandatory human rights due diligence laws, which require human rights due diligence abroad (OHCHR, undated).

1.3.4 Barriers to uptake and implementation

In order to be effective, screening processes need to be well designed and well implemented. In many circumstances, progress on both of these points can be stymied by a lack of support or even resistance by powerful actors in a position to influence whether such processes are undertaken and how they unfold. This could lead to these processes being undermined by gaps in uptake, implementation, and impact. The best results will be achieved when there is political support for technical good practice (Kazemi, 2021).

Uptake gaps

Policymakers and technical staff reading this guidance might see merit in amending their country's policy and strengthening screening processes for larger-scale investments in agriculture and food systems. However, getting these changes of policies and practices adopted requires more than that – it requires political support, which in some cases can be hard to come by and result in seemingly sound recommendations not being taken up. **Table 2** provides some strategies for overcoming such uptake gaps in the context of screening.

Table 2
Strategies to overcome uptake gaps with regard to screening mechanisms

Strategy	Description
Conduct political economy analysis	A political economy analysis can be instrumental in identifying and addressing political obstacles. This process involves identifying the key stakeholders, working out who has power over what/whom (including in the screening process), what their driving interests or incentives are, and how they exercise influence over screening processes (Kazemi, 2021). ¹
Strategize a path for maximum impact	Once the main obstacles and opportunities, opponents, and allies have been ascertained, paths to building political support can be strategized and pursued. Such paths might include framing the case for the uptake of screening processes in a way that aligns with the interests of key actors; creating coalitions of actors, within and beyond government, with an interest in supporting the adoption of strong screening processes (and the goals these are meant to achieve); working to shift the interests or incentives of those who hold the most power over screening processes in a supportive direction; or working around obstacles (Kazemi, 2021).

Note:

¹ For more detail on how to conduct a political economy analysis see page 4 (Kazemi, 2021).

Source: Kazemi, L. 2021. *Getting From Ideas to Reality: Building Political Support to Translate Good Ideas into Actual Practice*. Columbia Center on Sustainable Investment.

Implementation and impact gaps

Even if such hurdles are overcome and well-designed screening processes are put in place, there may still exist barriers to effective implementation and maximum impact. These may include:

- Opportunities or incentives for deviation from formal processes, including through the use of backchannels – for example, when screening processes are skipped as a result of a political directive to approve an investment application.⁷⁰
- Lack of sufficient enforcement mechanisms to address these deviations – for example, if there is no law that prohibits the skipping of essential steps (including screening) in the investment assessment process or that establishes consequences for this.⁷¹
- Lack of transparency creates de facto barriers to public knowledge of and voice in whether and how investment assessment processes are implemented, what they entail, and what is included in investment proposals prior to their approval. Being excluded in this way undermines public confidence in the assessment of investments.
- Capacity and resource constraints in the government entities in charge of conducting the due diligence, which, in turn, affect the processing and analysing of information received from proposed investors and supplementary independent research.⁷²
- Lack of available resources to integrate revised processes into investment assessment workflows and to sustain these revised processes. For example, the body in charge of screening may not have access to databases with paywalls that would be useful for screening potential investors.⁷³
- Advice or requirements from influential external actors (such as international financial institutions) that continue to undermine screening efforts (International Finance Corporation, 2018; World Bank Group, 2010).
- Loss of institutional knowledge and memory due to high government staff turnover.⁷⁴
- Lack of sufficient interagency coordination and information exchange.⁷⁵
- Investors withholding information.⁷⁶
- Corruption that influences the investment assessment process at various levels, leading to the swift passage of deals that bring risks and few (if any) benefits for national development and local communities.⁷⁷

⁷⁰ Key informant interview, May 2022.

⁷¹ Key informant interview, May 2022.

⁷² Key informant interviews, May–June 2022.

⁷³ Key informant interview, May 2022. Many or most large-scale investors have access to paid third-party services that support due diligence they conduct on proposed investments and locations.

⁷⁴ Key informant interview, May 2022..

⁷⁵ Key informant interviews, May–June 2022.

⁷⁶ Key informant interviews, May–June 2022.

⁷⁷ Key informant interview, May 2022.

Behind many, if not most, of these challenges is one fundamental problem: those with the power to shape how these processes unfold and determine whether or not they are effective in achieving responsible investment in agriculture and food systems often do not have a strong interest in realizing this objective or have stronger interests in competing priorities. When the latter is the case, opacity, non-enforcement, under-allocation of resources/capacity constraints, political pressure to circumvent process steps, corruption, and other factors can be used to thwart the progress that screening processes are meant to advance. The result can be screening processes on paper that have limited effect in practice. Identifying these practical and political hurdles, and defining strategies for addressing them, will be important for government entities seeking to advance effective screening for responsible investment in agriculture and food systems.⁷⁸ The strategies discussed in Table 2 above to work with, change, or work around challenging power and interest dynamics also apply to overcoming political impediments to implementation and impact gaps. **Table 3** considers some further strategies that can be considered to address practical and political hurdles in effectively implementing strong screening mechanisms.

Table 3
Strategies to overcome implementation and impact gaps with regard to screening mechanisms

Strategy	Description
Transparency	Transparency is a key overarching principle of effective investment assessment (Szoke-Burke, Mebratu-Tsegaye and Sommer, 2021). Creating transparency within an assessment process (i.e., establishing a process to publish decision-making outcomes, including of initial screening, and meaningfully engaging stakeholders throughout assessment processes) reassures investors and members of the community alike and increases accountability.
Formalized processes	Formalizing investment assessment processes in law, regulation, or policy is a key component of transparency. It ensures that all stakeholders know what will happen at each stage in the process. It facilitates the establishment of workflows and processes that mitigate the influence of biased or political value judgments regarding particular investment applications.
Publication of laws, regulations, policies, and guidelines online	Publishing both rules and information about how the rules are implemented in practice affords greater clarity around and buy-in for screening processes. [!]

⁷⁸ For further discussion of building political support for advancing responsible approaches to land-based investment, see (Kazemi, 2021).

Table 3(Cont.)

Strategy	Description
Coalition building	Creating and supportive coalitions (both within government and beyond) or standing bodies behind screening reforms. ¹¹ This increases the likelihood of meaningful implementation, consistency, and continuity.
Regional cooperation	Regional cooperation and information exchange can enhance political support for screening and foster peer learning (Pohl, Rosselot and Novak, 2022).
Employee performance decoupled from the number of investments approved	Decoupling employee performance criteria from the number of investments approved reduces incentives facing those undertaking assessments to grant approvals, irrespective of whether they are responsible or not.
Culture	Establishing a culture within relevant government entities, starting from senior management, that promotes and values responsible investment so that technical staff are empowered to advance responsible investment decisions.
Mandatory staff training	Requiring new staff to complete training modules on responsible agriculture investment and screening concretizes commitments under these principles and reduces the institutional knowledge and memory loss that results from staff turnover. These modules may be pre-recorded videos, online text-based resources, interactive live sessions, or a mixture of mediums. They may be required for new staff and may involve regular refresher courses for existing staff. They may also be conducted in coordination with international agencies and academic institutes.
Triage investment applications	In order to cope with screening requirements where application volumes are high, government entities in charge of screening can consider establishing a workflow to “triage” and organize incoming requests from investors (see Box 7).

Notes:

¹ For example, an OECD report on the EU screening framework advises that “flowcharts of processes and timelines can clarify the conduct of reviews; annual reports or other statistical material can provide insights into administrative practice; non-legally binding guidance notes or other explanatory material can offer overviews or insights in plain language; and information about planned reforms may provide clarity about the direction and content of future policy” (Nicolás, 2021).

¹¹ Advice received from an anonymous political economy expert.

Sources: See References.

Box 7

Triaging investment applications

Establishing a process or workflow to conduct an initial review of incoming applications and organize the next steps that will apply to their review may help to address: (a) capacity and resource constraints faced by a government entity with a mandate to conduct screening of proposed investments and (b) stakeholder's expectations regarding when a request for information or application might receive a response.

In New Zealand, a "quality assurance" and "triage review" process was established to enable the Overseas Investment Office (OIO) to review and organize investment applications upon receipt (New Zealand, 2018). Quality assurance checks at the outset of the investment application process enable the OIO to check that the application contains all required information for it to understand necessary assessments. If the application is missing necessary components, the OIO will require resubmission. An initial 15-day time frame is allocated for this quality assurance check, though it may be paused where additional information is requested or payment of a fee is outstanding.

Triaging enables the OIO to understand on an initial basis the nature of the proposed project, the risk that may be involved, the information needed for the application, and how long the screening evaluation might take. During the process, the OIO provides guidance to applicant investors on what to expect during the screening process, and it provides an estimate of how long the review process will take.

Following the triage review, the proposed project is allocated for the appropriate evaluation. The average assessment time in New Zealand varies based on the complexity of the proposed investment being evaluated.¹

Note:

¹ New Zealand provides indications of time frames based on the nature of the investment and tests to be applied here (Land Information New Zealand, 2023).

Source: New Zealand, ed. 2018. *How the overseas investment office uses information*. Wellington, Office of the Auditor-General.





2. Conducting due diligence on proposed investors and investments during screening

SECTION SUMMARY

- Governments need information about proposed investments and investors in order to make screening decisions. **Tables 4 and 5** list topics relevant to screening proposed investments and investors, respectively.
- **Tools 1 and 2** in **Annex A** set out lists of questions for the investor and investment topics that can be drawn from and adapted to country contexts and workflows to support screening for responsible investments in agriculture and food systems as per the CFS-RAI.
- **Tool 3** in **Annex A** links the topics outlined in Tools 1 and 2 to examples of supporting documentation and resources (online platforms and offline sources) that can assist governments with information verification and broader due diligence searches associated with the proposed project.

In order to make screening decisions, governments need information about the proposed project and its proponent(s). This information can be obtained by conducting due diligence. Due diligence is likely to involve information provided by the investor coupled with independent investigation by government officials. This independent investigation is a critical component of due diligence as it is the main way to supplement and verify the information provided by the investor.

This section looks at what information governments should seek during due diligence and how they can seek it and addresses the practical challenges that arise during information verification.

2.1 What information to seek? And how?

The information about a proposed investor and investment that a government may wish to seek will depend on a number of factors, such as the nature and site of the investment and the corporate structure of the investor. It is also likely to be shaped by the country's national development goals.

Tools 1 and 2 in Annex A set out a list of questions about proposed investors and investments, respectively, that have been developed based on existing guidance and expanded to incorporate the CFS-RAI. The tools are not intended to be directly applicable to screening processes; rather, they are designed to be adaptable to country contexts and workflows and can be used to develop questionnaires for investors, guidance for officials conducting verification, and scorecards and key performance indicators (discussed in Section 3). The lists of questions are divided into topics that can guide due diligence on whether a proposed investor and investment are likely to be responsible. **Table 4** sets out, in alphabetical order, the topics related to the screening of investors with brief descriptions of their relevance to responsible investment in agriculture and food systems.



Table 4
Topics relevant to screening investors

Topic	Description
Contact details	How government entities know who the proposed investor is and how to contact them.
Experience and expertise	Whether the investor has the necessary experience and expertise to undertake the type of project they are proposing.
Financing	How the investor would finance this project and whether they can demonstrate adequate resources.
Ownership and management	Details about who owns and manages the company so that the corporate structure is transparent and traceable.
Reputation	The investor's reputation according to third parties with respect to ongoing or past investments.
Stated commitment to sustainable development and responsible business conduct	Whether the investor has demonstrated a commitment to sustainable development and to implementing investments in compliance with applicable laws and standards of responsible business conduct.
Track record	The investor's track record in terms of how they have operated ongoing or past investments and evidence of commitment to sustainable development and responsible business conduct.

Sources: This table adapts and builds upon existing resources, including materials currently used by Investment Promotion Agencies and other relevant in-country entities. See details in the References section.

Table 5 sets out, in alphabetical order, topics related to the screening of investments with brief descriptions of their relevance to responsible investment in agriculture and food systems.



Table 5
Topics relevant to screening investments

Topic	Description
Business plan and project feasibility and financial viability	Details about the business model and plan with a view to ascertaining whether what is proposed is feasible, financially viable, and likely to yield the anticipated and desired outcomes.
Climate change	Whether the proposed project is designed and would be implemented to integrate climate change considerations.
Community participation and consent	Whether the investor has and would engage meaningfully with communities throughout the investment life cycle, including by respecting the right to FPIC.
Culture, diversity, and innovation	How the project would affect cultural heritage, traditional knowledge, diversity, and innovation in food systems.
Food systems, food security, and nutrition	The expected contribution to safe and healthy agriculture and food systems, food security, and nutrition.
Gender equality and economic empowerment	The expected contribution to gender equality through economic and empowerment.
Monitoring, evaluation, and project closure	How the investor plans to monitor and evaluate the project during its implementation and close it after the project has concluded.
National and sustainable development objectives	The expected contribution to national development objectives and (more generally) to poverty eradication and sustainable development.
Natural resource use and management	Whether the proposed project is designed and would be implemented to guarantee sustainable management and use of natural resources.
Project concept	Details about the proposed project.

Table 5 (Cont.)

Topic	Description
Site suitability (geographical and infrastructure)	Whether the proposed site is geographically suitable for the proposed project.
Site suitability (tenure impacts)	Whether the proposed site is suitable for the proposed project, considering potential impacts on legitimate tenure rightsholders.
Youth economic empowerment	The expected contribution to youth economic empowerment.

Ideally, all topics addressed in these tables should be investigated by a government in the early stages of the investment assessment process. What occurs in practice may look different. Depending on a country’s investment assessment process, and given that due diligence can occur at multiple instances throughout that process, at what point or points a government entity chooses to address each of those topics will vary. This point is further explored and illustrated in **Annex B**.



Country examples of the type of information sought during due diligence

Applicants for an investment permit in **Myanmar** must pay an application fee⁷⁹ and submit an application that fully discloses “the nature of the investment” and all relevant information for consideration by the Myanmar Investment Commission,⁸⁰ including details of the persons (investor and person with “significant direct or indirect interest”) involved in the investment, location of the investment, investment amount including a description of the investment sector, description of the plan with a timeline for project implementation, and number of expected employees.⁸¹ Applicants are required to submit a detailed proposal form (Myanmar Investment Commission, undated), application for a permit, and any other relevant forms (e.g., tax exemption or relief and land use) (Myanmar Investment Commission, undated).

Applicants of restricted businesses in certain agricultural activities (discussed under screening applications for consent or approval) seeking approval from the Ministry of Agriculture, Livestock and Irrigation in **Myanmar** are required to complete a proposal form and supply copies of company registration certificates, “financial documents,” joint venture agreements, details of the land the subject of the proposal (including “land rights authorization form, evidence of land ownership, land lease agreement (draft), location map”), a list of machinery and equipment to be imported, a list of raw materials, details about

⁷⁹ Myanmar Investment Rules, Chapter VI 41 (c).

⁸⁰ Myanmar Investment Rules, Chapter IV 29.

⁸¹ Myanmar Investment Rules, Chapter IV 38.

proposed employee recruitment, and plans and policies such as social security for employees, social welfare, corporate social responsibility programme, and production, among other things (Myanmar Investment Commission, 2018).

Sierra Leone's draft⁸² revised Agribusiness Investment Approval Process asks for information at the early screening stage about the potential investor's reputation, transparency, and readiness and sophistication (SLIEPA, undated). This initial screening was designed to be complemented by more in-depth due diligence later in the investment assessment process on investor topics such as: financial capability; experience in other jurisdictions, and disputes;⁸³ and investment topics such as strategic alignment with government objectives and policies, target region, projected investment amount, total land area, land use, intended mode of land acquisition, and business model, understanding of land rights and impact assessment and mitigation, consultation, negotiations and consent, and final agreements such as dispute resolution and grievance mechanisms. In the case of proposals that have already identified a specific parcel of land, questions pertain to land ownership, acquisition methods, current land use, conflict, proximity of Indigenous Peoples, and any reports of human rights violations in the project area.

Overseas investors seeking to invest in farmland that exceeds 5 hectares in **New Zealand** must pay a fee⁸⁴ and submit a range of documents in support of the application, including corporate structure diagrams, formation documents, latest financial accounts, annual report(s), and directors' CVs (Overseas Investment Office, New Zealand, 2021). Information about the investor that is required includes ownership and control of the applicant tracking back to the ultimate owners/controllers; the applicant's decision-making as it relates to the proposed investment; the "investor test"; the applicant's business operations, past and present; and a summary of the applicant's financial position. For those that are required to satisfy the "investor test,"⁸⁵ applicants must answer questions about investor character and capability. Character factors include various elements, including past criminal convictions and ineligibility for visas or entry permission under the Immigration Act 2009. Capability factors include elements such as prohibition from involvement in management, liability in the last 10 years to pay a penalty with respect to an abusive tax position, evasion or a similar act, and an outstanding unpaid tax liability of NZD 5 million or more due and payable in any jurisdiction.

Information about the investment analysed in New Zealand includes details about the land (e.g., location, size, ownership, sensitivities, etc.) and details of the proposed transaction, any pre-conditions to completion or pre-consent arrangements, required regulatory consents, and transaction cost and funding. The investor also has to complete a "Benefit to New Zealand test" (examined in greater detail in Section 3.1) and submit a range of documents in support of the application, including corporate structure diagrams, formation documents, latest financial accounts, annual report(s), and directors' CVs (Overseas Investment Office, New Zealand, 2021).

⁸² The draft was never approved for implementation. Due to changes in the governance structure for investment assessment and approval, the approval and implementation of the AIAP was put on hold and a new entity (the National Investment Board) was established.

⁸³ A new due diligence tool was also intended to amend the process.

⁸⁴ At the time of writing, fees range from around NZD 37 500 to 49 000, depending on the circumstances.

⁸⁵ Set out in Overseas Investment Act 2005 (NZ), s 18A.

Canada requires information regarding designated business activities, sources of funding, timeline of implementation, number of employees, amount of capital invested, projected annual revenue for the second year of operation, and financial statements for the previous three years, as well as a detailed description of the investment that makes reference to section 20 of the Investment Canada Act ("net benefit" test).⁸⁶ This description is used as part of the net benefit assessment, which considers the effect of the investment on the economic activity of Canada (including employment, productivity, innovation, and competition) and the investment's compatibility with domestic policies.

In **Fiji**, an application for a tuna longline fishing licence requires the provision of an investment proposal along with supporting company and vessel documentation. The documentation requested includes a comprehensive business plan that details the first three years of operation, conduct of past fishing operations, company registration documents, notarized statements of shareholders, clearance of company taxation from Fiji Revenue and Customs Authority, and a valid Fiji Revenue and Customs Authority Tax Compliance Certificate, among other things.⁸⁷

Ghana's investor registration form requests investor information relating to contact details and equity structure. It asks for investment details such as project concept, location, product, effluence and pollutants, implementation plan, project cost and financing, and anticipated employment, among other details.⁸⁸ Ghana's investment legislation also imposes a USD 200 000 minimum capital requirement for foreign investors in a partly foreign-owned enterprise, and USD 500 000 for a wholly foreign-owned enterprise.⁸⁹ Applicants for special incentives in Ghana must provide, among other details, a business plan or feasibility report, a profile of shareholders and directions, an explanation of the investment's quantitative benefits to the country (employment levels or tax revenue, for example), quantity of imported materials and a list of necessary equipment, a list of expatriate employees and a description of their skills, sources of funding, and projected debt-equity ratio at full operational capacity. The investor must also apply for permits from all relevant agencies, such as the Environmental Protection Agency.

To apply for renewal of an investment licence in **Ghana**, investors must provide details and documentation for any new activities taken up since the initial registration, investment trends, employment statistics, training plans for Ghanaian employees, challenges facing the proposed project, and suggestions for improvement, among other details.⁹⁰

In **Senegal**, applicants for an investment licence must provide a technical file that contains details of the investment, including location, funding source, descriptions of goods, services, and production processes, title of the occupied land if relevant, and estimated output and market coverage.⁹¹

⁸⁶ Section 20, Investment Canada Act (1985).

⁸⁷ Pursuant to the 2018-2019 Fisheries Sector Investment Guide.

⁸⁸ Form available at <https://gipc.gov.gh/investor-forms/>.

⁸⁹ Ghana Investment Promotion Centre Act, 2013 (Act 865), s 28.

⁹⁰ Ghana Investment Promotion Centre Act, 2013 (Act 865). Key informant interview March 2021.

⁹¹ Article 9 of Decree 2004-627 (2004) lists the information and accompanying documents that applicants seeking an investment licence are required to provide.

Applicants for an investment certificate in **Kenya** must provide contact and company details, details of shareholders and directors, a project description, estimates of Kenyan and expatriate employment, and details of the investment and financing programme. They must also demonstrate to the Kenya Investment Authority that they meet the minimum capital requirements in support of their application.⁹² They must submit their certificate of incorporation in Kenya and memorandum and articles of association as supporting documentation.

Chile's application process for investor benefits through the Foreign Investor Certificate requires submission of the following (along with other information) to the Foreign Investment Promotion Agency: submission of a completed application form; provision of bylaws of the foreign investor; a certified or legalized and registered Certificate of Good Standing of the foreign investor; power of attorney; deeds of establishment; and a certificate issued by the Central Bank of Chile stating the date, amount of capital transferred to the country, and object of the investment (InvestChile, 2018).

To grant an authorization for business conducted within 50 km of its national borders, **Peru** requires (among other information) the submission of an application that includes investor identification and contact details, details of the land, the identity of the foreign investors or company with which business is being done, and the total sum of the investment.⁹³

To apply for a business licence in **Suriname**, fruit processors must apply to Suriname's Business Chamber of Commerce for name clearance, an application for business registration, a building plan, and tax registration (World Bank, 2018).

Applicants for compulsory investment certificates in **Uganda** must submit to the Uganda Investment Authority their application in the prescribed form (an online portal called "eBiz portal" (Uganda Investment Authority, undated) and include contact details, "the shareholders and nationality of the business enterprise," "the nature of the business, its capital structure, business plan and the amount to be invested," among other requirements.⁹⁴ The application must be accompanied by, among others, the environmental impact assessment certificate, anticipated number of employees, relevant sectoral licences, and the applicant's business plan, which includes location, "detailed information on the type of investment," "the action plan," operation commencement date, raw material sourcing information, evidence of availability of financing for the project, land requirements, required utilities, a market survey, and details of technology and knowledge transfer, among others.⁹⁵

In terms of **how to seek** the information raised by the topics in Tables 4 and 5 and Tools 1 and 2, governments may have an online application portal or paper form, or a questionnaire, among other options. Governments may also conduct their own independent research to supplement and verify information obtained from proposed investors (discussed further in verification, below).

⁹² Investment application forms (KenInvest/IS form/002) available at <http://www.invest.go.ke/wp-content/uploads/2016/10/Investment-Application-Form-2021.pdf>.

⁹³ Must submit the application found in Annex III of Decreto Supremo N° 162-92-EF (Peru).

⁹⁴ The Investment Code Act, 2019 (Uganda), s 21.

⁹⁵ The Investment Code Act, 2019 (Uganda), s 17. See the Uganda Investment Authority Checklist of Requirements for an Investment License available at <https://www.ugandainvest.go.ug/why-uganda/getting-started/>.



Country examples of how information is sought

Canada provides its investment project application as an online form.

Ghana provides access to copies of both the investor registration form and the registration renewal form online. The completed forms and relevant attachments can then be emailed, faxed, or mailed to the Ghana Investment Promotion Centre (GIPC).⁹⁶

Foreign applicants for sensitive land in **New Zealand** complete an online form and upload relevant documents.⁹⁷

Applications for consent for foreign investment in agribusiness or agricultural land in **Australia** are lodged electronically on the Foreign Investment Review Board website, along with the payment of a fee (Australian Government Treasury, 2019).

In **Uganda**, applicants for a compulsory investment certificate apply online at the "eBiz portal" (Uganda Investment Authority, undated).

2.2 How to verify and supplement it?

A key challenge faced by officials engaged in the assessment of proposed investments is verifying information provided by investors and supplementing information where there are gaps to conduct a meaningful assessment of the proposed project and its proponent at the screening stage.⁹⁸ How can governments work out whether an investor is telling the whole truth? And what does this say about the investor if they are not?

There are two complementary ways government entities can undertake this task. The first is by requesting appropriate documentation from the proposed investor. The second is by conducting supplementary independent research using a range of available resources. In addition, government entities may also choose to seek support from third parties in conducting due diligence checks on proposed investments and investors.

Tool 3 in Annex A links the topics outlined in Tables 4 and 5 and Tools 1 and 2 to examples of supporting documentation and resources (online platforms and offline sources) that can provide avenues for (a) examining and verifying information provided by investors and, more broadly, (b) searching for information about investors during the due diligence process (e.g., when checking an investor's track record). Tool 3 does not constitute an exhaustive list; rather, it provides a starting point to build from for government entities who are engaged in conducting due diligence to strengthen existing or future due diligence workflows.

⁹⁶ Ghana Investment Promotion Centre, 'Investor Forms,' available at: <https://gipc.gov.gh/investor-forms/>.

⁹⁷ Forms available at <https://oio.linz.govt.nz/sensitive-land-submission>.

⁹⁸ This challenge was reflected in responses to a survey of government officials conducted when preparing this guidance and in key informant interviews with relevant stakeholders.

3. Evaluating investment proposals: Making screening decisions based on information uncovered during due diligence

SECTION SUMMARY

- Information unearthed through due diligence can inform evaluations of proposed investments and proposed investors and guide screening decisions.
- Positive tests that require investors to prove that the proposed investment will meet the relevant threshold in order to advance to the next stage in the assessment process are preferable. They require proposed investors to closely analyse the nature of the investment they are proposing and shape that proposal into one that is responsible and, thus, more likely to be accepted and succeed in the long run.
- Building on the existing practice of tests that involve a threshold of “net benefit” or “national interest,” this guidance proposes an expanded test threshold of “responsible investment.”
- Governments can employ a mixture of qualitative value judgments and quantitative evaluation when assessing the information unearthed during screening and deciding whether or not to grant approval.
- **Tool 4** in **Annex A** sets out sample KPI based on the CFS-RAI.
- **Tool 5** in **Annex A** provides a suggested template for developing an investor scorecard based on responsible investment criteria.
- **Tool 6** in **Annex A** suggests a hybrid “traffic light” model for evaluating investment proposals on the basis of responsible investment criteria.

- Mandatory requirements in domestic investment laws to approve investment applications within certain time periods constrain governments in an undesirable way and increase the risk of irresponsible investments being accepted. They are especially problematic when the time periods are unrealistically short with limited or no ability to extend them.

This section focuses on how information uncovered during due diligence processes can inform screening decisions.

In terms of the types of tests governments can apply when making such decisions, two main approaches are employed in practice: positive tests and negative tests (Productivity Commission, 2020):

- Positive tests tend to require investors to prove that the proposed investment will meet the relevant threshold in order to be granted approval. That is, the investment is not approved or advanced to a subsequent stage in the assessment process unless the investment and investor pass the test.
- Negative tests tend to operate with a presumption that the investment will be approved unless the government demonstrates that the proposed investment does not meet the relevant threshold.

Positive tests are preferred in the responsible investment context. Good practice does not recommend presumptions of approval, especially where approval is deemed to be granted after a certain time period. Positive tests are likely to be preferable for governments and realizing investments that are aligned with national development objectives, as they require proposed investors to closely analyse the nature of the investment they are proposing and shape that proposal into one that is responsible and, thus, more likely to be accepted and succeed in the long run. Notably, when done properly, screening takes time and should not be rushed by legislative timelines.

Common thresholds that arise in investment screening tests include good character and sound capability, net benefit, economic benefit, national security, and national interest.



This guidance further suggests a threshold of “responsible investment.” In terms of how governments can measure and weigh up the expected benefits and risks associated with proposed investments, the chief methods are qualitative in the form of a value judgment, quantitative in the form of a scorecard or KPI, or a combination of the two.

All in all, positive tests may increase the control governments have over what and how foreign investments are admitted into their economies and, with respect to foreign and domestic investments, which investments are afforded special benefits or other forms of support upon being granted approval. Apart from facilitating responsible investment in general, this approach enables governments to respond to sudden changes to global or regional economies or other massive or unpredictable shifts, such as those associated with the COVID-19 pandemic. Some of the “risks” or potential harms associated with certain investments were augmented due to the economic and public health impacts of the pandemic. Perhaps unsurprisingly, the pandemic accelerated state efforts to screen investments. At the end of 2020, 70 per cent of OECD countries had implemented some form of an investment screening mechanism. Most of the investment screening measures made in response to COVID-19 did one of two things: (a) added assets to the list of thresholds used in assessment tests or (b) enhanced foreign direct investment (FDI) screening mechanisms overall in an effort to prevent acquisitions of sectors that might suffer temporary financial stress from the fallout (OECD, 2020b).

The following subsections discuss common test thresholds used by countries, examine the ways governments make screening decisions, propose a hybrid model for evaluating investment proposals on the basis of responsible investment criteria, and consider the implications of legislatively-imposed timelines.

3.1 Test thresholds

In terms of the thresholds that are applied in investment screening tests, some are directed at investments, some at investors, and some are a mixture of the two; there is not necessarily always a clear distinction.

3.1.1 Good character and sound capability

Tests that examine character and capability tend to be focused on the investor and ascertaining whether they are of good character and capable of conducting the proposed investment.



Country example of good character and sound capability

In **New Zealand**, applications for overseas investment in sensitive land must pass the “investor test”⁹⁹ by satisfying the relevant ministers that they have not committed any of the character or capability “factors,” such as convictions of offences and tax evasion. If any such factors are established, then the ministers can only grant consent if the established factor(s) do not make the investor unsuitable to own or control sensitive assets.¹⁰⁰ Factors are divided into questions of investor character and capability.

⁹⁹ Set out in Overseas Investment Act 2005 (NZ), s 18A.

¹⁰⁰ Overseas Investment Act 2005 (NZ), s 18A(3).

3.1.2 National security

A significant number of the recent screening requirements for foreign investments in higher-income countries have been based on national security grounds (Bauerle Danzman and Meunier, 2021; OECD, 2020b).¹⁰¹ The question of whether the transaction has the potential to endanger national security (Bauerle Danzman and Meunier, 2021) depends on how a country defines “national security.” In a narrower conception, national security may focus on investments in the defence sector and critical infrastructure (Bonnitcha, 2020). Broader interpretations of national security may include factors such as environmental protection and the protection of public health (Bonnitcha, 2020; Kuc *et al.*, 2019; Napolitano, 2020).



Country examples of national security tests

A recent **European Union** regulation advances a **common framework** for screening foreign investment and aims to promote cooperation among Member States, including by way of information exchange and harmonization of screening standards.¹⁰² The focus of the framework is on national security, but it also lists a number of other factors that may be considered by Member States in screening inward investments, such as food security.¹⁰³

In **Australia**, some foreign investments are screened under the “**national security test**,” which is narrower than the “national interest test” (discussed below). It applies to investments that do not trigger the “national interest test” but still pose national security concerns (Australian Government Treasury, 2019).

3.1.3 Benefit and national interest

While benefit and national interest tests have historically tended to look at the economic impact of the proposed investment (Bauerle Danzman and Meunier, 2021), some also consider certain social or environmental impacts.



Country examples of benefit and national interest tests

New Zealand mandates consent for overseas investments in sensitive land, a component of which for foreign investors is satisfying the “**benefit to New Zealand test**.” The test involves (and a policy emphasis is placed on) a number of economic factors, such as job creation or retention and export and processing opportunities, but factors also include environmental, social, and cultural

¹⁰¹ This trend is discussed in Box 5 of this guidance.

¹⁰² Effective as of October 2020. Regulation (EU) 2019/452 of the European Parliament and of the Council establishing Framework for the Screening of Foreign Direct Investments into the Union, PE/72/2018/REV/1 < <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02019R0452-20200919> > (hereafter EU Screening Framework).

¹⁰³ EU Screening Framework, art. 4.1(c).

considerations, such as the protection of indigenous vegetation.¹⁰⁴ In the case of non-urban land that exceeds 5 hectares, the benefit must be “substantial and identifiable.”¹⁰⁵ The expected result of investment is compared with a **counterfactual**, that is, if the overseas investment is not permitted, and if there were to be no future changes to the ownership or control of the land (Land Information New Zealand, 2021).

New Zealand employs a “**national interest test**” for overseas investment in fishing quota. Factors cited in the fisheries legislation are primarily economically focused, but reference is also included to the Overseas Investment Act 2005, which, as above, includes some environmental, social, and cultural considerations.¹⁰⁶

Canada employs a “**net benefit test**” for investment proposals requiring review under the Investment Canada Act that considers economic factors as well as compatibility with industrial, economic, and cultural policies.¹⁰⁷

Applicants for an investment certificate in **Kenya** are required to prove that the investment is **beneficial to Kenya**. The factors considered are primarily economic in nature but may also include any other factors that the Kenya Investment Authority considers beneficial to Kenya.¹⁰⁸

In **Australia**, foreign investors with a “notifiable” investment proposal must notify the Treasury of their proposed investment (Australian Government Treasury, 2019; Foreign Investment Review Board, undated; Productivity Commission, 2020; United Nations Conference on Trade and Development, 2022).¹⁰⁹ The government screens proposed investments with a “**national interest test**” that, while not defined in legislation, looks at national security, competition, other Australian Government policies (including tax), impact on the economy and the community, and the character of the investor (Australian Government Treasury, 2019). For investments in the agricultural sector, the government also considers the effect of the proposal on additional environmental and economic factors, as well as an expectation that Australian investors have had equal opportunity to purchase the agricultural land (Australian Government Treasury, 2019). The “national interest test” places the burden on the government to determine that a proposed investment is against the national interest or otherwise grant approval – making it a negative test (Productivity Commission, 2020).¹¹⁰ For those investments that the Treasurer deems contrary to Australia’s national interest, they can prevent the investment, allow it with conditions, and discontinue an existing investment. If no action is taken, the application is deemed approved after statutory time periods have passed (Productivity Commission, 2020).

¹⁰⁴ Overseas Investment Act 2005 (NZ), ss 16A, 17 and *Overseas Investment Regulations* 2005 (NZ), r 28.

¹⁰⁵ This section summarizes key points from Overseas Investment Act 2005 (NZ), ss 16A, 17 and Overseas Investment Regulations 2005 (NZ), r 28. Emboldened factors are those that are to be given relative high importance for overseas investment in “rural land” – (Land Information New Zealand, 2017).

¹⁰⁶ Fisheries Act 1996 (NZ), s 57H (2).

¹⁰⁷ Investment Canada Act 1985 (CAN) ss 20, 21, available at <<https://laws-lois.justice.gc.ca/PDF/I-21.8.pdf>>.

¹⁰⁸ Investment Promotion Act 2004 (Kenya) s 4(2).

¹⁰⁹ Foreign Acquisitions and Takeovers Act 1975 (Australia).

¹¹⁰ “This is a fairly high bar and few investment applications are blocked outright (chapter 2)” (Productivity Commission, 2020).

3.1.4 Responsible investment

While climate, human rights, and other sustainable development obligations and objectives are not yet commonly or explicitly featured at the core of investment screening requirements with most recently adopted screening requirements and policy frameworks having focused primarily on more narrow national security considerations, strategic industries, and critical infrastructure – there is every reason for them to be. A threshold of “responsible investment” would achieve this. A responsible investment threshold for agriculture and food systems would comply with states’ commitments to – and could be based on – international principles, including the CFS-RAI and VGGT, and good practice. This guidance, particularly Section 2 and Annex A, seeks to provide the framework for how such a responsible investment threshold could be developed, adapted to country contexts, and implemented in practice.

3.2 Type of assessment

3.2.1 Qualitative – Value judgments

Due diligence conducted at the screening stage enables the collection and collation of information to build a picture of a proposed investment. The information enables decision-makers to form a “value judgement about whether the investment is desirable, based on a range of factors” (UNCTAD and World Bank, 2018a). Such value judgments – or qualitative assessments – are a common way of deciding whether an investment application proceeds to approval or not. Where qualitative assessments form an influential component of such decisions, establishing a transparent and inclusive assessment and decision-making process (where decisions can be cross-checked and questioned by other government entities and non-government stakeholders) can help to mitigate biases or external pressures affecting the screening process.¹¹¹

¹¹¹ Key informant interview, April 2021.





Country examples of qualitative assessments

When screening permit applications, the **Myanmar** Investment Commission is required to consider whether the investor and investment proposal meet a set list of criteria.¹¹² Notably, the list includes “demonstrating a commitment to carry out the investment in a responsible and sustainable manner by reducing and avoiding any adverse environmental and social impacts by the investor; such commitment without limiting environmental conservation actions, compliance with environmental conservation policies and human right, and application of effective technology for natural resource and practices of waste management strategy being included.”¹¹³ The list also includes “having business experience and acumen in respect of the investment by the investor or holding company or an associate involving the management of investment,” “making financial commitment to the investment activity by the investor, associate, and holding company; being the investor, an associate, and holding company of good character and business reputation,” and “in consideration of the policies and objectives of national development, security, economics, social and culture, among others.”¹¹⁴

When conducting **New Zealand’s** “benefit to New Zealand test,” all factors must be considered to determine relevance,¹¹⁵ and relevant ministers may determine the relative importance to be given to each relevant factor.¹¹⁶

Decisions are made under **Canada’s** “net benefit” test by “measuring the effects of a proposal in relation to the relevant individual factors of assessment and in measuring the aggregate net effect after offsetting the negative effects, if any, against the positive ones. An investment will be determined to be of net benefit when the aggregate net effect is positive, regardless of its extent” (Government of Canada, 2002).

Kenya’s “beneficial to Kenya” test is primarily a qualitative assessment.¹¹⁷

In **Australia**, the Treasurer – on advice from the Foreign Investment Review Board – decides on a case-by-case basis whether a particular investment would be contrary to national security or the national interest (Australian Government Treasury, 2019).

¹¹² Myanmar Investment Rules, Chapter V1 64.

¹¹³ Myanmar Investment Rules, Chapter VI 68.

¹¹⁴ Myanmar Investment Rules, Chapter VI 64 – 66.

¹¹⁵ This section summarizes key points from Overseas Investment Act 2005 (NZ), ss 16A, 17 and Overseas Investment Regulations 2005 (NZ), r 28.

¹¹⁶ Overseas Investment Act 2005 (NZ), s 17(1)(c).

¹¹⁷ Interview with government representative, 9 March 2021.

3.2.2 Quantitative – Scoring systems

Another key way of making decisions about a proposed investor and investment in the context of investment assessment processes is the use of **scoring systems**. As developed in **Tool 5** in **Annex B**, the questions discussed in Section 2, Tool 1, and Tool 2 can form the basis of the scoring system. While assigning a score to each question and answer remains a value judgment (UNCTAD and World Bank, 2018a), the result of a total score provides decision-makers with a number that either passes or does not pass a pre-set numerical threshold, leading to either rejection of or amendment to the investment proposal.



Country examples of a scoring system

In **Sierra Leone**, the draft Agribusiness Investment Assessment Process employs a scoring system of answers to investor- and investment-related questions posed in the Know Your Customer questionnaire (SLIEPA, undated).¹¹⁸

3.2.3 Quantitative – Key performance indicators

Key performance indicators (KPI) are measurable values that are used to track performance. In the screening context, it is possible to request KPI estimates from proposed investors on the basis of national development objectives and the CFS-RAI and then carefully evaluate them. These KPI estimates may be used in the initial assessment and (where relevant) in subsequent assessments such as renewal of a licence, as well as part of the project baseline for general project monitoring and evaluation.

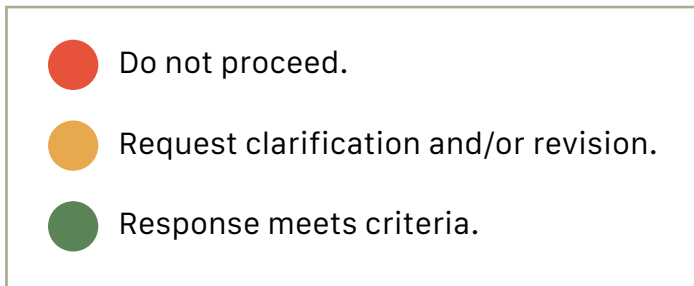
Tool 4 in **Annex A** sets out sample KPI based on the CFS-RAI. It suggests KPI for the topics “Gender equality and economic empowerment” and “Youth economic empowerment” from Table 5 and Tool 2.

3.2.4 A hybrid assessment for responsible investment

A scorecard may not be appropriate for evaluating some investment topics, especially those topics that relate to the proposed investment. Certain issues will be significant enough to warrant rejection of the application; that is, they will be “red line” issues. Others will need to be resolved in order for the application to proceed in the investment assessment process. For example, if due diligence reveals that the proposed investment project would have a significant and irremediable negative impact on the environment, that would be reason to reject the application. If the proposal did not provide information on how the project would sustainably manage and use resources, that would be a catalyst for seeking further information. Only once all relevant criteria are met can the application proceed.

¹¹⁸ NB: Due to changes in the governance structure applicable to investment assessment and approval, the approval and implementation of the AIAP was put on hold and a new entity (the National Investment Board) established.

Tool 6 in **Annex A** provides an example of a sample assessment tool for the investment topics “Site suitability (tenure impacts)” and “Natural resource use and management,” employing a “traffic light” system whereby responses can be categorized and a corresponding action attached:



3.3 The risks of strict timelines for screening

Conducting proper due diligence on investors and investments to ensure they are responsible takes time. Shallow evaluations of investors and proposed projects greatly increase the risk that troubling information will be overlooked and that an irresponsible investment may be permitted as a result of the oversight. This can have grave consequences further down the road (see discussion of harms in Section 1.2.2).

An unfortunate trend in recent years has been to include in domestic investment laws mandatory requirements to approve investment applications within certain time periods. Such provisions often also deem approval if nothing is heard to the contrary within the set time period. These mandatory time periods and approval on the basis of silence place undue pressure on approval of proposed investments and may undermine rigorous assessments and responsible investments.¹¹⁹ It is not recommended that governments constrain themselves in such a way.

To the extent that mandatory time periods are deemed necessary, making them long enough for proper processes to be conducted is vital. Careful consultation would need to occur with the entities in charge of screening to determine how long this time frame should be. Further, the time frame should only begin after the relevant entity confirms that all relevant information has been received. A mechanism for extending the time period where further time or information is required should also be built in, and the default of automatic approval if time period lapses should be avoided at all costs. Finally, a staged or “triaging” approach could be considered – see discussion in Box 7.

A related trend has driven states to conduct a wide range of investment facilitation efforts, ostensibly to remove certain barriers to investment. These measures may do more harm than good if they are overly investor-centric – such as when they focus on removing important regulatory barriers or avoiding amendments to the regulatory regime to the detriment of broader society, the environment, or a state’s development goals (Güven, 2020). Investment facilitation measures should instead focus on addressing any *undue* barriers and on advancing (rather than undermining) states’ sustainable development objectives. Examples of such measures include investing in local industry and skills development to strengthen local economies and the potential for linkages. In addition to advancing national development objectives, this approach will also benefit the investment project itself (Coleman *et al.*, 2018).

¹¹⁹ Excessively short screening time periods in the EU are also undermining states’ abilities to “effectively incorporate input from the cooperation mechanism” (Pohl, Rosselot and Novak, 2022).

Conclusion

Investment governance is complex. It involves many stakeholders, processes, and institutions. Enhancing investment governance for responsible investment in agriculture and food systems requires varied and sustained interventions. Screening is only one of the pieces in the investment governance puzzle, but it is an important one.

Screening empowers governments as the gatekeepers to investment. It enables governments and, directly or indirectly, communities and peoples to shape what investments will look like and who is permitted to conduct them. Rigorous due diligence processes during screening can unearth the information about a proposed investor and investment that governments and other stakeholders need to evaluate whether a proposed project should advance to the next stages in an investment assessment process. Screening at the outset of investment assessment processes can help filter out irresponsible projects and investors and avoid far-reaching harm to communities, the environment, and countries' economies.

With sustained efforts across the investment governance landscape, a government can design and implement measures that harness private sector investment for the genuine benefit of all and not just an elite few. We hope that this guidance provides governments with an additional set of tools for turning aspiration into reality so that larger-scale investment in agriculture and food systems leads to development that is truly sustainable.



Annex A - Tools

Tool 1: Questions about the proposed investor

Tool 1 sets out a list of questions about proposed investors that have been developed based on existing guidance and expanded to incorporate the CFS-RAI. The structure of the tool is shaped by topics listed in alphabetical order that each contain a subset of guiding questions.

This tool is not intended to be directly applicable to screening processes; rather, it is designed to be adaptable to country contexts and workflows and can be used to develop questionnaires for investors, guidance for officials conducting verification, and scorecards and key performance indicators (KPI).

While the tool does contain a significant number of questions, these lists are not exhaustive, nor do they imply that every single question must be asked in the first phase of the investment assessment process. Government entities can pick and choose questions based on their particular country circumstances and sustainable development priorities (see also the discussion on “triaging” in **Box 7** above).





Tool 1

Questions about the proposed investor

Topic	Guiding questions
Contact details	<p>Who is the proposed investor, and how can we contact them?</p> <ul style="list-style-type: none"> • What are the proposed investor’s contact details, including name, incorporation details and related documents, and addresses in the host and (if foreign owned) home country? • What is the contact information for the project lead and any other persons involved in the investment application process? • What are the contact and other details of the consultancy firms that the proposed investor uses, e.g., to conduct their environmental impact assessments? • Is the proposed investor properly registered in the country in which it is seeking to operate? • Is the proposed investor properly registered?
Experience and expertise	<p>Does the proposed investor have the necessary experience and expertise to undertake the type of project they are proposing?</p> <ul style="list-style-type: none"> • Does the proposed investor have experience carrying out similar investments, at similar scales, in the country in which they are seeking to operate? • Does the proposed investor have experience carrying out similar investments in other countries? • Do the directors and senior managers of the proposed investor have the demonstrated experience and expertise required to implement the proposed project in accordance with applicable laws, conditions, and best practices?
Financing	<p>How would the proposed investor finance this project, and can they demonstrate adequate resources?</p> <ul style="list-style-type: none"> • Does the proposed investor have sufficient funds to finance a project of the size and nature proposed? • What are the sources of capital (including project lenders, equity investors, and insurers)? • Does the proposed investor have contingency plans for project financing, should original sources of funds fall through or change? • Do any providers of funding for the project apply performance standards that may be applicable to the proposed investor and associated entities? If so, what are these performance standards? And what is the contact information for project leads at the relevant entities charged with oversight of compliance with these performance standards?

Tool 1 (Cont.)

Topic	Guiding questions
	<ul style="list-style-type: none"> • If the proposed project is approved, would the investment and proposed investor be eligible to receive incentives available under domestic law? If so, at what point is the proposed project expected to reach full operating capacity without relying on such incentives? If incentives programmes or policies change in the future, would the proposed project be resilient in the face of such changes?
<p>Ownership and management</p>	<p>Who owns and manages the proposed investor?</p> <ul style="list-style-type: none"> • Who are the ultimate beneficial owners of the proposed investor? • Who are the shareholders of the proposed investor? • Who are the directors and senior managers of the proposed investor? • Is the proposed investor associated with any other entities? If so, which entities? What is the relationship between entities in the corporate group? • Is the proposed investor a state-owned or -controlled company? • Are any persons associated with the proposed investor or its associated entities a "politically exposed person" (PEP) according to the Financial Action Task Force criteria? If so, which persons? • Are any persons associated with the proposed investor or its associated entities linked to other sanctioned or rights violating companies, or have they themselves been sanctioned in a personal capacity for rights or other violations? • Is the company undergoing or planning to undergo any structural changes? • Do any company officials in the corporate chain have connections with or have they held positions in the host government in the past?
<p>Reputation</p>	<p>What is the proposed investor's reputation according to third parties with respect to ongoing or past investments?</p> <ul style="list-style-type: none"> • Has the proposed investor been associated with any negative press reports; reports of abuses of tenure or other human rights; or reports of non-compliance with domestic laws or international principles regarding responsible business conduct? If so, how does the proposed investor explain these reports? • Has the proposed investor remedied any reported abuses?

Tool 1 (Cont.)	
Topic	Guiding questions
Stated commitment to sustainable development and responsible business conduct	<p>Has the proposed investor demonstrated a commitment to sustainable development and to operating investments in compliance with standards of responsible business conduct?</p> <ul style="list-style-type: none"> • Does the proposed investor have company policies and procedures in place regarding human rights and environmental due diligence; an active grievance mechanism, either company-wide or at the project level, for other ongoing projects; engagement with local communities potentially affected by the proposed project; and human rights defenders? • Do directors and senior managers of the proposed investor have demonstrated experience and expertise regarding compliance with relevant standards of responsible investment and responsible business conduct, including the CFS-RAI, VGGT, the <i>Voluntary Guidelines for Securing Sustainable Small-Scale Fisheries in the Context of Food Security and Poverty Eradication</i> (SSF Guidelines), and UNGPs? • Does the proposed investor currently hold membership in or otherwise participate in sustainability initiatives, industry associations, or certification bodies relevant to the proposed project? • Does the proposed investor apply any other relevant policies or codes of conduct not covered by the questions above?
Track record	<p>What is the proposed investor's track record in terms of how they have operated ongoing or past investments and evidence of a commitment to sustainable development and responsible business conduct?</p> <ul style="list-style-type: none"> • What evidence can the proposed investor show of compliance with applicable laws that apply to this phase of the investment life cycle? • Can the proposed investor provide an explanation of their company's track record or past behaviour/performance that is relevant to the proposed investment? • Can the proposed investor provide an explanation of associated entities' track record or past behaviour/performance that is relevant to the proposed investment? • Has the proposed investor or any of its associated entities brought any legal claims against: (a) rightsholders affected by its operations or human rights defenders or (b) host governments in countries in which it operates? If so, what is the nature of those previous claims? • Has the proposed investor or any of its associated entities had any legal judgments, administrative decisions, or penalties against them for non-compliance of any kind? If so, what is the nature of those judgments, decisions, or penalties?
<p>Note: ¹ For more information visit https://www.fatf-gafi.org/en/home.html. Sources: This table adapts and builds upon existing resources. See details in the References section.</p>	

Tool 2: Questions about the proposed investment

Tool 2 sets out a list of questions about proposed investments that have been developed based on existing guidance and expanded to incorporate the CFS-RAI. The structure of the table is shaped by topics listed in alphabetical order that each contain a subset of guiding questions.

This tool is not intended to be directly applicable to screening processes; rather, it is designed to be adaptable to country contexts and workflows and can be used to develop questionnaires for proposed investors, guidance for officials conducting verification, and scorecards and KPI.

While the tool contains a significant number of questions, these lists are not exhaustive, nor do they imply that every single question must be asked in the first phase of the investment assessment process. Government entities can pick and choose questions based on their particular country circumstances and priorities (see discussion on “triaging” in **Box 7** above). For example, the questions in some of the boxes are grouped in *anticipation* of a certain action (such as plans to consult communities) on the one hand and *actual* action taken on the other (how community consultations have gone to date). A government entity will know how advanced the investment assessment process is and, therefore, when each group of questions applies.







Tool 2

Questions about the proposed investment

Topic	Guiding questions
Business plan, project feasibility and financial viability	<p>What is the business model and plan? Is the proposal feasible, financially viable, and likely to yield the anticipated and desired outcomes?</p> <ul style="list-style-type: none"> • How does the proposed investor’s estimated product price performance compare to historical performance? Does price performance tend to vary cyclically? If so, has this been accounted for in the business plan? • What are the proposed project’s intended markets? Explain those markets’ trends in recent years. • Does the business plan factor in tariffs, duties, and foreign exchange? • Are there certain price controls or other regulations that may apply to the proposed investor’s target product? • Does the business plan factor in costs of requirements, such as community consultations or impact assessments? • Does the proposed investor qualify for any investment incentives? If so, has the relevant government authority issued approval for incentives? To what degree does the proposed project rely on incentives for its success? • Does listed employee compensation align with domestic requirements? • Does the proposed investor anticipate impacts on the local economy in terms of spillovers to local suppliers? Does the business plan incorporate inclusive business approaches to incorporate smallholders into the business model for the proposed investment? Are there plans to contract local smallholders, for example? If so, are contractual conditions fair? • How have inputs from any previous community consultations been incorporated into the current business plan? How would inputs from future consultations be incorporated into amended versions of the plan? • If the proposed project encounters unforeseen difficulties or delays, is there an alternative business plan in place? <p>NB: Questions in <i>Natural resource use and management, Site suitability, Climate change, Culture, diversity and innovation, Gender equality and economic empowerment, and Youth economic empowerment</i> are relevant to the business plan, as well as project feasibility and financial viability, and should be considered in conjunction with this topic.</p>




Tool 2 (Cont.)

Topic	Guiding questions
<p>Climate change</p> 	<p>Would the proposed project be designed and implemented to integrate climate change considerations?</p> <ul style="list-style-type: none"> • Has the proposed investor conducted a climate change impact assessment of the proposed investment? If not yet, do they plan to? • What impacts would the proposed project have on climate change, in particular, greenhouse gas emissions? What would be done to identify and avoid or mitigate these impacts? • How are changing climate variables (including rainfall and temperature) in the region targeted for investment anticipated to affect the proposed investment? Has the proposed investor identified these climate variables and incorporated appropriate mitigation and adaptation measures into the project design to create a project that is responsive to a changing climate and resilient to the threats of climate change? • Is the proposed project aligned with the country’s nationally determined contributions and to the National Adaptation Plan? • How does the proposed project contribute to building climate resilience in the local and national food and livelihood systems? For example, is the proposed project aligned with national or regional policy efforts to advance more climate-resilient food systems? • Does the proposed project anticipate the integration of mechanisms to “anticipate, absorb, accommodate, or recover from” climate-related threats or shocks that can affect the stability of agriculture, food security, food safety, and nutrition (FAO, undated)?¹ • To what extent has the proposed investor incorporated traditional and scientific knowledge regarding climate science and the sustainable use of natural resources into project design and planning? Would it continue to draw on traditional and scientific knowledge throughout the investment life cycle?
<p>Community participation and consent</p> 	<p>Has and would the proposed investor engage meaningfully with communities throughout the proposed investment life cycle, including by respecting FPIC?</p> <ul style="list-style-type: none"> • Does the proposed investor have plans for formal community consultation procedures? • Do those plans anticipate and make provision for: <ul style="list-style-type: none"> - Public provision of complete, accessible, and culturally appropriate information? - Adequate time frames that allow communities and peoples to properly receive, discuss, and decide upon information? - Sensitivity to customs and culture of communities and peoples, including preferred decision-making practices?



Tool 2 (Cont.)

Topic	Guiding questions
	<ul style="list-style-type: none"> - Meaningful engagement with different groups within communities, including Indigenous Peoples, women, and people with disabilities? - Technical and resource support for communities and peoples during negotiations? - Meaningful involvement of communities and peoples in the Environmental and Social Impact Assessment (ESIA) process or any other data-gathering processes or surveys? - Operational-level grievance mechanisms or other dispute resolution procedures that are compatible with the existing customs and decision-making practices of the community and compliant with international good practice? <p>Where preliminary consultations with communities have already taken place:</p> <ul style="list-style-type: none"> • Has all information relevant to communities and peoples been made available to them within a reasonable timeframe, in a complete and culturally accessible manner? • Were consultations performed in a way that was compatible with the customs and culture of the community, particularly that community’s preferred decision-making practices? • Has the proposed investor investigated whether those acting on behalf of a larger group are the legitimate representatives? • Has the proposed investor meaningfully engaged with different groups within communities, including Indigenous Peoples, women, and people with disabilities? • Do communities and peoples have the capacity and resources to negotiate with the proposed investor? Has technical assistance been provided to communities and peoples to do so? • How does the proposed investor plan to meaningfully involve the community in the ESIA process, or any other data-gathering processes or surveys? Will the findings be made public and made accessible to all community members? • Have the proposed investor and communities agreed upon specific operational-level grievance mechanisms or other dispute resolution procedures? Are these mechanisms already in place or would they need to be developed? Are these mechanisms compatible with the existing customs and decision-making practices of the community and compliant with international good practice?


Tool 2 (Cont.)

Topic	Guiding questions
<p>Culture, diversity, and innovation</p> 	<p>How would the project affect cultural heritage, traditional knowledge, diversity, and innovation in food systems?</p> <ul style="list-style-type: none"> • How would the proposed project benefit incorporate traditional knowledge, skills, and practices, as well as local genetic resources? How would consent be sought from local communities to do this? What plans would be put in place for safeguarding this knowledge and equitable benefit-sharing? • Does the proposed investor and proposed project support plant genetic diversity and the safeguarding of smallholders' rights to save, use, exchange and sell plant genetic resources?¹¹ • What types of locally adapted technologies and innovative practices relevant to responsible agriculture and food systems would be introduced to the local area or (if a foreign investment) to the country if the proposed project were to proceed? Would these technologies or practices be transferred to local farmers and operators? • In what ways would the proposed investor support research and development on responsible agriculture and food systems? • If the proposed project entails any sort of innovative aspects (new crops, materials, or technology), have these been tested on a small or large scale? Have they been tested in the local context? Will the introduction of new aspects be phased in gradually or all at once? <p>If the preferred specific location for the proposed project has already been identified:</p> <ul style="list-style-type: none"> • Does the proposed investment site overlap with known cultural heritage sites? What is the impact likely to be?
<p>Food systems, food security, and nutrition</p>  	<p>What are the expected contributions to safe and healthy agriculture and food systems, food security, and nutrition?</p> <ul style="list-style-type: none"> • What "product" would be produced as a result of the proposed project? • How would the proposed project minimize the loss and waste of the product and inputs needed to produce it? • What is the intended destination for the product? Who would it be marketed to? Is the proposed project likely to impact local people's food security and nutrition? If so, in what ways? What is the expected contribution to food security locally and nationally? Does the proposed project pose any risks to local food security (e.g., by preventing subsistence farming)? • Does that product contribute to healthy and nutritional diets? • Would the proposed project pose any risk to public health, including to local communities? • What are the anticipated impacts of the proposed project on animal and plant health and welfare?


Tool 2 (Cont.)

Topic	Guiding questions
	<ul style="list-style-type: none"> • What policies, procedures, or practices has the proposed investor put in place to guarantee animal health and welfare, plant welfare, human health, and food safety? Are these approaches grounded in scientific knowledge? • Would the proposed investment empower consumers with meaningful knowledge and access to food products that are safe, nutritious, diverse, culturally appropriate, and produced in compliance with applicable laws?
<p>Gender equality and economic empowerment</p> 	<p>What is the expected contribution to gender equality and to the economic empowerment of women?</p> <ul style="list-style-type: none"> • Have project due diligence or impact assessment processes that have so far been undertaken accounted for the direct and indirect gender-specific impacts of the project? • In what ways would the proposed project contribute to the economic empowerment of women? • Would any jobs and training opportunities created by the proposed project be specifically reserved for women? • What policies and procedures would the proposed investor put in place to ensure that all people are treated with dignity, fairness, equality, respect, and independence in accordance with applicable human rights laws and principles? • What approaches, measures, and processes would the proposed investor take to guarantee the meaningful participation of women (and other marginalized groups) in decision-making processes and leadership roles? • What policies and procedures will the proposed investor put in place to ensure that any form of discrimination in the workplace would be eliminated? Where discrimination is alleged, would employees have access to operational-level grievance mechanisms through which they can access meaningful remediation for their claims through legitimate processes?
<p>Monitoring, evaluation, and project closure</p> 	<p>How does the proposed investor plan to monitor and evaluate the project during its implementation and close it after the project has concluded?</p> <ul style="list-style-type: none"> • Does the proposed investor have an exit plan in the case of project failure? Is there a monitoring and evaluation plan in place that can serve as early-warning system for foreseeing such failure? Who will provide inputs into the monitoring and evaluation process, and who will have access to information generated by the process? • Has the proposed investor presented to the community any information regarding the proposed project's closure, generational impacts, and long-lasting effects on the land? • When the proposed project concludes, who would own or otherwise control access to the land and related natural resources? What would become of any benefit-sharing aspects of the project?

Tool 2 (Cont.)

Topic	Guiding questions
	<ul style="list-style-type: none"> • Is the community likely to become economically dependent on the proposed project, meaning failure of the project would significantly harm nearby populations? How would the project be concluded without harming such dependent populations? • Who is responsible for any necessary rehabilitation or remediation following the proposed project's closure?
<p>National and sustainable development objectives</p> 	<p>What is the expected contribution to national development objectives and (more generally) to poverty eradication and sustainable development?</p> <ul style="list-style-type: none"> • Does the proposed project align with local and national development objectives established in relevant policy documents? Does the proposed project align with community development objectives? • Which objectives does the proposed project align with? • Which objectives does the proposed project not align with or directly conflict with? How might the proposed project be adjusted or reshaped so as not to conflict with these objectives? • Has the proposed investor undertaken a cost-benefit analysis of the proposed investment to determine its "net" potential contribution to sustainable development? • Would the proposed project reduce poverty and inequality in the long term? If so, how? <ul style="list-style-type: none"> - For example, would the proposed project create employment? If so, what types of jobs would the proposed project create? How many, over what time period, and for whom? Would the proposed project involve removing existing livelihood opportunities (whether or not these would be formally considered "employment")? What would be the overall effect on livelihoods, taking into account new jobs balanced against lost opportunities? Would the proposed investor comply with fundamental principles and obligations regarding rights at work, particularly those enshrined in the ILO Conventions? Would the proposed investor pay a living wage to all workers? Are workers in the proposed sector unionized? • Are there foreseeable risks associated with the proposed investment that could contribute to increased poverty and inequality? For example, exploitation of casual workers? • Does the proposed project increase the viability of other existing investments in the local area or country? • Would the proposed project contribute to or require government assistance for the development of local infrastructure?


Tool 2 (Cont.)

Topic	Guiding questions
<p>Natural resource use and management</p> 	<p>Would the proposed project be designed and implemented to guarantee sustainable management and use of natural resources?</p> <ul style="list-style-type: none"> • Which natural resources would the proposed project be using and relying upon? • How would the project change the existing use of such natural resources? • What risks would the project pose to the environmentally sustainable and socially responsible management of such natural resources? Have these risks been identified, and have measures been designed to avoid or mitigate such risks? • What impacts would the proposed project have on the environment (e.g., biodiversity, ecosystems, soil degradation, deforestation, water source use and/ or pollution)? What would be done to identify and avoid or mitigate these impacts? • To what extent does the proposed project contribute to supporting and conserving biodiversity at the local, national, regional, and global levels? • Does the proposed project require significant changes to existing land uses? If so, what steps would the proposed investor take to reduce the contribution of these changes in land use to greenhouse gas emissions, water quality, and soil degradation? • What policies and measures would be put in place to remediate any negative impacts on the environment? • If the proposed project proceeds to the next stage of investment assessment and an ESIA has yet to be completed, are there specific risks or potential impacts that should be included in the ESIA for deeper evaluation and assessment (based on this initial screening of the project proposal)? • If an ESIA has already been completed and submitted as part of the project proposal, what do the findings reveal regarding potential impacts and mitigation measures? Has the proposed investor integrated ESIA recommendations or conditions into a revised business plan? Has the proposed investor presented an environmental and social management plan that meaningfully responds to the findings of the ESIA?
<p>Project concept</p>	<p>What is the proposed project?</p> <ul style="list-style-type: none"> • What is the economic activity and sector of interest? • What activities or operations is the proposed investor seeking to undertake? • What is the anticipated amount of the proposed investment (in local currency and in the currency of the home state of the proposed investor if a foreign investor)? • What is the anticipated timeline for the proposed project? • Is the proposed project a greenfield or brownfield development?

Tool 2 (Cont.)

Topic	Guiding questions
<p>Site suitability (geographical and infrastructure)</p> 	<p>Is the proposed site geographically suitable for the proposed project?</p> <ul style="list-style-type: none"> • Has the proposed investor already identified the region or specific area in which they would like to invest? If so, where and why? • Are climatological, water, and soil conditions in the region and (if already identified) specific investment location suitable for the proposed project? Would other regions or specific investment locations be better suited to the proposed project from a climatic perspective? • What is the anticipated size of the area required for the proposed project? • What is the anticipated use required for the proposed project? • In addition to use of areas of land or bodies of water, does the proposed project anticipate use of other natural resources? If so, which resources? How does the proposed project anticipate the use of such resources? • Is there a risk the proposed investor is likely to either underutilize or overexploit land, water, or other resources allocated for the proposed project? If so, how great a risk? • What infrastructure (such as roads, power lines, or railways) currently exists and what additional infrastructure would be needed? How would the construction of additional infrastructure affect surrounding communities and who would need to be consulted? Who would be in charge of constructing the needed infrastructure (e.g., funding, project management)? • Are other necessary materials (including fertilizer, fuel) readily available? From what areas would they be sourced? Would this create scarcity for surrounding populations?
<p>Site suitability (tenure impacts)</p> 	<p>Is the proposed site suitable for the proposed project, considering potential impacts on legitimate tenure rightsholders?</p> <ul style="list-style-type: none"> • Has the proposed investor already identified a preferred specific location for the proposed project? If so, what is the specific location? Include information about any areas that may be potentially affected by the proposed project. • Who is currently living on or using the land? • How is the land currently being used? • Are Indigenous Peoples or customary communities currently living or using the land identified as the preferred location for the proposed project? • Have all legitimate tenure rightsholders (this includes those who are not formally legally recognized – see Box 3) who may be affected by the proposed project been identified? If so, who are they? What process did the proposed investor go through to identify legitimate tenure rightsholders?

Tool 2 (Cont.)

Topic	Guiding questions
	<ul style="list-style-type: none"> • Has the proposed investor assessed whether there are any land tenure issues that may affect the preferred specific location of the proposed project, including past or ongoing grievances/conflicts concerning the location or other legacy issues? What process did the proposed investor go through to assess these issues? In what venues have these conflicts been addressed? • If access to or control over the land is currently held by another company or legal entity, how were those rights acquired? Were they acquired through expropriation or involuntary displacement? • What policies and procedures has, or would, the proposed investor put in place to guarantee compliance throughout the investment life cycle with relevant principles concerning respect for legitimate tenure rights to land, fisheries, and forests, including the VGGT and the SSF Guidelines? • With respect to any ongoing or past land grievances or conflicts: (a) who is involved? And (b) what is the current status of the grievances or conflicts? • (If the proposed investor is seeking transfer of land rights) Has the proposed investor explored alternative investment models that do not result in, or minimize, the transfer of land rights from legitimate tenure rightsholders to the company?
<p>Youth economic empowerment</p> 	<p>What is the expected contribution to the economic empowerment of youth?</p> <ul style="list-style-type: none"> • In what ways would the proposed project contribute to the economic empowerment of youth? • Would any long-term jobs and training opportunities with transferable skills created by the proposed project be specifically reserved for youth?

Notes:

^I FAO definition of "resilience", <https://www.fao.org/capacity-development/resources/good-practices/resilience/en/>.

^{II} Relevant international law addressing plant genetic diversity includes the International Treaty on Plant Genetic Resources for Food and Agriculture (FAO, 2009); International Convention for the Protection of New Varieties of Plants (UPOV, 1991); Convention on Biological Diversity (UN, 1992); Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity (UN, 2014); TRIPS Agreement, Article 27.3(b) (WTO, 1994), and the Doha Declaration on the TRIPS Agreement and Public Health, Paragraph 19 (WTO, 2001).

Sources: This table adapts and builds upon existing resources. See details in the References section.

Tool 3: Documentation and resources to support due diligence processes

Tool 3 links the topics outlined in **Tools 1 and 2** above to examples of supporting documentation and resources (online platforms and offline sources) that can provide avenues for (a) examining and verifying information provided by proposed investors and, more broadly, (b) searching for information about proposed investors during the due diligence process (e.g., when checking a proposed investor’s track record).

Tool 3 does not constitute an exhaustive list; rather, it provides a starting point for government entities who are engaged in conducting due diligence to build from in strengthening existing or future due diligence workflows.



Tool 3 Documentation and resources to support due diligence processes

Questions about the proposed investors

Topic	Supporting documentation beyond the investment application (to seek from the proposed investor, or to find)	Resources that can support due diligence (online; offline; freely available; paid)
Contact details	<ul style="list-style-type: none"> • Proposed investor registration • Proposed investor websites 	<ul style="list-style-type: none"> • Home country corporate registry – e.g., US Corporate Registry Directory (online; free); UK Companies House (online; free) • OpenCorporates (online; free)
Experience and expertise	<ul style="list-style-type: none"> • Proposed investor company websites • Presentations on past projects • CVs of directors and senior managers • Business plan and timeline • Press reports and media coverage 	<ul style="list-style-type: none"> • OpenLandContracts.org (online; free) • LandMatrix.org (online; free) • LandPortal.org (online; free) • FarmLandGrab.org (online; free) • BHRRRC Lawsuits Database (online; free) • BHRRRC Company Response Mechanism (online; free) • CorpWatch “Gulliver” tool’s history of procurement contracts (online; free) <p>See also resources under <i>Reputation</i> and <i>Track record</i></p>

Tool 3 (Cont.)		
Topic	Supporting documentation beyond the investment application (to seek from the proposed investor, or to find)	Resources that can support due diligence (online; offline; freely available; paid)
Financing	<ul style="list-style-type: none"> • Letter of credit • Credit risk analysis • Bank statements, including from any financial backers • Tax returns • Independent auditor report • List of principal risks and uncertainties • Indemnifications 	<ul style="list-style-type: none"> • Host country central bank or other relevant host country bank • Home country financial regulator databases – e.g., Canadian Securities Administrators (CSA) Database (online; free); UK Companies House (online; free); US SEC website and 'EDGAR' Database (online; free); European Securities and Markets Authority (online; free) • International finance institution project databases – e.g., World Bank (online; free); Inter-American Development Bank (online; free); Asian Development Bank (online; free)
Ownership and management	<ul style="list-style-type: none"> • Proposed investor company websites • Annual reports • Press releases 	<ul style="list-style-type: none"> • Offshore Leaks (online; free) • OpenCorporates (online; free) • Open Sanctions (online; free) • Name Scan (PEP) (online; free) • US Security Exchange Commission 'EDGAR' (search for Beneficial Ownership) (online; free) • World Bank Listing of Ineligible Firms and Individuals (online; free) • Bureau van Dijk (online; paid) • LandMatrix.org (online; free)
Reputation	<ul style="list-style-type: none"> • Verification of information through proposed investor company websites, news reports, local trade associations or chambers of commerce • Press and non-governmental organization reports regarding ongoing and past investments 	<ul style="list-style-type: none"> • World-Check (online; paid) • Global and national newspapers (offline or online; free or paid) – e.g., Mongabay (online; free) • Factiva (online; paid) • Lexis-Nexis (online paid) • Blogs and reports of non-governmental organizations (online; free) – e.g., Namati, Oakland Institute, Oxfam International, etc.

Tool 3 (Cont.)		
Topic	Supporting documentation beyond the investment application (to seek from the proposed investor, or to find)	Resources that can support due diligence (online; offline; freely available; paid)
Stated commitment to sustainable development and responsible business conduct	<ul style="list-style-type: none"> • Codes of business conduct that set out a company's values and ethics • Human rights, land tenure, gender equality, environmental sustainability, climate change, and other relevant company policies • Modern slavery statements • CVs of directors and senior managers • Documentation of any certification programmes the company may be a member of, such as sustainability or climate initiatives • Evidence of an active grievance mechanism either company-wide or at the project level for other ongoing projects 	<ul style="list-style-type: none"> • Global Reporting Initiative Sustainability Disclosure Database (online; free) • Corporate Register of corporate responsibility reports (online; free) • CorpWatch "Gulliver" tool (online; free) • BHRRRC Modern Slavery Statements (online; free) • BHRRRC company dashboards (online; free) • UK Modern Slavery Registry (online; free) • OpenSecrets (online; free) • Certification Program websites (online; free) – e.g., Climate Neutral; Fairtrade International; FSC International; Roundtable on Responsible Palm Oil
Track record	<ul style="list-style-type: none"> • Human rights, land tenure, and other relevant company reporting • Safety performance reports and disclosures • Environmental performance reports and disclosures • Sustainability or corporate citizenship reports • Disclosure of payments, e.g., made to government entities for the development of resources • Disclosure of any judicial or non-judicial proceedings • Disclosure of political donations • Documentation or details of past comparable projects • Proposed investor company "sales pitches" 	<ul style="list-style-type: none"> • Business and Human Rights Resource Center (BHRRRC) Lawsuits Database (online; free) • BHRRRC Database on Attacks on Human Rights Defenders, Lawsuits (SLAPPs) (online; free) • BHRRRC Company Response Mechanism (online; free) • French Duty of Vigilance Law "Radar" (online; free) • OECD Database of specific instances of alleged misconduct (online; free) • CorpWatch database of history of procurement contracts (online; free) • OpenLandContracts.org (online; free) • Environmental Justice Atlas (online; free)

Tool 3 (Cont.)		
Topic	Supporting documentation beyond the investment application (to seek from the proposed investor, or to find)	Resources that can support due diligence (online; offline; freely available; paid)
	<ul style="list-style-type: none"> • Court documents • Records of any regulatory actions taken against the proposed investor company 	<ul style="list-style-type: none"> • Home country databases – e.g., UK Financial Conduct Authority (online; free); UK Companies House Disqualified Directors list (online; free); US Federal Financial Institutions Examination Council Anti-Money Laundering Information Base (online; free); US Securities and Exchange Commission (online; free); EU sanctions list (online; free) • UN sanctions list (online; free) • World Bank and UNODC Stolen Asset Recovery Initiative Corruption Cases Database (online; free) • Thomson Reuters litigation database (online; paid) • World Legal Information Institute (online; paid)
Questions about the proposed investment		
Topic	Supporting documentation beyond the investment application (to seek from the proposed investor, or to find)	
Business plan and project feasibility and financial viability	<ul style="list-style-type: none"> • Company registration • Financial statements • Proof of funds (i.e., letters of credit) • Projected sales, market projections, market intelligence reports • List of intended or actual purchasers of "product," including a list of destination countries • Any approvals that may have already been sought or required at this stage in the assessment process • Feasibility study, if conducted at this stage • Independent assessment of feasibility study, if the study is conducted at this stage • A schedule with priorities and order of activities for operationalization, expected returns over the short- and mid-term, and reinvestment of profits, if conducted at this stage 	

Tool 3 (Cont.)	
Topic	Supporting documentation beyond the investment application (to seek from the proposed investor, or to find)
Climate change	<ul style="list-style-type: none"> • Climate-related company policies, procedures, and commitments • Climate mitigation, adaptation, and resilience plans • Assessments of the proposed project on climate variables (and vice versa), such as the World Bank’s Climate and Disaster Risk Screening Tools • Any other relevant assessments of the proposed project from national climate service providers • ESIA, statement, and plan, if already conducted <p>See also <i>Natural resource use and management and Site suitability (geographical and infrastructure)</i></p>
Community participation and consent	<ul style="list-style-type: none"> • Human rights, land tenure, and related company policies and procedures • Documentation of all correspondence with local communities • Notes of any meetings between local communities and the proposed investor company • Where negotiations between the proposed investor company and local communities have already taken place, verified copies of any community–investor agreements (including social agreements) and verified details of payments or benefits the proposed investor company owes or will owe the community or individuals in exchange for using lands and natural resources¹ • CVs of proposed investor company representatives engaging, or who will engage, with local communities on behalf of the proposed investor company and their experience and expertise with community consultation processes • Verification of whether and what technical assistance local communities have access to and have or will receive during their interactions with proposed investor company, and how this assistance was or will be paid for • Verification of whether and to what extent local communities were meaningfully or will be meaningfully involved in the ESIA process or other data-gathering processes (such as monitoring and evaluation processes) • Verification of whether and to what extent local communities were meaningfully, or will be meaningfully, consulted and whether FPIC was given by legitimate tenure rightsholders • Policies and procedures regarding community grievances • Press reports regarding past or ongoing projects • Community FPIC protocols or customary bylaws, if available

Tool 3 (Cont.)	
Topic	Supporting documentation beyond the investment application (to seek from the proposed investor, or to find)
Culture, diversity, and innovation	<ul style="list-style-type: none"> • Business plan, including details of planned farming or other production practices, use of technology, and inclusive business approaches • Human rights, land tenure, and other relevant company policies and procedures • Sustainability reporting and disclosures • Press reports regarding past or ongoing projects • CVs of directors and senior managers • Proposed investor company website • Where a human rights impact assessment has already been conducted, copies of the assessment to verify identification and avoidance or mitigation of impacts on rights to culture¹¹
Food systems, food security, and nutrition	<ul style="list-style-type: none"> • Proposed investor company website • Business model • Sustainability, human rights, and land tenure-related plans, disclosures, reports • Assessment of alternative business models • Health and safety policies and procedures • Press reports regarding past projects • ESIA, statement, and plan, if already conducted
Gender equality and economic empowerment	<ul style="list-style-type: none"> • Employment (including recruitment and training) policies and procedures • Human rights policies and (voluntary or mandatory) reporting (e.g., reports on human rights processes, impacts of operations, mandatory human rights due diligence legislation requirements, etc.) • Reporting on employment, including performance on gender and human rights issues from other projects • Organizational structure • Grievance mechanism policies and practices • Press reports regarding past projects or litigation/grievances
Monitoring, evaluation, and project closure	<ul style="list-style-type: none"> • Monitoring and evaluation plan with timeline • Formal plans for project closure • Independent assessment of project closure plans • Documentation of any correspondence with local communities regarding community access to information and rights to monitor, and regarding project closure

Tool 3 (Cont.)	
Topic	Supporting documentation beyond the investment application (to seek from the proposed investor, or to find)
National and sustainable development objectives	<ul style="list-style-type: none"> • National and local development plans (for assessment of proposed project against objectives put forward in those plans) • Maps of current and proposed land or other resource use and infrastructure • Region-specific reports detailing socioeconomic status of the local population • Organizational structure, employment policy, recruitment and training policies, project health and safety guidelines • Plan for the development of an inclusive project, e.g., inclusion of smallholders • Local content policies and practices • Plans for capacity building and for provision of social services to local communities (e.g., education, childcare, health, etc.)
Natural resource use and management	<ul style="list-style-type: none"> • Environmental and social impact assessment, statement, and plan, if conducted at this stage • Assessment of the impact of the proposed project on water, ecosystems, biodiversity, and other natural resource use considering the proposed investment period • Forest management plans, if already conducted <p><i>See also Climate change</i></p>
Project concept	<ul style="list-style-type: none"> • Proposed investor company website • Company registration • Business plan
Site suitability (geographical and infrastructure)	<ul style="list-style-type: none"> • Soil and water tests • Geographical and climatological assessments • Maps of current and proposed area (land, water) use, including infrastructure, pastoralism, settlements, conservation or reserve areas, national parks, etc. • Government land use plans and community land use plans, if available • Where ESIs have already been conducted, copies of those assessments and proof of integration of findings or conditions into the proposed investment's business plan • Irrigation plans and any necessary water use authorizations • Environmental (including water) management plans

Tool 3 (Cont.)

Topic	Supporting documentation beyond the investment application (to seek from the proposed investor, or to find)
Site suitability (tenure impacts)	<ul style="list-style-type: none"> • Any documentation of formal ownership or use rights over lands or natural resources concerning the proposed project acquired by or otherwise transferred to the proposed investor company • Relevant codes of conduct and company policies regarding human rights and land rights • Community mapping report conducted by affected communities themselves or by an independent third party and verified by local communities through a meaningful consultation process • Information regarding legitimate tenure rights of women and minorities, Indigenous Peoples, pastoralists, youth, or marginalized groups in the proposed investment area (whether tenure rights are documented or undocumented) • Updated list of identified legitimate tenure rightsholders • Notes of any meetings between local communities and the proposed investor company • Verified letters or other documentation provided by local communities confirming any communications with local communities that are reported by the proposed investor company in its application • Where negotiations between the proposed investor company and local communities have already taken place, verified copies of any community-proposed investor agreements and verified details of payments or benefits the proposed investor company owes or will owe the community or individuals in exchange for using lands and natural resources^I • Minutes from any ongoing dialogues linked to community development agreements or other relevant negotiations • Details of any ongoing or past land or resource conflicts or grievances regarding the area relevant to the proposed investment
Youth economic empowerment	<ul style="list-style-type: none"> • Employment (including recruitment and training) policies, procedures, and plans • Human rights policies and reporting

Notes:

^I For guidance on community-investor interactions see: (Columbia Center on Sustainable Investment and Namati, undated).

^{II} For guidance on collaborative human rights impact assessments see: (Columbia Center on Sustainable Investment, undated).

^{III} For guidance on community-investor interactions see: (Columbia Center on Sustainable Investment and Namati, undated).

Sources: This table adapts and builds upon existing resources. See details in the References section.

Tool 4: Sample responsible agricultural investment key performance indicators

Tool 4 sets out sample KPI based on the CFS-RAI. It suggests KPI for the topics "Gender equality and economic empowerment" and "Youth economic empowerment" from Table 5 and Tool 2.



Tool 4 Sample key performance indicators (KPI) based on the CFS-RAI				
Guiding Questions	KPI	Target	Proposal estimate	Actual (review)
Topic: Gender and youth [CFS-RAI Principles 3 and 4]				
Will any jobs and training opportunities created by the proposed project be specifically reserved for women?	Percentage of jobs created by the proposed project specifically reserved for women			
Will any jobs and training opportunities created by the proposed project be specifically reserved for youth?	Percentage of jobs created by the proposed project specifically reserved for youth (aged [X-Y])			

Tools 5 and 6: Sample evaluation tools for responsible investors and investments

Evaluation tools can be framed to match the questions a government entity poses to an investor about the company, its associated entities, and the proposed project. Theoretically, an evaluation tool could be designed for all the content set out in Tables 4 and 5 and Tools 1 and 2. The following samples are a non-exhaustive suggestion of how Tables 4 and 5 and Tools 1 and 2 can be adapted into an evaluation tool.




Tool 5 provides a sample investor scorecard for the topics "Reputation" and "Experience and expertise." It would be up to each government to determine what an acceptable "pass" rate is for investors, whether it be full marks or otherwise.



Tool 5 Sample investor scorecard

Topic	0	1	2	3	Score
Reputation	<p>Negative press.</p> <p>Reports of abuses of tenure or other human rights, non-compliance with laws or international principles.</p> <p>No legitimate explanation for these reports.</p> <p>No remedy for reported abuses.</p> <p>Legal claims brought against rightsholders affected by investments or governments without justifiable explanation.</p>	<p>Some negative press or reports of abuses, but explanation provided and evidence of legitimate efforts to remedy abuses.</p> <p>Legal claim brought against government with justifiable explanation.</p>	<p>No negative press or reports of abuses.</p> <p>No legal claims against rightsholders affected by investment or governments.</p>	<p>Well-established, strong track record of successful ongoing and past investments.</p>	
Experience and expertise	<p>No company or director/senior manager experience with similar investments and no relevant expertise.</p> <p>No prior company or director/senior manager experience in the country or region.</p>	<p>No company or director/senior manager experience with similar investments but some relevant expertise.</p> <p>Prior company or director/senior manager experience in the country or region.</p>	<p>Company or director/senior manager experience and expertise with similar investments.</p> <p>Company or director/senior manager experience in the region.</p>	<p>Company and director/senior manager experience and success with similar investments at a similar scale in the same country</p>	
Assessment				Total (out of [x])	

Tool 6 provides a sample investment screening tool for the topics “Site suitability (tenure impacts)” and “Natural resource use and management.” The sample screening tool has been formulated into a “traffic light” system, whereby responses can be categorized and a corresponding action attached:

-  Do not proceed.
-  Request clarification and/ or revision.
-  Response meets criteria.

If any of the items in the red list are circled, then the application should be rejected. If any of the items in the orange list are circled, then the relevant action must be pursued (information obtained, clarified, or revised), and a green response legitimately procured before the project can advance.



Tool 6 Sample investment evaluation tool

	Do not proceed	Request clarification / revision	Criteria met	Action required and notes
Site suitability (<i>tenure impacts</i>)	<p>Evidence of expropriation without compliance with applicable laws and good practice or involuntary displacement.</p> <p>Refusal by legitimate tenure rightsholders to allow the use of identified site or no plan for seeking Free, Prior and Informed Consent (FPIC) or conducting meaningful consultations with affected communities and peoples.</p>	<p>Unsuitable selected site (e.g., proposed crop would not grow there, insufficient infrastructure to support proposed project).</p> <p>No effort made to identify tenure issues.</p> <p>Evidence of ongoing but unconcluded efforts to resolve tenure issues with legitimate tenure rightsholders.</p> <p>No – or gaps in –policies relating to principles concerning respect for legitimate tenure rights.</p>	<p>Site selected suitable.</p> <p>Identification of tenure issues.</p> <p>FPIC from legitimate tenure rightsholders for proposed use.</p> <p>Comprehensive policies relating to principles concerning respect for legitimate tenure rights.</p>	

Tool 6 (Cont.)				
	Do not proceed	Request clarification / revision	Criteria met	Action required and notes
Natural resource use and management	<p>Project proposed for an ecologically sensitive site with unique biodiversity.</p> <p>Investment would have a significant and irremediable negative impact on the environment.</p> <p>Project has a high risk of causing the eradication of a species.</p> <p>No or inadequate plan for conducting ESIA.</p>	<p>Does not consider sustainable management and use of resources.</p> <p>Proposed project requires a significant change in existing land use.</p> <p>No – or gaps in – policies and measures to remediate any negative impacts on the environment.</p>	<p>Clear and comprehensive approach to sustainable management and use of resources.</p> <p>Emphasis on supporting and conserving biodiversity.</p> <p>Comprehensive policies and measures to remediate any negative impacts on the environment.</p>	

Tools 1 to 6 are available for download in PDF and Word formats below:

Tool 1. PDF  WORD 

Tool 4. PDF  WORD 

Tool 2. PDF  WORD 

Tool 5. PDF  WORD 

Tool 3. PDF  WORD 

Tool 6. PDF  WORD 



Annex B - Ideas of how topics can be addressed in different investment assessment processes

This Annex provides further detail on the question discussed in Section 2.1 regarding when to address each topic, recognizing the variations that exist in countries' investment assessment processes. Each scenario has been abstracted from real country processes. The key distinction that was observed between processes was whether early-stage screening occurred once or twice.

In **Scenario 1**, screening occurred twice: first at initial contact with government, such as by way of inquiry or registration of interest of intent and second, when an investment proposal is required, such as when applying for consent, providing mandatory notification, or applying for an investment licence. In **Scenario 2**, screening only occurred at one instance, whether upon registration of intent, application for benefits, or investment licence; consent; mandatory notification; or another entry point.

The scenarios are not exhaustive, but rather indicative of general trends observed. The scenarios seek to show that, in spite of the differences between investment assessment processes, multiple entry points exist in practice, as well as opportunities to cover the topics discussed in Section 2. The scenarios only capture the early stages of an investment assessment process, even though entry points do arise in practice in later stages.

The screening topics developed in this guidance can be adapted into either scenario. Figures 2 and 3 provide suggestions for the point at which it may be appropriate for each topic to be addressed for each of these two scenarios.

Figure 2. Scenario 1 – Screening in two instances

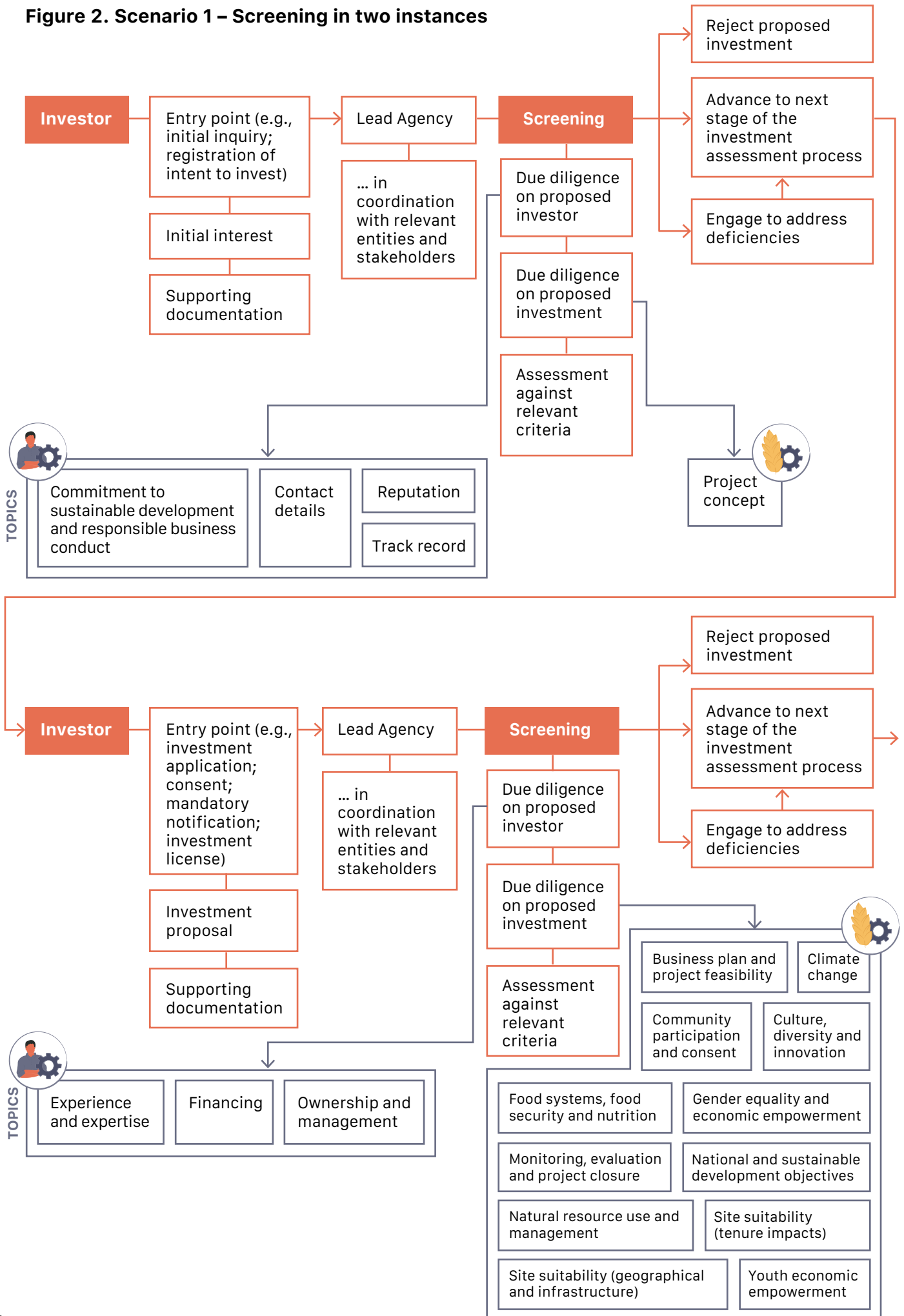
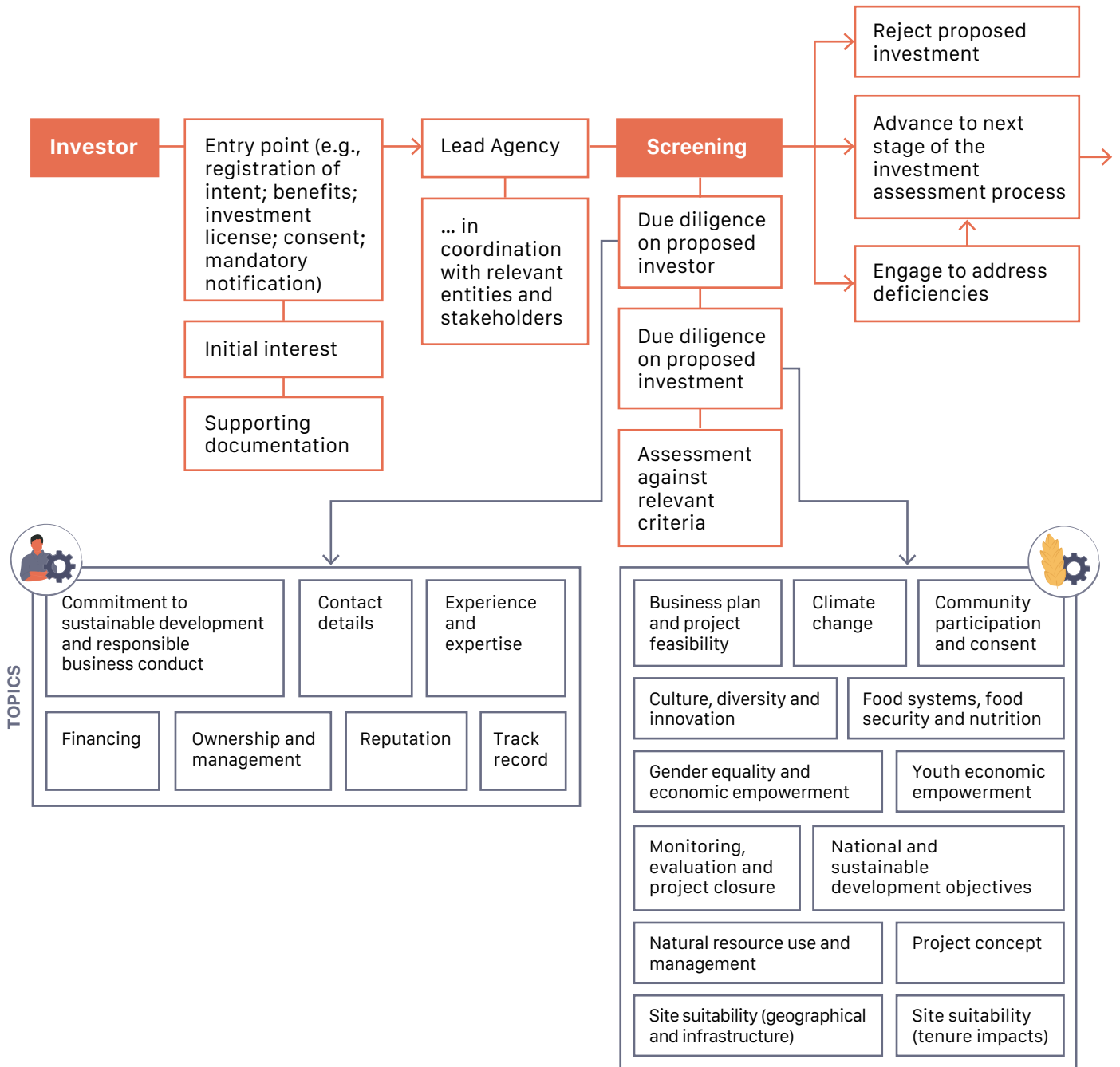


Figure 3. Screening in only one instance



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