Background document

Certifying reform efforts through international standards for Compact with Africa countries

On the benefits and pathways of striving towards adherence to key OECD and G20 standards

Prepared for the AfDB-IMF-OECD-WBG workshop on international standards for Compact and G20 countries

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1. Introduction

Under the Compact with Africa (CwA), reform-minded countries in Africa have come together in partnership with G20 countries and international organisations to implement policy measures and reforms that aim to increase their attractiveness for private investment. The core activities of the Compact with Africa are geared towards improving the macro, business and financing frameworks of Compact countries through close collaboration between Compact countries, the three key partner IOs (World Bank Group, IMF, AfDB) and the private sector.

As the host organization for a number of international standards on good economic governance, the OECD proposes to support the Compact with Africa with an initiative on investment-related standards, which seeks to encourage countries to benefit from the signal value of standards. Adherence to standards could ultimately send a strong message that participating countries are implementing ‘good investment practices’ and are taking necessary steps to strengthen their regulatory and policy frameworks, enhance their attractiveness and raise their profile vis-à-vis international investors without adding to existing commitments.

Compact with Africa countries are invited to engage with the OECD, the World Bank, the AfDB and the IMF to align reforms with standards that potential investors understand and that if adopted will provide confidence in potential investee countries. These standards represent internationally recognised instruments in areas such as investment policy, corporate governance of multi-national and state-owned enterprises, public procurement, foreign bribery, anti-corruption and integrity and export credit financing and sustainable lending, in reference to 6 OECD and 2 G20 instruments. OECD instruments are grounded in empirical evidence and result from multilateral work and consultations, involving OECD member and partner countries. G20 standards crystallise good practices identified by G20 countries, and benefit from the work of international organisations such as the AfDB, the World Bank/IFC and the OECD.

This note aims to inform Compact with Africa countries how the reforms that they are implementing correspond to international standards and how existing and future engagement with IO partners can allow Compact countries to progress towards standard adherence. Each section is devoted to one of the instruments that have been identified as a relevant target standard for Compact countries and explains the benefit of striving towards adherence and describes how Compact with Africa countries can implement gradual reforms that position them on a path towards adherence.

In the spirit of the Compact with Africa, G20 countries are also encouraged to contribute by ensuring that investment in Compact countries is responsible and sustainable. For this reason, this initiative encompasses two standards that G20 countries are encouraged to adopt on addressing foreign bribery and on leveling the playing field on export credits and ensuring sustainable lending. This note therefore also explains the pathway of adherence to the relevant instruments for G20 countries.

2. How can Compact with Africa countries align reform processes with key OECD and G20 standards?

The AfDB-IMF-OECD-WB initiative has two objectives. On one hand, it aims to support efforts to improve economic governance in Compact with Africa countries. This objective is not new, and Compact countries, through the Compact country teams and in collaboration with partner IOs, are already working to implement reforms in the governance of investment in the broadest sense. The second objective of this initiative, and this is where it adds crucial value, is to align reforms with progress towards the adherence of key OECD and G20 standards. Ultimately, this will allow Compact countries to gain recognition for progress made, and attract investment.

Setting high bars with concrete intermediate steps

While the final aim of this initiative is the adherence of key standards and principles, achieving adherence is an ambitious goal for Compact countries, which include even amongst themselves countries at different stages of economic development. Moreover, this initiative includes a number of legally recognised OECD instruments that require far-ranging reforms of institutions and a thorough peer review process. Some of these standards, such as the Anti-Bribery Convention, currently only have a few non-OECD member adherents. But the idea that adherence to these standards is difficult to attain does not prevent Compact countries to strive towards them. On the contrary, it should serve as a motivation to achieve the signal value that is associated with their attainment.

Beyond setting high bars, this initiative recognises that intermediate steps towards standard adherence are important to encourage progress. Therefore, where possible, this note indicates the different phases towards adherence that countries need to go through to attain adherence, and the intermediate steps that can serve to signal progress.

Different instruments, different adherence processes and intermediate steps

It should also be emphasised that the instruments included under this initiative are diverse and include OECD standards and G20 principles embedded in soft and hard law[1]. Each of these types of standards require substantial engagement on the part of countries interested in engaging with them. For some, the pathway towards membership may be more clearly defined than others. OECD experts are therefore ready to assist CwA countries in clarifying adherence processes and associated commitments. The extent of signal value or certification that can be obtained from engaging with the different types of instruments also varies. For example, the G20 principles do not involve a concrete review and adherence process. This initiative therefore also seeks ways to allow countries to obtain recognition from aligning reforms with such standards, for example in the regular reporting of the CwA initiative.

[1] https://www.oecd.org/legal/legal-instruments.htm

2.1. Investment and multinational enterprises

Private investment, domestic and foreign, is key to Compact with Africa economies' development objectives. Significant barriers to private investment in CwA countries nevertheless remain, including in backbone sectors such as infrastructure, energy and agriculture. These challenges include remaining statutory restrictions, conflicting and complex regulatory requirements, institutional capacity and access to finance. Further reforms are also required to reap the maximum benefits of private investment, such as through the promotion of responsible and sustainable investment in key development sectors, in particular investment that leads to further integration of domestic enterprises into Global Value Chains (GVCs), linkages between domestic and foreign multinational enterprises (MNEs), and that addresses infrastructure deficiencies. FDI liberalisation and reaping the maximum benefit of investment are still unfinished agendas in most CwA countries.

OECD studies suggest that the effects of FDI reforms can be significant and sizeable. The evidence suggests that even partially lifting restrictions can have a strong impact on investment. It is estimated that the introduction of reforms leading to a 10% reduction in level of FDI restrictiveness as measured by the *OECD FDI Regulatory Restrictiveness Index* could increase bilateral FDI inward stocks by around 2.1% on average.

Adherence to the OECD Declaration on International Investment is a key step forward in signalling a country's existing and ongoing commitment to implement reforms that benefit a competitive investment environment and ensure responsible conduct by MNE's. In addition, the Declaration introduces a country into an international community of like-minded countries who strive towards liberalisation of policies towards international capital movements, international direct investment and multinational enterprises and trade in services, fosters international co-operation in these fields and promotes better understanding of the policy issues at stake. The Declaration and work of the Investment Committee are closely supported by the set of principles that are part of the Policy Framework for Investment.

2.1.1. *What are the OECD Declaration on International Investment and Multinational Enterprises and the Policy Framework for Investment?*

The OECD Declaration on International Investment and Multinational Enterprises (*the Declaration)* is a policy commitment by adhering governments to provide an open and transparent environment for international investment and to encourage the positive contribution multinational enterprises can make to economic and social progress. Through this Declaration and the OECD's Guidelines, Compact Countries can increase the positive effects from MNEs within their borders, such as investment and local infrastructure, while limiting negative ones such as resource depletion, corruption and environmental degradation.

The Declaration consists of four elements:

- **The Guidelines for Multinational Enterprises** are recommendations on responsible business conduct addressed by governments to multinational enterprises operating in or from adhering countries. Observance of the Guidelines is supported by a unique implementation mechanism: adhering governments - through their network of National Contact Points - are responsible for promoting the Guidelines and helping to resolve issues that arise under the specific instances procedures.

- **National Treatment**: A voluntary undertaking by adhering countries to accord to foreign-controlled enterprises on their territories treatment no less favourable than that accorded in like situations to domestic enterprises.

- **Conflicting requirements**: Adhering countries shall co-operate to avoid or minimise the imposition of conflicting requirements on multinational enterprises.

- **International investment incentives and disincentives**: adhering countries recognise the need to give due weight to the interest of adhering countries affected by laws and practices in this field; they will endeavour to make measures as transparent as possible.

To date, all OECD members and 12 non-members have adhered to the Declaration, including Egypt (2007), Morocco (2009) and Tunisia (2012).

The Policy Framework for Investment is a multi-laterally backed instrument supporting governments in self-assessing their investment climates against global sustainable investment standards, including OECD investment instruments. It has been developed and updated in 2015 with significant contributions from African economies and the World Bank. It Countries and regional economic communities such as the Southern African Development Community (SADC), in the framework of the NEPAD OECD Sustainable Investment Programme for Africa, have used the PFI to develop their own regional action plans, undertake action-oriented *OECD Investment Policy Reviews*, and conduct national and regional investment policy dialogues in specific areas of the PFI, such as investment policy, quality investment in infrastructure and responsible business conduct.

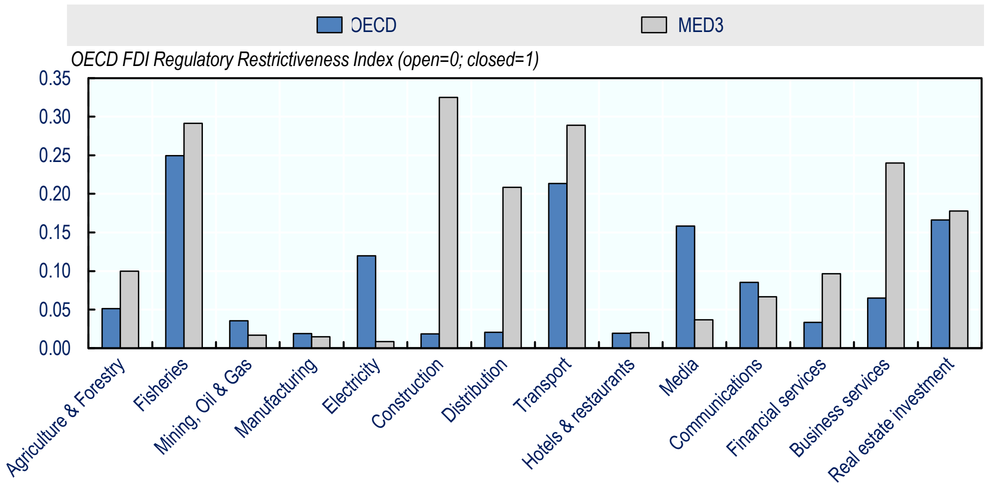
2.1.2. *What is the potential impact of Compact countries' adherence to the Declaration on International Investment and intermediate steps?*

Morocco, Egypt and Tunisia, which have reformed their investment regimes considerably following reforms based on recommendations in their Investment Policy Review and adherence to the OECD Declaration, have in the past 5 years reduced investment restrictions to the tune of 25%. Since their adherence to the Declaration they have continued to engage in investment liberalisation efforts. Figure 1. highlights that their investment regimes compare as relatively open, with some notable exceptions (as shown in the averages for the construction, distribution and business services sectors). Morocco was able to capitalise on its reforms with a close to 40% increase of FDI as a percentage of GDP since adhering to the Declaration in 2009. For Tunisia and Egypt, the picture is complicated by concurrent political uncertainty, but Egypt also has seen a strong positive trend since the turn of the decade.

Asian and Latin American countries have also used the PFI, allowing for important sharing of experience and investment best practices. For example, Myanmar significantly reduced statutory restrictions to investment using the PFI moving from one of the most closed economies in 2012 to below the OECD average. Myanmar shared its investment policy reform with SADC members, informing the SADC regional policy framework for investment.

Figure 1. MED3 average openness to FDI

According to the OECD *FDI Regulatory Restrictiveness Index* (2016)



Source: OECD *FDI Regulatory Restrictiveness Index* (2016)
Note: MED3 represents the average of the economies of Egypt, Morocco and Tunisia

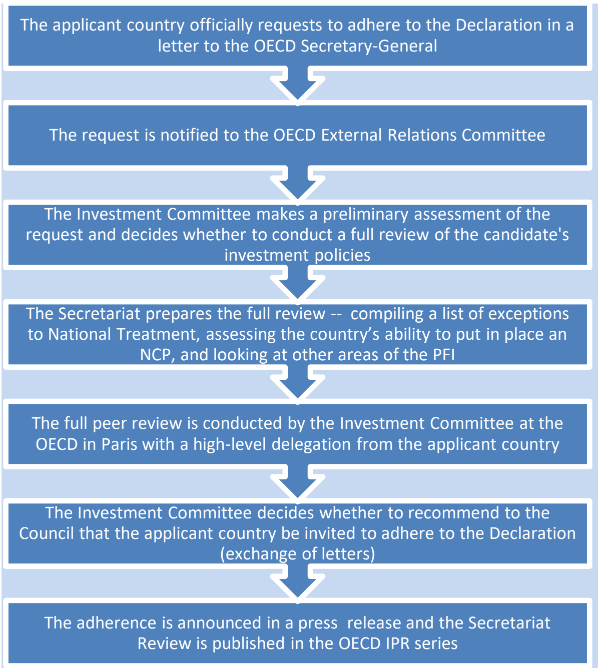
2.1.3. *How can Compact with Africa countries engage with the OECD and Partners institutions on responsible and sustainable investment?*

All CwA countries are already implementing investment policy reforms that aim to improve business environments with a goal of attracting further investment. Many of these reforms are in line with the Policy Framework for Investment and put countries on a path towards adherence to the OECD Investment Declaration. Engagement with the OECD can ensure further complementarities between existing reform efforts and these instruments. Ultimately, adherence to the Investment Declaration can serve to signal countries' reform efforts and encourage further improvements.

A typical process could proceed as follows:

- *Phase 1: Awareness raising among decision makers* – during this phase the OECD and partner institutions, in particular the World Bank/IFC and the African Development Bank, can work with CwA countries to promote structured policy dialogue and peer learning among African and other relevant countries and regions to discuss specific topics of investment policies (eg: ASEAN, G-20, select OECD countries).
- *Phase 2: Identification of focus areas:* CwA countries can use the OECD investment instruments, notably the Policy Framework for Investment (PFI), to enhance their framework for responsible and sustainable investment with guidance and technical assistance from the OECD and partner institutions, both at country and regional levels. Typical focus areas include:
    - Investment policy (including liberalisation and protection), investment promotion and facilitation (to attract sustainable investment);
    - Responsible business conduct;
    - Promotion of private sector investment in quality infrastructure.

- *Phase 3: Diagnostic:*
    - Assessment of the investment framework in identified focus areas;
    - Tailor-made capacity building to support the assessment;
    - Development of investment review focusing on key short to medium-term reforms (this could, depending on the CwA country request, involve an OECD IPR)
- *Phase 4: Implementation and monitoring of the reforms* – during this phase the OECD and partner institutions can work with CwA countries to provide capacity building, technical assistance to accompany reforms identified in the investment review. This can be structured through policy dialogue and peer learning among the African states and relevant policy communities, such as experts from OECD investment promotion agencies.
- *Phase 5: Enhanced standards and possible adherence to the OECD Declaration on International Investment* - the process to adhere to the Declaration generally takes more than one year to complete, from the first request letter to the official exchange of letters and the launch of the publication. A number of procedures are necessary before a country can formally adhere, as demonstrated in the figure below:



2.1.4. *Where do CwA countries currently stand?*

Egypt, Morocco and Tunisia are CwA countries that have adhered to the OECD Declaration on International Investment, after an Investment Policy Review and associated peer review at the Investment Committee of the OECD.

- Egypt has seen political challenges in the last decade, but is addressing the investment-related obstacles through an OECD Investment Policy Review that is currently underway. The OECD has delivered capacity building on FDI statistics, investment disputes and on attracting investment into Special Economic Zones.

- Morocco and the OECD have launched a country programme in 2019, which foresees the undertaking of an Investment Policy Review. Morocco also has a very active National Contact Point on responsible business conduct.
- Tunisia participates in the EU-OECD Programme on Promoting Investment in the Mediterranean and benefits from OECD's work on investment promotion agencies.

2.2. Corporate governance of state-owned enterprises

In Compact with Africa economies, state-owned enterprises (SOEs) represent a substantial part of economic activity and employment, reaching up to 30% of GDP in some cases. SOEs are prevalent in key sectors such as utilities, energy and transport, whose performance is important to citizens and the private sector, and overall national competitiveness. While the strategic and economic rationales for state ownership vary across jurisdictions, empirical studies have suggested that a high level of concentration of SOEs has a crowding out effect on private investment. Improving SOE performance can lead to better market efficiency, public service delivery and fiscal sustainability.

In many African economies, important SOEs have experienced major governance failures in the form of unclear objectives, excessive politicisation, weak accountability, and corruption. They have failed to deliver on developmental mandates, resulting in large fiscal and social costs. Governance failures can deter investment and raise red flags with the costs and risks associated with doing business in a given jurisdiction, especially if there is a weak rule of law. A recent OECD study has found that corrupt acts or other irregular practices in SOEs over the past three years have cost an average of 3% of annual corporate profits in the OECD area alone.

2.2.1. *What is the OECD Recommendation on the Guidelines on Corporate Governance of State-Owned Enterprises?*

The new OECD Guidelines on Corporate Governance of State-Owned Enterprises provide an internationally agreed benchmark to help governments assess and improve the way they exercise their ownership functions in state-owned enterprises. They provide concrete recommendations to countries on how to manage their responsibilities as company owners, thus helping to make SOEs more competitive, efficient and transparent. The SOE Guidelines include a set of good practices on the legal and regulatory framework for SOEs, the professionalisation of the state ownership function and the corporate governance arrangements of SOEs. Set at a high level of aspiration, the SOE Guidelines serves as a national reform driver by aligning practices with international standards.

This new version of the recommendation was developed in the light of almost a decade of experiences with its implementation and a number of thematic and comparative studies, developed on the basis of the earlier version of the Guidelines, that showed the need for, and supported, their revision, including in areas such as disclosure and transparency, public-private competition, board practices and funding and financing of SOE.

2.2.2. *What is the potential impact of aligning reforms efforts with the Guidelines on Corporate Governance of State-Owned Enterprises?*

A number of components of the OECD Guidelines on Corporate Governance of SOEs, if implemented, can allow for an improved investment environment. Empirical evidence suggests that private firms operating in industries with a high level of SOE concentration invest systematically less than businesses that are not competing directly with SOEs.[2345] This suggests that SOEs may be crowding out investment and could be especially problematic if there is an unequal playing field. Chapter 3 of the SOE Guidelines deal specifically with SOE operations in the marketplace. If fully implemented this chapter would enshrine the principle of "competitive neutrality" in the compact country. This would help assure foreign investors that their investments will be treated fairly if venturing into the compactor country's domestic market. This includes ensuring that SOEs are subject to the same rule of law, for example in the face of competition law and policies, regulatory or tax treatment.

Enhancing transparency and accountability of state-owned enterprises also components of the Guidelines, can reassure investors that SOEs and their state-owners exercise their powers responsibly and help to instil confidence that investors entering new markets compete on an equal basis. Adherence involves a comprehensive review of individual countries' portfolio of SOEs that creates insights into the size, weight and operational practices of the state owned sectors that generally go beyond what non-state actors previously had access to.

Empirical studies have concluded that SOEs on average are 15% less profitable than private companies in like circumstances. Part of this difference likely reflects undisclosed public policy objectives rather than intrinsic inefficiencies in the SOE sector. At the same time, given that the main direction of the SOE Guidelines is the implementation of best private sector practices in SOEs, the expected benefits from reforming according to the instrument is an efficiency enhancement between 0 and 15% across the state's portfolio. Within the OECD area, if all countries undertook such reform the macroeconomic savings are estimated at US$ 44 bn. per year.

SOE reform often goes hand in hand with structural reforms since in many transition, developing and emerging economies SOEs represent a sizeable share of economic activity and employment, reaching up to 30% of GDP in some cases. In combination with the estimated 15% slack in SOE efficiency, this implies that a developing country that thoroughly reforms its SOE sector can expect a permanent lift of its GDP by up to 5%. This, in isolation, is estimated to lead to an increase in inward investment stocks by 5-10%. To this should be added two additional impacts on investment, namely: (1) a growing productivity in a number of other economic sectors that rely on goods and services from SOEs; and (2) diminished crowding out of private commercial activities since the SOEs are now largely operated on market terms. Both effects will undoubtedly attract foreign investors, but the magnitude of effects has not to our knowledge been the subject of OECD or other studies.

[2] Cevik (2019) You Are Suffocating Me! Firm-Level Evidence on Crowding Out, IMF Working Paper No. 19/80

[3] Menon, J. & Ng, T. H. (2017). Do State-Owned Enterprises Crowd Out Private Investment?: Firm Level Evidence from Malaysia. Journal of Southeast Asian Economies (JSEAE) 34(3), 507-522. ISEAS–Yusof Ishak Institute. Retrieved September 18, 2019, from Project MUSE database.

[4] Xu, Xiaoming & Yan, Yanyang. (2014). Does government investment crowd out private investment in China?. Journal of Economic Policy Reform. 17. 10.1080/17487870.2013.866897.

[5] Reassessing the Role of State-Owned Enterprises in Central, Eastern, and Southeastern Europe, IMF Working Paper No. 19/11.

Examples of SOE reforms associated with adherence to the SOE Guidelines

These reforms were part of policy drives toward improving the national business environment and mobilise investment. In the case of Argentina, for example, SOEs were put on a commercial footing as part of the efforts to persuade investors that the years of "economic populism" were over. In the case of Bulgaria SOE reform had long been a request by the investors' community since inefficient (and patronage ridden) SOEs were concentrated in the energy and transport sectors, and exercised a downward pull on the business sector productivity overall.

- **Colombia:** removed government ministers from boards of directors; established an ownership coordination unit and developed a state ownership policy;
- **Latvia:** established an ownership coordination function; commenced annual reporting about the SOE portfolio; established professional boards of directors in largest SOEs;
- **Lithuania:** consolidated dispersed SOE portfolios in some sectors; strengthened its existent ownership coordination unit and transparency requirements to SOEs;
- **Bulgaria:** developed a new state ownership law with technical assistance from the OECD, which will in turn lead to the implementation of most of the SOE Guidelines recommendations.

2.2.3. *How can Compact with Africa countries engage with the OECD and Partner IOs on SOE reform?*

CwA countries can engage on this standard directly through the OECD, existing regional cooperation channels and networks, as well as through cooperation with international financial institutions. The level of engagement for a CwA country will depend on its stage in the reform process, resourcing, and requisite capacity. A typical process would proceed as follows:

Phase 1: Awareness raising among decision makers. During the initial phase the OECD and partner institutions can work with CwA countries to promote structured policy dialogue and peer learning among the African and other relevant countries, including through the regular meetings of the Africa Network for Corporate Governance of SOEs. The Network is organised by the African Peer Review Mechanism with the OECD as a technical partner.

Phase 2: Capacity building and technical assistance to assist reform. During this phase the OECD and partner institutions can work with CwA countries, upon demand, to provide capacity building and technical assistance on thematic areas covered that relate to the OECD Guidelines on Corporate Governance of SOEs (SOE Guidelines) drawing upon the expertise of practitioners in member and Partner countries. Typically, a country would approach either the OECD or partner institution with a specific request, for example input to develop relevant laws or institutional frameworks. The request could be funded directly by the country or as part of a funding arrangement between the OECD and a donor institution.

Phase 3: Undertaking a SOE review to assess and prioritise reforms. A CwA country undergoing an active reform process may wish to undertake an OECD *Review of Corporate Governance of SOEs*. These reviews evaluate the ownership, corporate governance and regulatory arrangements for SOEs in individual countries. The OECD SOE Guidelines the only internationally recognised SOE-specific corporate governance standard (and legal instrument) of its kind. They provide concrete recommendations to countries on how to manage their responsibilities as company owners, thus helping to make SOEs more competitive, efficient and transparent.

SOE reviews are conducted by the OECD Working Party on State Ownership and Privatisation Practices, the international body responsible for developing and overseeing implementation of the SOE Guidelines. They are undertaken at the request of interested countries and subject to available funding/resourcing. While the Review is a perquisite for adherence to the Instrument, reviews can be undertaken without adherence as an end-goal. Moreover, depending on the priorities of the CwA country, the review process can be adapted or focused on a specific sector or even an individual company. Additional information on the review process can be provided upon request.

Phase 4: Implementation and monitoring of the reforms. During the implementation phase the OECD and partner institutions can work with CwA countries to provide *additional* capacity building and ensure regular reporting and monitoring of progress with the implementation of reforms. This can be structured through policy dialogue and peer learning among the African states and relevant OECD policy communities. Bilateral projects can also be developed based on demand on areas identified as priorities from the Review. This can be supported through existing technical assistance programmes, or through new ones, which can be funded directly by the partner or via a donor-funded arrangement.

Phase 5: Formal adherence to the SOE Guidelines. A country's adherence to the SOE Guidelines necessitates a formal SOE review. Adherence implies a willingness and ability to implement – over time and through a credible reform commitment – the standards of the SOE Guidelines and the recommendations developed as part of the review process.

The assessment examines national implementation of each of the SOE Guidelines' policy tenets, notably concerning the institutional arrangements for ownership and regulation, the competitive landscape between SOEs and private enterprises, the equitable treatment of shareholders, policies for stakeholder relations and responsible business conduct, the effectiveness and independence of SOE boards of directors and transparency and disclosure by SOEs and the state as owner.

2.2.4. *Where do CwA countries currently stand?*

A number of countries, including some on the African continent, have taken steps to undertake corporate governance reform of SOEs, and an increasing number recognise the OECD's standard as the benchmark. No African state has yet adhered to the instrument.

Most CwA countries have participated in Phase I activities through existing policy dialogue networks. This includes Egypt, Morocco and Tunisia through the MENA-OECD Working Group on Corporate Governance; and the remainder (with varying degrees of engagement) through the Africa Network for Corporate Governance of SOEs (organised by the African Peer Review Mechanism with OECD as technical partner). Phase II work has been included in the Bilateral Country Programme of the OECD with Morocco.

2.3. Public procurement and infrastructure

The African continent has an infrastructure funding gap of $87 billion to $112 billion annually, according to latest estimates from the African Development Bank. Yet, attracting the necessary financing does not only rely on the attractiveness of the infrastructure projects pipeline but also on the robustness of the governance and delivery frameworks, including public procurement. In the African continent majority of infrastructure financing is provided by public investment, thus channelled through public procurement. In addition, assessments of procurement systems in some CwA countries have suggested that market analyses allowing to implement tailored procurement strategies could be systematised and strengthened. Considering the scale and complexity of infrastructure projects, such analysis is central to define appropriate procurement strategies to effectively deliver those projects.

2.3.1. *What are the OECD Recommendation on Public Procurement and international frameworks for infrastructure governance?*

The OECD Recommendation on Public Procurement is the overarching OECD guiding framework on public procurement that promotes the strategic and holistic use of public procurement. It is a reference for modernising procurement systems and can be applied across all levels of government and state owned enterprises. It further includes dedicated principles on transparency, integrity and accountability which are supported and reinforced by the G20 Principles on Promoting Integrity in Public Procurement.

International frameworks on infrastructure, such as the OECD Framework for the Governance of Infrastructure, the World Bank Framework on Disclosure in Public-Private Partnership project as well as the forthcoming OECD Framework for Effective Delivery of Major Infrastructure offer additional good practice instruments, specifically focusing on the development of infrastructure. Adhering to these frameworks would support compact countries' efforts to develop infrastructure plans and improve the governance and delivery of infrastructure projects.

2.3.1. *What is the potential impact of Compact countries' alignment with international frameworks on infrastructure?*

Public procurement represents between 15-30% of GDP in African countries. Strengthening the public procurement system and using it as a lever to achieve policy objectives such as sustainability or stimulating foreign investment could have a tangible impact on both citizen's trust but also on the economy in terms of investments, trade and productivity. As an example, streamlining procurement processes could reduce the timeframe for awarding public contracts, which could be as high 186 days in Senegal[6], thus discouraging some companies to compete. This is particularly the case in the area of infrastructure where public procurement can have a significant impact on the effectiveness, transparency and accountability in the delivery of infrastructure projects. Compact with Africa countries could benefit from international partners' experience and standards in these two high-risk areas.

[6] Mission conjointe d'audit des délais applicables aux procédures de passation et d'exécution des marchés publics – Final report, p 54

2.3.2. *How can Compact with Africa countries engage with international partners on promoting integrity in the public procurement of infrastructure?*

International partners offer a range of possibilities for engaging on integrity in public procurement, notably the procurement of infrastructure. Assessment methodologies, good practices and implementation support are the corner stones of an engagement process in several stages, depending on a country's capacity and needs.

- *Phase 1: Initial diagnostics* – interested countries are invited to conduct a first or a follow-up assessment of the strengths and weaknesses of their public procurement systems, potentially with a view towards analysing the specificities of the procurement framework for public works, PPPs or concessions and the market for infrastructure projects. The Methodology for Assessing Procurement Systems (MAPS) offers a universal indicator framework for all countries that allows for a precise evaluation. MAPS is the only tool that assesses public procurement systems in their entirety and will include a certification mechanism (forthcoming). It is universal in nature and can be used by all countries - regardless of income level or development status. MAPS covers the public procurement system in four pillars, including one on Accountability, Integrity and Transparency. Additional supplementary modules allow for the assessment of specific aspects, including an analysis of sector markets or concessions and public private partnerships.
- *Phase 2: Technical assistance on specific infrastructure projects* – CwA countries could benefit from international partners' experience in supporting concrete infrastructure projects, adapting recommendations to the existing environment and constraints and providing tailored policy advice and practical tools to support the effective delivery of infrastructure in dimensions such as governance, procurement strategies, integrity and engagement with civil society and affected population. Insights gained from this support could further provide the grounds for broader procurement reforms in countries.
- *Phase 3: In-depth review* – Interested CwA countries could engage with partner organisations in a more in-depth review based on the G20 Principles for Promoting Integrity in Public Procurement, with a focus on aspects related to infrastructure. Such a review will offer an opportunity for targeted and structured in-depth evaluations that includes advice and experiences from peer countries. Such an evaluation is the basis for developing an action plan with targeted activities for reform, prioritised according to the specific contextual needs.
- *Phase 4: Implementation support and monitoring of reform progress* – action plans resulting from the in-depth review could be implemented with the support of international partners. Activities would be country-led and bespoke to their specific interests but could include trainings, workshops and outreach events. To ensure reforms are effective and stay on track, the reform action plan could be followed by regular monitoring. These additional evaluations in line with the G20 Principles could provide clear visibility of progress achieved and reveal opportunities to fine-tune reform activities.
- *Phase 5: Adherence to the OECD Recommendation on Public Procurement* - adherence implies a willingness and ability to implement – over time and through a credible reform commitment – the OECD standards on public procurement. The process of meeting OECD's accession criteria includes thorough scrutiny of procurement practices and detailed recommendations which inevitably leads to concrete reforms and structured improvements in public procurement.

2.3.3. *Where do CwA countries currently stand?*

Several countries in Africa, including Tunisia, have begun reforming their procurement systems based on the 12 principles forming the OECD Recommendation on Public Procurement. Integrity-focused support has been provided to some OECD countries and some African countries, including Morocco, have expressed a willingness to adhere to the OECD Recommendations on Public Procurement.

Countries of the West African Economic and Monetary Union are currently using MAPS assessments as the starting point for reform activities that aim at further integrating their regional procurement markets. Most African countries have undertaken a MAPS assessment at least once with the support of international partners since 2004 and technical assistance support is provided by the international community in several countries to implementation the measures identified.

2.4. Foreign bribery

Despite existing reforms that have yielded positive results for African economies, African countries still face significant obstacles to economic development. Corruption and lack of transparency and accountability in business transactions remain high on the list of investment risks in Africa. Specific measures to promote private sector transparency, accountability and ethics, prevent conflicts between private profit and public interest, deter active bribery of public officials, and ensure the effective prosecution of bribe takers and givers are ways to help overcome these obstacles that have hampered Africa’s economic development and progress towards achieving the Sustainable Development Goals, in particular SDG 16.5 to substantially reduce corruption and bribery in all their forms.

2.4.1. *What is the OECD Anti-Bribery Convention?*

The OECD Convention against the Bribery of Foreign Public Officials in International Business Transactions (the Convention) was designed exactly for ensuring a level playing field in international business transactions. The Convention is a legally binding treaty, which entered into force in 1999 and has been ratified by 44 OECD and non-OECD countries so far. Parties to the Convention have committed to criminalise the bribery of foreign public officials under their laws and to investigate, prosecute and sanction this offence. The OECD Anti-Bribery Convention is the first and only international anti-corruption instrument focused on the “supply side” of the bribery transaction.

2.4.2. *What is the potential impact of the implementation of the OECD Anti-Bribery Convention in Africa?*

While the African region has become a commercially significant market, bribery and corruption risks are deterring higher rates of investment and the ability of companies to conduct business fairly on a level playing field. This is valid for both foreign companies investing in Africa as well as African companies operating on the continent. Improving business integrity and reducing the bribery of public officials in business transactions can contribute to diminishing these investment risks and help overcome economic and social development problems.

Companies from CwA countries would economically benefit from preventing and managing corruption risks and make integrity and compliance part of their business equation as they increasingly operate and partner with foreign companies in Africa. This is key in a context of large infrastructure projects across the Continent and the parallel growing threat of countries' enforcement of anti-corruption legislations, extraterritorial jurisdiction of foreign laws and debarment by Multilateral Development Banks.

For countries that are Party to the OECD Anti-Bribery Convention that are investing in Africa, implementation of the OECD Anti-Bribery Convention brings specific benefits. These include strengthening the capacity of law enforcement authorities to prevent, detect, and investigate foreign bribery, via the country monitoring of the OECD Working Group on Bribery. Accession to the Anti-Bribery Convention and access to its community of law enforcement and policy experts has facilitated inter-agency and cross-border cooperation in corruption cases, including those involving African jurisdictions and in sectors relevant to the Compact with Africa. Benefits can also accrue to the companies headquartered in, or subject to the jurisdiction of countries Party to the Anti-Bribery Convention, which may be perceived as 'clean' business partners.

2.4.3. *How can Compact with Africa countries engage with the OECD and Partners institutions on the Anti-Bribery Convention?*

CwA countries can work to combat cross-border bribery via the Compact with Africa, leveraging the experience and expertise of the OECD Working Group on Bribery and its regional initiatives, including the Joint Initiative to Support Business Integrity and Anti-bribery Efforts in Africa set-up jointly in 2008 between the African Development Bank (AfDB) and the Organisation for Economic Co-operation and Development (OECD) (hereafter the OECD/AfDB Joint Initiative). The OECD/AfDB Joint Initiative mandate aims at assisting African countries in their fight against bribery of public officials in business transactions and to improve corporate integrity and accountability, while sustaining growth through an environment conducive to attracting foreign investment. The overall objectives of the Joint Initiative are to increase the capacity for effective anti-bribery enforcement, reinforce global anti-bribery efforts, enhance public sector integrity and contribute to transparent and accountable business in Africa. The level of engagement for a CwA country will depend on its stage in the reform process, resourcing, and requisite capacity. A typical process of engagement on strengthening the fight against foreign bribery could include the following elements for Compact with Africa countries:

- *Phase 1: Awareness raising among decision makers* – during this phase partner IOs can work with CwA countries to promote structured policy dialogue and peer learning among the African and other relevant countries, including through meetings of the OECD/AfDB Joint Initiative to which six CwA countries are already participating (i.e. Benin, Burkina Faso, Ethiopia, Ghana, Rwanda and Senegal). The Joint Initiative existing mandate, as defined in its Course of Action adopted in 2011 in Malawi, will provide an adequate framework for this structured policy dialogue. This process could include, for example, engaging the embassies of OECD and G20 countries investing in CwA countries to ensure that these awareness-raising efforts involve and benefit foreign companies and individuals operating in CwA countries.
- *Phase 2: Capacity building and technical assistance to assist reform* – during this phase the OECD and partner institutions can work with CwA countries to provide capacity building and technical assistance on the areas identified in the Course of Action[7] of the OECD/AfDB Joint Initiative, drawing upon the expertise of practitioners in OECD Working Group on Bribery countries. These exercises can include high-level visits, parliamentary seminars, or meetings

[7] See OECD/AfDB Anti-Bribery and Business Course of Action, www.oecd.org/daf/anti-bribery/46970303.pdf.

with business and civil society with domestic and international anti-corruption experts. This could include discussions, for example, on the development and implementation of a foreign bribery offence, as required under the UN Convention against Corruption and the OECD Anti-Bribery Convention, with representatives from G20 countries that are Party to the Convention.

- *Phase 3: Active reform process: developing relevant laws and regulations, and reforming existing, ownership institutions* – further technical assistance and capacity building can be provided to support CwA countries during this phase.

  In parallel the OECD could assist CwA companies in the implementation of the AfDB/OECD Anti-Bribery Policy and Compliance Guidance for African Companies – a practical, concise guide to help African companies set up measures to stop the supply side of bribes to public officials in business transactions and support both the public and private sectors in their efforts to prevent bribery and improve the quality of corporate compliance and bribery prevention measures. Sound corporate compliance measures can help companies from CwA countries win new business opportunities and become more reliable partners in the global supply chain. In addition, G20 countries engaged in this process can also strengthen law enforcement linkages with their CwA country counterparts, in order to improve cooperation if cases of cross-border corruption emerge. Funding will be explored through voluntary contributions.

- *Phase 4: Implementation and monitoring of the reforms* – during this phase the OECD and partner institutions can work with CwA countries to ensure regular reporting and monitoring of progress with the implementation of reforms, in line with the OECD/AfDB Joint Intiative's Course of Action.

2.4.4. *Where do CwA countries currently stand?*

A number of CwA countries have taken steps to undertake anti-corruption reforms, and an increasing number recognise the OECD's standard as an international benchmark. South Africa is the only African state to have adhered to this instrument. Benin, Burkina Faso, Ethiopia, Ghana, Rwanda and Senegal are already members of the Joint OECD/AfDB Joint Initiative. For countries interested in aligning their framework with the OECD Anti-Bribery Convention, benefits also include increased capacity to combat corruption and attracting needed investment.

2.5. Countering corruption in customs

Beyond addressing the supply-side of corruption, ensuring public sector integrity is an important component of fostering attractive business environments. Eliminating corruption in the public sector ensures a level playing field and additional business costs. This principle is particularly pronounced in the customs sector, which is an important sector for internationally operating firms. Considering the importance of international trade for global economic welfare, the costs generated by non-tariff barriers such as the lack of integrity can be quite significant for the public and private sectors, citizens and society at large, and can have a deterrent effect on attracting FDI.

2.5.1. *What are the G20 High Level Principles on Countering Corruption in Customs?*

In response to the integrity challenges in customs, and building on the WCO Revised Arusha Declaration (2003), the G20 Anti-Corruption Working Group developed the "G20 High Level

Principles (HLP) on Countering Corruption in Customs (2017)", which associates customs not only with tax collection and trade facilitation text but also with fighting illicit trade.

Specifically, the G20 HLP on Countering Corruption in Customs cover eight sections: (1) Leading by example; (2) Implementing appropriate integrity standards; (3) Transparency; (4) Automation; (5) Reform and Modernization; (6) Human resources management; (7) Relationship with the Private Sector; and (8) Audit and Reporting. Each of these sections mentions relevant customs policies such as risk strategies, integrity standards, transparent procedures, automation, adequate human resources policies, and productive relationships with the private sector.

The High Level Principles on Countering Corruption in Customs are a non-binding set of principles and objectives that G20 countries collectively strive to follow. While there is no adherence process, the High Level Principles can be used as a framework for designing comprehensive strategies to promote integrity in customs.

2.5.2. *What is the potential impact of Compact countries' alignment of reforms with the High Level Principles on Countering Corruption in Customs?*

Estimates show that loss of revenue caused by customs-related corruption costs World Customs Organization (WCO) members at least USD 2 billion in customs revenue each year. Customs-related corruption is more costly for large economies in absolute terms, with India losing about USD 334 million, Russia losing about USD 223 million, and 8 China losing about USD 170 million annually. Estimated customs revenue losses appear to be even more acute in Africa, where they amount to USD 43 million in Algeria, USD 37 million in Morocco and Egypt, USD 39 million in Ghana, USD 26 million in Côte d'Ivoire, USD 33 million in Namibia, USD 23 million in South Africa and a devastating USD 38 million for Lesotho alone[8]. In addition to revenue losses, corruption in customs also hampers trade and discourages foreign direct investments, with negative implications for socio-economic development and employment.

Furthermore, addressing integrity risks in cross-border trade also helps counter global threats posed by the "dark side" of globalisation, such as illicit trade, smuggling and counterfeiting. Strengthening integrity systems in relation with cross-border trade empowers governments to better prevent and detect illicit trade flows as well as other forms of trafficking and human rights violations.

2.5.3. *How can this Initiative support compact countries in improving integrity in customs?*

CwA countries can engage on the HLP through this CwA Initiative, in cooperation with existing regional cooperation channels and networks. The level of engagement for a CwA country will depend on its stage in the reform process, resourcing, and requisite capacity. A typical process would proceed as follows:

- *Phase 1: Awareness raising among decision makers* – during this phase partner institutions can work with CwA countries to promote structured policy dialogue and peer learning among the African and other relevant countries.

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[8] Michael, B. (2012), Do Customs Trade Facilitation Programs Help Reduce Customs-Related Corruption? International Journal of Public Administration, 35:2, pp 81-97

- *Phase 2: Capacity building and technical assistance to assist reform* – during this phase the partner institutions can work with CwA countries to provide capacity building and technical assistance on thematic areas covered by the HLP drawing upon the expertise of practitioners in member and Partner countries.
- *Phase 3: Active reform process: developing relevant laws and regulations, and reforming existing, ownership institutions* – further technical assistance and capacity building can be provided to support CwA countries during this phase. In parallel, the country may wish to conduct a more in-depth review, to assess national practices against the HLP and propose priorities for further changes.

  An Integrity Review is essentially an assessment of the policies and practices of a country in the field of integrity and anti-corruption. Its primary objective is to develop practical proposals that aim at strengthening institutional arrangements, capacities and policy framework. The analytical framework is provided by the 2017 OECD Recommendation on Public Integrity, which offers policy makers the blueprint for a public integrity strategy. It shifts the focus from ad hoc integrity measures to a comprehensive, risk-based approach with an emphasis on cultivating a culture of integrity across the government and across the whole of society.
- *Phase 4: Implementation and monitoring of the reforms* – during this phase partner institutions can work with CwA countries to provide *ex-post* capacity building and ensure regular reporting and monitoring of progress with the implementation of reforms. This can be structured through policy dialogue and peer learning among the African states and relevant OECD/international policy communities.

  The support offered by international organisations is underpinned by the following considerations:

  Given the multitude of public institutions involved, a whole-of-government perspective can yield benefits to fully capture the integrity risks throughout the cross-border trade process and to allow for coherent measures and policies across agencies. For instance, the OECD is partnering with the WCO on integrity in customs, and can offer a wide range of good practices in customs administrations and in public institutions more broadly.

  Risk assessments, and more broadly, risk management, can help customs administrations anticipate and mitigate risks and well as bring corrupt actors out of the shadows. For instance, the OECD 2017 Recommendation of the Council on Public Integrity, as well as international standards for risk management and internal control (eg. COSO, INTOSAI), highlight the benefits of risk assessments as a management tool.

2.5.4. *Where do CwA countries currently stand?*

A number of countries, including some on the African continent, have taken steps to strengthen integrity in customs, and an increasing number recognise the G20 HLP on Countering Corruption in Customs as the benchmark. However, corruption in cross-border trade remains rife in African countries[9], and efforts usually remain limited to customs organisations, neglecting the role of

[9] OECD (2018), *Illicit Financial Flows: The Economy of Illicit Trade in West Africa*, OECD Publishing, Paris, https://doi.org/10.1787/9789264268418-en.

other border agencies (eg. migration, health) and private actors (eg. freight forwarder, agents, brokers).

Sandra Sequeira (2016) Corruption, trade costs, and gains from tariff liberalisation: Evidence from Southern Africa, American Economic Review 2016, 106(10): 3029–3063, http://dx.doi.org/10.1257/aer.20150313

Michael, B. (2012), Do Customs Trade Facilitation Programs Help Reduce Customs-Related Corruption? International Journal of Public Administration, 35:2, pp 81-97

3. How can G20 countries engage on key OECD and G20 standards to foster responsible investment in CwA countries?

3.1. Foreign bribery

In 2014, G20 countries endorsed High-Level Principles on Corruption and Growth, reaffirming the importance of acting collectively to combat corruption as a vital part of the broader G20 growth agenda. The third principle states "Corruption discourages foreign investment by creating an unpredictable and high-risk (financial and reputational) business environment". Competition remains distorted as four G20 countries have not yet adhered to the OECD Anti-Bribery Convention. This is particularly visible in Africa where companies from these remaining G20 countries have been increasingly active in sectors known to be at risk of corruption, including in the infrastructure sector.[10] For instance, from 2006 to 2018, China and India's trade in Africa have increased by 226% and 292% respectively.[11]

3.1.1. *How would G20 countries' adherence to the OECD Anti-Bribery Convention benefit investment environments in Compact with Africa countries?*

All G20 countries have called for the effective implementation of the UN Convention against Corruption, including the criminalization of foreign bribery, and to working toward possible adherence to the OECD Anti-Bribery Convention.[12] Adherence to the Convention has had a clear and robust impact on foreign direct investment. As a result of the introduction of bribery laws, companies under the jurisdiction of Parties to the Convention have reduced their investments towards countries subject to high levels of corruption. OECD research found that a 1 point rise in the Transparency International Corruption Perceptions Index reduces investment flows by companies from Parties to the OECD Convention by a range of 4-9%.[13] Following this research conducted on the effects of adherence to the Convention on FDI, WGB countries voiced strong support to conduct further work on the economic impact of foreign bribery.

Adherence of all G20 countries to the Convention would be economically beneficial as it would deter companies from these countries from engaging in foreign bribery and conversely invest the costs otherwise allocated to paying bribes in their operations. Indeed, companies that engage in bribery have to somehow re-coup the cost of paying bribes, which can only be done by misallocating precious resources, unnecessary additional costs, and the, often delayed, delivery of poor goods and substandard products.

The financial and economic fragmentation between countries Party to the Convention and G20 countries that have not yet adhered leads to a two-tier system, particularly in relation to foreign

[10] The OECD Foreign bribery Report found that two-thirds of the foreign bribery cases occurred in four sectors: extractive (19%); construction (15%); transportation and storage (15%); and information and communication (10%)OECD (December 2014) "OECD Foreign Bribery Report: An Analysis of the Crime of Bribery of Foreign Public Officials"

[11] The Economist (March 2019), "Africa is attracting ever more interest from powers elsewhere".

[12] See 2018 Buenos Aires Communiqué and 2019-2021 G20 Anti-Corruption Action Plan, available online here:http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=DAF/WGB/RD(2018)10&docLanguage=En

[13] Adrian Blundell-Wignall and Caroline Roulet (October 2016) "Foreign direct investment, corruption and the OECD Anti-bribery Convention".

investment in Africa. Due to the types and levels of sanctions across jurisdictions and the varying levels of detection and punishment probabilities, foreign bribery may still be a viable option and a good “investment”.[14]

Sanctions, as legal incentives, also have important effects on economic activity and arguably on foreign investments. Since the entry into force of the Convention in 1999, the legal persons sanctioned have collectively paid approximately USD 14.9 billion (in constant 2018 US dollars) in monetary sanctions, confiscation (and possible associated costs) in foreign bribery cases since 1999. Non-trial resolutions were responsible for approximately 95% of this amount, with DPA-like resolutions.[15]

3.2. Officially supported export credits

The OECD provides a forum for exchanging information on Members’ export credits systems and business activities and for discussing and coordinating national export credits policies relating to good governance issues, such as anti-bribery measures, environmental and social due diligence, and sustainable lending. These discussions take place under the auspices of the Working Party on Export Credits and Credit Guarantees (the “Export Credits Group”, or ECG). Internationally agreed export credit measures can ensure a level playing field for the supply of investment, and can also be used as an incentive to improve macro-economic reforms by encouraging sustainable lending practices. As such, international standards on export credits provide a way for G20 countries to show their commitment to a level playing field and sustainable financing when investing in Compact with Africa countries.

In the context of the tremendous growth in lending to low-income countries (especially from non-traditional lenders) and worrying signs of debt distress in many of these countries, initiatives to strengthen the international financial architecture in relation to debt transparency and sustainability are now at the forefront of discussions taking place in multiple forums, including the G20, UNCTAD, the Paris Club, the International Institute of Finance (IIF), and of course the OECD.

The G20 countries adopted Operational Guidelines for Sustainable Financing in 2017 to ensure that creditor and debtor countries' lending and borrowing practices will facilitate sustainable public debt levels. In 2018, G20 Finance Ministers and Central Bank Governors highlighted that enhancing information sharing could help avoid new episodes of debt distress in low income countries. They also called for greater transparency both on the side of debtors and creditors. The OECD Recommendation on Sustainable Lending Practices and Officially Supported Export Credits provides a mechanism for transparency and exchange of information and ensures that countries’ debt levels are taken into account when providing export financing.

3.2.1. *What are the OECD Recommendation on Sustainable Lending Practices and Officially Supported Export Credits and the Arrangement on Officially Supported Export Credits?*

The **2018 Recommendation on Sustainable Lending Practices and Officially Supported Exports Credits** (Sustainable Lending Recommendation) is the latest in a long line of export credit standards on sustainable lending practices that were designed to ensure that the export credits

[14] OECD Business and Finance Outlook (2016), “Is foreign bribery an attractive investment in some countries?

[15] OECD (2019), “Resolving Foreign Bribery Cases with Non-Trial Resolutions: Settlements and Non-Trial Agreements by Parties to the Anti-Bribery Convention”, p. 107.

provided by Adherents do not contribute to the run-up of unsustainable external debt levels by lower income countries.

Consistent with the key objectives of the above-listed initiatives, the Sustainable Lending Recommendation is built upon two basic pillars; respecting the debt limits for low-income countries set by the IMF and the World Bank and promoting transparency with regard to the export credit loans and guarantees provided by Adherents to the public sector in these countries. The Sustainable Lending Recommendation stands apart, however, due to the fact that it comprises concrete measures to be applied on a loan-by-loan basis:

1. Adherents have agreed to respect all prevailing IMF and World Bank limits on public sector borrowing; this means that non-concessional export credit loans and guarantees cannot be provided to the public sector in any country with a “zero” limit on non-concessional borrowing.

2. For countries with a “non zero” limit on non-concessional borrowing, before providing an export credit loan or guarantee to the public sector, Members commit to:

- Seek assurances from appropriate government authorities in the debtor country that the transaction is in accordance with the limits set by the IMF and World Bank, and
- Inform the IMF and World Bank about their intention to provide an export credit; this is meant to ensure that the IMF and World Bank are aware of all potential public external debt obligations related to export credit-supported projects in lower income countries before they are contracted.

Adherents also agreed to provide detailed information about all official export credit loans and guarantees provided to lower income countries (private and public sector) to the IMF and World Bank on an annual basis.

The OECD is also a forum for maintaining, developing and monitoring the financial disciplines for export credits, which are contained within the **Arrangement on Officially Supported Export Credits** (the “Arrangement”). These disciplines stipulate the most generous financial terms and conditions that Members may offer when providing officially supported export credits. Discussions relating to the Arrangement take place under the auspices of the Participants to the Arrangement on Officially Supported Export Credits (the “Participants”). The Participants are composed of Australia, Canada, the European Union, Japan, Korea, New Zealand, Norway, Switzerland, Turkey, and the United States. The Arrangement establishes a series of general and sectoral financial disciplines that must be observed when Participants provide official support for export credits.

The main purpose of the Arrangement is to provide a framework for the orderly use of officially supported export credits by fostering a level playing field in order to encourage competition among exporters based on quality and prices of goods and services exported rather than on the most favourable officially supported export credits.

3.2.2. *How would G20 countries’ engagement with international export credits standards benefit investment environments in Compact with Africa countries?*

The benefits of G20 countries’ adherence or compliance with the Recommendation and Arrangement on export credits include:

- ✓ Helping ensure that export credits do not contribute to the run-up of unsustainable external debt by CwA countries.

- ✓ Promoting and implementing more transparent lending practices and enhancing cooperation amongst borrowers, lenders and international financial institutions.

- ✓ Embracing an operational blueprint that could be applied to all types of official financing, beyond the currently limited scope of the Recommendation to export credits, in line with the **G20 Operational Guidelines for Sustainable Financing**.

- ✓ Providing Compact with Africa countries with foreign investment based on the quality and price of the goods/services and not the competitiveness of government backed financing