U4 Helpdesk Answer2018:16

Best practices in business integrity support provided by investment promotion agencies

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Investment promotion agencies can push for integrity and anti-corruption efforts through training, advisory and facilitation services, and access to information about the business environment and legal framework. They can establish grievance mechanisms, cooperate with law enforcement and set up participatory accountability mechanisms in the agencies themselves. These agencies can play an important role in counteracting the negative impact of corruption on foreign investment.

Query

Please provide an overview of best practices in business integrity support provided by investment promotion agencies.

Contents

Main points

- Investment creates special corruption risks for countries which may endanger the quantity and quality of investment.
- Investment promotion agencies can take various measures to increase business integrity and mitigate corruption risks.
- Investment facilitation services are among the most valued services IPAs can offer to investors, and can reduce potential opportunities for rent-seeking.
- There are a number of international organisations that offer integrity

Overview of investment promotion agencies and corruption

With the rise of globalisation and the reduction of trade barriers worldwide, the last 30 years have seen a growing tendency to promote foreign investment as part of a country's development strategy. Such investment, whether through foreign participation in domestic companies or through the establishment of foreign and multinational enterprises in a host country or territory, is now a cornerstone of most nations' strategies to increase economic development, create jobs and increase the scientific and technical know-how.

Due to the increased emphasis placed on securing and maintaining investment "at home", countries compete to promote the benefits of investing in their territory as opposed to another. Investment promotion, particularly through specialised investment promotion agencies (IPAs), has become central to many countries' attempts to foster economic development. Investment promotion consists of "activities that disseminate information about, or attempt to create an image of the investment site and provide investment services for the prospective investors" (Wells and Wint 1990 in Rajan 2004).

Investing in unfamiliar markets can bring with it various integrity risks, which can endanger an investment and undermine its potential benefits for both foreign firms and host countries. This Helpdesk Answer seeks to explore the role IPAs can play in mitigating these risks by providing integrity support to foreign businesses.

Background on IPAs

Investment promotion agencies are organisations – typically government bodies – specifically mandated to attract investment to a country or territory, acting as “the nexus for developing a country’s image as an investment destination, improving the investment climate and actively recruiting foreign investors” (OSCE 2006).

Estimates as to the current number of IPAs vary: the World Association of Investment Promotion Agencies (WAIPA) lists 170 members from 130 countries (WAIPA 2018). A 2009 World Bank report notes that there are 383 national and subnational IPAs (Investment Climate Advisory Services 2010). An older survey of IPAs conducted by the United Nations Conference on Trade and Development (UNCTAD) found 160 national IPAs, and more than 250 subnational IPAs (UNCTAD 2001).

IPAs can be fully public bodies, or they may involve participation of private actors such as business groups or chambers of commerce. In terms of operational autonomy, there appears to have been a shift over the past 15 years. A 2001 UNCTAD survey found that only 20% of IPAs in the world were fully autonomous bodies, while the rest depended directly on a ministry of finance or commerce (UNCTAD 2001). A more recent OECD report found that, in OECD countries, 60% of IPAs are fully autonomous, 31% are dependent on a ministry, and 7% are either private-public partnerships or fully private (OECD 2018a).

Broadly speaking, IPAs have a number of core functions, including promoting a country or territory directly to potential investors, and with promoting and/or creating the market conditions necessary to make a country or territory enticing to invest in.

When it comes to directly promoting a country to potential investors, IPAs generally work with ministries, consulates and business associations to identify investors and business sectors that might be willing to invest and then market the country to these groups as a desirable investment location. IPAs may also spearhead actions to bid for direct investment from multinational enterprises, such as when a company is seeking to open new operations in a region and launches an open call for potential hosts (OSCE 2006).

IPAs may also be tasked with developing the domestic business environment to make investing in a country desirable. There is a range of services and measures that they employ to do so, including:

- Investment market development, whereby IPAs invest in domestic human capital or infrastructure to create favourable conditions for foreign companies looking to invest in the country. These actions may involve actively constructing infrastructure such as roads or industrial parks, but may also be more passive, providing “linkage” services that connect local suppliers or retailers with foreign companies looking to invest. Providing linkage promotion saves potential investors time and effort in identifying these actors by themselves.
- Investment facilitation, whereby IPAs provide services to facilitate entry into the domestic marketplace, such as fast-tracking licences and permits and streamlining legal processes for companies seeking to invest. It can also involve other services, such as site visits and the promotion of private facilitation firms providing legal, financial or human resources services (Rajan 2004). According to the Global Investment Competitiveness Survey, IPA facilitation services are rated “important” by

approximately half of all investors involved in efficiency-seeking foreign direct investment (FDI)[1] (World Bank 2018a). Despite this, currently only 20% of IPAs carry out facilitation actions (UNCTAD Investment Promotion and Facilitation Monitor 2017).

- "Aftercare" services, which entail following up with investors already operating in the country to ensure these do not migrate to a third country. Aftercare services may involve periodic reviews of contracts and agreements to ensure that the profitability of the investment is to the levels that were advertised, but could also take the form of facilitation or linkage services for companies seeking to expand their previous investments in the territory.
- IPAs may also be responsible for negotiating and offering special fiscal or tributary arrangements for companies interested in investing in the country (Rajan 2004). For example, an IPA may have the prerogative to offer a reduced tax rate or tax holiday to a company interested in investing in a particular territory to offset other costs and make an investment more profitable. IPAs may also implement special fiscal and tributary arrangements to influence investment towards a particular geographical area or industry, such as in a special economic zone. However, most IPAs are not directly involved in the creation of these arrangements and tend to play a passive role through policy recommendations to relevant authorities or advocacy in the name of investors (UNCTAD 2001).

The literature on IPAs tends to agree that IPAs can have a significant positive impact on economic development. Harding and Javorcik (2011) show that countries with IPAs tend to attract more foreign direct investment than countries under similar conditions without IPAs. Studies also show that countries with active agencies promoting investment grow faster than those who do not (Rodrik 2006, Hausmann, Hwang and Rodrik 2007 in Harding and Javorcik 2012). Harding and Javorcik (2012) note that developing countries with IPAs have higher unit value on exports than those without.

Corruption risks in attracting investment

Attracting foreign investment can bring with it significant corruption risks as foreign firms enter unfamiliar markets. Both host countries and investors need to take steps to not endanger the positive effects of investment on development, as well as the profits and effective operations of private enterprises that choose to invest in a country.

Rent-seeking

Investment involves the injection of large amounts of capital into a territory, and companies may incur significant costs when setting up operations in a new market. So as to not endanger the profitability of their operations, investors may cede to rent-seeking demands by public officials (UNCTAD 2004). Rent-seeking involves improper deductions, fees or commissions charged for access to public services or public resources by way of those individuals that control access to them, for the benefit of the official (Zúñiga 2017).

When rent-seeking is common occurrence by way of public officials, this may deter potential

[1] The survey asked investors to note whether they had invested abroad to lower production costs or establish a new base for exports, or whether they were more interested in efficiency and producing a higher quality product or service.

investors from entering a country, as real projected costs of doing business are unclear due to the arbitrary nature of rent-seeking (Rodriguez et al. 2005). Requests for bribes from public officials once a company is operating in a country may cause a company to withdraw their investments, either due to these unforeseen costs or fear of prosecution under the extra-jurisdictional bribery legislation, like the Foreign Corrupt Practices Act or the UK Bribery Act.

Rodriguez, Uhlenbruck and Eden (2005) also note that where corruption is pervasive, companies are more likely to avoid local linkages, depending heavily on imported labour and trusted companies; this negates any linkage effects that an IPA may try to promote and may favour foreign companies or companies with foreign ties, rather than local ones.

A high-profile 2012 case from the Afghanistan Investment Support Agency (AISA) illustrates the dangers of corruption for IPAs. In 2012, seven officials quit in protest at alleged rampant corruption in the AISA, including nepotism, cronyism and rent-seeking (Bowley and Sukhanyar 2013). One of the officials who resigned claimed that rent-seeking was one of the key reasons why two potential investments worth millions of dollars were withdrawn by the prospective investors earlier that year (Bowley and Sukhanyar 2013).

Nepotism and cronyism

Specifically related to the function of IPAs to provide facilitation or linkage services, public officials may favour recommending firms or companies controlled by family members, friends or party members, regardless of their merit or suitability to the investor. Domestic companies may also bribe officials to be put at the top of their list for recommendations, as allegedly occurred in the Afghan IPA scandal, where directors opted to favour family and tribal services for linkage promotion (Bowley and Sukhanyar 2013). In the long run, this may lead to increased costs for the investor, lower quality technology and know-how transfer or simply to lower quality outputs, thus negating any positive effects that facilitation or linkage services may have (OECD 2011).

Bribery and policy capture

Investors may also present their own corruption risks to a territory. First of all, where IPAs have the ability to negotiate fiscal and tributary benefits for companies, bribery by potential investors to negotiators may create arrangements which benefit the company while decreasing the value of the investment to the host territory (OECD 2011). Bribery or undue influence in the negotiation process may cause officials to turn a blind eye to irregularities of companies' operations, including illegal activities, or the violation of labour or environmental protection regulations (Drahokoupil 2008; World Bank 2018a).

If an investment is important enough to significantly alter the economic or social well-being of a territory, investors may use this knowledge to hold these territories captive and demand further benefits or market favourability to the detriment of the population (Drahokoupil 2008; Kostevc et al. 2011). Policy capture by a small group of investors may shut out other investors or local competitors in the future (World Bank 2018a).

While the literature specifically on investment promotion and corruption risks is scarce (Olivié and Pérez 2014), there is extensive literature on corruption risks and foreign direct investment, as well as on the effects of corruption on foreign direct investment. For more information about the effects of corruption on foreign direct investment, please see the U4 Helpdesk Literature review of the impact of corruption on firms, export decisions and foreign direct investment.

IPA best practices in promoting business integrity

Investment promotion agencies can take a number of measures to mitigate the impact of corruption on foreign investment. In fact, according to a 2011 study, the positive effects of IPAs on FDI are actually greater in countries with higher levels of corruption (Harding and Javorcik 2011), demonstrating the important role that IPAs can play in counteracting the negative effects of corruption on investment. This section will focus on best practices that can be implemented by IPAs to mitigate corruption risks and promote integrity.

Integrity training and advisory

Taking proactive steps to educate potential investors about official procedures and compliance as it relates to anti-corruption legislation can increase investors' knowledge of their rights, protections and obligations when it comes to corruption, as well as reduce the acceptability of offering or soliciting bribes in local business culture (UNCTAD 2004). As the UNCTAD notes "as part of their facilitation efforts, IPAs could [...] familiarise new international investors with the rules of law, procedures and the local business culture as a preventive measure against corruption and other illicit practices" (UNCTAD 2004).

This will require that IPA officials providing training and advisory services to investors have relevant information and expertise on integrity and compliance. Indeed, UNCTAD recommends that IPAs develop a thorough understanding of anti-corruption legislation so that they can actively work with foreign firms to develop internal corporate governance structures and ensure compliance with national anti-corruption and anti-money laundering legislation (UNCTAD 2004). It is particularly important that in the beginning stages of attracting investment, IPAs aim to establish a "no-negotiation" attitude regarding the circumvention of anti-corruption and money laundering rules (UNCTAD 2015).

As part of aftercare services offered by an IPA, agencies should meet with investors regularly and offer complimentary advice on dealing with corruption and complying with national and international integrity standards (UNCTAD 2015). As investment ventures mature, IPA officials should gauge investors' experiences with both corruption and compliance advisory services, with the aim of informing legislators about the reception of anti-corruption and integrity legislation, as well as to improve training and advisory services (UNCTAD 2004).

ProColombia: Anti-bribery workshops for investors

From 2014 to 2017, Colombia's national IPA, ProColombia, as well a number of subnational IPAs, worked with the Ministry of Finance and the OECD on several workshops for investors, chambers of commerce and business organisations to educate these actors on the OECD Anti-Bribery Convention, which Colombia had recently become party to, as well as Colombia's corruption and anti-corruption legislation (Secretaría de Transparencia 2017).

Invest Fiji: Anti-corruption workshops for staff

The Fijian IPA, Invest Fiji, has recently required all Invest Fiji staff undergo capacity training offered by the Fiji Independent Commission Against Corruption (FICAC) to guarantee full comprehension of anti-corruption law and how to refer investors to the FICAC.

Facilitation services to prevent corruption

IPAs can implement facilitation services where government officials within the IPA are responsible for attaining permits and licences. Removing an investor from the equation permits all requests from bribes or stalling of permits to be dealt with internally, without the temptation of investors to “grease the wheels” (Drabek and Payne 2002; Copeland 2007). In OECD countries, 71% of national IPAs offer direct support to investors in relation to permits, licences, visas and state-sponsored financing (2018a). A 2010 World Bank publication notes that 76 countries have one-stop shops, though only 15 of these have integrated facilitation functions for investor registration (Investment Climate Advisory Services 2010)

According to the Global Investment Competitiveness Survey, 52% of investors involved in efficiency-seeking investment valued facilitation services for legal and bureaucratic processes more highly than any other IPA service (World Bank 2018a).

Some IPAs implement the use of “client charters”, whereby individual agencies commit to investors to uphold stipulated procedure times, fees and requirements, and to not partake in illicit or unethical activity. This is seen as one way to promote the accountability of individual agencies towards investors (UNCTAD 2004). These charters can be formal legal clauses within investment agreements or may simply be informal documents to be acted on in good faith.

The use of client charters worldwide is not common among IPAs, though examples of their regular use can be found in the Zambian (Zambia Development Agency 2018), Ugandan (UNCTAD and Japan Bank for International Cooperation 2004) and Malaysian (Malaysia External Trade Development Corporation 2018) IPAs.

Access to public information for investors

Providing investors with detailed information about estimated costs, wait times and required paperwork for various bureaucratic processes (such as applying for permits, licences or certifications), reduces information asymmetry between officials and investors, helping investors to understand the actual costs and avoid undue delays and overcharging of official fees. The Foreign Investment Advisory Service (FIAS) recommends maintaining an updated, public database of all laws and regulations as one of its baseline recommendations (Moran et al. 2007).

The OSCE recommends that IPAs assume the role of guarantor of access to information for investors, both current and potential (OSCE 2006). Following the same logic, UNCTAD (2017) recommends that transparency and integrity clauses be integrated into national investment regulations. UNCTAD notes that transparency clauses are only present in about 13% of investment laws.

Many IPAs implement “one-stop shop” websites or e-platforms, where investors can access all the information necessary about national and subnational laws and regulations from a single place, and can digitally apply for permits, licences and certification.

The one-stop shop approach further limits the contact of investors with public officials, and also allows contact with investors to be controlled, moderated and adequately evaluated. UNCTAD (2017) notes that 20% of investment laws worldwide legally mandate the existence of active transparency mechanisms within IPAs. Yet in practice, a survey by UNCTAD concludes that “more than a third of information portals currently in existence contain only the minimum amount of information to qualify as business registration portals, and only about 10% of portals are (almost) complete” (UNCTAD 2017).

UNCTAD recommends that directories of third party services or linkages that may be offered to investors be regularly updated and evaluated. These directories should keep updated information of compliance of local third party service providers with local laws or certifications, so as to ensure that IPAs are offering legally-compliant linkage services based on objective criteria, rather than arbitrary or corrupt decisions (UNCTAD 2004; UNCTAD 2017).

MERCOSUR: Institutionalising access to information for investors

The 2017 MERCOSUR Protocol on Investment Cooperation and Facilitation provides examples of good practices for regulating investments in the trade-bloc. It provides the adequate framework for all countries party to the protocol to establish an investment climate that is non-discriminatory and which allows investors access to information and legal protections in the host country (MERCOSUR 2017). Furthermore, the protocol establishes clear corporate social responsibility and anti-corruption obligations to both states and investors, explicitly prohibiting arbitrary protections or amnesties to investors found guilty of corruption or money laundering.

Jordanian Investment Commission: Public information directories

The Jordanian Investment Commission (JIC) provides an example of positive reform in IPA transparency. Working closely with the Investment Climate team in the Trade and Competitiveness Global Practice of the World Bank, they developed a public information inventory that is publicly available on the JIC's e-portal. The JIC also established regulations mandating the periodic update of all information contained in the inventory. The JIC went from being among the lowest performers in the MENA region in the World Bank's "Privilege Resistant Economic Policies" (PREP) survey, to being one of the top performers in the same survey after the inventory reform (IPA054).

KenInvest: One-stop shop portal

The Kenyan IPA, KenInvest launched an online portal in 2015 with the goal of providing more transparency regarding regulations and bureaucratic procedures. The KenInvest portal broke down complicated procedures into streamlined, step-by-step guides from an investor's perspective: where to go, what requirements to fulfil, forms that need to be completed, associated costs, relevant legal justifications and details of officials who can be contacted in case of a problem.

KenInvest worked closely with government agencies to track investor procedures in real time, evaluating how long processes were being delayed and working on problem areas (UNCTAD Investment Promotion and Facilitation Monitor 2017). The IPA also called on the Kenya Business Registration Service and the eCitizen programme to evaluate the platform to identify problem areas. Beyond providing information on fees and waiting times, which grant investors knowledge about legal procedures that might help them avoid corruption, the portal also "allows users to report problems and complain online if they witness unlawful or irregular behaviour" (UNCTAD Investment Promotion and Facilitation Monitor 2017).

ProMéxico: Transparency section on the website

The Mexican IPA, ProMéxico, features a detailed transparency section on their website which features several resources on transparency and anti-corruption legislation. It features a directory of public information which investors may access and includes a special platform where investors can access public information, as well as publish information when it is legally mandated. The website also includes a video which simplifies

Mexican anti-corruption law and processes, giving a step-by-step overview of making a corruption complaint (ProMéxico 2018).

Detection of corruption and complaint mechanisms

When it comes to detecting corruption, it is important to understand the role of "gatekeeper" or "guide" that IPAs assume in their dealings with investors (OSCE 2006). Being the liaison between the investor and other public agencies, IPAs should establish protocols to act if an investor approaches them to report a bribery request or any other corrupt act they experienced. According to a 2018 report, 72% of IPAs in the OECD have protocols to report illegal activities and violation of national legislation, including corruption laws (OECD 2018a). IPAs should also maintain direct contact with relevant law enforcement or anti-corruption agencies to effectively relay corruption complaints and not leave a potential investment exposed to rent-seeking behaviour. IPAs operating in countries with high levels of corruption should clearly explain to investors the channels available to them to denounce corruption (UNCTAD 2004).

Some IPAs have implemented "investment ombudspersons" charged with receiving corruption complaints from investors and about investors to speedily investigate and address complaints. The ombudspersons act under the umbrella of the IPA and have the legal powers of other ombudspersons to launch investigations and address problems. Twenty-six per cent of IPAs in OECD countries have established a dedicated investment ombudsperson (OECD 2018a).

Invest Korea: Office of the Investment Ombudsman (OIO)

In 1999, the Republic of Korea established the Office of the Investment Ombudsman (OIO) as a non-profit organisation within Invest Korea. The ombudsman is directly appointed by the president and is mandated to "address and resolve difficulties experienced by foreign investors and to help improve the overall investment environment" (UNCTAD 2004).

The OIO provides assistance to foreign companies in resolving complaints related to bureaucratic red tape and administrative procedures, as well as providing legal assistance to incoming investors, mostly through "home doctor counsellors", experts in the field of legal and financial affairs, management, construction, taxes and labour (UNCTAD 2004). The "home doctor system" also provides pre-emptive counselling to investors to better prepare investors and monitor problem areas (Nicolas and Bang 2013). In 2010, the OIO received further powers to act as guarantor for investors' access to information, being granted legal powers to request public documents directly from ministries (Nicolas and Bang 2013).

Georgian National Investment Agency: Business ombudsman

In 2015, the Georgian tax ombudsman was modified to a business ombudsman, with close links both to the national IPA and to the prime minister's cabinet (World Bank 2018b). The business ombudsman is specifically charged with rights and interests of entrepreneurs and investors doing business in the country.

Morocco: National contact point

Following the OECD framework for national contact points (NCP), Morocco established an NCP to protect foreign investors and multinational companies from corruption and other crimes. The NCP is chaired by members of seven ministries, as well as agencies for competition, corruption and human rights as well as the Moroccan Investment

Development Agency (OECD 2018b). The NCP allows these members to coordinate responses to individual complaints and grievance.

Promotion of IPA accountability

It is important that investment promotion agencies be held accountable for their actions and regularly report to higher authorities, especially if the IPA in question is autonomous, or if it has the power to grant tax breaks or fiscal benefits (UNCTAD 2004).

It is essential that IPAs establish clear rules and criteria for decision making, to prevent tax benefits from becoming focuses of policy capture or rent-seeking. For example, the OSCE Best Practice Guide for a Positive Business and Investment Climate recommends that incentives granted by IPAs should (OSCE 2006):

- be part of an overall government strategy of incentives
- not be "stacked" on top of other tax incentives
- be transparent, to monitor the effectiveness of these incentives and assure compliance
- should be applied for limited periods or be subject to periodic review
- be applied as non-discriminatorily as possible, to not favour some regions to the detriment of others
- be in the public record

The OECD, WAIPA and UNCTAD also recommend that IPAs encourage the participation of business, labour and community groups. Granting a space for these actors in policymaking decisions reduces the discretion of IPA directors, reduces the probability of conflict and provides for smoother transitions of investments into a country (Ghouri 2018). Rajan (2004) notes that, in the long run, participation of local, private actors in IPA affairs translates positively into increased FDI.

Instances of participation may also serve to train and inform local actors about the standards in anti-corruption compliance and integrity expected when working with investors. IPA-led training and information sessions targeted at local businesses, labour forces and service providers could help to improve integrity and business ethics in the linkage partner investors will be dealing with and lower the chance that these local actors will seek to commit or participate in corrupt acts (UNCTAD 2004).

Ethiopia: Institutionalising private sector participation

Following a workshop on private/public sector dialogue organised by the World Bank in 2002, it was decided that the prime minister would meet with the national chamber of commerce biannually to discuss investment policy and strategy, while Ministry of Trade and Industry officials would meet quarterly with representatives of the private sector to make sure the strategy is being followed (OECD 2003).

Tanzania National Business Council: Involving investors in investment review

Tanzania has established the Tanzania National Business Council (TNBC), whereby groups of public and private actors (including investors), chaired by the president of Tanzania review investment policies, linkage strategies and state bureaucracy. The TNBC works closely with the National Investment Steering Committee, a public institution responsible for identifying and resolving legal, regulatory and administrative barriers (UNCTAD 2004).

Actors working on IPA integrity development

Investment Policy and Promotion (IPP) team

The Investment Policy and Promotion (IPP) team of the World Bank works with IPAs to tackle challenges in attracting FDI. The IPP team employs a strategy of evaluating the sustainability and efficiency of IPA policies and works with IPAs to produce tailor-made solutions (World Bank 2018b). Regarding their work on integrity, the IPP assisted Georgia in creating a business ombudsman (see above) and worked with Kosovo to publish all national and subnational laws and regulations on their IPA's website (World Bank 2018b).

Investment Climate team in the Trade and Competitiveness Global Practice

The Investment Climate team in the Trade and Competitiveness Global Practice of the World Bank largely works on integrity advisory with IPAs focusing on improving transparency by creating an inventory of all the tax, customs-duty and financial incentives provided to investors by different agencies (IPA054). They have had success working with Bosnia and Herzegovina, Kosovo, Kyrgyzstan, Tajikistan and Jordan (see Jordan case, above).

UN Conference on Trade and Development (UNCTAD)

As part of their work to support IPAs, UNCTAD has developed several online platforms and offer training to IPAs wanting to implement them. Among these platforms are:

- eSimplificiation platforms, which aim to simplify procedures into digestible bits, employing clear and simple language (UNCTAD 2017)
- eRegulations platforms which aim to standardise and provide access to information on investment regulation in a simplified format (UNCTAD Investment Promotion and Facilitation Monitor 2017)
- eRegistration platforms, which offer online "single windows" for investors to file for licences and permits online (UNCTAD 2017)

UNCTAD also offers guidelines for increasing IPA effectiveness in attracting investors and on institutional governance. UNCTAD Global Action Menu for Investment Facilitation, for example, is considered an international standard with regard to good practices in IPA governance (IPA33). Furthermore, UNCTAD's Investment Advisory Series guideline on IPA self-evaluation can be useful tool for IPAs to improve their efficiency (UNCTAD 2008).

World Association of Investment Promotion Agencies (WAIPA)

The WAIPA is a private, non-governmental organisation that aims to foster collaboration among IPAs and offer support, policy guidance and training to IPAs. WAIPA has 170 members from 130 countries, and partners with other international organisations like the International Economic Development Council (IEDC), the Organisation for Economic Co-Operation and Development (OECD) and the International Chamber of Commerce (ICC) (WAIPA 2018).

The association provides members with information about global investment climate and innovating IPA practices, and offers training services for IPA.

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