Catalyse	• Mobilise first movers in the public sector, including the IDC, DBSA and provincial/local economic development agencies, to establish prototype blended capital pools targeting township and rural SMMEs to prove the use case • Include a specific variant for green economy opportunities
Enable	• Work through the South African Reserve Bank and the Banking Association of South Africa to consolidate public sector funds which can serve as first loss reserves for impact capital pools and streamline the process of establishing such partnerships • Explicitly link blended financing pools via appropriate public institutions – including DBSA and the IDC – with IPP support from the Departments of Mineral Resources & Energy and Co-operative Governance and Traditional Affairs • Mandate blended financing for service improvement and expansion via off-grid/micro-grid networks in areas with the highest levels of technical losses of bulk water and bulk electricity • Adopt a national standard for landfill pricing which is cost reflective of managing landfills at full regulatory compliance with a linked blended financing programme for waste economy industrialisation.

Source: South Africa Country Investment Strategy (2021)

10. South Africa's Investment Regulatory Landscape

10.1. Laws and Regulations pertaining to Investment

In 2010, South Africa adopted an investment policy framework that seeks to modernise and strengthen the country's investment regime ensuring that the country remains open to foreign investment and continues to provide strong protection to investors whilst preserving the right of government to regulate aligned to its national interest and ensuring consistency with the South African Constitution located within a human rights framework. This followed a three-year multi-stakeholder review of Bilateral Investment Treaties (BITs) that concluded in 2010. The Review drew three essential conclusions. The first was that the relationship between BITs and increased inflows of FDI in South Africa has been ambiguous. Second, BITs are not generally considered essential by investors in their decisions to invest, with return on investment metrics, expectation of economic growth, and robust domestic legal regimes protecting investment, having significantly more decisive impact on the decision to invest. Third, the Review highlighted the range ambiguities that are evident in many standard provisions of the BITs. These ambiguities give rise to varying interpretations of meaning, usually expansive, that create great uncertainty for both investors and governments. Deficiencies in BITs are compounded by severe problems in the international investment arbitration system. The system is not unified system and has no common standards. Awards granted by different arbitration panels on similar matter diverge and these inconsistencies lead to uncertainty and unpredictability about the meaning of treaty.

On the basis of the Review, Cabinet decided in July 2010 that South Africa would terminate existing BITs and that while South Africa already provides strong protection for foreign investors in national legislation, it will clarify that protection in a new Investment Act.

South Africa's investment policy framework follows a sustainable development approach, which recognises that regulations are required to balance economic and sustainable development goals.

The country's approach has been informed by its Constitution as well as the legislative and policy frameworks created, notably, the Protection of Investment Act 2015 (PIA) promulgated in 2018, the National Development Plan, the National Industrial Policy Framework and the Economic Recovery and Reconstruction Plan (ERRP). South Africa has also carefully considered its regional obligations as contained in various investment treaties and protocols.

South Africa's investment reform is prompted by shifts in international policy thinking that seeks to ensure that investment protection regimes support inclusive growth and sustainable development objectives.

In this respect, the country's investment policy framework has helped to foster an environment that clearly specifies the strong protection investors can expect in South Africa with the country's legal framework offering robust non-discriminatory protection to all investors. Foreign investors, once established in South Africa, benefit from open, transparent and predictable conditions for investment, which enable investors to conduct business on terms no less favourable than those available to domestic investors.

10.1.1. Protection of Investment Act 2015

The Protection of Investment Act 2015 (PIA), amongst other things, codifies typical bilateral investment treaty provisions into domestic law, while ensuring consistency with the South African Constitution. Sustainable development requires that investment is subject to effective and efficient regulation at both the domestic and the international level to avoid, for example, environmental and social harm. Underpinning this framework is a strong and credible judicial system. In addition, property rights are fully protected under the Constitution and property may only be expropriated pursuant to specific constitutional provisions that are in line with international practice.

The PIA also seeks to achieve several balances. Balance is sought between the rights and obligations of investors; the need to provide adequate security and protection to all investors and their investments; the need to preserve the sovereign right of Government to regulate in the public interest; the need to pursue developmental public policy objectives; and the need to ensure South Africa's constitutional obligations are upheld. The country's legal framework also provides protection through the Promotion of Administrative Justice Act, the Promotion of Access to Information Act, Intellectual Property Rights Act, the Competition Act and various environmental laws.

10.2. Municipal Governance

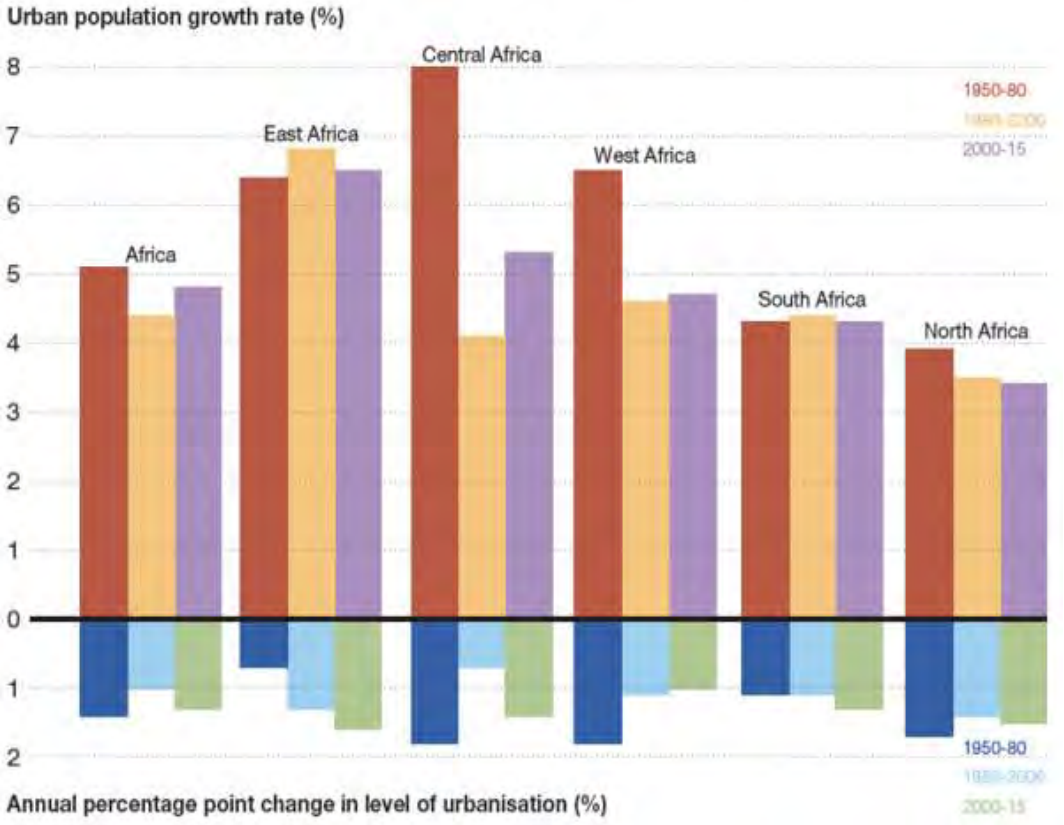
Municipal services and service delivery are the basic functional activities of municipal governments. Municipalities are the third sphere of government and the one that functions closest to local communities. Municipal governments have often been described as comprising the sphere of government that is tasked with the development and provision of services to communities.

In compliance with the basic constitutional provisions and requirements in respect of municipal service provision, the Municipal Systems Act determines specific duties and requirements for all municipalities. As a general duty, a municipality must give effect to the provisions of the Constitution and must:

- Give priority to the basic needs of the local community;
- Promote the development of the local community; and
- Ensure that all members of the local community have access to at least the minimum level of basic municipal services

Municipal services must be equitable and accessible for all residents and must enable municipalities to achieve and fulfil their objectives and duties. According to Section 4 of the Municipal Systems Act, every municipality has the right to finance the municipality by, amongst others, charging fees for services, imposing surcharges on fees, effecting rates on property.

Figure 54: Urbanisation over time on the African continent



Source: Brookings Institute (2016)

Over the last five years, local government had to navigate several challenges with these being increasingly pronounced within smaller local municipalities due to the difficulties posed by collecting revenue and hence, ensuring financial sustainability. Smaller local municipalities have limited economic opportunity and struggle to find alternative revenue sources towards becoming more self-sustaining. Metropolitan municipalities are under

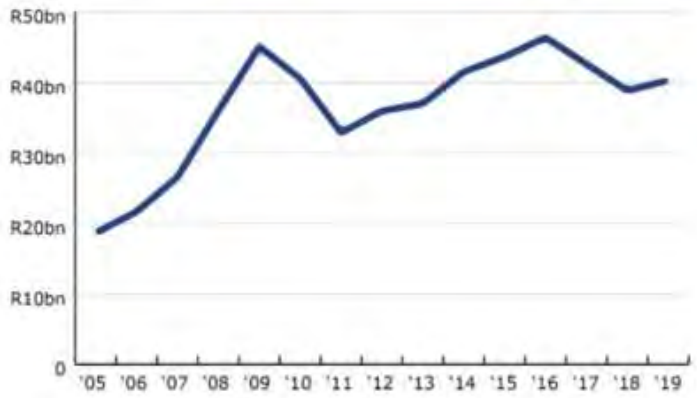
continuous strain as a result of rapid rural urban migration hampering planning and implementation. These challenges cannot be solved by local government alone, which is one of the fundamental anchors of the DDM which provides the basis for an integrated and co-ordinated way of working across departments and across the three distinct and interrelated spheres of government. Figure 55 aptly articulates some of these challenges.

Figure 55: Challenges of local government

Source: Department of Co-operative Governance (2021)

The failures of local government have led to poor municipal performance and the widespread lack of performance, in particular from smaller municipalities. Political infighting amongst coalition governments and political interferences in administrative matters have severely hampered service delivery. Municipalities must be an enabler and not a hindrance to growth. A lack of effective oversight and accountability has sought to undermine the legitimacy of municipalities and has further created the space for political interference. The failures of local government also manifest through the increasing incidence of service delivery protests. Government remains positive in terms of the future trajectory of the country particularly within the context of various initiatives underway.

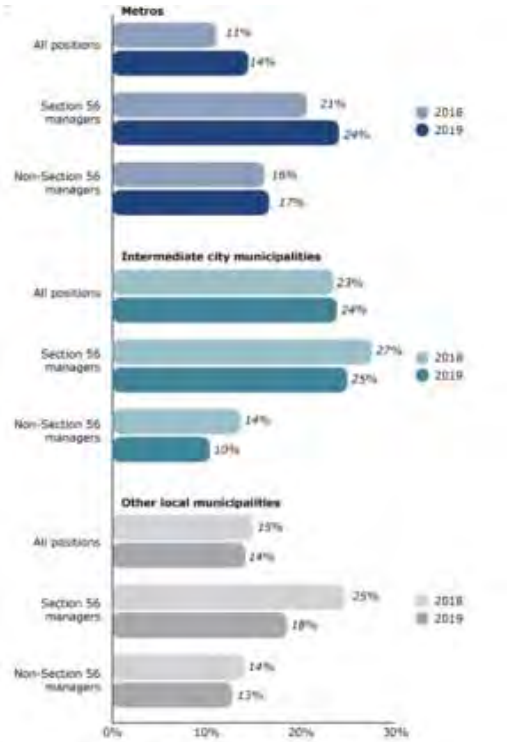
Figure 56: Capital spending by local government



Source: StatsSA (2020)

Local government challenges include a lack of skills; rural-urban migration; an inability to spend efficiently and effectively (see figure 55); weak supply chain management; poor revenue collection and management and a lack of spending on repairs and maintenance (BER, 2021). Figure 57 highlights the vacancy rates in local government between 2018 and 2019, where Section 56 managers represent senior management. It is within this context that government has adopted the DDM and pursued various successful partnerships with the private sector to fill the prevailing public sector skills gap.

Figure 57: Vacancy rates in local government



Source: StatsSA (2020)

10.2.1. Municipal function in infrastructure provision for development

Municipalities have a critical role to play in investment facilitation and as such, must address administrative and legislative hurdles to investment, ensure the streamlining of internal processes and procedures, the employment of professional and competent staff in this critical area and importantly and critically, the development of partnerships for alternative funding mechanisms from an infrastructure provision perspective.

The Municipal Systems Act

In terms of the Municipal Systems Act, the Council of a Municipality has a duty, within its financial and administrative capacity, to promote and undertake development in the municipality. Municipal Councils are in terms of the Municipal Systems Act required to adopt Integrated Development Plans (IDP). The IDP is a strategic plan necessary for the development of a municipality which, inter alia, "links, integrates, and co-ordinate plans and takes into account proposals for the development of the Municipality, and also forms the policy framework and general basis on which annual budgets must be based". According to the Municipal Systems Act, an IDP adopted by the Council of municipality:

"is the principal strategic planning instrument which guides and informs all planning and development, and all decisions with regard to planning, management and development, in the community".

Furthermore, in terms this Act, cities are required to, inter alia, conduct their affairs in a manner that is consistent with IDPs. The Municipal Planning and Performance Management Regulations stipulates that the IDP must identify "any investment initiatives in the municipality, and any development initiatives in the municipality, including infrastructure".

Town Planning and Townships Ordinance 15 of 1986

Section 116 of the aforementioned ordinance provides that every township established shall be provided with engineering services for the proper development of the township. In terms of these provision, local authorities are responsible for the installation and provision of external engineering services and requires that an applicant, in a township establishment application, contributes towards the costs incurred by the local authority to install and provide external engineering services.

Linking infrastructure investment to a spatial development vision can be a powerful motivator for private investment. Spatial development has the potential to generate income that can be ringfenced for future infrastructure development. Over time, land use rights approved can generate income to finance capital upgrades and enhance the quality of life for all residents. Local governments allocate capital budgets for the installation of bulk services and whilst this budget is often insufficient due to the high demand for bulk services in new and existing areas, backlogs and the rapid growth of various nodes; budgets are chronically underspent due to insufficient planning and project execution, amongst other factors.

10.2.2. Built Environment Requirements

Annexure 3 to the CIS contains an overview of key built environment regulations and associated processes, including land acquisition, building approvals, environmental impact assessment related information, key construction permit processes, water license processes and registering property.

10.3. Leveraging emerging financing and funding mechanisms to catalyse investment

South Africa is well below its NDP target of 30 percent GDP by 2030 with respect to GFCF. Estimates currently stand at below 20 percent, with the public sector's contribution at below 8 percent and real growth in public infrastructure spend has been declining by 2 percent each year. Capital budget reforms are required to boost infrastructure spending, particularly as new infrastructure projects are rolled out. The crowding out of capital spending by consumption spending pressures, such as the public sector wage bill and debt service costs, has been highlighted as a major required shift by National Treasury (2020). Furthermore, Covid-19 has significantly exacerbated the position of the country's fiscus and its already strained ability to finance capital infrastructure. Bridging the infrastructure and investment gap, which will still exist with the elimination of efficiency improvements, requires the identification and implementation of alternative mechanisms to leverage private sector finance.

Insufficient capacity, skills and an inefficient regulatory and policy framework hamper government's ability to develop a robust project pipeline. Government currently lacks the technical expertise and institutional landscape to attract private sector finance and, in addition, to improve infrastructure project lifecycles. Infrastructure finance and funding is still heavily reliant on the state, which is not sustainable, nor desirable. For instance, 80 percent of national roads are non-toll funded through government and 10 percent are tolled and managed by SANRAL (funded by toll revenue and capital market borrowings). On the Gautrain, despite high user fees, government still pays ZAR250 million per year; creating significant contingent liabilities. Thus, government's capital financial requirements, reflected by capital revenue less expenditure, will remain in a chronic deficit, due to increased reliance on the state for infrastructure funding.

The share of public infrastructure spend is not sufficient and budgets are declining, as importantly indicated. Significantly reduced municipal and state-owned entity (SOE) spending capacity is evident and is a drag on, rather than an enabler of, growth. Municipalities have continuously underspent on conditional grants and increasingly, have not collected sufficient revenue to finance capital expenditure. This situation is exacerbated by the fact that national government has decreased conditional grants to provinces and municipalities due to rising debt and an increasing budget deficit. SOEs, due to the unenviable state of their governance, have struggled to efficiently and effectively allocate their expenditure and deliver on infrastructure; essentially serving to undermine the country's macroeconomic stability. In addition, cost overruns on infrastructure projects are far too frequent creating major spending inefficiencies.

Public infrastructure is predominantly financed through cash, savings and debt by government with the exception of 33 PPPs since 1998. In the last ten years, South Africa has averaged at less than one PPP project closed per annum with all but one being office accommodation. In addition, PPPs account for a mere 2.2 percent of total public sector infrastructure (National Treasury, 2020). These have included hospitals, transport and roads, tourism and mainly, head office accommodation with the majority funded through a combination of equity, debt and government capital contributions. However, the current governance and institutional arrangements for infrastructure spending in the country requires an overhaul demonstrated by poor accountability, rampant corruption and distrust from the public. A welcomed and most recent innovation is private sector investment in renewables with the country's Independent Power Producer Programme, which has attracted over ZAR200 billion, including ZAR41.8 billion internationally.

Emerging innovations in the infrastructure finance space have revealed that blended finance plays a critical role in bringing risk adjusted returns in line with investment requirements. Blended Finance leverages strategic public finance to mobilise private financing with the South African Infrastructure Fund being a notable positive development in this regard. The DBSA is currently developing a mechanism for the funding and implementation of municipal bulk infrastructure to unlock large scale catalytic developments within the context of metros and intermediate cities often being unable to provide the bulk infrastructure necessary to unlock large-scale catalytic developments.

Figure 58: Typical DBSA Blended Finance Model

Source: DBSA (2020)

The DBSA is also exploring initiatives across critical areas of economic infrastructure, including transport, energy, water and ICT towards adopting an integrated approach to infrastructure development and identifying and implementing mechanisms to enhance South Africa's capability to leverage private investment for development initiatives.

Figure 59: DBSA Areas of Focus

Source: DBSA (2020)

10.3.1. Mechanisms to Improve Private Sector Participation

The South African government considers the role of the private sector as central in South Africa's infrastructure delivery and investment attraction programme through the provision of skills, resources and funding to solve infrastructure challenges. Bridging the infrastructure investment gap requires developing innovative approaches to leverage private-sector finance, making the necessary regulatory changes and improving infrastructure planning across government to build a pipeline of projects. To unlock this potential, government has initiated broad reforms in infrastructure provision. These reforms will ensure that infrastructure is built faster and that costs are

controlled, with appropriate sharing of risks between the private and public sector. The initiatives below include those articulated in South Africa's 2020 Budget Review (National Treasury, 2020).

The Budget Facility for Infrastructure

The Budget Facility for Infrastructure (BFI) was established by National Treasury in 2016 to evaluate large-scale project proposals before committing fiscal resources. Most proposals submitted through the BFI have, however, been poorly planned and packaged, mainly because of insufficient technical expertise and institutional capacity to develop bankable projects. The Development Bank of Southern Africa (DBSA) has established a project preparation facility to bridge this gap, in addition to leveraging DFI support in this regard.

National Treasury is currently developing a government-wide project appraisal and evaluation guideline to complement the Infrastructure Delivery Management System (IDMS) and the 2019 Framework for Infrastructure Delivery and Procurement Management (FIDPM). The guideline aims to provide simple, uniform methodologies and criteria that will apply to all new proposals to ensure value for money and optimal economic and social outcomes.

Infrastructure South Africa (ISA)

As directed by Cabinet in 2020, responsibility for the IDMS is being transferred from National Treasury to the Minister of Public Works and Infrastructure for execution by ISA. Work is therefore in progress between ISA, National Treasury and the Infrastructure Fund to review the country's eco-system for driving the value chain of preparing, appraising, approving and delivering public infrastructure investment and private partnerships for infrastructure. This important effort is taking on board the institutional systems, guidelines and legal provisions developed and implemented across government to date; the reviews conducted on these systems (including the review of the PPP Framework) and the advent of opportunities emerging for blended finance. ISA has identified international best practice methodologies that include partnership options early in the preparatory phases of infrastructure planning and will adapt these for application in South Africa. ISA aims to streamline the institutional roles, improve transparency and accountability, and expedite new ways to boost capacity for robust infrastructure investment planning and efficient delivery, utilising both public and private resources.

ISA's focus is not only on driving public sector investment but also on unblocking state obstacles to the independent investment initiatives of private sector companies. In this regard, ISA is developing mechanisms for private investors to register specific needs for support from government in the unblocking of private capital projects.

Infrastructure Fund

Government has committed R100 billion to the Infrastructure Fund, including R10 billion over the next three years. The fund focuses on blended-finance projects; increasing private-sector investment in public infrastructure in order to contribute to higher economic growth, productivity and employment creation. Government's aim is to leverage R1 trillion worth of infrastructure investment. The fund's implementation unit, housed within the DBSA, aims to facilitate and expedite the development of projects and programmes.

Over the next three years, the DBSA will identify, plan and package at least five blended-finance mega projects (valued at over R200 billion), using the funds committed by government to close funding gaps and reduce risks for the private sector. The DBSA is collaborating with private-sector investment associations, the Banking Association South Africa, the Association for Savings and Investment South Africa and the Public Private Growth Initiative to build partnerships and attract private-sector funding. Project proposals will be evaluated through the BFI.

Public-Private Partnership Review

In 2019, National Treasury began reviewing the public-private partnership (PPP) regulations and guidelines. The review aims to identify and address challenges that have

negatively affected PPP project readiness and private-sector participation. Improvements stemming from the review are being taken up by ISA and are also expected to enhance the Infrastructure Fund work on blended-finance projects. The reform of the PPP framework is key as most of the blended projects will be partnerships between the public and private sector which urgently need to increase in scale, quality, pace and impact.

Municipal Investment Programme Project Preparation Facility

The Neighbourhood Development Programme helps municipalities improve the development and management of their built environment. A dedicated grant will be created to support municipalities to establish effective and efficient programme management and project preparation facilities for capital investment programmes. The Cities Preparation Support Fund will provide co-financing, which declines as these municipalities increase their capacity.

10.4. Institutional Co-ordination of Inward Investment

10.4.1. Scoping the investment coordination challenge

A clear and specific service offering must be developed and articulated towards providing services to investors in a more cohesive and effective manner, which includes high-level strategic objectives, institutional arrangements and associated KPIs to deliver on the country investment strategy (World Bank, 2019). The investment coordination process and investment fast-tracking mechanisms outlined below respond to the NDP targets on investment acceleration, as measured by gross fixed capital formation. It is evident that the NDP targets require acceleration in order to meet the 2030 target levels. The investment coordination process, interlocked with the National Infrastructure Plan 2050, are key enablers for this acceleration.

There is a clear need to coordinate both messaging and programming to actively attract high-growth sectors and enable the investment the private sector is willing to make on its own. This is directly linked to the socio-economic objectives of the ERRP in that it is this enabling environment and value creation by government that creates the opportunity for developmental and catalytic conditions generated by quality investment. It is useful, in assessing the capacity of the state to execute this function to distinguish between various categories relevant to the coordination of the investment mandate:

a) *Investment mobilisation* includes the scope of activities relating to the identification of specific investors or classes of investors relevant to a specific sectoral or strategic objective and the deployment of targeted engagement to convince these investors to engage with – and invest – in South Africa
b) *Investment promotion* seeks to promote South Africa as an investible market, based on more transversal, systematic factors
c) *Investor intelligence* refers to activities which gather crucial information on what is driving investor intent (or the lack thereof) and what informs the nature and scope of potential investment decisions, subjecting this information to trend analysis and overlaying analyses of different sectors and geographies to drive a coherent strategy to inform investment mobilisation and investment promotion activities
d) *Investment design* references the process of financially and operationally structuring new investments, particularly relevant in a public policy context where co-investment or catalysation are required

e) *Investment implementation* covers all the processes and actions required to realise an investment in country on the part of active participants in said processes (public and private).
f) *Investment enabling* entails the unblocking of intended investment through fast-tracking of existing processes and/or the creation of legislation.

The investment coordination structures of government are spread across 77 distinct IPAs at the national, provincial and local level. Invest SA, though in theory the overarching IPA, has no direct authority over the other 76, nor does it directly instruct the diplomatic missions across the globe which conduct investment mobilisation and promotion activities in the context of economic diplomacy. The structural incentives embedded within legal, taxation and programmatic frameworks similarly lack co-ordination.

As alluded to earlier, a report commissioned by the Department of Planning, Monitoring and Evaluation (DPME) in 2018 highlights the following:
- South Africa spends around ZAR50 billion a year on an elaborate mix of business incentives that cut across multiple departments and sectors
- The incentive system is well-aligned with government's overall economic strategies and goals, but it is difficult to assess whether the system is actually contributing towards the achievement of these objectives
- Insufficient attention is given to the rationale and design of new incentives, and the monitoring and evaluation of existing programmes
- A large part of the incentive system is oriented towards sustaining mature industries and protecting workers in existing companies, rather than facilitating new entrants (companies or sectors) or technology diffusion.

The absence of structured coordination of the various mandates and processes relevant to mobilising, promoting, designing, implementing and enabling investment undermines strategic capacity to realise the NDP targets for both investment in its right and economic growth more broadly.

As such, the investment coordination process is designed to do the following:
- Coordinate, direct and streamline investor mobilisation and investment implementation
- Effect investment fast-tracking aligned to key strategic criteria
- Coordinate and act on incoming investor intelligence; specifically with respect to driving investment design with state support
- Track the universe of investment relevant commitments elevated from the ERRP, sector masterplans and other relevant sources.
- Elevate the commitments that need specific coordination attention from the Presidency as Country Strategic Investment Programmes (CSIPs), with the infrastructure-linked versions of these phasing into SIPs.

These functions form basis of the terms of reference of the Investment Fast-Tracking Committee that will be established by the Presidency.

10.4.2. How investment co-ordination will work in practice

In order to build on and aggregate existing efforts across government to enable and facilitate investment, the investment coordination process supports, compliments and integrates the following active workflows which have organised and streamlined government activities to realise cross-cutting economic policy priorities:

a) The Economic Reconstruction and Recovery Plan (ERRP)
b) Operation Vulindlela (easing the regulatory burden and streamlining regulation)
c) Presidential Employment Stimulus Programme
d) Sector Masterplans developed by the Department of Trade Industry and Competition and other specific lead departments working with key private sector constituencies

e) Economic diplomacy commitments (and opportunities) with respect to the Africa Continental Free Trade Area (AfCFTA) and wider international trade positioning

As per the process outlined, investment relevant commitments will be repeatedly analysed according to the four state action areas (convene, co-invest, catalyse, enable) to generate an investment action matrix that can be tracked and subjected to troubleshooting by the investment fast-tracking committee. A selected cluster of interventions derived from the investment action matrix will be periodically elevated to the status of apex interventions to be directly co-ordinated by the Investment and Infrastructure Office in the Presidency.

The categories of Apex Interventions (drawn from the investment action matrix) to be managed will be as follows:

- *Country Strategic Investment Programmes* which include multiple departmental mandates and require leadership from the centre to execute. These projects are specifically assigned to one department, though multiple departments and agencies will implement them. The naming is indicative of the intent to navigate complexities and incept these projects to the point they can be managed as Strategic Infrastructure Projects (SIPS) or through other appropriate implementation vehicles.
- *Blended finance vehicles* targeted for enabling key categories of investment to be deployed via the Infrastructure Fund or other relevant vehicles
- *Regional economic masterplans* linked to clustering and stimulating specific sectors and areas through targeted/enabled investment
- *Critical Regulatory reforms* including allowing strategic projects in various sectors to conduct various initiatives and experiment on areas. This may be of success under the supervision of a regulator for key sectors and types of projects which pilot new regulatory approaches in a limited area or areas for a limited period of time.

As indicated, the proposed Investment Fast-Tracking Committee (IFTC) will provide a platform for ecosystem coordination.

- The IFTC will apply exemptions and special dispensations based on the application of investment fast-tracking criteria and will further commit to these in writing.
- The committee will also track interventions under the four articulated action areas captured as part of the investment action matrix; and define country value propositions for targeted sectors to be communicated to the wider network of IPAs, led by InvestSA.
- The IIO, in addition to acting as secretariat for the committee, leads and reports on the execution of the Apex projects, identifying new apex projects through the investment action matrix.

10.4.3. Investment incentives

In addition, the investment fast-tracking committee must implement the recommendations of the 2018 DPME review into the effectiveness of business incentives acting as an Inter-Governmental Incentives Coordinating Committee and developing a National Incentives Policy Framework to inform the design, administration and review of both existing and new business incentives. As part of its participation in the investment fast-tracking committee, National Treasury must develop a methodology for evaluating the motivation for and the economic costs and benefits of new and existing incentives. All incentives should be assessed against the National Incentives Policy Framework in accordance with this methodology. National Treasury in collaboration with the DPME must develop minimum annual reporting requirements for all government incentives and single register of all beneficiary firms is critical for efficient administration in this regard.

The IFTC should oversee the appointment of an independent party to design and develop a comprehensive document management system. The DPME, as part of its participation in the IFTC will review the status and the depth of internal and external evaluations across all incentives identified in the 2018 study. In addition, those incentives that have not yet been subjected to an independent evaluation should be prioritised for inclusion in the national evaluation plan. Furthermore, all departments responsible for the administration