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Perspectives on topical foreign direct investment issues

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Ethical and legal implications of FDI in or near cultural heritage sites

by

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Cultural heritage is increasingly recognized as a productive asset. With FDI in or near cultural heritage sites (hotels, restaurants, tour operators) on the rise, many investors are capitalizing on the potential of these sites to generate income. This trend is evident in different countries, where such assets are driving the emergence and growth of cultural tourism. For instance, [investment projects](#) are available for foreign investors in Petra, a [UNESCO World Heritage Site](#), and one of the most famous tourist attractions in the Middle East. Examples of investment projects include the construction of a museum, cultural village and hotels, as well as local infrastructure. These projects will generate more tourism for Petra.

As this trend gains momentum, it highlights the need to consider such investments' ethical and legal implications, including issues related to cultural identity.

When foreign investors invest in or near cultural heritage sites, they essentially acquire or affect a portion of a nation's cultural legacy, with the intent to benefit from the economic potential of these sites, such as through investments in the tourism industry that surrounds them. This may create concerns over the ownership and management of these assets and whether foreign investors are behaving as stewards or appropriators of a nation's cultural heritage.

Depending on the specific context and the motivations behind such investments, FDI in cultural heritage sites or nearby assets may provide various benefits and drawbacks. On the one hand, such investment can provide financial resources and expertise that assist in preserving and restoring cultural heritage sites. Moreover, FDI in or near cultural assets can expand economic opportunities in host countries, generating new employment and economic prospects for local residents. However, concerns may arise over the impact of FDI on cultural identity, especially when foreign investors seek to change or commercialize and monetize cultural heritage sites

in a manner that is not consistent with local traditions or values. It may also raise concerns about the displacement of local communities and cultural identity erosion.

Given the complex ethical and legal issues, it is important to develop measures that promote responsible FDI in or near cultural heritage sites. One way to achieve this is by strengthening safeguards. For example:

- While host country authorities already have the sovereign power and duty to regulate, approve, restrict, or prohibit FDI, it is important to develop measures that strengthen safeguards to ensure responsible FDI in or near cultural heritage sites. One such measure could be giving authorities the ability to veto FDI that is deemed incompatible with cultural values and traditions.
- Host countries could establish a process to examine proposed foreign investments in or near cultural heritage sites. This could take the form of a panel of experts or a government agency reviewing and approving investment proposals, to ensure they align with the cultural values and traditions of the host country. This process could also seek assurances that investors will not damage cultural heritage sites, but instead preserve and develop them.
- Host countries could also regulate how and under what conditions cultural heritage sites can be commercialized.
- Finally, international investment agreements (IIAs) can also play a role, particularly regarding the pre-establishment phase, especially when national FDI restrictions related to cultural heritage may conflict with international commitments—unless these IIAs include an exception for investment in cultural heritage from the non-discrimination principle.

In addition, voluntary codes of conduct and partnership agreements can play a role in fostering responsible FDI, by indicating how stakeholders should work together to promote sustainable development and protect cultural heritage sites. This is in line with the [United Nations' Sustainable Development Goal 11](#), which calls for efforts to protect and safeguard the world's cultural and natural heritage, as well as [UNESCO's World Heritage and Sustainable Tourism Programme](#), which promotes partnerships between stakeholders to ensure the sustainable management of cultural heritage sites.

By adhering to a voluntary code of conduct, foreign investors would be expected to respect cultural heritage sites, collaborate with local communities and meet certain ethical standards when undertaking such investments. This would help ensure that FDI projects align with host countries' cultural values and traditions. Furthermore, partnership agreements between foreign investors and local communities should be utilized to foster mutually beneficial arrangements that take into account both parties' interests. This could include shared profits or collaborative

decision-making regarding the use and preservation of cultural heritage sites and their environment.

The ultimate key to encouraging responsible FDI in or near cultural heritage sites is a combination of robust rules and voluntary initiatives. Governments and other stakeholders should work together to create a policy environment that encourages foreign investors to consider the ethical and legal implications of their actions and to take steps to preserve and promote cultural heritage. Such a balanced strategy would take into account the benefits and drawbacks of FDI and ensure that they align with host countries' cultural values and traditions.

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