



**Asia-Pacific
Economic Cooperation**

Best Practices Guidebook

**Capacity-Building to Ensure Appropriate and
Prompt Consideration of Investors' Complaints
to Improve the Investment Climate Within APEC**

Investment Experts' Group

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BEST PRACTICES GUIDEBOOK

**CAPACITY-BUILDING TO ENSURE APPROPRIATE AND
PROMPT CONSIDERATION OF INVESTORS' COMPLAINTS
TO IMPROVE THE INVESTMENT CLIMATE WITHIN APEC**

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INTRODUCTION

Pre-court dispute resolution and investor claims processing (besides the existing legal procedures) are essential for improving the investment climate. Improved dispute settlement and grievances investigation practice provides more transparency and a better understanding of regulatory mechanisms for investment in APEC economies. There is an increasing need for investors to seek dispute resolution outside the judicial system, making it critical for investors to understand how such resolution mechanisms work.

A “best practices guidebook” could provide such a framework for coordinating all pre-court dispute resolution mechanism in order to build capacity to address inefficiencies, promote transparency, and therefore confidence in these institutions, ultimately leading to greater cross-border FDI¹ within APEC. As APEC economies have different levels of regulatory, legal and business assistance environment levels, we expect that they might need the alternative dispute resolution mechanisms.

MAIN DEFINITIONS

Investor claim: an investor’s complaint against violation of its legitimate rights by government authorities, improper actions by another legal entity, administrative barriers (delays, burdensome compliance requirements, repetitive audits, unreasonable fines, etc.).

Dispute: a dispute between an investor and governmental authorities over realization of an investment project realization.

MAIN REASONS FOR ESTABLISHING A PRE-COURT DISPUTE RESOLUTION MECHANISM

Disputes, arising within the scope of investment project realization are regularly settled by investors’ interacting with government bodies, other legal entities or during litigation. The given means of disputes resolution are often insufficient and cause significant delays and complications in investment project realization.

For these reasons one possible practice is to establish special dispute resolution (including pre-court) institutions, facilitating dispute resolution and eliminating obstacles to investment project realization. That’s why it is better to anticipate sources of problems and take preventive action, rather than acting only after an incident arises and damage has been caused.

Depending on the current regulatory environment, this might be a special investment ombudsman establishment with a diverse scope of functions or other alternative dispute resolution mechanisms, such as economy-wide investment agencies, ministries or business associations that could solve problems at the pre-court level.

One of the main success-drivers of dispute resolution mechanisms is concentration of the powers at one place. For this reason, alternative dispute resolution mechanisms, such as an investment ombudsman, economy-wide investment agencies or business associations could be considered as most effective types of investor dispute resolution.

¹ FDI - Foreign direct investment

Several economies have a long history of dispute resolution and claims processing using an Investment Ombudsman. Initially, the role of an Investment Ombudsman is often informal and flexible and included an explicit commitment, not just to resolve individual disputes, but also to assist in resolving them as early as possible; and to attempt to reduce the sources of complaints by providing information about lessons learned. As a public body, an Investment Ombudsman can be open to judicial review at the request of a party adversely affected by an action or decision by the Ombudsman. Moreover, it may be able to provide investors with a decision that resolves disputes at the pre-court level, helping to solve most issues at an early stage, and avoid back-logs in courts – a common problem in many economies.

As already mentioned several economies have an Investment Ombudsman mechanism for resolving investors' claims at the pre-court level. Moreover, the Investment Ombudsman may in some cases be able to initiate alteration in the legal framework if it is required. The decision as to whether or not it is important to modify the legal framework should be based on the case studies. It might provide a good example for other APEC economies to implement such options.

Finally, an Investment Ombudsman can set standards for responsible government institutions in each economy – such as coordination, progress monitoring, and accessibility of the authorities. A classic Ombudsman is concerned with eliminating “maladministration”, this generally stemming from some degree of corruption in public administration. An Ombudsman will, therefore, need to tackle corruption where it is the cause of administrative malfunction.

For a more comprehensive view, it is important to highlight other alternative dispute resolution mechanisms that might be equivalent to the Investment Ombudsman in terms of problems resolution at the pre-court level. For instance, an Investment Business Support Center, Investment Promotion Agency (IPA) or Investor Complaint Service Centers could help to simplify the procedures for resolving foreign investor' complaints and provide investor-friendly services to foreign investors. Generally it should be noted that there are a lot of options to implementing the special regulatory mechanism for investor complaints investigation and resolution. Although the functions of these existing schemes are similar on their surface, they could vary depending on the specific ways they are employed.

This system could simplify dispute settlement, reduce back-logs in court proceedings, provide more immediate resolution and provide feedback where the settlement procedure is unclear and ensure a tailored approach to investor' complaints. Finally, the potential future impact of an alternative dispute resolution mechanism might have is to improve conflict resolution procedures and thus increase FDI inflow.

EXISTING INVESTMENT OMBUDSMEN ARRANGEMENTS

As already mentioned, some economies have a long history of alternative dispute resolution mechanisms using an Investment Ombudsman. Few of them have one or more Ombudsmen for different sectors; some have sectorial complaints boards. Alternatively, some economies have established a separate Ombudsman's Office, while others. Empower the FDI attraction agencies with a dispute resolution function.

FDI agencies as ombudsman. Canada, for instance, created the 'Invest in Canada' bureau to promote, attract and retain FDI. Invest Korea provides a comprehensive set of one-stop services for foreign investors, as well as practical support related to living in the Republic of Korea and post-investment support.

Ombudsman office. The Office of the Investment Ombudsman was established within Invest Korea to resolve practical and administrative difficulties. China has a Code of Conduct for Investment Ombudsman which identifies basic principles, personal conduct, professional commitment, media enquiries and public comment, etc.

A comparison of the processes, institutional systems and legal approaches might provide observers with ideas for potential development of investment facilitation procedures. Not all economies have

mechanisms that perform all the “ombudsman” functions described above. The cases outlined below describe offices and mechanisms within APEC economies that perform some or all dispute resolution functions.

Therefore, it is important to highlight that with a high level of public trust and profile, and investigative capacities for examining their complaints, Investment Ombudsmen or another alternative dispute resolution mechanism might constitute a highly effective instrument, unifying all the requisite tools for the dispute resolution at one place.

PRACTICES ON DISPUTE RESOLUTION MECHANISMS

CHILE

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| Institutional/Legal Framework | FIC ² is the authority in charge of managing foreign investment disputes, as well as the Consultation Process that foreign Parties may initiate, Decree Law (DL) 600 In the case of Chile, domestic legislation calls for a mandatory consultation process prior to legal action. |
| Purpose | To avoid new Investment Disputes and in some cases, to reach an out of court amicable settlement. |
| Authority Conferred by Office | Coordinates the defense and representation of the Republic of Chile through the Foreign Investment Arbitration Defense Program in cases filed by foreign investors before arbitral tribunals. |
| Structure | <p>FIC has an Executive Vice-Presidency, managed by an Executive Vice-President who is the head of the agency and its legal, judicial and non-judicial representative. The Executive Vice-President is appointed by the President of the Republic on the basis of a proposal provided by FIC. The Executive Vice-President's responsibilities include delegating part of these responsibilities, powers and duties to the Executive's Vice-Presidency staff. In the absence of the Executive Vice-President, these powers are exercised by the head of the agency's legal department as the Executive Vice-President's deputy.</p> <p>Decree Law (DL) 600 is a mechanism for the entry of capital into Chile. DL 600 can be used by Foreign legal entities including companies (in any of their legal forms). Article 9 of DL 600 establishes the principle of non-discrimination, guaranteeing that, in the exercise of their business activities, foreign investors operating under this law will be subject to the same laws and regulation as local investors in the same sector of activity.</p> |
| Mechanism for Resolving Issues | <p>Consultations:</p> <ol style="list-style-type: none"> 1. The Complaint can be received through different means; <ul style="list-style-type: none"> - Direct contact with FIC; - Through diplomatic channels, where contact is made through the Chilean Embassy or its Ambassador to the Economy of which the Investor is resident, who will then inform FIC. 2. Once the complaint is filed, FIC will proceed to contact the investor who filed the complaint and seek an alternative and amicable solution to the problem. |
| Competent Authority | <p>Investors can submit requests and information to The Foreign Investment Committee through FIC web site: http://www.foreigninvestment.cl</p> <p>Foreign Investment Committee Ahumada 11, 12th floor, Santiago +56 2 6984 254 +56 2 6989 476</p> <p>cie@foreigninvestment.cl</p> |

² FIC - The Foreign Investment Committee

PEOPLE'S REPUBLIC OF CHINA

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| Institutional/Legal Framework | Administrative Reconsideration Law of The People's Republic of China, 1999 |
| Purpose | To prevent and correct any illegal or improper specific administrative acts, protecting the lawful rights and interests of citizens, legal persons and other organizations, safeguarding and supervising the exercise of functions and powers by administrative organs in accordance with law. |
| Authority Conferred by Office | <ol style="list-style-type: none"> 1. Accepting applications for administrative reconsideration; 2. Taking of evidence from organizations and persons concerned, and consulting files and materials; 3. Reviewing the legality and appropriateness of any specific administrative acts being applied for administrative reconsideration, and drawing up decisions of administrative reconsideration; 4. Handling or forwarding applications for reviewing items; 5. Putting forward proposals, in accordance with statutory authorities and procedures, on disposing acts violating the provisions of this Law committed by administrative organs; 6. Handling affairs responding to action, if deciding to bring a suit in circumstances of refusing to accept the reconsideration decision; 7. Other duties prescribed by laws and regulations. |
| Structure | <p>An applicant, who refuses to accept a specific administrative act of the departments under local people's governments at or above the county level may apply for administrative reconsideration to the people's government at the same level; an applicant may also apply for administrative reconsideration to the competent authority at the next higher level.</p> <p>An applicant, who refuses to accept a specific administrative act of an administrative organ, who carries out vertical management system, such as Customs, banking, tax collection, foreign exchange control, or by a State security organ, shall apply for administrative reconsideration to the competent authority at the next higher level.</p> <p>A citizen, legal person, or any other organization that refuses to accept a specific administrative act of local people's governments at various levels shall apply for administrative reconsideration to the local people's government at the next higher level.</p> <p>An applicant who refuses to accept a specific administrative act of a local people's government at the county level, which belongs to a dispatched organ legally established by a people's government of a province or an autonomous region, shall apply for administrative reconsideration to the dispatched organ.</p> <p>A citizen, legal person, or any other organization that refuses to accept a specific administrative act of a department under the State Council, or the people's government of a province, an autonomous region, or a municipality directly under the Central Government, shall apply for administrative reconsideration to the department under the State Council, or the people's government of the province, the autonomous region, or the municipality directly under the Central Government that undertook the specific administrative act. The applicant who refuses to accept the administrative reconsideration decision may bring a suit before a people's court; or apply to the State Council for a ruling, and the State Council shall make a final ruling according to the provisions of this Law.</p> <p>If a citizen, legal person or any other organization applies for administrative reconsideration, and an administrative reconsideration organ accepts the application in accordance with laws, or if, in accordance with relevant provisions of laws or regulations, he or it shall first apply to an administrative reconsideration organ for administrative reconsideration and then bring an administrative suit before</p> |

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| | <p>a people's court, if he or it refuses to accept the reconsideration decision, he or it shall not bring an administrative suit before a people's court within the statutory time limit for administrative reconsideration.</p> <p>If a citizen, legal person, or any other organization brings a suit before a people's court, and the people's court, in accordance with law, accepts the suit, he or it shall not apply for administrative reconsideration.</p> <p>In addition, foreign investment complaint service centers have been established both at national and local level to coordinate complaints from foreign investors or disputes which they get involved.</p> |
| <p>Mechanism for Resolving Issues</p> | <p><u>Filing a complaint</u> Any citizen, legal person or any other organization, who considers that a specific administrative act has infringed upon his or its lawful rights and interests may file an application for administrative reconsideration within 60 days from the day when he or it knows the specific administrative act, except that the time limit prescribed in laws, exceeds 60 days.</p> <p><u>Initial evaluation</u> An administrative reconsideration organ shall, after receiving an application for administrative reconsideration, examine the application within five days, and it shall inform the applicant in written if it refuses to accept the application in circumstances where the application for administrative reconsideration does not comply with the provisions in this Law; it shall inform the applicant to apply to the relative administrative reconsideration organ if the application, not within the scope of administrative reconsideration applications acceptable to this organ, comply with the provisions in this Law.</p> <p>Except for the provisions in the preceding paragraph, an administrative reconsideration organ shall be considered to accept the administrative reconsideration application from the day when the office responsible for legal affairs receives the application.</p> <p><u>Resolving the problem</u> The office responsible for legal affairs of an administrative reconsideration organ shall examine the specific administrative act undertaken by the respondent of the application, put forward its opinions and make the decision of administrative reconsideration after the approval of the responsible persons of the administrative reconsideration organ or the assent after the group discussion, in accordance with the following provisions:</p> <ol style="list-style-type: none"> 1. If the facts are clearly ascertained by a specific administrative act, the evidence for the act is conclusive, the application of grounds is correct, the procedure is legal, and the content of the act is proper, the specific administrative reconsideration act shall be sustained by decision; 2. The applied who fails to perform the statutory duties shall be required to perform the duties within a fixed time by decision; 3. If a specific administrative act has been undertaken in one of the following circumstances, the act shall be annulled, altered, or confirmed as illegal by decision; if the specific administrative act is altered, or confirmed as illegal by decision, the applied may be ordered to undertake a specific administrative act anew within a fixed time: <ul style="list-style-type: none"> - Ambiguity of essential facts, and inadequacy of evidence; - Erroneous application of grounds; - Violation of legal procedures; - Excess of authority or abuse of powers; - Obvious inappropriateness of the specific administrative act. <p><u>Report the results</u> An administrative reconsideration organ that makes an administrative reconsideration decision shall draw up a written administrative reconsideration</p> |

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| | decision on which the organ shall stamp a seal. Once the written administrative reconsideration decision is served, the decision is instantly legally effective. |
| Competent Authority | <u>Central government level:</u> Treaty and Law Department, Ministry of Commerce +86 10 6510 9823 <u>Local government level:</u> Provincial Department of Commerce |

HONG KONG, CHINA

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| Institutional Framework | Hong Kong, China (“HKC”) does not have a designated investment ombudsman establishment. Pre-court disputes resolution in connection with a foreign investment may be achieved in HKC through mediation and arbitration. To further enhance investor protection, FDRC ³ , opened on 19 June 2012, has administered an independent and impartial dispute resolution scheme with an aim to resolve monetary disputes between individuals and financial institutions through “mediation first, arbitration next”. |
| Purpose | To facilitate the fair, effective and speedy resolution of disputes by mediation and / or arbitration. |
| Legal Framework/ Authority Conferred by Office | <ol style="list-style-type: none"> 1. The Arbitration Ordinance applies to arbitration under an arbitration agreement if the place of arbitration is in HKC irrespective of whether or not the arbitration agreement is entered into in HKC. 2. Under the mediation process, the mediator is to facilitate the parties to resolve their disputes and reach an agreement themselves as opposed to having it imposed upon them. Mediation is a private process and is held in confidence. The mediator will not adjudicate on the dispute. |
| Structure | <p><u>Other Arbitration and Mediation Service Providers⁴:</u></p> <ol style="list-style-type: none"> 1. The Hong Kong International Arbitration Centre, which was established in 1985, administers arbitrations and other dispute resolution activities including mediation. It is a non-profit company governed by a council composed of leading local and international business people and professionals. In recent years, other reputable arbitration institutions have established their presence in HKC, including (a) the International Court of Arbitration of the Paris-based International Chamber of Commerce which opened a branch of its Secretariat in 2008 and (b) the China International Economic and Trade Arbitration Commission which established its office in 2012. 2. A Mediation Information Office has been set up in the High Court to provide information on court-related mediation. 3. The Joint Mediation Helpline Office jointly operated by eight major mediation services providers provides one-stop mediation referral services for parties in need of mediation services. 4. The Hong Kong Mediation Accreditation Association Limited, an industry-led accreditation body, commenced its operation in April 2013. It sets standards for accreditation of mediators and mediation training courses in HKC and promotes a culture of best practice and professionalism in mediation in HKC. |
| Mechanism for Resolving Issues | <p><u>Arbitration Process:</u></p> <ol style="list-style-type: none"> 1. The Arbitration Ordinance came into operation on 1 June 2011, establishing a unitary regime for arbitration which is based on the UNCITRAL⁵ Model Law on International Commercial Arbitration. 2. It provides a comprehensive legal framework for arbitration procedures, enforcement of arbitration agreements and arbitration awards. 3. It is based on the principle that the parties to a dispute should be free to agree on how the dispute should be resolved subject to the observance of safeguards that are necessary in the public interest. 4. Arbitral awards made in HKC are enforceable through the courts of the Contracting States of the New York Convention⁶, and under HKC’s arrangement with China on reciprocal enforcement of arbitral awards made in 1999 and a similar arrangement with Macao, China made in 2013. Arbitral awards made in a Contracting State of the New York Convention and those made in China and Macao, China are equally enforceable in HKC as domestic judgments with the leave of the court. |

³ FDRC - Financial Dispute Resolution Centre

⁴ This is not an exhaustive list.

⁵ UNCITRAL - United Nations Commission on International Trade Law

⁶ Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958)

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| | <p><u>Mediation Process:</u></p> <p>1. The Mediation Ordinance came into effect on 1 January 2013. It provides a legal framework for the conduct of mediation and addresses some areas in which the law is uncertain, such as confidentiality and admissibility of mediation communication in evidence. The enactment of the Ordinance helps to promote the resolution of disputes by mediation and protect the confidential nature of mediation communications.</p> <p>2. The Judiciary of HKC has promulgated a Practice Direction on Mediation which includes the requirement to file a mediation Certificate, a Mediation notice and Response. There are potential costs sanctions for any party who chooses not to attempt mediation.</p> |
| <p>Service Provider⁷</p> | <p><u>Useful websites:</u></p> <p>The Hong Kong International Arbitration Centre: <i>http://www.hkiac.org</i></p> <p>Financial Dispute Resolution Centre: <i>http://www.fdr.org.hk</i></p> <p>The Judiciary's Mediation Information Office: <i>http://mediation.judiciary.gov.hk</i></p> <p>Joint Mediation Helpline Office: <i>http://www.jointmediationhelpline.org.hk</i></p> <p>Hong Kong Mediation Accreditation Association Limited: <i>http://www.hkmaal.org.hk</i></p> |

⁷ This is not an exhaustive list.

INDONESIA

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| Institutional/Legal Framework | <ol style="list-style-type: none"> 1. Law No. 25/2007 on Investment 2. The Investment Coordinating Board (BKPM⁸) Chairman Regulation No. 13/2009 on The Guidance and Procedure of Investment Controlling and Implementation, as amended by The Investment Coordinating Board Chairman Regulation No. 7/2010 and The Investment Coordinating Board Chairman Regulation No. 3/2012. |
| Purpose | To help solve investment issues and impediments by providing consultations, and to assist investors in making investment decisions. |
| Authority Conferred by Office | Providing consultation on the implementation of investment according to the provision of laws, and providing assistance and facilitation in finding solutions to problems faced by investors in realizing their investment activities. |
| Structure | <p><u>Central Government</u> Deputy Chairman of Investment Controlling and Implementation, Indonesia Investment Coordinating Board</p> <p><u>Provincial Government</u> Head of Provincial Investment Board and One-Stop Shop Service (BPMPTSP Provinsi⁹)</p> <p><u>Regency/Municipal Government</u> Head of Regency/Municipal Investment Board and One-Stop Shop Service (BPMPTSP Kabupaten/Kota¹⁰)</p> <p><u>Free Trade and Free Port Zones</u> Authority of Free Trade and Free Port Zone (KPBPB¹¹)</p> <p><u>Special Economic Zones</u> Administrator of the Special Economic Zones (KEK¹²)</p> |
| Mechanism for Resolving Issues | <p>Mechanism for resolving issues is done in stages, by :</p> <ol style="list-style-type: none"> 1. Head of Regency/ Municipal Investment Agency, for investment projects which are under the purview and the authority of the Regents/Mayors (not including those within Free Trade and Free Port Zones (KPBPB) and Special Economic Zones (KEK). 2. Authority of Free Trade and Free Port Zone, for investment projects located in these areas; 3. Administrator of Special Economic Zones, for investment projects located in these areas; 4. Head of Provincial Investment Agency, for investment projects which are under the purview and the authority of the Governor (which could not be resolved by Head of Regency/Municipal Investment Agency, Authority of Free Trade and Free Port Zone, and Administrator of Special Economic Zones) 5. Indonesia Investment Coordinating Board, for investment projects which are under the purview and the authority of the Central Government. <p>All activities are carried out in close coordination with related government institutions.</p> |
| Competent Authority | <p>Mr. Wisnu W. Sudibyo Director for Area III, Deputy for Investment Controlling and Implementation, Indonesia Investment Coordinating Board wisnuws@indo.net.id, wisnusoedibjo@gmail.com</p> <p>+62 21 5225838 +62 21 5225838</p> |

⁸ BKPM - The Investment Coordinating Board, by its Indonesian acronym

⁹ Badan Penanaman Modal dan Pelayanan Terpadu Satu Pintu Provinsi, by its Indonesian acronym

¹⁰ Badan Penanaman Modal dan Pelayanan Terpadu Satu Pintu Kabupaten/Kota, by its Indonesian acronym.

¹¹ Kawasan Perdagangan Bebas dan Pelabuhan Bebas, by its Indonesian acronym

¹² Kawasan Ekonomi Khusus, by its Indonesian acronym

JAPAN

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| Institutional/Legal Framework | The “Improvement of the Business Environment” Chapter / Article under the EPAs ¹³ / BITs ¹⁴ . (Japan has established such regular consultation and dialogue mechanism in its EPAs / BITs and other frameworks with some of its counterparts. Japan’s experience shows that having such a dialogue mechanism could also help to prevent investment disputes.) |
| Purpose | Improvement of the Business Environment between the investors and the host economy. |
| Structure | <ol style="list-style-type: none"> 1. The “Improvement of the Business Environment” Chapter / Article sets up a committee to allow industry and Governments to work together to improve the business environment under the EPAs / BITs. 2. Invited industries can discuss directly with the high rank officials of host economy with the help of home economy. 3. Basically no limitation in the discussion agenda (Improvement of the infrastructure, simplification and facilitation of administrative procedures, improvement of public safety and protection of IPRs¹⁵, etc.). |
| Mechanism for Resolving Issues | <p><u>Facilitates close communication between Government and Business sides</u></p> <ol style="list-style-type: none"> 1. A liaison office is designated to transmit to the relevant authorities complaints, inquiries, and requests submitted by enterprises. The liaison office also forwards responses from the relevant authorities to the enterprises and provides the enterprises with necessary information and advice. 2. Business representatives are invited, when necessary, to the (Sub-)Committee for discussion on a more favorable business environment. <p><u>Encourages the Governments to address the issues</u></p> <ol style="list-style-type: none"> 3. Based on findings regarding the business environment reported by the liaison office, the (Sub-) Committee, composed of representatives of both Governments and private sector, discusses the issues and make recommendations for measures to be taken by the Governments. 4. Responding to recommendations from the (Sub-) Committee, the Governments address the issues facing business enterprises. |
| Competent Authority | <p>Noriko Miyake, Officer, APEC Division Economic Affairs Bureau, Ministry of Foreign Affairs, Japan + 81 3 5501 8342</p> <p>Yasuhiro Nakayama, Assistant Director APEC Office, JAPAN Ministry of Economy, Trade and Industry + 81 3 3501 1407</p> |

¹³ EPAs - Economic Partnership Agreements

¹⁴ BITs - Bilateral Investment Treaties

¹⁵ IPRs - Intellectual Property Rights

REPUBLIC OF KOREA

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| Institutional/Legal Framework | The Foreign Investment Promotion Act |
| Purpose | <ol style="list-style-type: none"> 1. Investigation and handling of grievances of foreign investors and foreign-capital invested companies. 2. Providing relevant government agencies and public organizations with recommendations to improve the foreign investment promotion system. 3. Addressing other necessary matters for handling grievances of foreign investors and foreign-capital invested companies |
| Authority Conferred by Office | <ol style="list-style-type: none"> 1. Requesting explanation or data on the issues from relevant governmental agencies in accordance with the standards prescribed by Presidential Decree. 2. Speaking for foreign businesses or interested persons in question. 3. Asking for cooperation from relevant governmental agencies for on-site investigations. 4. Recommending the heads of relevant administrative agencies and public agencies to take corrective measures on related affairs. |
| Structure | <ol style="list-style-type: none"> 1. The foreign investment ombudsman is commissioned by the President on a recommendation of the Minister of Trade, Industry & Energy. 2. The foreign investment ombudsman is the head of a grievance resolution body. |
| Mechanism for Resolving Issues | <p><u>Filing a grievance:</u> A foreign-capital invested company may file a grievance to the office of the Foreign Investment Ombudsman through e-mail, the Ombudsman's web-site, phone, fax, twitter and in person. Also, companies could receive assistance from on-site visits by Home Doctors, consultants of the Office of Foreign Investment Ombudsman. Since the office of the Foreign Investment Ombudsman has regular meetings with Foreign Chambers of Commerce in Korea through various annual events, foreign-capital invested companies may also file its grievance via the Chambers of Commerce in Korea, such as AMCHAM(The American Chamber of Commerce in Korea), ECCK(European Chamber of Commerce in Korea), SJC(Seoul Japan Club) and so on.</p> <p><u>Review and investigation on the filed grievance:</u> When a grievance is filed, a Home Doctor is assigned to the case to review and investigate the problem.</p> <p><u>Grievance resolution:</u> The Home Doctor examines the grievances and seeks resolutions by contacting relevant organizations, if there are any.</p> <p><u>Report on the results:</u> The Home Doctor reports the results to the foreign-capital invested company.</p> |
| Competent Authority | <p>Hyunju Ro Manager Investment Aftercare Division / Office of the Foreign Investment Ombudsman Korea Trade-Investment Promotion Agency (KOTRA)</p> <p>Tel : +82 2 3460 7639 Fax : +82-2-3460-7944 Email : hjro@kotra.or.kr Homepage : http://www.i-ombudsman.or.kr</p> |

MEXICO

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| Institutional/Legal Framework | <p>The mechanism is based on spreading the knowledge at the different levels of government (including the municipalities) on international rules and Mexico's FTAs¹⁶ and BITs, support cooperation among the different government levels and identify possible solutions.</p> <p>Mexico is in a process of implementing the stage of the independent agreements between the federal and the State governments. The Secretariat of Economy is in close coordination with some States in order to follow up the signature process. These Agreements will help the federal government to receive cooperation in terms of information exchange and transparency. The legal instrument is not aiming to create a binding legal consequence for those local governments that are not able to provide the information but to act as a "bona fide" instrument to support cooperation and information exchange. The expectation is to create a positive sign and attitude from the local governments in this matter to prevent and consequently avoid a dispute process before a notice of intention is presented by an investor. The mechanism for resolving issues previous to the presentation of the "notice" is based also on a serial of meetings with high level authorities when the State or the Municipalities are involved in the problem and identify possible solutions or constructive discussions.</p> |
| Purpose | <ol style="list-style-type: none"> 1. Prevent investor's complaints in close coordination between the federal and the local governments 2. To create a formal cooperation of the States to strengthen the conflict resolution before it turns out into a formal dispute 3. |
| Authority Conferred by Office | <ol style="list-style-type: none"> 1. Identify and solve potential conflicts before they could turn into an international dispute. 2. Formal cooperation in order to exchange information on the current legal framework that municipalities are implementing and their consistency with international commitments. 4. |
| Structure | <ol style="list-style-type: none"> 1. The overall project is being coordinated by the Secretariat of Economy and it is supported by the General Secretariat of the Organization of American States. 2. Investment promotion agencies (Pro México) and a close coordination with the Secretariat of Interior provide some alternative solutions and policy recommendations |
| Mechanism for Resolving Issues | <p>This prevention project is being implemented in two phases. First, the mechanism is based on spreading the knowledge at the different levels of government (including the municipalities) on international rules and Mexico's Free Trade Agreements and Bilateral Investment Treaties, particularly on the investment disciplines.</p> <p>During the second phase the federal government proposes an Agreement of formal cooperation in order to exchange information on the current legal framework that municipalities are implementing and their consistency with international commitments.</p> <p>Additionally, the investment promotion agency, ProMexico, has an alternative mechanism for resolving issues previous to the presentation of the "notice", which is based also on a series of meetings with high level authorities when the State or the Municipalities are involved in a problem with an established or potential investor in order to identify possible solutions through good offices and constructive discussions.</p> |
| Competent Authority | <p>For additional information the investor will be able to access the official website of the project within the Secretariat of the Economy's website: www.economia.gob.mx, from November 2014.</p> |

¹⁶ FTAs - Free Trade Agreements

Secretariat of Economy

Office of the General Counsel on Trade Negotiations
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| <p>Institutional/Legal Framework</p> | <p>Law N° 28933 which creates the State Coordination and Response System for International Investment Disputes and its Regulations approved by Supreme Decree No. 125 – 2008 – EF. The main objectives of this system are:</p> <ul style="list-style-type: none"> • To optimize the response and coordination within the public sector with respect to potential international investment disputes. • To centralize information on: <ul style="list-style-type: none"> ➢ Investment Covenants or Treaties signed by the various government levels and dispute settlement clauses that refer to international mechanisms. ➢ Potential disputes. • To set an alert mechanism of investment disputes. • To establish responsibility within the state entities for the costs assumed due to the dispute. |
| <p>Purpose</p> | <ul style="list-style-type: none"> -To prevent the emergence and development of new investment disputes. -To count on an alternative and more efficient mechanism to try to resolve these disputes amicably. -To be prepared as a state to face international investment disputes. -To improve and maintain a favorable investment environment by providing the investor with the confidence that his potential disputes will be addressed by the competent state organism. |
| <p>Authority Conferred by Office</p> | <ul style="list-style-type: none"> -Has to be informed about every notification regarding an international investment dispute. For that reason, every governmental agency must inform to the Coordinator (Ministry of Economy and Finance) in case is notified by any investor. -Through the Special Commission, has the representation of the Republic of Peru in international investment disputes not only in the stage of negotiations but also in the potential arbitral procedure. |
| <p>Structure</p> | <ul style="list-style-type: none"> • The System counts on a: • Coordinator: which is the Ministry of Economy and Finance (MEF) and is in charge of: (i) Centralize system information and coordination; (ii) be informed about the emergence of disputes; (iii) receive direct negotiations or dispute notices; set and keep record of investment agreements and treaties which include an international mechanism of dispute settlement. • The Special Commission: is attached to the Ministry of Economy. It represents the State in direct negotiations and arbitration stage. This commission is composed by: <ol style="list-style-type: none"> 1. Permanent Members: <ul style="list-style-type: none"> • Ministry of Economy and Finance (Chair) • Ministry of Justice • Ministry of Foreign Affairs • ProInversion 2. Non-permanent members: Ministry of Foreign Commerce and Tourism if the case involves a treaty and any other state agency if it is involved in the dispute. • The duties of the Special Commission are: <ul style="list-style-type: none"> • Participate in the direct negotiations stage. • Propose hiring of lawyers and professionals. • Appoint arbitrators. • Contribute in the process of arbitration. • Approve provision of resources for the state defense. • Define responsibility of Public Entity involved. |

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| <p>Mechanism for Resolving Issues</p> | <p>Consultations and negotiations:</p> <ul style="list-style-type: none"> • After the notification or document is received by the coordinator, he will share the information with members of the Special Commission in order to determine its competence on the case. • Establishes a Special Ad Hoc Commission, calling for the designation of non-permanent members. • The Special Ad Hoc Commission call on the relevant government agencies to report in detail on the circumstances giving rise to the dispute. • The investor is invited to submit its views on the facts. • The Special Ad Hoc Commission will evaluate and will promote dialogue to try to achieve an amicable solution. • Depending on the case, the Special Ad Hoc Commission may initiate the process for selection of lawyers or other professionals needed. • The Special Ad Hoc Commission may recommend extra judicial transactional formulas. This formula must be informed to the Cabinet and approved by the Ministers represented before the Special Ad Hoc Commission. <p>Arbitral Procedure:</p> <ul style="list-style-type: none"> • The Special Ad Hoc Commission initiates the process for selection of the lawyer's firm who will be in charge of the defense. The Law firm assumes the defense of the Peruvian State and coordinates with the Commission on the general guidelines of the strategy and procedural matters. • The hiring process and payments to the Law firm are managed through the Ministry of Economy and Finance. • The Special Commission appoints arbitrators, contributes in the process of arbitration, approve provision of resources for the state defense, among other duties. |
| <p>Competent Authority</p> | <p>In case of an investment dispute, the investor has to submit the documents to Dr. Carlos Jose Valderrama Bernal, Chair of the Special Commission, Ministry of Economy and Finance. Jr. Junín 319, Lima 1 +51 1 3115930</p> <p>www.mef.gob.pe/</p> |

RUSSIAN FEDERATION

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| Institutional/Legal Framework | <p>Federal law # 78-FZ “On Business Ombudsmen in the Russian Federation” from May 7, 2013 (with amendments from November 2, 2013). “Procedure of dealing with applications” from 6 June 2013, ratified by B.U. Titov, the President’s Authorized Agent (Ombudsman) for Protection of the Entrepreneur Rights.</p> |
| Purpose | <p>To assist to an investor to resolve the particular problem cases (improper public services, corruption, customs issues, migration rules, taxation, etc.) and to eliminate the existing system legislative bottlenecks</p> |
| Authority Conferred by Office | <ol style="list-style-type: none"> 1. Orders/requests to the governmental bodies to review/correct the situation, which led to the investors rights violation 2. Collaboration with law enforcement agencies 3. Propose changes in the business-affecting legislative and organizational environment 4. Reporting the situation on the investment climate to the Government and other interested agencies 5. Collaboration with international/foreign business association in Russia to identify system legislative gaps and the typical investor’s problems 6. Appealing through the courts against local authorities’ non-normative legal acts, which violate entrepreneur rights, and suspending this acts until judicial decision. |
| Structure | <p><u>Federal Level:</u> B.U. Titov, the President’s Authorized Agent (Ombudsman) for Protection of the Entrepreneur Rights</p> <p><u>Regional Level:</u> In 81 regions of Russian Federation legislation has been established, in 79 regions of Russian Federation already work regional business ombudsmen.</p> |
| Mechanism for Resolving Issues | <p><u>Filing a complaint</u></p> <ol style="list-style-type: none"> 1. An investor sends a complaint by any means convenient; 2. The complaint is registered and filed; 3. Investor is given access to the status of complaint; 4. An official responsible for problem resolution is determined. <p><u>Initial evaluation</u></p> <ol style="list-style-type: none"> 1. Official makes a preliminary expertise of the communicated problem (including determination of the fact of investor’s rights violation) 2. Official determines the type of the problem from a list: customs regulation, immigration regulation, administrative barriers, exceeding of authority by public officials, shortcoming of the Russian legislation, taxation, trade activities regulation, property rights protection, discrimination of companies; 3. The official defines the interested agencies; 4. The official requests additional information from all pertaining government agencies; (The results are presented to the regional ombudsman within one day) <p><u>Resolving the problem</u></p> <ol style="list-style-type: none"> 1. The official formulates a plan of action, with stages and deadlines, if necessary a Work Group is created; 2. If the problem is caused by the legislation shortcoming, the ombudsman office prepares the proposals on the legislative changes; 3. If the problem exceeds regional level, the official is entitled to engage the federal level, such as department of investment policy and development of public-private partnerships. <p><u>Report the results</u></p> <ol style="list-style-type: none"> 1. The results are sent to the investor; 2. The investor submits a statement as to the effect of being satisfied with the |

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| | <p>decision;</p> <p>3. Ministry of Economic Development of the Russian Federation assesses the measures undertaken;</p> <p>4. Regional ombudsman present their reports on the work accomplished at regular periods.</p> |
| Competent Authority | <p>B.U. Titov, the President's Authorized Agent (Ombudsman) for Protection of the Entrepreneur Rights E-mail: press@ombudsmanbiz.ru Cell: +7 (495) 649-18-23</p> <p>There is special web-site (www.ombudsmanbiz.ru) via which entrepreneur may file his application.</p> |

SINGAPORE

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| Institutional/Legal Framework | SMC ¹⁷ [Note: Singapore has no domestic investment tribunals. Accordingly, Singapore does not have in place any specific mechanism to have decisions about foreign investment reviewed.] |
| Purpose | <p>1. To promote mediation and to provide other dispute resolution services, primarily in commercial mediation. This includes a Med-Arb service, jointly developed between SMC and the Singapore International Arbitration Centre.</p> <p>2. Administers a wide range of domestic and cross border cases which include (and are not limited to) banking, construction, contractual, corporate, employment, IT, insurance, negligence, partnership and tenancy disputes. There is no limit on the quantum of the claim that can be brought to SMC or any restrictions on the type of claim that can be mediated.</p> |
| Authority Conferred by Office | Dedicated to the promotion of amicable and efficient settlement of disputes through mediation. |
| Structure | SMC has a dedicated Secretariat that includes Registry and Training departments and it reports to a Board of Directors chaired by a Supreme Court Judge. |
| Mechanism for Resolving Issues | <p><u>Mediation Process</u></p> <p><u>Request for Mediation:</u> The parties contact the SMC to make the initial request. There is no formality for this request. SMC can also assist a party to contact the other parties in the dispute.</p> <p><u>Agreement to Mediate:</u> When all parties agree to mediate their dispute, SMC prepares the Mediation Agreement to be signed, designates a date, time and place for mediation, appoints a mediator and attends to all other administrative matters.</p> <p><u>Mediation Process:</u> The mediator will help facilitate a conversation between parties to guide parties through a problem-solving process. The lawyers of the parties will attend to play an important role of assisting the mediator and advising the parties throughout the settlement process. More than 90% of cases that settle are concluded within a day and SMC's overall settlement rate for mediations is 75%.</p> <p><u>End of Mediation:</u> The parties usually reduce the terms of their settlement into writing with the assistance of their lawyers at the end of the mediation. This is a binding contract between parties.</p> |
| Competent Authority | <p>Evon Lim, Assistant Director, International Trade Cluster, Ministry of Trade and Industry (Singapore) +65 332 1705</p> <p>Joy Eng, Assistant Director, International Trade Cluster, Ministry of Trade and Industry (Singapore) +65 332 7452</p> <p>Vasudha Srinivasan (Ms.) Assistant Manager (Registry Services) Singapore Mediation Centre +65 332 4006 enquiries@mediation.com.sg</p> |

¹⁷ SMC - Singapore Mediation Centre

CHINESE TAIPEI

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| Purpose | <p><u>A one-stop service center to help investors</u> The mandate of the InvesTaiwan Service Center (ITSC) is to work closely with existing and prospective investors; to help them resolve problems efficiently, and to improve their business experience in Taiwan.</p> <p>As a “one-stop service center,” ITSC will provide customized services to investors and be able to interface with other branches of the government on behalf of its “clients.” Reporting directly to the Executive Yuan’s Global Investment Task Force chaired by the Premier, it will be supported by Cabinet-level authority.</p> |
| Authority Conferred by Office | <ol style="list-style-type: none"> 1. Evaluate investment plan and provide consulting services; 2. Provide investors with customized, “one-stop” services to solve their problems; 3. Coordinate with central and local government agencies to overcome problems; 4. encountered by investors and follow-up on the progress of investment projects; 5. Identify potential locations for factories or office sites; 6. Facilitate related administrative processes; 7. Provide investors with the assistance they need to facilitate their investment in Taiwan; and 8. Investment projects concerning industries under the jurisdiction of other government authorities /agencies. |
| Structure | <p><u>Central Level:</u> InvesTaiwan Service Center (ITSC¹⁸)</p> <p><u>Regional Level:</u> Regional Investment Agencies</p> |
| Mechanism for Resolving Issues | <p>Each case is assigned a dedicated project manager who takes responsibility from beginning to end (backed up by a larger team). Nearly 40 staff members, most of whom with technical industrial backgrounds, are encouraged to exercise creativity, flexibility, and perseverance in helping our clients.</p> <ol style="list-style-type: none"> 1. Investors pose investment ideas and planning or problems. 2. Consulting and Evaluation Division: <ul style="list-style-type: none"> -Provide investment information and consulting services. -Evaluate feasibility of ideas and plans. -Provide necessary follow-up services. 3. Project Management and Solutions Division: <ul style="list-style-type: none"> -Provide investors with customized “one-stop” services to solve problems. -Assist investors with applications for taxation benefits investment incentives, etc. 4. Coordinate, negotiate and integrate between investors, central-government agencies, local-government agencies and ITSC. 5. Convene the coordination meeting by The Ministry of Economic Affairs or by The Executive Yuan. <ol style="list-style-type: none"> 1. Investors resolve problems or accomplish investment goals. |
| Competent Authority | <p>InestTaiwan Service Center (ITSC Office) +886 2 2311 2031 service@invest.org.tw</p> <p>Department of Investment Services, Ministry of Economic Affairs +886 2 2389 2111 dois@moea.gov.tw</p> <p>The Coordination Office for Investment Promotion (COIP), Ministry of Economic Affairs coip@moeaidb.gov.tw</p> |

¹⁸ ITSC – InvesTaiwan Service Center

USA

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| Institutional/Legal Framework | <p>The President's Executive Order 13577—"Establishment of the SelectUSA Initiative," June 15, 2011</p> <p>(The Initiative previously operated under the authority of the U.S. Secretary of Commerce as the "Invest in America" program, established in 2007)</p> |
| Purpose | <ol style="list-style-type: none"> 1. To support private sector job creation and enhance economic growth by encouraging and supporting business investment in the United States; 2. To serve as ombudsman that facilitates the resolution of issues involving Federal programs or activities related to pending investments. |
| Authority Conferred by Office | <ol style="list-style-type: none"> 1. The President established the SelectUSA Initiative to facilitate and promote business investment in the United States. 2. The Executive Order establishing the Initiative also establishes a Federal Interagency Investment Working Group, co-chaired by SelectUSA and the Director of the President's National Economic Council. It consists of senior officials from U.S. Government Departments and agencies whose functions impact business investment in the United States. 3. The Group is designed to coordinate activities to promote business investment, and to respond to specific issues that affect business investment decisions. |
| Structure | <ol style="list-style-type: none"> 1. The SelectUSA Initiative is housed within the U.S. Department of Commerce, which provides funding, staffing, and administrative support for the Initiative, as well as the Initiative's Executive Director (a senior staff member designated by the Secretary of Commerce). 2. The Executive Director coordinates activities both within the Department of Commerce and with other Departments and Federal Government agencies that have activities relating to business investment decisions. 3. Within the Department of Commerce, SelectUSA is housed within the International Trade Administration, as part of the U.S. and USFCS¹⁹. USFCS has international field staff in approximately 70 countries. In key markets, these staff are being trained to handle investment promotion matters and refer ombudsman cases to SelectUSA offices in the United States. |
| Mechanism for Resolving Issues | <ol style="list-style-type: none"> 1. An investor shares the complaint by any means convenient. A SelectUSA staff member promptly interacts with the investor to further understand the nature of the complaint and its potential impact on investment, and advises the investor of next steps. 2. SelectUSA staff works with the relevant Federal bureau/ agency to understand the case and advises the investor of its findings. If needed, SelectUSA may determine additional follow-up steps (e.g., facilitating a meeting between the investor and the relevant agency). <p>SelectUSA does not have the authority to mandate a particular outcome from a Federal agency. The purpose of SelectUSA's ombudsman function is to help facilitate an investment project through the Federal regulatory process.</p> |
| Competent Authority | <p>Investors can submit requests and information to SelectUSA through the "Contact Us" link on the SelectUSA web site: http://selectusa.commerce.gov/</p> <p>SelectUSA can also be contacted directly at the following address, telephone number, and email: SelectUSA U.S. Department of Commerce</p> |

¹⁹ USFCS - Foreign Commercial Service

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| | <p>1401 Constitution Avenue, NW, Room 1038 Washington, DC 20230 +1 202 482 6800</p> |
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info@selectusa.gov

AUSTRALIA

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| Institutional/Legal Framework | The <u>Foreign Acquisitions and Takeovers Act 1975 (FATA)</u> provides the legislative framework |
| Purpose | <ol style="list-style-type: none"> 1. To guide foreign investors on the Government's approach to administering the FATA. 2. To identify a number of specific types of investment proposals that are required to be notified to the Government even if the FATA does not appear to apply. |
| Authority Conferred by Office | <ol style="list-style-type: none"> 1. The Treasurer is ultimately responsible for all decisions relating to foreign investment, and for the administration of Australian foreign investment policy. The FATA allows the Treasurer or his/her delegate (usually the Assistant Treasurer) to review investment proposals to decide if they are contrary to the Australian national interest. If this occurs, the Treasurer can block proposals, or apply implementation conditions to ensure that the national interest is protected. 2. The Treasurer is advised and assisted by the Foreign Investment Review Board (FIRB) which administers the FATA in accordance with the policy. The FIRB is an administrative body with no statutory existence, and FATA makes no reference to it. However, the foreign investment policy confirms the FIRB's role. All decisions by the Treasurer relating to a foreign investment proposal are underpinned by analysis and recommendations made by the FIRB. |
| Structure | <p>The Treasury consists of The Treasurer and four ministers: a minister for small business, acting assistant treasurer, assistant treasurer and parliamentary secretary to the treasurer.</p> <p>The Foreign Investment Review Board (the Board) is a non statutory body established in 1976 to advise the Treasurer and the Government on Australia's Foreign Investment Policy (the Policy) and its administration.</p> <p>Board membership:</p> <p>The Board currently comprises five part-time Members and a full-time Executive Member.</p> |
| Mechanism for Resolving Issues | <p>The Act empowers the Treasurer to examine proposals by foreign persons to:</p> <p>acquire, or increase, a substantial shareholding¹ in, or acquire a controlling interest in the assets of, a prescribed Australian corporation valued above the relevant thresholds or</p> <p>acquire an interest in Australian urban land.</p> <p>The Act does not provide the Treasurer with a power to 'approve' investment proposals. Rather, it empowers the Treasurer to prohibit a proposal that he decides would be contrary to the national interest, or to raise no objections subject to conditions considered necessary to remove national interest concerns (section 25).</p> |

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| | It also permits the Treasurer to make orders for foreign persons to divest shares, assets or interests in urban land where the acquisition is decided to be contrary to the national interest. |
| Competent Authority | All foreign investment enquiries should be emailed to: The Executive Member Foreign Investment Review Board <u>firbenquiries@treasury.gov.au</u> Telephone enquiries +61 2 6263 3795 |

BRUNEI DARUSSALAM

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| Institutional/Legal Framework | Brunei Investment Incentive Order 2001 |
| Purpose | To provide investors with an investment allowance: to exempt an amount of chargeable income of a company debited from the investment allowance account. |
| Authority Conferred by Office | The Ministry of Industry and Primary Resources |
| Structure | Different departments and divisions are responsible, main complaints are hold by the Promotion and Facilitation Services Division |
| Mechanism for Resolving Issues | <p>Where a company proposes to carry out a project —</p> <ul style="list-style-type: none">(a) for the manufacture or increased manufacture of any product;(b) for the provision of specialised engineering or technical services;(c) for research and development;(d) for construction operation;(e) for the recycling of domestic and industrial waste;(f) in relation to any qualifying activity;(g) for the promotion of the tourist industry (other than a hotel) in Brunei Darussalam, the company may apply in the prescribed form to the Minister for the approval of an investment allowance in respect of the fixed capital expenditure for the project. <p>Where the Minister considers it expedient, having regard to the economic, technical and other merits of the project, he may approve the project and issue the company with a certificate which shall qualify the company for an investment allowance (as stipulated in the certificate) in respect of the fixed capital expenditure for the approved project subject to such terms and conditions as he thinks fit.</p> <p>Every certificate issued under this section shall specify a date as the investment day from which the company shall be entitled to investment allowance under this Part.</p> <p>The Minister may, in his discretion upon the application of a company amend its certificate by substituting for the investment day specified therein such earlier or later date as he thinks fit and thereupon the provisions of this Part shall have effect as if the date so substituted were the investment day in relation to that certificate</p> |
| Competent Authority | Investment Incentives Services Unit, Promotion and Facilitation Services Division, Ministry of Industry and Primary Resources, Third Floor, Jalan Menteri Besar, Bandar Seri Begawan, BB3910, Brunei Darussalam. Tel: +673 2382822, +673 2380107 Fax: +673 2382835 http:// biz.bruneimipr.gov.bn/emipr |

CANADA

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| Institutional/Legal Framework | Foreign Investment Promotion and Protection Agreements 1989. |
| Purpose | To promote Canada's economic prosperity through the establishment of a fair, open, transparent and rules-based system of international trade and investment. This is done through trade and investment liberalisation, which stimulates competition and promotes innovation and productivity gains amongst domestic producers |
| Authority Conferred by Office | Foreign Affairs, Trade and Development Canada, the Canadian Trade Commissioner Service |
| Structure | The Canadian Trade Commissioner Service owns a network spanning 160 cities worldwide and across Canada. On the site it is possible to find a commissioner nearest to the whereabouts of the company. |
| Mechanism for Resolving Issues | <p>Non-discriminatory treatment is provided to investors of a State Party to a treaty, and to their investments on both a national treatment basis and a most favoured nation treatment. National treatment is treatment in relation to investors of the other Party and their investments. This obligation means that both Canada and the partner economy must treat investment by investors of the other country no worse than investment by its own nationals. For example, for foreign businesses operating within Canada, Canada must generally accord these businesses treatment that is no less favourable than it accords, in like circumstances, to domestic businesses. Most favoured nation treatment is treatment in relation to third country investors and their investments. This means that for Canadian businesses looking to set up in a country and operate there, such as in China, they cannot be treated less favourably than any other foreign company looking to setup there or which is already operating in that country.</p> <p>Customary International Law Minimum Standard of Treatment is provided to foreign investments to ensure that treatment does not fall below a basic international minimum standard. A breach of this standard would include, for example, the denial of justice in criminal, civil or administrative proceedings.</p> <p>Protection against direct and indirect expropriation is provided to foreign investments such that any expropriation must be done for a public purpose, under due process of law, in a non-discriminatory manner and against payment of prompt, adequate and effective compensation. It should be stressed that FIPAs do not require governments to compensate investors just because a governmental measure has decreased profits. The government measure must substantially deprive the investor of its investment. Moreover, the mere fact that a measure decreases a foreign investor's profits, even if substantially, does not mean, in and of itself, that the measure breaches the FIPA's obligations. In more recent agreements, a dedicated annex on expropriation clarifies the meaning of indirect expropriation. The annex confirms that legislation and regulations adopted by Canada to protect the public welfare, such as in areas like health, safety, and the environment, do not violate the FIPA's obligations on expropriation, regardless of</p> |

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| | <p>whether they result in a decrease in a foreign investor's profits.</p> <p>Transparency of legal frameworks applying to investments is promoted. Laws, regulations and procedures applying to investment must be published or otherwise made available. To the extent possible, parties are required to consult on new measures.</p> <p>Free transfer of capital and other payments relating to an investment, for example, contributions to capital, profits, capital gains, interest, dividends, or proceeds from sales of investments, are provided into and out of the host economy and without delay.</p> <p>Performance requirements obligations usually prevent Parties from imposing certain requirements on investors and their investments, such as trade balancing requirements, domestic content requirements and requirements mandating the transfer of technology. The conditioning of the receipt of an advantage, such as subsidies, on certain requirements is also prohibited.</p> <p>Senior Management and Board of Directors obligations protect against nationality requirements for senior management and boards of directors.</p> <p>Compensation for Losses obligations provide non-discriminatory treatment in cases where the government provides compensation due to natural disasters or civil unrest.</p> |
| <p>Competent Authority</p> | <p>Write to:</p> <p>Enquiries Service (BCI) Foreign Affairs, Trade and Development Canada 125 Sussex Drive Ottawa, ON K1A 0G2 Canada Telephone: 1-800-267-8376 (toll-free in Canada) 613-944-4000 (in the National Capital Region and outside Canada)</p> <p>Facsimile: 613-996-9709 TTY:613-944-1310 1-800-394-3472 (toll-free from the U.S. and Canada only)</p> |

NEW ZEALAND

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| Institutional/Legal Framework | The Overseas Investment Act 2005 |
| Purpose | <p>To acknowledge that it is a privilege for overseas persons to own or control sensitive New Zealand assets by—</p> <p>(a)requiring overseas investments in those assets, before being made, to meet criteria for consent; and</p> <p>(b)imposing conditions on those overseas investments.</p> |
| Authority Conferred by Office | Land Information New Zealand, the Overseas Investment Office |
| Structure | <p>The Overseas Investment Office (OIO) administers the New Zealand government's overseas investment legislation. The core work of the OIO is to assess applications for consent from overseas persons who want to invest in sensitive New Zealand assets. The OIO is a regulatory unit within LINZ made up of a team of lawyers and legal executives.</p> |
| Mechanism for Resolving Issues | <p>The consent process</p> <p>All applications for consent must be tested against the prescribed investment criteria set out in the Act and Regulations. An applicant (or if the applicant is not an individual, the persons with control of the applicant) must: be of good character have relevant business experience or acumen, and be able to demonstrate a financial commitment to the investment.</p> <p>Additional Criteria For Sensitive Land</p> <p>Applications for overseas investment in sensitive land must also satisfy the following additional criteria. Either: the applicant, or if the applicant is not an individual, all the individuals who control the applicant, are New Zealand citizens, ordinarily resident in New Zealand, or are intending to reside in New Zealand indefinitely and have applied for a visa or permit under any of</p> <p>Immigration New Zealand's residence policies (refer to the chapter on Immigration) or: the overseas investment will, or is likely to, benefit New Zealand (or any part of it or group of New Zealanders), as determined by the relevant Ministers if the relevant land includes non-urban land that in area (either alone or together with any associated land) exceeds five hectares, the relevant Ministers determine that that benefit will be, or is likely to be, substantial and identifiable, and factors set out in the Regulations. Such benefits can be longer term as well as immediate.</p> <p>Processing and decision application</p> <p>The OIO is responsible for overseeing the Act, and assesses consent applications. The OIO will commonly contact the applicant or its advisers for further information during the process. The power to make decisions on whether to approve or decline an application is vested in the relevant</p> |

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| | <p>Minister of the Crown. The Ministers have delegated to the OIO the power to decide all applications except those involving sensitive rural land and land adjoining waterways. The processing of consent applications can take several months: two to three months for a business assets acquisition and three to four months for a sensitive land acquisition is typical.</p> <p>For complex applications, a longer period is not uncommon. We advise that potential consent requirements be assessed early when considering a foreign investment in New Zealand.</p> <p>Consent conditions</p> <p>Consent is usually granted subject to various conditions with which the applicant must comply. When imposing conditions of consent, the OIO must be satisfied that the condition is necessary and will achieve the desired result. Conditions can be varied or revoked in appropriate circumstances.</p> <p>Compliance will be monitored by the OIO and will continue until the benefits of the investment have been realised or the conditions have been revoked. The Government has instructed the OIO that in general, monitoring should not extend beyond five years unless the benefits are not expected to begin accruing until after that time. Penalties apply in case of a breach of these provisions.² In addition, the High Court has the power, on application from the OIO, to order disposal of any property (which includes a right or interest in any security, an interest in land, an interest in fishing quota or any other property or any rights or interests in any other property).</p> |
| <p>Competent Authority</p> | <p>Overseas Investment Office Land Information New Zealand Level 7 Radio New Zealand House 155 The Terrace PO Box 5501 Wellington New Zealand Phone +64 4 462 4490 Email oio@linz.govt.nz</p> |

THAILAND

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| Institutional/Legal Framework | <p>Thailand does not have a designated investment ombudsman establishment. Pre-court disputes resolution in connection with a foreign investment will be achieved through mediation and conciliation. The Office of the Board of Investment can also help facilitate foreign investors.</p> <ul style="list-style-type: none"> - Arbitration Act B.E. 2545 - Arbitration Rules of the Arbitration Institute, Office of the Judiciary - The Code of Ethics for Arbitrators |
| Purpose | <ul style="list-style-type: none"> -To encourage and support business investment environment in Thailand. -To facilitate the resolution of issues. |
| Authority Conferred by Office | <ul style="list-style-type: none"> -Promote coordinate and conduct mediation and conciliation, also give legal advice on conciliation to the public including foreign investors. -To improve arbitration acts, as well as other acts concerned, observing conciliation and arbitration rules of other institution to conform with entry into legal force. |
| Structure | <p>The Structure and Responsibilities of ADR -O ²⁰</p> |
| Mechanism for Resolving Issues | <p><u>Arbitration Process</u> ²¹</p> <p><u>Mediation process</u></p> <ol style="list-style-type: none"> 1. Preparation stage <ul style="list-style-type: none"> - The mediator has to study the basic information of the disputes from the case files or inquire the disputing parties. 2. Opening stage <ul style="list-style-type: none"> - The mediator will make his or her opening statement which includes introduction of himself or herself and the persons participating in the mediation, building up the amicable atmosphere, explaining his or her roles and the mediation process as well as all necessary ground rules. 3. Interest-finding stage <ul style="list-style-type: none"> - From information and facts given at the caucus of the disputing parties or the joint meeting of the parties, the mediator has to find out what is the interest of each of the disputing parties. 4. Solution-finding stage <ul style="list-style-type: none"> - The mediator will try to reduce the number of disputed issues, and exploring possible options for solution. |
| Competent Authority | <p>Alternative Dispute Resolution Office Thailand Criminal Court Building 5 fl., Ratchadapisek Road, Chompol, Chatuchak, Bangkok 10900 Tel. +66 254 12298 Fax. +66 2512 8436 E-Mail. adro@coj.go.th</p> <p>Office of the Board of Investment 555 Viphavadee Rangsit Road, Bangkhen Bangkok 10900 Tel +66 2553 8111 Fax +66 2553 8222 E-Mail : head@boi.go.th</p> |

²⁰ Annex 1 – The Structure and Responsibilities of ADR -O

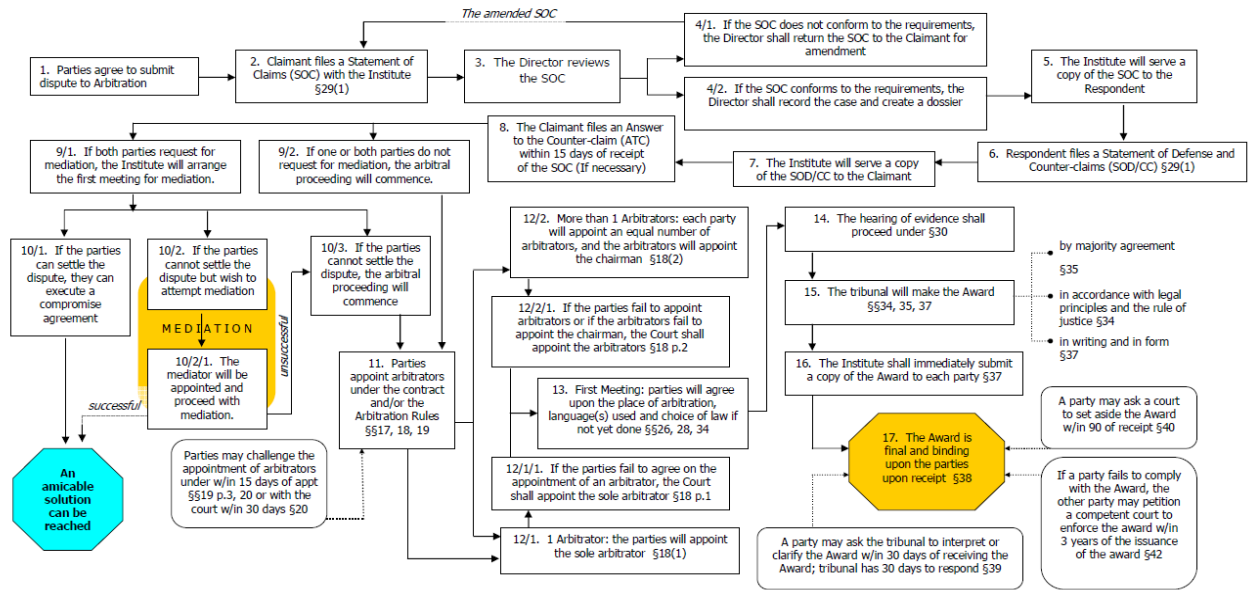
²¹ Annex 2 - Thai arbitration institute, office of the judiciary

The Structure and Responsibilities of ADR-O

The Structure and Responsibilities of the Alternative Dispute Resolution Office, Office of the Judiciary

| Administrative Support Section | Thai Arbitration Institute | Thai Mediation Center | ADR Knowledge Center | ADR Training and Promotion Center |
|---|---|---|--|--|
| <ol style="list-style-type: none"> 1. Perform correspondence and general administration works of the office. 2. Perform secretarial work and meeting arrangement for the office. 3. Provide and disseminate documents and works of the office. 4. Operate a basic personnel management of the office. 5. Manage the basic financial and accounting activities, and office supplies for the office. 6. Proceed with requesting budget and perform operating report including budget disbursements and statistics of the office. 7. Perform the financing of the litigation. 8. Provide reports and statistics of mediation, conciliation, arbitration, and other alternative dispute resolution. 9. Collaborate with or support other parties concerned and complete all assignments. | <ol style="list-style-type: none"> 1. Perform promotion, collaboration, guidance, and civil and commercial dispute resolution by arbitration 2. Act as secretariat for arbitration committee during arbitration procedure both in Thai and English. 3. Proceed with the registration of arbitrators. 4. Collect in-processing and final court cases. 5. Collect statistics of the arbitration cases. 6. Collaborate with or support other parties concerned and complete all assignments. | <ol style="list-style-type: none"> 1. Proceed the mediation and conciliation for public sector, private sector, and common persons as requested or court's order. 2. Conduct registration the process of mediator, conciliator, and senior advisor. 3. Give advice to related sections and common persons with the mediation and conciliation. 4. Act as the center for promotion, coordination and conciliation of mediation for the courts nation-wide. 5. Collaborate with or support other parties concerned and complete all assignments. | <ol style="list-style-type: none"> 1. Conduct the legal development, rules, and regulation of mediation, conciliation, arbitration, and other dispute resolution. 2. Give legal advice on mediation, conciliation, arbitration, and other dispute resolution. 3. Promote and support other parties to set up a system and develop mediation, conciliation, arbitration, and other dispute resolution including academic collaboration and assistance 4. Comply a movement of treaties, conventions, and international agreements of international arbitration in which Thailand is a member, also of the arbitration law of other countries. 5. Conduct study, analysis, research to develop system, model measure, and procedure of mediation, conciliation, arbitration, and other dispute resolution both inside and outside of the court. 6. Act as knowledge center for mediation, conciliation, arbitration, and other dispute resolution. 7. Collaborate with or support other parties concerned and complete all assignments. | <ol style="list-style-type: none"> 1. Proceed on promotion and dissemination of dispute settlement by mediation, arbitration, and other dispute resolution. 2. Conduct training programs and seminar for personnel concerned and common persons with the topic of mediation, arbitration, and other dispute resolution. 3. Arrange international meetings of Alternative Dispute Resolution. 4. Prepare academic paper, work manual, and dispute resolution article by mediation, arbitration, and other dispute resolution including prepare and amend a data base for dissemination. 5. Proceed on publication, presentation, video and photo meeting record, training, and seminar of the office. 6. Compliance and evaluate on Alternative Dispute Resolution. 7. Collaborate with or support other parties concerned and complete all assignments. |

THAI ARBITRATION INSTITUTE, OFFICE OF THE JUDICIARY
ARBITRATION PROCEEDINGS FLOW DIAGRAM (UNDER THE ARBITRATION ACT OF 2002 AND TAI RULES OF ARBITRATION)



MAIN CONCLUSIONS

The APEC member economies have adopted different options to facilitate pre-court dispute resolution for domestic and foreign investors. These options consist of a wide variety of dispute resolution mechanisms with the common aim of providing support to investment activities in the APEC member economies.

Corresponding institutions exist in Chile; China; Hong Kong, China; Indonesia; Japan; Republic Korea; Mexico; Peru; Russian Federation; Singapore; Chinese Taipei; USA; Brunei Darussalam; Canada; New Zealand, Thailand although the nature of the “services” provided by these institutions can vary widely.

Several economies possess a separate agency (Chile, Korea and Singapore) for the dispute resolution purposes. Economies like Hong Kong, China encourage private settlement of disputes by the parties themselves using arbitration or mediation services available from independent and impartial arbitration and mediation service providers. Other economies organize dispute resolution activities within the marks of the government (China, Indonesia, Japan, Russian Federation and Mexico) or by a creation of a special inter-agency commission (USA). A designated investment ombudsman establishment does not exist in Thailand, but pre-court disputes resolutions in connection with a foreign investment are settled by the Office of the Board of Investment.

The main goal is to provide a transparent and efficient mechanism to help resolve investment disputes, and to protect the investor interests and create a favorable overall investment environment. In general, the economies foresee a similar mechanism of dispute resolution assistance, aimed at a faster grievances processing and the legislation environment optimization.

The main authorities conferred by the different offices in most of APEC economies are:

- processing of the complaints;
- facilitation of collaboration between the investors and a government authority, organizing such collaboration;
- recommendations to the responsible government bodies to eliminate the arisen obstacles for the legal investment activity;
- preparing the proposals for the legal environment enhancement for the investors.

The most common procedure of dispute resolution for most of economies consists of:

- filing a complaint;
- transmission of a complaint to a relevant governmental agency;
- analyzing the response of the relevant governmental agency;
- transmission of a complaint to the principal administrative persons if a problem can not be solved by the agency.

Common tool utilized by several economies is the creation of a problem resolution roadmap, which is tailored for a particular case. This option helps to identify the proper approach for the problem solving.

Use of the mentioned tools assures the advancement of investor protection from harassment and from issuances of local laws that contradict with economy-wide laws.

In any case, the corresponding institutions should not substitute the court authorities and law enforcement agencies.

Also, it should be noted, that the more authorities the dispute resolution institution is disposing, the more profound and significant legislative measures (changes) it requires. Thereby for an economy is to decide the level of the authority of the institution based on the current investor protection level (supposing that the weaker the situation with the investor rights protection is the higher level of the authorities/powers is required).

The present paper had a task to analyze the situation with the pre-court dispute resolution mechanisms in different APEC economies and to collect best practices, indicating the main tools and authorities used.

At the same time as a significant number of economies use this mechanism to ensure the investor confidence; other economies within the APEC region do not practice pre-court dispute resolution. Taking into account high efficiency of the abovementioned institution, permitting the higher level of business climate, we recognize the benefits of creation of model framework for dispute resolution mechanism, including the standard functions, organizational structure and procedures for the pre-court dispute resolution.

Such model in the future could be disseminated to the economies, currently disregarding the use of pre-court dispute resolution mechanism to increase the speed and clarity of the investment procedures.



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