Asia-Pacific Economic Cooperation

Research and Survey on the Dispute Prevention and Mitigation System in APEC Economies

APEC Policy Support Unit

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EXECUTIVE SUMMARY

A number of economies in the world have established mechanisms which are designed to address grievances and complaints of foreign investors at an early stage to prevent and mitigate the risk of escalation into formal investment disputes. Such mechanisms may have been established either on an economy's own initiative under domestic legislation, or pursuant to agreements with other economies for the promotion and protection of foreign direct investments (investment agreements).

This research and survey project was aimed to identify such dispute prevention and mitigation mechanisms established by APEC member economies, analyse their legal bases, powers and functions and, to the extent that information is available, assess their past performances in addressing investors' grievances and complaints.

The project has specifically focussed on two types of dispute prevention and mitigation mechanisms, namely (i) those which serve as a one-stop contact point for receiving grievances and complaints directly from foreign investors; and (ii) those which initiate actions to resolve such grievances, or are otherwise involved in the grievance resolution process, including through coordination between different authorities. This Report analyses ten mechanisms established by APEC member economies pursuant to domestic legislation, as well as mechanisms that are required or encouraged to be established pursuant to investment agreements between two or more APEC member economies.

Key findings and takeaways are as follows:

There is no set pattern among the practices of APEC member economies, and diverse mechanisms are constituted in different institutional models and perform a range of functions. For example:

- some mechanisms are semi-independent, some are units within a single authority, others are inter-authority coordination bodies.

- some mechanisms are empowered to direct responsible authorities, others involve responsible authorities in the decision-making process.

- some mechanisms are empowered to lead negotiations and consultations with investors, others facilitate discussions between investors and responsible authorities.

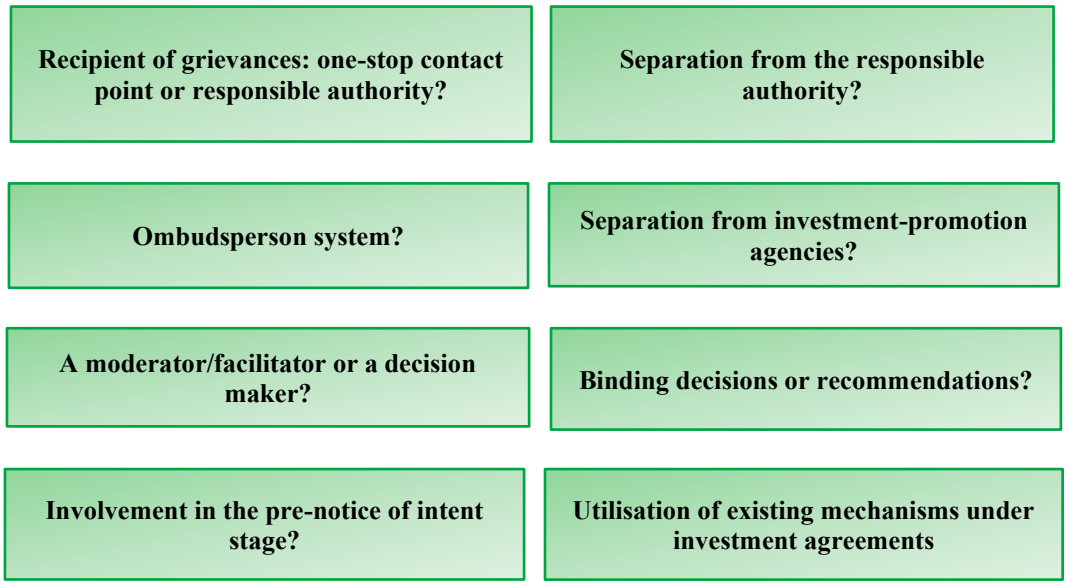
- some mechanisms are empowered to issue recommendations, while others give some directions that may in reality need to be complied with.

Based on the available evidence, none of the surveyed economies have established mechanisms under domestic legislation to dispense with investment arbitration or deprive investors of their entitlement under applicable investment agreements to go to arbitration. No mechanisms have been offered as alternative to investment arbitration. To date, none of them have required investors to choose between investment arbitration and domestic mechanisms. Again, based on the available evidence, investors are not required in those surveyed economies to exhaust the available domestic mechanisms before submitting disputes to investment arbitration.

While publicly available information is limited, there is some indication that the existence of such mechanisms is not widely known among foreign investors and there are only a few instances where investors' grievances and complaints regarding the treatment of their investments were successfully addressed by established mechanisms, without being escalated to investment arbitration. At the same time, no available evidence indicates that the types of dispute prevention and mitigation mechanisms that are analysed in this Report negatively affected the prospect of early resolution of disputes. Nor is there any publicly available evidence that the performance of such dispute prevention and mitigation mechanisms was criticised (or worse, gave rise to a separate claim) by foreign investors.

There is no list of "best practice" or a one-size-fits-all approach to establishing a mechanism for receiving and addressing investors' grievances and complaints, or to coordinating the government's efforts in preventing and mitigating investment disputes. This Report does not purport to prescribe any particular form, and no recommendation in this Report should be understood as a prescription for a successful implementation. A dispute prevention and mitigation mechanism needs to be designed to fit the particular constitutional arrangements, political and administrative system and culture of each economy, as well as any investment agreements which it concludes.

The analysis of the mechanisms established by APEC member economies has nevertheless identified the following points that economies may wish to consider when designing or improving a one-stop contact point and/or coordination mechanism:



Domestic mechanisms for preventing or mitigating investment disputes should be a complement to investment arbitration. Domestic mechanisms for prevention and mitigation of investment disputes cannot resolve every type of disputes that may be brought to investment arbitration for final resolution.

Dispute prevention is a broad concept, and a series of measures can be adopted for that purpose, in addition to establishing a one-stop contact point and/or a coordination mechanism. Such measures may include:

- assisting different branches of an economy in understanding their obligations towards foreign investments (e.g., through training programmes);

- recording the reasons behind adopting or amending legislation or specific administrative actions affecting investors;

- providing investors with a reasonable opportunity to express their views; and

- allowing both foreign and domestic investors to use dispute prevention and mitigation mechanisms.

Dispute prevention and mitigation mechanisms have the potential to provide both economies and investors with concrete and practical advantages. If well designed and effectively implemented, they could facilitate quicker and more amicable resolution of grievances, help lower legal costs and risks, improve investors' ability to navigate government processes, and contribute to a more predictable and stable business environment.

1. BACKGROUND AND SCOPE OF THE PROJECT

The aims and objectives of the Project are to analyse mechanisms within APEC member economies which are designed to address grievances and complaints of foreign investors regarding the treatment of their existing investments by authorities, as alternatives or complements to traditional dispute-settlement mechanisms based on agreements between APEC member economies which are aimed at protecting the rights and interests of foreign investors and investments.

To explain the aims and objectives, this Chapter begins by outlining a range of protection accorded to foreign investments under investment agreements between two or more economies (**Section 1.1**). It then examines the traditional mechanisms for settling disputes on the host economy's treatment of existing investments (often called 'investor-State dispute settlement' (ISDS) mechanisms), including arbitration between an investor and a host economy. Next, it describes the scope of the research and survey of this Project (**Section 1.2.1**) and the methodology for identifying target mechanisms for further analysis (**Section 1.2.2**). Each mechanism is briefly introduced (**Section 1.3**), with detailed discussion of organisation, competence and function of each mechanism reserved for **Chapter 2**. A list of Annexes will supplement the information in the main text (**Section 1.4**).

1.1 PROTECTION OF FOREIGN INVESTMENTS AND RESOLUTION OF INVESTMENT DISPUTES

1.1.1 Protection accorded to foreign investments under investment agreements

Investment agreements (see **Box 1.1** and **Box 1.4**) between two or more economies are one principal means of cooperation to promote and protect foreign investments. Under such agreements, contracting economies undertake to accord a range of protections to investors of their counterparties and certain investments meeting defined criteria.

Box 1.1 Types of investment agreements

Economies' commitment to promote and protect investments are typically set out in:

(i) bilateral investment treaties (BITs), namely standalone agreements signed between two economies (these treaties are typically signed between two economies (thus 'bilateral'), but there are a few known plurilateral treaties on investments); or
(ii) investment chapter in free trade agreements, economic partnership agreements, and other types of comprehensive agreements which set out various provisions on the trade and investment issues.

According to the United Nations Trade and Development (UNCTAD), there are 2,222 BITs and 407 agreements with provisions on investment protection in force (UNCTAD, 'International Investment Agreements Navigator', last checked on 15 July 2025).

Commonly, a contracting economy agrees with its counterparty economy:

- to accord to investors of the counterparty economy and their investments treatment no less favourable than what is accorded in like circumstances to its own investors or to investors of a third-party economy;

- to accord fair and equitable treatment to investments;

- not to expropriate or nationalise investments except for a public purpose, in a non-discriminatory manner, in accordance with due process of law, and upon payment of compensation; and

- to ensure that all transfers relating to investments may be freely made into and out of the territory.

These obligations are distinct from, and additional to, the requirement to treat investments in accordance with the host economy's domestic law. Breach of obligations can occur not only by the executive branch, but also by the legislative branch, the judiciary or any other entities to the extent that they may be considered as instrumentalities of an economy.

Investment agreements may play a role in complementing or substituting for weak domestic legal and regulatory institutions,[1] particularly in environments where investors perceive insufficient legal protection within a host economy. This perspective aligns with arguments for greater complementarity between domestic and international institutions to support the rule of law.[2] Similarly, initiatives such as the APEC Investment Facilitation Action Plan (IFAP) emphasise transparency, simplicity, and predictability to create investment environments conducive to productive business activities.[3]

In addition to substantive protections, investment agreements commonly include provisions for the resolution of investment disputes through formal dispute-settlement processes between an investor and the host economy. These typically allow an investor to initiate arbitration against the host economy if it suffers loss or damage from the treatment of its investments allegedly in violation of the obligations set out in the applicable investment agreement. Many investors have submitted claims relating to their investments to international arbitration (see **Box 1.2** for more information).

[1] Bayhaqi and Mann, 'ISDS as an Instrument for Investment Promotion and Facilitation' (2019), 3, citing Oldenski, 'What Do the Data Say about the Relationship between Investor–State Dispute Settlement Provisions and FDI?' (2015).
[2] Bayhaqi and Mann, 'ISDS as an Instrument for Investment Promotion and Facilitation' (2019), 3, citing Puig and Shaffer, 'Imperfect Alternatives: Institutional Choice and the Reform of Investment Law' (2018).
[3] APEC, *APEC Investment Facilitation Action Plan: Principles and Strategies* (2025), 2.

Box 1.2 Investment arbitration

Arbitration is a procedure in which a dispute is submitted, by agreement of the parties, to one or more neutral and impartial arbitrators (instead of a court), who will make a final, binding and enforceable decision on the dispute.

In a large majority of investment agreements, contracting economies consent in advance to submit to arbitration if a dispute with an investor arises in relation to the host economy's treatment of investments.

According to UNCTAD, as of 31 December 2024, there were 1,401 arbitration cases. Of those cases, 399 cases (approx. 30%) were decided in favour of host economy, while 301 cases (approx. 20%) were decided in investors' favour. 182 cases (approx. 13%) were settled after arbitration was commenced (UNCTAD, 'Investment Dispute Settlement Navigator').

This process often begins with a written request for consultations or negotiations – often called a notice of intent, triggering a 'cooling-off' period aimed at facilitating amicable solutions. If unresolved, the investor may proceed to international arbitration. **Box 1.3** below explains the process.

Box 1.3 Seeking settlement at the pre-arbitration stage

A large majority of investment agreements require that, when an investment dispute arises, the aggrieved investor and the host economy first seek to resolve it amicably through direct negotiations or consultations, before the investor chooses to go to a formal dispute-resolution mechanism (including arbitration).

Thus, an aggrieved investor is required to submit a written request for consultation – often called a **notice of intent** or a trigger letter. The investor would typically explain in this document why it believes that its investments have suffered loss or damage as a result of the host economy's measure and why it considers there is a breach of the applicable investment agreement. Many investment agreements provide for a fixed period for negotiations, normally between three and six months, during which amicable solutions may be explored (often colloquially called **cooling-off period**: see in **Figure 1.1**). Some agreements allow for involving a third party, such as through mediation, but it is up to the parties to decide how to conduct negotiations and consultations.

If no settlement is reached, and the aggrieved investor decides to proceed to arbitration, it files a **notice of arbitration** (also called **request for arbitration**) formally to commence arbitration proceedings (see **Figure 1.1**).

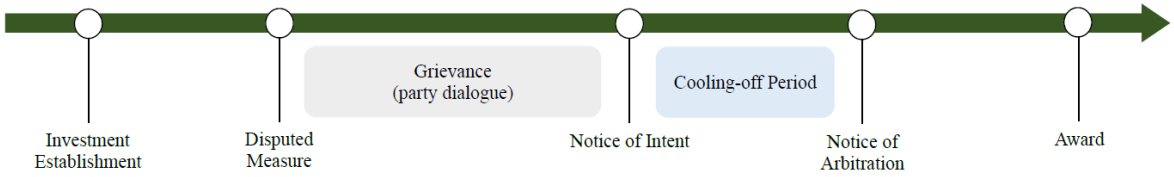
Despite its intended advantages,[4] investment arbitration faces a range of criticisms for high costs, procedural complexity, lengthy timelines, limited transparency, and the potential for strategic claims.[5] While this Report does not take a position on these criticisms, it recognises that such concerns have spurred widespread discussions and made economies consider

[4] Rocha, Brauch, and Mebratu-Tsegaye, 'Advocates Say ISDS Is Necessary Because Domestic Courts Are "Inadequate," But Claims and Decisions Don't Reveal Systemic Failings' (2021).
[5] UNCTAD, *Investor–State Disputes: Prevention and Alternatives to Arbitration* (2010), xxii–xxiii.

adopting possible reforms through various avenues. These criticisms provide context for discussions on the prevention and mitigation of investment disputes.[6]

Figure 1.1 illustrates the stages leading from the establishment of an investment to the emergence of a grievance, the initiation of arbitration, and the issuance of a final award.

Figure 1.1 Schematic illustration of escalation of an investment grievance into formal dispute-resolution process



1.1.2 Initiatives for preventing and mitigating investment disputes

The Project is aimed to identify and analyse dispute *prevention* and *mitigation* mechanisms. A number of economies, including some APEC member economies, have developed mechanisms aimed at preventing and/or mitigating investment disputes. These efforts focus on addressing potential disputes at an earlier stage. If such disputes were resolved at an early stage, formal legal proceedings would be avoided altogether. Even if they started, mitigation efforts could result in the termination of proceedings before an award is issued and the issue of liability is determined. This may, in turn, help reduce the resources needed to address the investor's grievance.

There is no strict or universally accepted definition distinguishing 'dispute prevention' from 'dispute mitigation'. Attempting to draw a rigid line or to categorise mechanisms as one or the other may even be counterproductive, as some mechanisms may contribute to both phases. Nevertheless, a conceptual distinction may be useful for analytical purposes, and this Report adopts, for reference, a framework proposed by the United Nations Commission on International Trade Law (UNCITRAL).

Dispute prevention involves proactive measures aimed at addressing investor grievances before they escalate into legal disputes. Such grievances may be expressed in non-legal terms, through informal complaints, media coverage, or public statements, and may not yet reflect breaches of investment agreements.[7] Preventive efforts may include structured information-sharing among government agencies for early identification of potential investor concerns, as well as timely and coordinated responses.[8]

Preventive measures may also encompass broader activities to ensure that domestic laws, regulations, and decisions comply with international investment commitments, such as:

[6] UNCTAD, *Investor–State Disputes: Prevention and Alternatives to Arbitration* (2010), xiv, xv; Johnson, Sachs, and Merrill, 'Investor–State Dispute Prevention: A Critical Reflection' (2021), 125.
[7] UNCITRAL, 'Possible Reform of Investor-State Dispute Settlement (ISDS): Draft Toolkit on Prevention and Mitigation of International Investment Disputes' (2025), 3, para. 2.
[8] UNCITRAL, 'Possible Reform of Investor-State Dispute Settlement (ISDS): Draft Toolkit on Prevention and Mitigation of International Investment Disputes' (2025), 3, para. 2.

- consulting with investors before introducing a law, policy, or specific decision, or providing opportunities for them to share views and opinions on issues that may potentially affect their investments; or

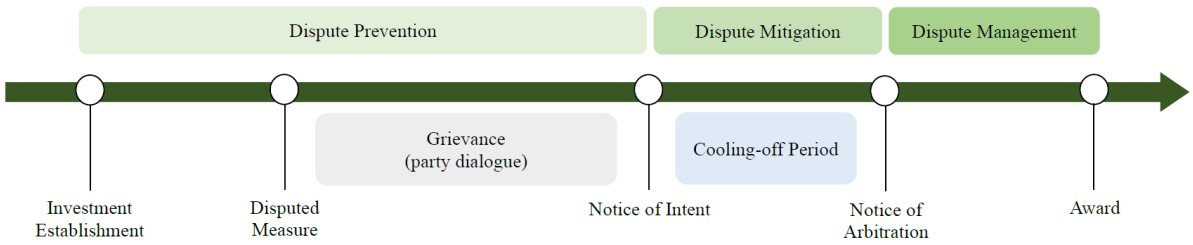
- offering training programmes, technical assistance, and other initiatives to raise awareness of obligations under investment agreements.

In contrast, ***dispute mitigation*** generally begins when a grievance is formally framed in legal terms, typically through a notice of intent (used generically in this Report to refer to a written request for consultations or negotiations: see **Box 1.3** above). A majority of investment agreements require that, upon issuance of a notice of intent, an aggrieved investor and the host economy seek to resolve by consultation and negotiation for a fixed period (namely 'cooling-off' period). The parties could agree to go to mediation to seek settlement. This requirement for consultation or negotiation could provide a major opportunity for exploring a consensual resolution. Dispute mitigation also plays an important role in managing the transition between informal dialogue and formal proceedings.[9]

If no settlement is reached and the investor initiates arbitration, the process enters the ***dispute management*** phase. There is again no universally accepted definition of this phase. However, in this phase an investor would make legal claims and seek remedies in a formal proceeding (arbitration or litigation) and the host economy would need to defend its position. Internally, that management would require inter-agency coordination, strategic response and instructions on legal counsel and cost management.[10]

Figure 1.2 below uses the timeline at **Figure 1.1** above and illustrates schematically UNCITRAL's concepts of dispute prevention and dispute mitigation phases. For clarity, we also show where the dispute management phase occurs.

Figure 1.2 Schematic illustration of the concepts of dispute prevention and dispute mitigation



Dispute prevention and mitigation mechanisms are often viewed as constructive alternatives or complements to investment arbitration. In theory, dispute prevention and mitigation mechanisms could offer more accessible, cost-effective, and relationship-preserving avenues for addressing investor grievances, and when effectively implemented, they may reduce reliance on formal proceedings and contribute to a more predictable and stable investment or business climate.

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[9] UNCITRAL, 'Possible Reform of Investor-State Dispute Settlement (ISDS): Draft Toolkit on Prevention and Mitigation of International Investment Disputes' (2025), 3, para. 2.

[10] See UNCITRAL, 'Possible Reform of Investor-State Dispute Settlement (ISDS): Draft Toolkit on Prevention and Mitigation of International Investment Disputes' (2025), 3, para. 2; Bonnitcha and Williams, *Investment Dispute Prevention and Management Agencies: Toward a more informed policy discussion* (2022), 14, '3.3 Litigation Management Agencies'.

Some economies have introduced dispute prevention and mitigation mechanisms as tools that may help to facilitate investment. By promoting early engagement, transparency, and amicable grievance resolution, these mechanisms can support investment strategies aimed to attract, protect, expand, and retain investment, within a stable and predictable environment.[11]

One good example is the Korean Foreign Investment Ombudsman (see **Section 2.1.3** below). It is stated to be aimed to provide aftercare support and grievance resolution service for foreign investors and foreign-invested companies. The Ombudsman represents that such support enhances the business environment of Korea and makes it a more attractive investment destination [12] and informs us that foreign chambers of commerce have regarded the Ombudsman system as one of the most effective incentives for attracting investment.

By enabling early resolution, dispute prevention and mitigation mechanisms may help to foster the 'free, open, fair, non-discriminatory, transparent and predictable' trade and investment environment envisioned in the Putrajaya Vision 2040.[13]

1.1.3 Review of previous studies

The issue of dispute prevention and mitigation has been addressed in a few studies and policy reports. They have examined approaches adopted by host economies to prevent and mitigate investment disputes. This section will highlight a few selected examples that are relevant to this Project. For clarity, these references were consulted as background information to analyse mechanisms in different economies and to guide our own identification of mechanisms that fall within the scope of this Project (see **Section 1.2.1** below).

1.1.3.1 APEC Guidebook

Other than efforts made in the international fora, APEC also endeavoured to promote dispute settlement prevention and mitigation. The APEC Best Practices Guidebook on Capacity Building to Ensure Appropriate and Prompt Consideration of Investor Complaints [14] (Guidebook) focused on pre-court dispute resolution. The Guidebook included mechanisms considered to contribute to investment facilitation by performing advisory, pre-screening, and approval functions. Those functions may be relevant to dispute prevention and mitigation, the theme of this Project. At the same time, some of those mechanisms may either perform wider functions than addressing specific grievances or complaints from individual investors regarding the treatment of their investments, while some are not so empowered to address such grievances or complaints. We have reviewed domestic legislation of all 21 APEC member economies covered by the Guidebook, and identified a set of mechanisms which fall within the scope of the Project, which are summarised in **Chapter 2**.

[11] UNCITRAL, 'Possible Reform of Investor-State Dispute Settlement (ISDS): Draft Toolkit on Prevention and Mitigation of International Investment Disputes' (2025), 3, para. 5; UNCITRAL, 'Compilation of Best Practices on Investment Dispute Prevention and Mitigation' (2023), 2, para. 7.
[12] Foreign Investment Ombudsman, *Annual Report 2024*, 'Ombudsman's Message'.
[13] APEC, 'APEC Putrajaya Vision 2040' (2020).
[14] APEC, *Best Practices Guidebook: Capacity-Building to Ensure Appropriate and Prompt Consideration of Investors' Complaints to Improve the Investment Climate within APEC* (2015).

1.1.3.2 UNCITRAL resources

The UNCITRAL Compilation of Best Practices on Investment Dispute Prevention and Mitigation[15] and different versions of its Draft toolkit and its precursors on prevention and mitigation of international investment disputes (Draft toolkit)[16] scanned various prevention and mitigation mechanisms. The UNCITRAL's compilation seeks to list 'best practice' in the prevention, mitigation, and management of investment disputes. The Draft toolkit proposes a functional typology of such mechanisms, including investor communication, inter-agency coordination, and collaboration with other governments, with some examples of mechanisms to illustrate the points. Comments and submissions from UNCITRAL members on the early versions of the Draft toolkit clarified the functions of some of the mechanisms referenced in the document. Certain mechanisms of APEC member economies were included in the UNCITRAL materials. We reviewed primary resources (laws, regulations and official publications) relating to those mechanisms, as well as submissions made by some of those APEC member economies, to decide ultimately whether to include each such mechanism in this Project.

1.1.3.3 World Bank Reports

World Bank publications offer relevant insights into how economies manage investor grievances through institutional and policy frameworks. Two reports were reviewed in particular, as they present structured approaches to identifying, tracking, and resolving investor issues, areas directly relevant to the Project's aim of assessing how APEC member economies prevent and mitigate disputes. They also offer comparative examples of government-led mechanisms that align with the Project's focus on responsiveness, coordination, and early-stage resolution as part of a broader strategy to sustain investment.

The 2021 report entitled Managing Investor Issues Through Retention Mechanisms[17] proposes the Systematic Investment Retention Mechanism (SIRM) as a government-led framework for identifying, tracking, and resolving investor issues.[18] By integrating proactive engagement, inter-agency coordination, and risk management, SIRM is stated to help to address grievances early (possibly before those grievances are formulated as investment-agreement claims in a notice of intent) and prevent escalation into arbitration.[19]

The 2019 report entitled Retention and Expansion of Foreign Direct Investment: Political Risk and Policy Responses[20] serves as a conceptual basis for the 2021 report. Drawing on investor surveys and analysis of investment arbitration case, it outlines the rationale and intended functions of SIRM framework as an institutional response to political risks that may lead to divestment. The report highlights how institutional coordination, early-stage engagement, and structured tracking reduce risk, improve investor confidence, and support long-term retention. It is useful to review the 2019 and 2021 reports together to understand the SIRM proposed by the World Bank. We used those reports to see if any mechanism established by APEC member

[15] UNCITRAL, 'Compilation of Best Practices on Investment Dispute Prevention and Mitigation' (2023).
[16] UNCITRAL, 'Possible Reform of Investor-State Dispute Settlement (ISDS): Draft Toolkit on Prevention and Mitigation of International Investment Disputes' (2025). UNCITRAL adopted this draft document on 22 July 2025 (see the press release at https://unis.unvienna.org/unis/en/pressrels/2025/unisl382.html). However, when this report was endorsed, no final version has been published on the UNCITRAL website.
[17] Kher, P., E. Obadia, and D. Chun, *Managing Investor Issues Through Retention Mechanisms* (2021).
[18] Kher, P., E. Obadia, and D. Chun, *Managing Investor Issues Through Retention Mechanisms* (2021), 8.
[19] Kher, P., E. Obadia, and D. Chun, *Managing Investor Issues Through Retention Mechanisms* (2021), 8.
[20] World Bank, *Retention and Expansion of Foreign Direct Investment: Political Risk and Policy Responses* (2019).

economies might resemble those mechanisms covered by the World Bank and thus might be worth analysing in this Report.

1.2 OVERVIEW OF THE PROJECT

1.2.1 Scope of research and analysis

This Project focuses on mechanisms designed to address grievances raised by foreign investors with existing investments in APEC member economies before such grievances are elevated to formal dispute-settlement mechanism under the applicable investment agreements.

The Project has identified **such mechanisms that are (i) established by domestic laws and regulations of APEC member economies, or (ii) established pursuant to investment agreements to which they are contracting parties** (see the definition of Investment Agreement in **Box 1.4** below).

Box 1.4 Investment Agreements analysed in this Report

In this Report, the term 'Investment Agreement' refers to an agreement currently in force and is:

- signed between (i) two or more APEC member economies; (ii) the governing bodies of two or more APEC member economies; or (iii) entities associated with two or more APEC member economies or their governing bodies; and
- aimed to promote and protect investments from one APEC member economy into another APEC member economy.

This definition encompasses not only BITs but also the investment chapter of free trade agreements and economic partnership agreements. In identifying mechanisms established pursuant to Investment Agreements, we have reviewed the types of agreements defined above.

The term 'investment agreement' (lower case) is used in this Report more broadly to refer to any such agreement defined above but between any two or more economies.

APEC member economies may have taken their own initiatives to adopt laws and regulations to introduce mechanisms that would prevent and mitigate investment disputes. We have reviewed domestic laws and regulations relating to foreign investments and sought to identify such mechanisms.

APEC member economies may also have entered into Investment Agreements which require or encourage contracting economies to introduce a new mechanism under domestic law, establish a committee composed of the representatives from the contracting economies, or take certain institutionalised steps before commencing arbitration. We have considered and sought to identify any such mechanisms.

Both types of mechanisms, if well designed and implemented, may contribute to retaining investment and supporting continued operations, as effective grievance management could enhance investor confidence. These mechanisms may also contribute to a stable, transparent,

and supportive investment or business environment, key dimensions of investment facilitation in the APEC context.

More specifically, **this Report analyses those mechanisms of APEC member economies which:**

1. **serve as a one-stop contact point for receiving grievances directly from foreign investors; and/or**

2. **initiate actions to resolve such grievances, or are otherwise involved in the grievance resolution process, including through coordination between different authorities.**

This Report thus concentrates on institutional mechanisms that are empowered by domestic laws and regulations, or under Investment Agreements, which play a role in addressing grievances and complaints involving existing foreign investments. They may provide structured channels for early engagement, transparency, and amicable resolution of grievances.

1.2.2 Mechanisms excluded from the Project

As noted above, the Project focuses on institutional mechanisms that are specifically mandated to address grievances and complaints about existing foreign investments. Therefore, to maintain alignment and focus with the scope, the following types of mechanisms were excluded:

- mechanisms focused solely with investment promotion, market entry, or pre-establishment procedures.

- traditional litigation and judicial processes, as the Project centres on administrative or quasi-administrative mechanisms aimed at early-stage grievance management.

- public comment procedures to provide the public with an opportunity for comments before the adoption, amendment or repeal of regulations of general application that affect any matter covered by the Investment Agreement.

- joint committees or similar bodies created under Investment Agreements which are not explicitly mandated to address investor grievances relating to the treatment of their existing investments.

1.2.3 Methodological approach

We reviewed 122 Investment Agreements as well as domestic law and regulations of 21 APEC member economies to identify mechanisms established for addressing complaints and grievances raised by foreign investors concerning existing investments.

Building on the initial mapping, we undertook a detailed analysis of the institutional design, practical functioning, and performance of the identified mechanisms. This involved a desktop review of legal texts, procedural documents, and related materials to assess key organisational aspects such as institutional mandates, authority to act on investor grievances, inter-agency coordination, and procedural frameworks.

In addition to desktop research of publicly available information, we have also interviewed government officials responsible for the mechanisms. These discussions provided valuable insights into operational realities, implementation practices, and factors vital for the proper functioning of such mechanisms.

The key organisational and functional aspects of each mechanism is summarised in **Chapter 2**. The limited data on their past performance available to us are set out in **Chapter 4**.

We have also interviewed representatives from the Japanese industry/business sectors and the APEC Business Advisory Council (ABAC) on one-stop contact points for receiving and addressing investors' grievances and complaints. We have sought to understand their views as investors and users of the mechanisms on whether such contact points are well known to them; whether investors would consider approaching such contact points when issues arise with their existing investments; and what investors would expect from them. **Chapter 3** summarises some of their views relevant to the analysis in **Chapter 4**.

1.3 TARGET MECHANISMS IDENTIFIED FOR ANALYSIS

This section briefly describes those mechanisms which fall within the scope of this Project (Target Mechanisms). As explained at **Section 1.2.1** above, they include mechanisms established under domestic legislation on the own initiative of APEC member economies (see Section 1.3.1 below), and mechanisms established pursuant to Investment Agreements (see Section 1.3.2 below). Those mechanisms exhibit diverse institutional configurations and functions, and we will set out a typology of those configurations and functions in **Chapter 4**.

Box 1.5 'Responsible authority'

Investors' grievances and complaints could often arise from an act or omission of a public authority that allegedly cause loss or damage. Some Target Mechanisms include representatives of such a public authority as *ad hoc*, or non-permanent, members, while other Target Mechanisms are empowered to request information and documentation from such a public authority for their decision making.

Some domestic legislation may use specific terms to refer to such a public authority. In addition, we will also use the term 'responsible authority' in this Report generically to refer to such an authority.

1.3.1 Domestic mechanisms

The domestic mechanisms analysed in this Report include:

- **Chile**:
  - **Inter-ministerial Committee for the State Defence in International Investment Disputes**: a high-level advisory body that coordinates strategy and provides guidance across ministries in managing international investment disputes.
  - **International Disputes Defence Unit**: a specialised unit within the Ministry of Foreign Affairs that plans, coordinates, and supports Chile's defence in international disputes, in particular those involving foreign investments.

- **People's Republic of China**:
  - **National Center for Complaints of Foreign-Invested Enterprises and Local Agencies Handling Complaints**: a system coordinated and supervised by the Ministry of Commerce that provides administrative channels for foreign-invested enterprises and their investors to address grievances related to administrative actions and policies.

- **Republic of Korea**:
  - **Foreign Investment Ombudsman**: an independent body that receives grievances from foreign investors and foreign-invested companies, facilitates dialogue with government agencies, coordinates responses, and recommends corrective measures.
  - **Task Force on International Investment Disputes**: an inter-agency mechanism led by the Ministry of Justice that monitors potential investment disputes, assesses risks, designates responsible agencies, and coordinates inter-ministerial responses to develop strategies for dispute prevention and management.

- **Mexico**:
  - **Office of General Counsel for International Trade**: a legal unit within the Ministry of Economy that, among other, coordinates Mexico's defence in investment disputes under international agreements, provides legal advice to governmental agencies, and facilitates pre-arbitration negotiations with foreign investors.

- **Peru**:
  - **System of Coordination and Response of the State in International Investment Disputes**: a coordination mechanism under the Ministry of Economy and Finance that brings together relevant government entities to formulate strategies, coordinate responses, and support Peru's defence to investment disputes under contracts and treaties.

- **The Philippines**:
  - **Investment Ombudsman**: a dedicated unit within the Office of the Ombudsman that investigates investor complaints, facilitates resolution through mediation and coordination with government agencies, and refers serious matters for prosecution or disciplinary action.

- **Thailand**:
  - **Committee on International Investment Protection**: a cross-ministerial body that coordinates and supports government responses to treaty-based investment disputes and recommends preventive measures.
  - **Office of the Board of Investment**: a government agency under the Prime Minister's Office that supports investors granted promotion certificates through facilitation services, engagement with authorities, and advisory measures to prevent and address operational challenges.

1.3.2 Mechanisms established pursuant to Investment Agreements

Several Investment Agreements include provisions that support early engagement with investors and provide avenues for addressing grievances before they escalate into formal

disputes. These clauses reflect a growing trend to include dispute prevention and mitigation through early-stage consultation, coordination, and problem-solving frameworks.

The mechanisms analysed in this Report include:

- **Regional Comprehensive Economic Partnership (RCEP) Agreement**:
  - It encourages parties to establish or maintain one-stop investment centres, contact points, or focal points to assist investors, and refer complaints to relevant government agencies (Article 10.17).

- **China-Korea Free Trade Agreement**
  - It requires that each Party designate contact points that receive complaints from investors and assist them in resolving their difficulties (Article 12.19).

- **Indonesia–Korea Comprehensive Economic Partnership Agreement**
  - It requires consultations within 60 days of a claim and allows mediation within 180 days. Only after these steps, or if no resolution is reached, may the dispute proceed to arbitration or the courts of the host economy (Article 7.19).

- **Investment Agreement under the Mainland and Hong Kong Closer Economic Partnership Arrangement**
  - Under the agreement, the Mainland and Hong Kong agree to set up the Committee on Investment to deal with matters arising from the agreement. Disputes may be settled via complaint handling organisations/mechanism; coordination within the government or between the two sides which oversee dispute resolution of the respective sides; mediation; or administrative review, etc. as applicable (see Articles 17, 19 and 20).

- **Investment Agreement between the Manila Economic and Cultural Office and the Taipei Economic and Cultural Office**
  - It establishes a Joint Implementing Body and a Coordination Mechanism to address investor-related concerns (Articles 19 and 20).

1.4 LIST OF ANNEXES

This Report is accompanied by the following Annexes:

- **Annex 3.1**: ABAC Survey Questionnaire. This Annex reproduces extracts from a survey questionnaire that the research team used to obtain views from members of the APEC Business Advisory Council on the utility of one-stop contact points.

- **Annex 3.2**: Guiding Questionnaire for Japanese Business Stakeholders. This Annex reproduces a set of questions that the research team used for obtaining views from Japanese business stakeholders listed at Section 3.3 below.

This Report is also accompanied by a Bibliography of documents specifically referenced in Chapters 1-4.

2. SUMMARY OF THE TARGET MECHANISMS ANALYSED IN THIS PROJECT

2.1 DOMESTIC MECHANISMS

2.1.1 Chile: International Disputes Defence Unit and Inter-ministerial Committee for the State Defence in International Investment Disputes

2.1.1.1 Organisation

Under the current system, designed in 2023, the International Disputes Defence Unit (UDCI, *Unidad de Defensa en Controversias Internacionales* in Spanish) **and the Inter-ministerial Committee for the State Defence in International Investment Disputes** (Inter-ministerial Committee, *Comité Interministerial para la Defensa del Estado en Controversias Internacionales en Materias Relativas a Inversiones* in Spanish) **are mandated to lead Chile's efforts to address investors' grievances and complaints regarding the treatment of their investments**.[21]

The Inter-ministerial Committee and the UDCI were established by different legal instruments at different times, but they interact and converge in their functions.

On one hand, the Inter-ministerial Committee has the Minister of Finance and the Minister of Foreign Affairs (or their designated representatives) as permanent members, and other Ministers (or their designated representatives) on an *ad hoc* basis depending on the nature of the relevant dispute (Decree 125 of 2016, Article 2). The Inter-ministerial Committee receives support from a Technical Secretariat (role which currently is exercised by the Undersecretariat of Foreign Affairs of the Ministry of Foreign Affairs).[22] In turn, the UDCI must support the functions of its Technical Secretariat (Decree 125 of 2016, Articles 3 and 7).

On the other hand, the UDCI is a specialised unit established within the Ministry of Foreign Affairs and directly under the authority of the Minister of Foreign Affairs, as illustrated in **Figure 2.1** below (the Minister of Foreign Affairs is shown in green rectangle and the UDCI is shown in red rectangle). The coordinator of the UDCI is appointed directly by the

[21] The main pieces of legislation are as follows:
· **Decree 125 of 2016 of the Ministry of Foreign Affairs**, which creates the Inter-ministerial Committee for the State Defence in International Investment Disputes and regulates the coordination for settlement of such disputes (Decree 125 of 2016).
· **Law 21080**, which amends various legal texts to modernise the Ministry of Foreign Affairs (Law 21080). Article 8 of Law 21080 authorises the Minister of Foreign Affairs to establish a specialised advisory unit in charge of ensuring Chile's interests in international disputes.
· **Exempt Decree 180 of 2023 of the Ministry of Foreign Affairs**, which establishes a specialised advisory unit in charge of ensuring Chile's interests in international disputes (Exempt Decree 180 of 2023). Articles 1 and 3 of Exempt Decree 180 of 2023 describe the UDCI's functions broadly. Article 5 states that the Ministry of Foreign Affairs shall determine the international disputes to be handled by the UDCI.
· **Exempt Resolution 118 of 2023 of the Ministry of Foreign Affairs**, which assigns matters related to international investment disputes to the International Disputes Defence Unit of the Ministry of Foreign Affairs (namely the UDCI) (Exempt Resolution 118 of 2023). In fulfilment of Article 5 of Exempt Decree 180 of 2023, Article 1 of Exempt Resolution 118 of 2023 assigns to the UDCI those disputes that concern Chile in foreign investment matters.

[22] Under Chilean law, Ministers and Undersecretaries are appointed by the President.

Minister of Foreign Affairs (Exempt Decree 180 of 2023, Article 4) and does not have a specified term in office.

Figure 2.1 Excerpt from the Organisational Chart of Chile's Ministry of Foreign Affairs

Source: Ministry of Foreign Affairs website, 'Organisational Chart'.

Both mechanisms are funded with the public budget. The Inter-ministerial Committee does not have a specific account, but there is a specific entry for resources for the UDCI.

2.1.1.2 Competence and function

The Inter-ministerial Committee is mainly an advisory and inter-agency coordination body. It is in charge of advising and proposing actions, guidelines, and other measures to the President for the coordination, defence, and Chile's representation in international investment disputes (Decree 125 of 2016, Article 1) and is a place for different governmental stakeholders to discuss and coordinate how to address investors' grievances. As such, it does not have investor-facing functions.

The Inter-ministerial Committee structure and operations are flexible. As mentioned above, the specific composition of the Inter-ministerial Committee will depend on the specific nature of the issues to be addressed. It can invite other authorities and even private parties if deemed appropriate. The Inter-ministerial Committee hold sessions as needed but in practice it meets regularly around eight times a year. Likewise, there are no limitations as to the timing when the Inter-ministerial Committee can meet in relation to a specific grievance or dispute or the kind of grievances that it can consider.

The Inter-ministerial Committee does not itself issue binding decisions. Instead, it is the place where various public stakeholders involved exchange views and agree on how to proceed on certain matters. Agreements adopted by the Inter-ministerial Committee can be proposed to and implemented by the President through the relevant Ministry concerned, in coordination with the UDCI. There is no specific quorum for the Inter-ministerial Committee's recommendations, which are discussed among its members and adopted by consensus.

In contrast, the UDCI directly interacts and negotiates with foreign investors to solve grievances. While Decree 125 of 2016 sets forth that the UDCI shall support the activities of the Inter-ministerial Committee (particularly, its Technical Secretariat), Exempt Decree 180 of 2023 and Exempt Resolution 118 of 2023 broadly entrust the UDCI with the defence of Chile's interests in investment disputes, which includes all planning, coordination, and work preparation activities that may be necessary (Exempt Decree 180 of 2023, Article 5).

As shown in **Figure 2.2** below, the UDCI's operations are similarly flexible:

Figure 2.2 Flexible operations of Chile's UDCI[23]

Scope of authority	• There is no limitation as to the type of investors or grievances the UDCI can handle.
Timing of intervention	• The UDCI can be engaged at any stage: after the submission of a notice of intent or before such submission, if approached by authorities that become aware of a potential dispute.
Engagement mode	• In principle the UDCI is activated through government channels but nothing prevents it from receiving grievances directly from foreign investors.
Procedural rules	• There is no predetermined procedure to address grievances; instead, it is decided in a case-by-case basis.
Negotiation timeframe	• Consultations or negotiations are held within the timeframe set forth in the relevant investment agreement, although extensions are possible by agreement.

When negotiating with foreign investors, the UDCI is in permanent contact with the Inter-ministerial Committee. In practice, the UDCI first meets with aggrieved investors to understand their concerns and reports to the Inter-ministerial Committee. If the Inter-ministerial Committee recommends initiating formal consultations, a confidentiality agreement is signed with the investor. This agreement is important as it ensures that no reference is made publicly to the existence or contents of the discussions and the information exchanged will not be used against either party in a future case. Consultations are headed by the UDCI, with the participation of technical counterparties of other Ministries and responsible authorities involved, with whom the UDCI discusses the relevant issues and possible courses of action beforehand. Following several meetings with the investor, and in continuous coordination with other government interested parties, the UDCI calls for a session of the Inter-ministerial Committee for further discussion of the relevant grievances and possible courses of action. After obtaining views from the Inter-ministerial Committee, the UDCI meets again with the investors and continues the negotiations through an iterative process acting as a bridge between the aggrieved investors and the Inter-ministerial Committee and thus facilitating discussions between investors and responsible authorities.

The UDCI does not issue binding decisions. It instead provides advice and recommendations to the members of the Inter-ministerial Committee, which is integrated by people empowered to take a position regarding how to address investors' grievances. In addition, the UDCI coordinates the implementation of recommendations issued by the Inter-ministerial Committee, together with the Ministries and/or other public bodies involved. There also have been occasions where the UDCI has assisted in reviewing draft final decisions or responses from responsible authorities to investors, helping to ensure that they are well reasoned and consistent with the issue being addressed.

[23] Regarding the UDCI's engagement mode, we have been informed that investors may be more familiar with Chile's investment promotion office, InvestChile, and tend to contact InvestChile first to discuss their concerns and grievances. In these cases, investors' grievances may be redirected to the UDCI.

2.1.2 People's Republic of China: National Center for Complaints of Foreign-Invested Enterprises and Local Agencies Handling Complaints

2.1.2.1 Organisation

The system for addressing grievances of foreign-invested enterprises was initially rolled out by the Ministry of Commerce in 2006, and updated and revised by the legislative and executive branches in 2019-2020.[24]

The 2020 Rules designate the Ministry of Commerce at the central level, and a body within each local people's government at the regional and local levels, as 'Agencies Handling Complaints', and mandate them to receive and address complaints from foreign-invested enterprises or foreign investors (2020 Rules, Article 2). To perform this role, the Ministry of Commerce establishes the 'National Center for Complaints of Foreign-Invested Enterprises' (the National Center) (2020 Rules, Article 6). Each local people's government at and above the county level is required to designate a department or institution as 'Local Agency Handling Complaints' (2020 Rules, Article 7).

The Ministry of Commerce is also tasked to coordinate the work of various Agencies Handling Complaints. The Ministry establishes an 'inter-ministerial joint meeting system for complaints of foreign-invested enterprises' (Joint Meeting) (i) to coordinate and facilitate the handling of such complaints at the central level; and (ii) to guide and supervise the handling of such complaints at the regional and local levels (2020 Rules, Article 5). The Department of Foreign Investment Administration of the Ministry of Commerce serves as the Office of Joint Meeting.

No information has been identified in the public domain as to how the chair of the National Center for Complaints of Foreign-Invested Enterprises is selected or what criteria are applied for selecting an Agency Handling Complaints at the regional and local levels. Nor has information been identified on who are the members of the Joint Meeting and how they are selected.

2.1.2.2 Competence and function

The Agencies Handling Complaints are tasked to address problems raised by foreign-invested enterprises or their investors (FIL, Article 26). 'Foreign-invested enterprise' is defined as 'an enterprise that is wholly or partly invested by a foreign investor and registered in the territory of [the People's Republic of China] in accordance with [its] law' (FIL, Article 2). There is no limitation on the scope of foreign investors whose 'problems' (grievances, complaints, etc.) may be submitted to the Agencies Handling Complaints.

Complaints may also be submitted by Chambers of Commerce or similar organisations. The 2020 Rules provide that chambers of commerce and associations of which foreign-invested enterprises are members may submit issues concerning investment environment raised by their

[24] The main pieces of legislation are as follows:
· **Foreign Investment Law of the People's Republic of China (FIL)**, adopted on 15 March 2019.
· **Regulations on the Implementation of the Foreign Investment Law**, adopted on 26 December 2019.
· **Order of the Ministry of Commerce of the People's Republic of China 2020 No. 3**, adopted on 18 August 2020, setting out the Rules on Handling Complaints of Foreign-Funded (Foreign-Invested) Enterprises (2020 Rules).
· **Handling Guideline of NCCFIE**.

members, and specific suggestions on policies and measures, to Agencies Handling Complaints (2020 Rules, Article 9).

The Agencies Handling Complaints are empowered to address a broad range of grievances, complaints, etc. One explicit limitation set out in the 2020 Rules is that those Agencies do not deal with 'applications … for coordination to settle civil and commercial disputes with other natural persons, legal persons or other organizations' (2020 Rules, Article 2). So long as complaints relate to (i) an alleged infringement of the complainant's legitimate rights and interests by the actions of administrative agencies (including organisations authorised by legislation to perform public functions) and their staff members; or (ii) issues with the investment environment (see 2020 Rules, Article 2), they can be submitted to the Agencies Handling Complaints.

The following categories of complaints are to be addressed by the Ministry of Commerce (as the National Center) (2020 Rules, Article 6):

- where the matter is related to administrative actions of the relevant departments under the State Council, people's governments of provinces, autonomous regions and municipalities and their staff members;

- where suggestions are made for relevant departments under the State Council and people's governments of provinces, autonomous regions and municipalities to improve relevant policies and measures; and

- where the matter has significant national or international impact, and could be handled by the Ministry of Commerce as it deems fit.

The Agencies Handling Complaints are mandated to facilitate dialogues between a complainant (namely an aggrieved investor or enterprise) and the relevant administrative organ (i.e., responsible authority as defined in Box 1.5 above) and to recommend policies and measures. The 2020 Rules provide that an Agency Handling Complaints may deal with complaints in any of the following ways:

- promoting mutual understanding (including reaching a settlement agreement) between an aggrieved investor and the relevant administrative organ;

- coordinating with the relevant administrative organ;

- submitting recommendations to people's governments at and above the county level and their departments on how relevant policies and measures may be improved; and/or

- other methods that the Agency Handling Complaints deems appropriate.

The Agency Handling Complaints has no explicit authority to impose settlement on the parties. It is not known whether, in practice, it may decide to do so in the exercise of its discretionary power.

If a settlement agreement is reached and made in accordance with law, that agreement is binding on both parties. If a settlement agreement is reached between the aggrieved investor or enterprise and the government (or the relevant administrative organ) as a result of the

involvement of an Agency Handling Complaints and it is made in accordance with law, it is binding on both parties. If the administrative organ fails to implement the settlement agreement, its responsibility would be pursued in accordance with Article 41 of the Implementing Regulations (2020 Rules, Article 18, final paragraph).

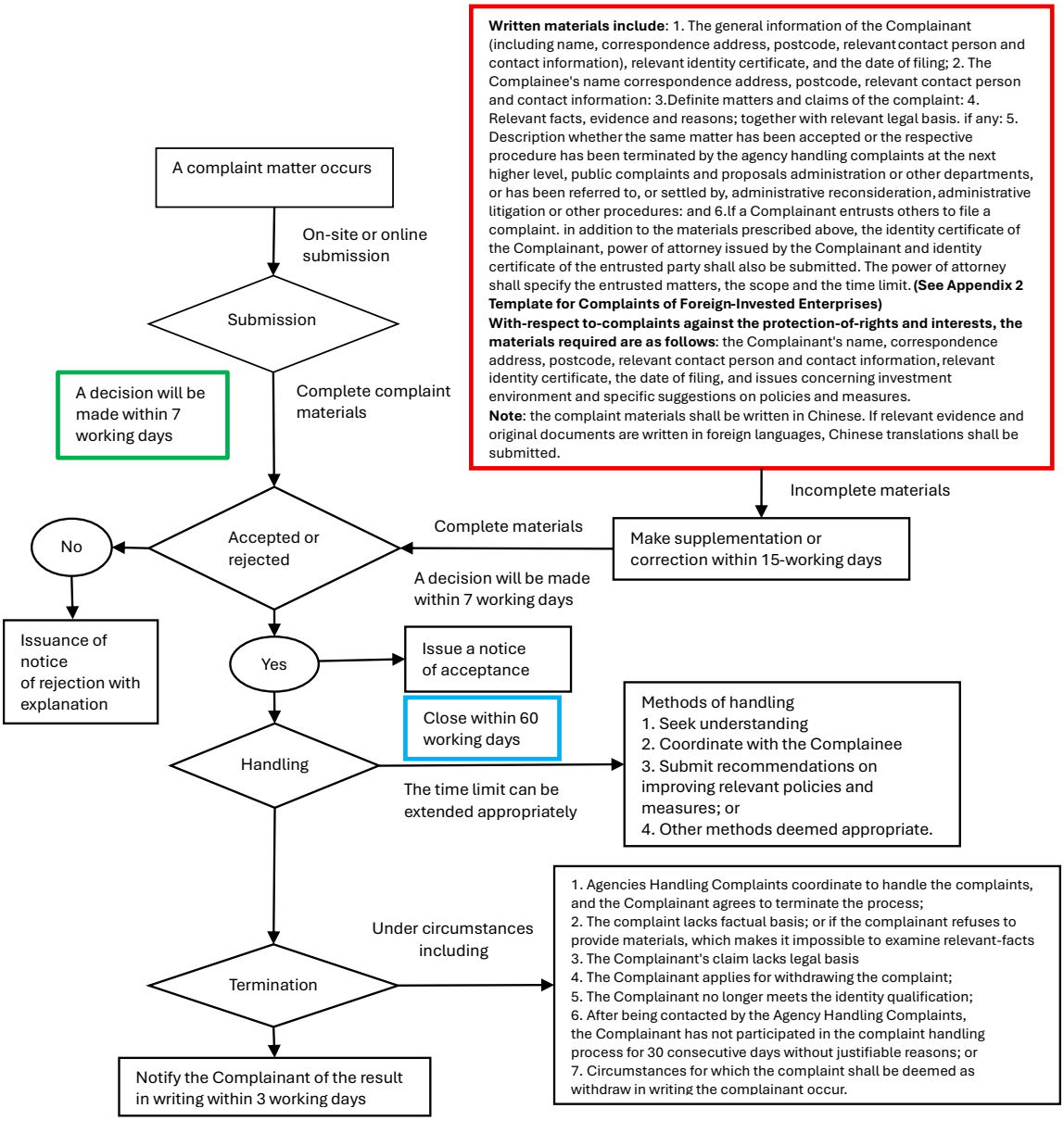
The Agencies Handling Complaints conduct a screening to reject those complaints which do not meet certain conditions. An Agency Handling Complaints will communicate to the foreign-invested enterprise that submitted a complaint (defined in the Handling Guideline as Complainant), within seven working days of receipt of the complaint, if any of the following threshold conditions is not met and the complaint cannot be accepted (2020 Rules, Article 14):

- the Complainant is not a foreign-invested enterprise or foreign investor;
- the Complainant applies for coordination to settle civil and commercial disputes with other natural or legal persons or other organisations;
- those civil and commercial disputes are not within the scope of complaints of foreign-invested enterprises prescribed by the 2020 Rules;
- the Complainant is not within the acceptable scope of the respective Agency Handling Complaints;
- the Complainant's materials fail to meet the requirements of the 2020 Rules, even after being supplemented or corrected in accordance with the notice request by the relevant Agency Handling Complaints;
- the Complainant forged or altered evidence;
- the complaint is manifestly without factual basis;
- the same complaint has been accepted by the relevant Agency Handling Complaints or the respective procedure has been terminated by public complaints and proposals administration etc.; or
- the same complaint has been referred to, or settled by, administrative reconsideration, administrative litigation, etc.

Conversely, if the complaint meets the conditions under the 2020 Rules, it must be accepted and a note of acceptance must be issued to the Complainant.

The 'Flow Chart of Complaints of Foreign-Invested Enterprises' in the Handling Guideline, reproduced in **Figure 2.3** below, shows this screening process and the subsequent handling of a complaint:

Figure 2.3 Flow-chart showing how a complaint is addressed by an Agency Handling Complaints



Source: Attachment to the Handling Guideline of NCCFIE (recreated by the authors).

The part indicated in a red rectangle in **Figure 2.3** above lists the materials that need to be submitted by a Complainant. It reads as follows:

Written materials include:

1. The general information of the Complainant (including name, correspondence address, postcode, relevant contact person and contact information), relevant identity certificate, and the date of filing;
2. The Complainee's name, correspondence address, postcode, relevant contact person and contact information;
3. Definite matters and claims of the complaint;
4. Relevant facts, evidence and reasons, together with relevant legal basis, if any;
5. Description whether the same matter has been accepted or the respective procedure has been terminated by the Agency Handling Complaints at the next higher level, public complaints and proposals administration or other departments, or has been referred to, or settled by, administrative reconsideration, administrative litigation or other procedures; and

> 6. If a Complainant entrusts others to file a complaint, in addition to the materials prescribed above, the identity certificate of the Complainant, power of attorney issued by the Complainant and identity certificate of the entrusted party shall also be submitted. The power of attorney shall specify the entrusted matters, the scope and the time limit. …
>
> **With respect to complaints against the protection of rights and interests, the materials required are as follows**: the Complainant's name, correspondence address, post code, relevant contact person and contact information, relevant identity certificate, the date of filing, and issues concerning investment environment and specific suggestions on policies and measures.

The diagram reproduced in **Figure 2.3** above also specifies that the submission must be made in Chinese and relevant evidence and original documents in foreign languages must be accompanied by Chinese translations.

An Agency Handling Complaint is required to complete its handling process within 60 days after deciding to accept the submitted complaint. As the Flow Chart summarises, a complaint is handled by the relevant Complaint-Handling Agency in the following manner:

1. The Agency Handling Complaints will decide whether to accept or reject the submitted complaint, within seven working days of its receipt, by checking whether the complaint meet the threshold conditions (2020 Rules, Article 14) (part indicated in a green rectangle).

2. The Agency Handling Complaints will then have 60 working days to complete the handling process (2020 Rules, Article 19) (part indicated in a blue rectangle). The time-limit may be extended if the complaint involves multiple departments or complicated issues.

3. The Agency Handling Complaints will terminate the handling process if any of the following circumstances exists (2020 Rules, Article 20):

    a. The Agency Handling Complaints coordinates to handle the complaint in accordance with Article 18 of the 2020 Rules and the Complainant agrees to terminate the process;

    b. The complaint lacks factual basis, or, the Complainant refuses to provide materials, which makes impossible the examination of relevant facts.

    c. The Complainant's claim lacks legal basis.

    d. The Complainant withdraws the complaint in writing.

    e. The Complainant no longer meets the identity qualification (i.e. it is no longer a foreign-invested enterprise or a foreign investor).

    f. The Complainant has not participated in the handling process for 30 consecutive days after being contacted by the Complaint-Handling Agency without justifiable reasons.

The 2024 Edition of the Foreign Investment Guide, issued by the Ministry of Commerce, states that the Ministry launched a system for collecting and handling complaints of foreign-invested enterprises in September 2023, which, among others, allows enterprises to report complaints

online.[25] We have not been able to identify that site for online application. Other methods of communication for the National Center are set out as follows (the 2024 Edition of the Guide also contains a directory of Local Agencies Handling Complaints):

National Center for Complaints of Foreign-invested Enterprises

Address:	3F, Building 1, 28 Andingmen Outer East Back Alley, Dongcheng District, Beijing
Postal Code:	100731
Tel.:	+86-10-64404523
Fax:	+86-10-64515304
E-mail:	fiecomplaint@cipainvest.org.cn

2.1.3 Republic of Korea: Foreign Investment Ombudsman

2.1.3.1 Organisation

The Foreign Investment Ombudsman system was established in 1999, through the enactment of the Foreign Investment Promotion Act.[26] The system is aimed to provide 'aftercare support and grievance resolution service for foreign investors and foreign-invested companies in Korea'.[27]

The Foreign Investment Promotion Act created the position of Foreign Investment Ombudsman and a grievance committee (also known as 'grievance settlement body') to support the work of the Ombudsman. That Act provides that '[i]n order to resolve complaints from foreign investors and foreign-investment companies, a foreign investment ombudsman shall be commissioned from among persons with abundant knowledge and experience in foreign investment affairs' (Article 15-2, paragraph 1).[28]

The same Act further provides that a 'grievance committee' is created to support the duties of the Foreign Investment Ombudsman (Article 15-2, paragraph 10). That committee is located within the Korea Trade-Investment Promotion Agency (KOTRA) but it is headed by the Ombudsman.

The Ombudsman 'shall be commissioned by the President [of the Republic of Korea], after the recommendation of the Minister of Trade, Industry and Energy and deliberation and decision by the Foreign Investment Committee'. [29] The term of office of the Ombudsman is three years and, although the legislation is silent, an Ombudsman may be re-appointed (and two previous Ombudsmen were re-appointed).

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[25] Ministry of Commerce of the People's Republic of China, *Foreign Investment Guide of the People's Republic of China*, 2024 edition.

[26] Foreign Investment Promotion Act. The most recent amendments to the Foreign Investment Promotion Act are understood to have come into force on 14 December 2023, but we have been able to find an English translation of the version that incorporates all the amendments up to 5 January 2021.

[27] Foreign Investment Ombudsman, *Annual Report 2024*, 2 'Ombudsman's Message.'

[28] In Section 2.2.3, the Article and paragraph numbers within parentheses are those of the Foreign Investment Promotion Act.

[29] The Foreign Investment Committee is created pursuant to Article 27 of the same Act, and headed by the Minister of Trade, Industry and Energy. Its members include Vice Ministers of a range of government ministries and agencies: see Foreign Investment Promotion Act, Article 15-2, paragraph 2.

The President of KOTRA is empowered to determine all the matters necessary for the organisation and operation of the grievance settlement body, upon deliberation of the Foreign Investment Committee.

The grievance settlement body includes 'Home Doctors'. They are specialists assigned to each client company and act as the initial contact point within the Foreign Investment Ombudsman system to address grievances. Home Doctors are employed by KOTRA through a public recruitment process. The 2024 Annual Report explains that the current Home Doctors have 'deep knowledge and expertise in their respective fields of taxation, law, labor, environment, finance, immigration, etc.'.[30] Home doctors are permanently assigned to major foreign-invested companies; for example, companies with international recognition, in key industries, and/or with significant investment scale. Other foreign investors and foreign-invested companies receive home doctors' assistance as soon as issues arise.

2.1.3.2 Competence and function

The Foreign Investment Ombudsman is tasked to resolve complaints from foreign investors and foreign-invested companies (Article 15-2, paragraphs 1 and 3). A 'foreign investor' is defined in the Foreign Investment Promotion Act as a foreigner who holds stocks or shares of a Korean corporation or enterprise, while a 'foreign-invested company' means a company in which a foreign investor has invested (Article 2, paragraphs 5 and 6). Thus, not only foreign investors but also domestic companies with foreign investment are within the Ombudsman's support scope.

The Foreign Investment Promotion Act contains no limitation on the types of investment grievances or complaints that the Ombudsman is empowered to resolve. Its Annual Reports explain that the Ombudsman provides support in '[a]ll areas with regard to business & living environment, including investment system, investment incentives, taxation, finance, foreign exchange, labor, safety, fair trade, pharmaceuticals, tariff, customs, construction, environment, law, industrial site, visa, immigration, IT, intellectual property, etc.'.[31] The Annual Reports also clarify that he or she cannot deal with 'private disputes between companies, business of individual companies, requests that contradict global standards and matters that unjustly influence other companies or industries'.[32]

Although the legislation is silent, there is no indication in the publicly available sources that the Ombudsman and the grievance settlement body would select only certain types of grievances for resolution or otherwise refuse to deal with any specific grievances. Nor is any indication that any specific business sectors or industries are excluded from the scope of the Ombudsman's authority.

The Foreign Investment Ombudsman does not have the exclusive authority to discuss investment-related grievances and complaints for early resolution. Foreign investors and foreign-invested companies may either go to the Office of the Foreign Investment Ombudsman for assistance, or choose to discuss issues directly with the responsible authorities considering whichever is deemed more efficient.

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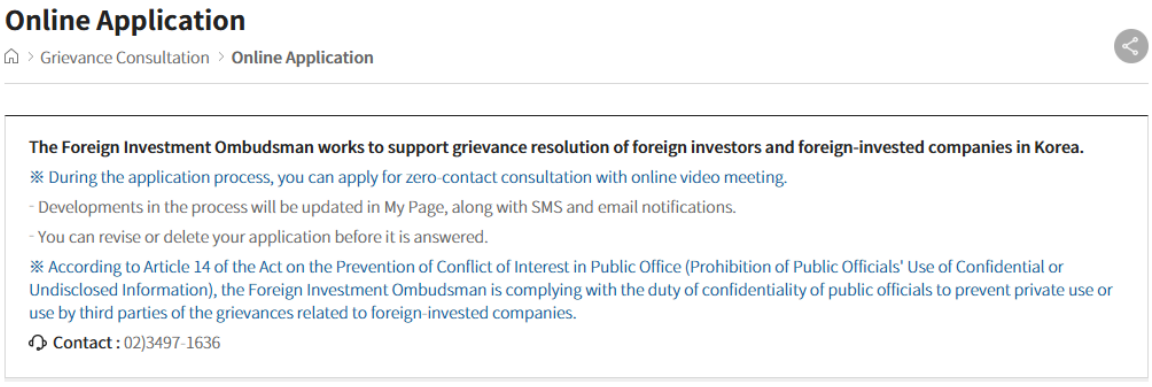
[30] Foreign Investment Ombudsman, *Annual Report 2024*, p. 2 'Ombudsman's Message'.
[31] See, e.g., Foreign Investment Ombudsman, *Annual Report 2024*, 6 'Areas of Support'.
[32] See, e.g., Foreign Investment Ombudsman, *Annual Report 2024*, 6 'Areas of Support'.

The Foreign Investment Ombudsman may request the cooperation of the responsible authority in the exercise of her or his statutory power and, where deemed necessary, she or he may recommend the responsible authority to take corrective measures. The Foreign Investment Promotion Act provides that 'where necessary for resolving complaints from foreign investors and foreign-invested companies, the foreign investment ombudsman may request the head of a relevant administrative agency and the head of a foreign-investment related agency … to render the following necessary cooperation' (Article 15-2, paragraph 3). The agency is required under that paragraph to give explanations, submit data, state opinions of the relevant employees and other interested persons, and facilitate site visits. Once he or she addresses complaints from foreign investors and foreign-invested companies, the Foreign Investment Ombudsman may **recommend** the heads of relevant agencies (i.e., responsible authorities) to take corrective measures (Article 15-2, paragraph 4). When issuing a non-binding recommendation, the Ombudsman may set out the 'reply deadline' for the administrative agency or public institution to take actions.

The responsible authority in receipt of a recommendation from the Foreign Investment Ombudsman is required to explain how it has acted in response. It may be required to provide explanations to the Foreign Investment Committee. Once a recommendation is issued, the relevant administrative agency or public institution is required to notify the Foreign Investment Ombudsman, within 30 days of receipt, how it has been addressed (Article 15-2, paragraph 5).[33] If the recommendation is not followed, the Foreign Investment Ombudsman may request the same agency or institution that the recommendation be submitted to the Foreign Investment Committee as an agenda for deliberation (Article 15-2, paragraph 6).

A foreign investor or foreign-invested company is invited to submit its grievance online. The portal is available at the following page of the website of the Foreign Investment Ombudsman: https://ombudsman.kotra.or.kr/ob-en/ob/i-2635/dstrss/front/cnslt-aply.do. The top part of this online application page is reproduced below.

Figure 2.4 Extract from the online application portal of the Foreign Investment Ombudsman

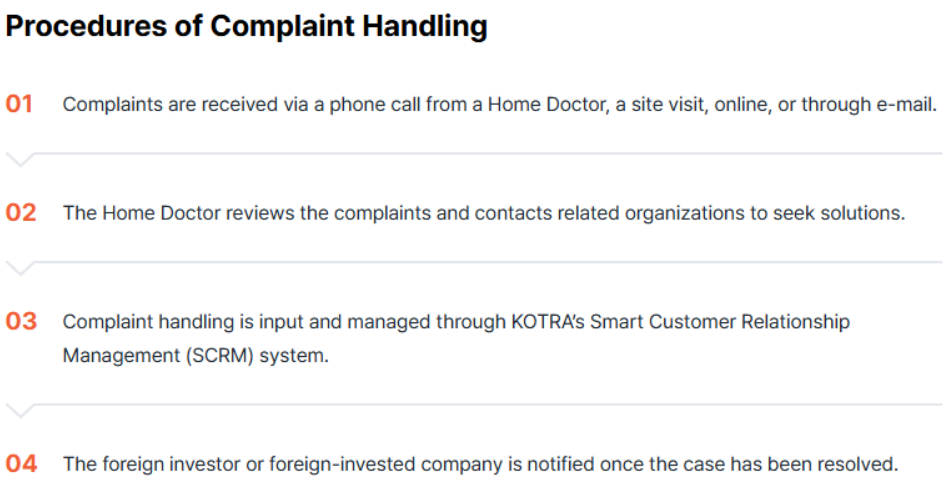


Source: Foreign Investment Ombudsman website, 'Online Application'.

[33] The 30-day period is prescribed in the Enforcement Decree of the Foreign Investment Promotion Act, Article 21-3, para. 5 (Presidential Decree No. 34657, dated 2 July 2024).

The website explains that the consultation needs to be made in Korean first, although it clarifies that consultation may be conducted in English as well. The KOTRA website contains the following diagram (**Figure 2.5**) briefly showing the procedure for complaint handling:[34]

Figure 2.5 Complaint handling process by the Foreign Investment Ombudsman



Source: KOTRA website, 'Foreign Investment Ombudsman'.

The Foreign Investment Ombudsman cooperates closely with the Ministry of Justice in preventing and proactively responding to investor disputes. On 30 April 2021, the Office of the Foreign Investment Ombudsman and the Ministry of Justice signed a Memorandum of Understanding (MOU) to prevent and proactively respond to grievances of foreign investors that may be escalated to arbitration proceedings.[35] According to the Ombudsman's Annual Reports, the Foreign Investment Ombudsman and the Ministry of Justice have shared information on grievances that may be escalated into dispute-resolution mechanisms (arbitration, conciliation, etc.) under applicable investment agreements. No information is made publicly available as to which grievances were considered to be potentially escalated into investment arbitration. Those reports also confirm that they established a 'joint response system'.[36] The Foreign Investment Ombudsman is understood to play a role in this joint response system by offering training courses on investment-arbitration mechanisms and other guidance to investment promotion agencies and local governments, with a view to reducing grievances and complaints of foreign-invested companies.

Information shared with the Foreign Investment Ombudsman in the consultation process is kept confidential. The Foreign Investment Promotion Act provides that the Ombudsman 'shall not use data received from the heads of relevant administrative agencies, etc. … or confidential information that he or she has become aware of in the course of performing duties for any purposes other than those prescribed by this Act, or divulge it to any third party' (Article 15-2, paragraph 8).

[34] KOTRA website, 'Foreign Investment Ombudsman'.
[35] Foreign Investment Ombudsman, *Annual Report 2021*, 41 '4. Cooperation and Promotion Activities / (1) Signing the MOU to prevent ISDS (Apr. 30, 2021)'.
[36] Foreign Investment Ombudsman, *Annual Report 2021*, 41; Foreign Investment Ombudsman, *Annual Report 2022*, 40; Foreign Investment Ombudsman, *Annual Report 2023*, 40.

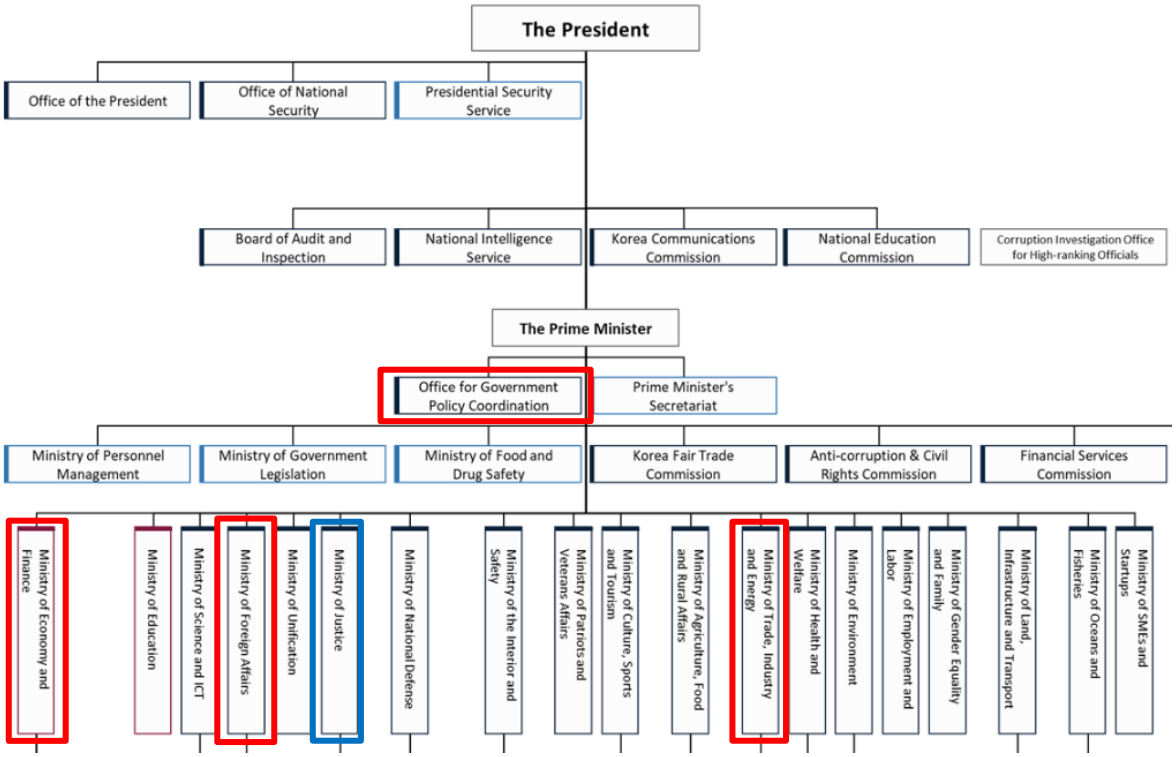
2.1.4 Republic of Korea: Task Force on International Investment Disputes

2.1.4.1 Organisation

The Task Force on International Investment Disputes (the Task Force) was established by the President, in a series of presidential decrees issued in 2019, 2021 and 2024.[37]

The Task Force is headed by the Ministry of Justice and includes as permanent members senior civil servants of various ministries. The Vice Minister of the Ministry of Justice chairs, and oversees the function of, the Task Force (Article 4, paragraph 2).[38] The permanent members include senior civil servants of (i) the Office for Government Policy Coordination (under the Prime Minister); (ii) the Ministry of Economy and Finance; (iii) the Ministry of Foreign Affairs; (iv) the Ministry of Justice and (v) the Ministry of Trade, Industry and Energy (Article 4, paragraph 3). Those permanent members are indicated in red rectangles in **Figure 2.6** below (the Ministry of Justice – the coordinating body – is marked in a blue rectangle).[39]

Figure 2.6 Organisational chart of the Korean government (extract)



Source: Government Organization Management Information System, 'Government Organisation Chart' (as of 27 May 2024).

The Task Force may also include, as non-permanent members, senior officials of other administrative agencies if the Vice Minister of Justice identifies those agencies as responsible for the subject-matter of the investment disputes in question.

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[37] Presidential Directive No. 399, dated 5 April 2019 (PD399); replaced by Presidential Directive No. 436, dated 5 October 2021 (PD436); replaced by Presidential Directive No. 468, dated 22 May 2024 (PD468). We have not found English translations (official or otherwise) of these presidential decrees in the public domain.

[38] Unless otherwise stated, Article numbers in brackets in this Section 2.2.4 are those of PD468.

[39] Available at: https://www.org.go.kr/orgnzt/chart/viewEng.do.

The International Legal Affairs Department of the Ministry of Justice is named in some of Korea's investment agreements as the authorised body to which an aggrieved investor may send a request for consultation on grievances, complaints and claims on its investments.[40] The Department is understood to have the following three divisions:[41]

- The International Legal Policy Division focuses on developing international legal norms as well as supervising the Korean government's policy-making activities in relation to international law and international commercial law generally.

- The International Legal Advisory Division represents the Korean government and its related agencies in international litigation and commercial arbitration and provides advice on international law-related matters involving government agencies or public entities, including international disputes and ISDS prevention.

- The International Dispute Settlement Division supervises and runs the defence of investor-state disputes against the Korean government, as well as leading the government's ongoing engagement with work on ISDS reform at UNCITRAL and other multilateral forums.

2.1.4.2 Competence and function

To the extent relevant to this Project, the Task Force assesses any potential or actual disputes that arise under the applicable investment agreements and prepares strategies for responding to such disputes and defending against claims under such Investment Agreements. The Task Force is mandated under PD468 to perform, among others, the following duties (Article 3, paragraph 2):[42]

- to draft guidelines for the prevention and response to international investment disputes;

- to review potential occurrence of international investment disputes;

- to establish strategies for responding to international investment disputes;

- to select, direct and supervise counsel who will conduct dispute-resolution procedures on behalf of the relevant administrative agencies or related institutions;

- to review the appropriateness of costs incurred for the appointment of counsel and other expenses related to responding to international investment disputes;

- to review the facts related to international investment disputes and request opinions from dispute-related institutions;

Ministries and agencies are also required to notify the Task Force if they become aware of any potential violation of foreign investor's rights or of any actual or potential investment claims against Korea. PD468 provides (Article 7, paragraphs 3 and 4) that

[40] See, e.g., Agreement among the Government of Japan, the Government of the Republic of Korea and the Government of the People's Republic of China for the Promotion, Facilitation and Protection of Investment, Article 15, para. 2, Note (c).
[41] *Global Arbitration Review*, 'New department at Korean ministry to strengthen international arbitration' (2024).
[42] 'International investment dispute' in the presidential decree means an investment-related dispute that may arise between the Republic and a foreign investor, based on, amongst others, free trade agreements, investment protection agreements or other treaties concerning the protection and rights of investors to which Korea is a party.

administrative agencies and other public institutions are required inform the chair of the Task Force (i.e., the Vice Minister of Justice) if, for example;

- legislation, administrative decisions and other policies that have been adopted or are about to be adopted may violate the proprietary rights of foreign investors; or

- a foreign investor has commenced litigation, or has indicated its intention to resort to an investor-state dispute-settlement process, in relation to legislation, administrative decisions and/or other policies.

The Task Force will become involved in investment disputes once administrative agencies and related institutions notify it of the occurrence of an actual investment dispute or the information indicating a potential investment dispute. If an administrative agency or related institution notifies the Head of the Task Force of a potential occurrence of an international investment dispute, the Head reviews the likelihood that the dispute will be materialised/crystalised. If it is considered likely, the Head will notify the heads of the relevant administrative agencies and related institutions. Similarly, if an administrative agency or related institution receives from a foreign investor a notice of commencement of dispute-resolution procedures, the Head of the Task Force must be notified immediately. The Head will then designate the agency responsible for the proceeding. The Minister of Justice or the head of the responsible authority may convene an inter-ministerial meeting where necessary.

The role of the Task Force is to coordinate Korea's response to investment disputes and preventing its escalation. It does not appear to be empowered to make any decisions on the solution to investors' grievances or to direct the relevant administrative agencies to take any remedial measures to address investors' grievances.

2.1.5 Mexico: Office of the General Counsel for International Trade

2.1.5.1 Organisation

The Office of the General Counsel for International Trade (Office of the General Counsel) was first established within the Ministry of Economy in 2012. Its current functions are set forth in Article 48 of the Internal Regulation of the Ministry of Economy (Internal Regulation).[43] The Office of the General Counsel is mandated to coordinate the defence of Mexico in international trade and investment disputes, including international arbitration.

The Office of the General Counsel currently has 30 officials. Under the Director General or General Counsel, there are seven teams, each led by one Director. The Director General is appointed by the Undersecretary of Foreign Trade with the approval of the Minister of Economy, and the rest of the staff is appointed by the Director General based on a professional career service examination, which includes (i) technical exams on relevant topics, (ii) aptitude tests, (iii) documental review, and (iv) interviews with the Director General. All staff are lawyers with different experience requirements, depending on their entry level.

The Office of the General Counsel is funded by the budget allocated to the Ministry of Economy and has no independent budget.

[43] Ministry of Economy. *Internal Regulation of the Ministry of Economy* (2025).

2.1.5.2 Competence and function

As mentioned above, the Office of the General Counsel is entrusted with the defence of Mexico's interests in international dispute proceedings. According to Article 48 of the Internal Regulation, the Office of the General Counsel is responsible, among other, for:

- 'coordinating the defence in dispute settlement proceeding initiated under international trade agreements signed by Mexico';

- 'conducting the negotiations and arriving at mutually agreed solutions in international trade disputes'; and

- 'being the office in charge of the reception of notifications and other documents in dispute settlement proceedings initiated by foreign investors against Mexico under international trade agreements signed by Mexico regarding investment'.

The functions of the Office of the General Counsel are not limited to dealing with investment disputes. It also is responsible for providing legal advice to governmental and other public bodies (including the legislator, if requested) on matters of international trade, treaties, negotiations, and defence in proceedings other than investment arbitration.

The Office of the General Counsel is called to intervene only after a notice of intent (see Figure 1.3 above) has been given by a foreign investor pursuant to an investment agreement signed by Mexico. Once a notice of intent is submitted, the Office of the General Counsel must deal with each and every notice, irrespective of the category of the aggrieved foreign investor, the industry concerned, or the claim value.

In terms of procedure, the Office of the General Counsel has set forth specific steps for the reception and addressing investors' grievances after a notice of intent has been given.[44] In its Procedure Manual, which includes various procedures conducted by and within the Office of the General Counsel, it has established a procedure to address investors' grievances from the reception of a notice of intent until the appeal or eventual implementation of the arbitrator's award illustrated in **Figure 2.7** below. The Procedure Manual describes the following steps that may lead to the prevention of a full-scale arbitration proceeding:

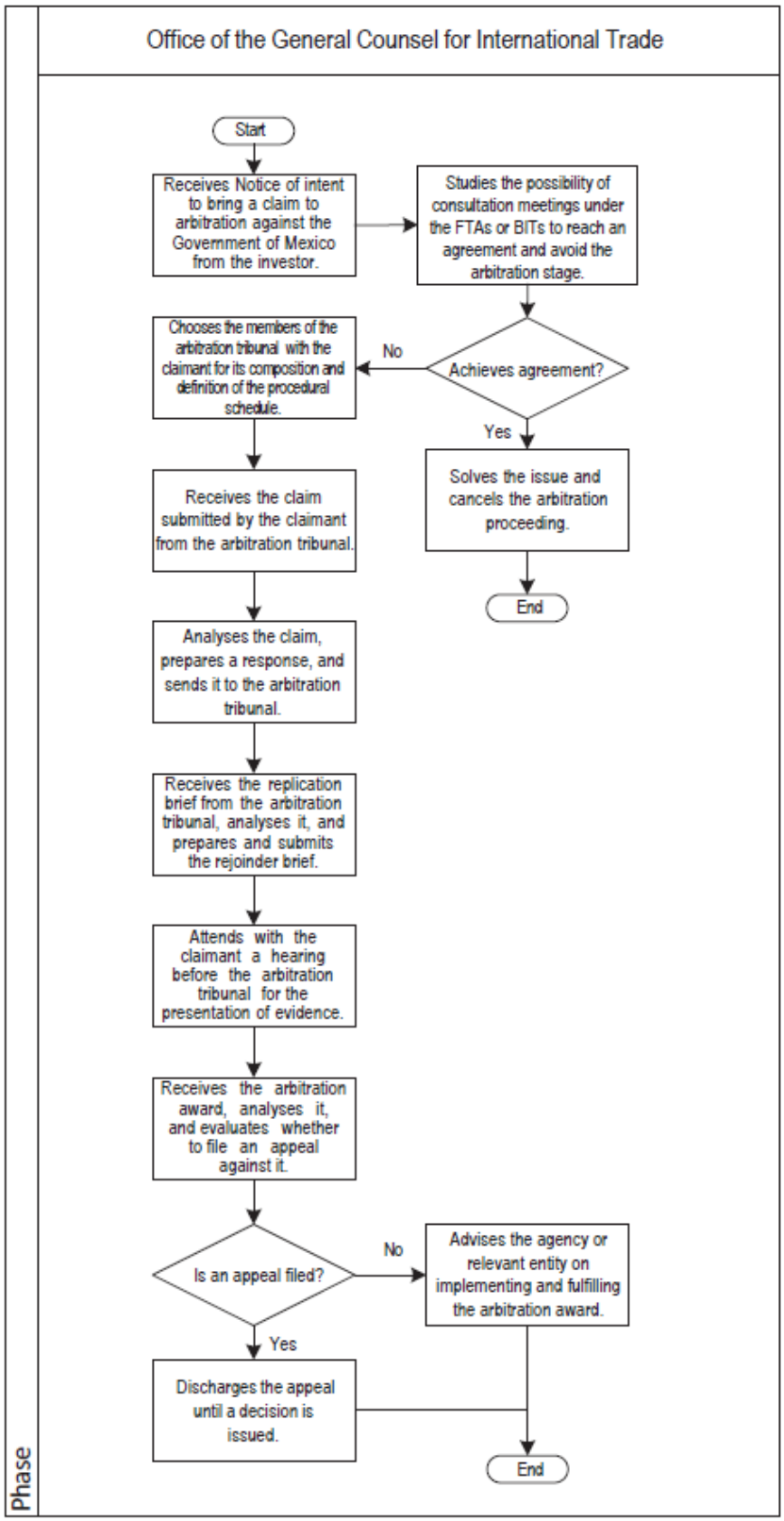
1. Reception of the notice of intent submitted by an investor by using a prescribed form and attaching the necessary supporting documents.

2. Study of the possibility of holding consultation meetings with the aggrieved investor with the aims of reaching a mutually agreeable solution.
   a. If an agreement with the investor is reached, the process ends and the arbitration phase is prevented.

   b. If an agreement with the investor is not reached, the process may continue to the arbitration phase (if the investor so choses) as set forth in the applicable investment agreement.

[44] Office of the General Counsel for International Trade, *Manual of Procedures* (2023). See Procedure SE-PR-O-511-04 – Defence of the Mexican Government in Investment Disputes.

Figure 2.7 Diagram of the Procedure for Addressing Investors' Grievances by the Office of the General Counsel



Source: Office of the General Counsel for International Trade, *Manual of Procedures* (2023), translated into English by the authors.

During the negotiation stage, the Office of the General Counsel has the task of facilitating discussions between the aggrieved investor and the responsible authority that caused the grievance. In this role, the Office of the General Counsel adopts an 'impartial' position and tries to facilitate communication between the investor and the agency(ies) to find amicable solutions, while it advises the governmental agency(ies) on potential solutions. However, the Office of the General Counsel is not authorised to directly offer remedial measures or otherwise propose potential solutions to aggrieved investors. The responsible authority adopts the final decision about what measures, if any, are offered to investors.

2.1.6 Peru: System of Coordination and Response of the State in International Investment Disputes

2.1.6.1 Organisation

Peru created the System of Coordination and Response of the State in International Investment Disputes (*Sistema de Coordinación y Respuesta del Estado en Controversias Internacionales de Inversión* in Spanish, SICRECI) in 2006.[45]

The system is aimed to promote the growth of national and foreign investment in Peru by preventing and mitigating investment disputes and resolving international investment disputes efficiently when and if they arise. It was created by an initiative of the General Directorate of International Economic Affairs, Competition and Productivity of the Ministry of Economy and Finance,[46] a body which is dependent on the Vice Ministry of Economy.[47]

The system is funded by the institutional budget of the Ministry of Economy and Finance (Law 28933, Article 14).

The system consists of a Special Commission responsible for representing Peru throughout all stages of an international investment dispute. The Special Commission is presided by a senior official of the Ministry of Economy and Finance, appointed by a Ministerial resolution. There are permanent members and non-permanent members to the Commission. Its permanent members include representatives from the Ministry of Economy and Finance, the Ministry of Foreign Affairs, the Ministry of Justice and Human Rights, and the Private Investment Promotion Agency ('ProInversión'). Non-permanent members can also be added to the Special Commission, including a representative from the Ministry of Foreign Trade and Tourism, and a representative from any public entity involved in the dispute (Law 28933, Article 7). Since the non-permanent members can vary in each dispute, in practice, this means that the composition of the Commission varies. The Ministry of Economy and Finance further assumes the role of 'Coordinator' of the Special Commission.

[45] The main pieces of legislation are as follows:
· **Law No. 28933, 15 December 2006**. Law which creates the System of Coordination and Response of the State in International Investment Disputes.
· **Decree No. 125-2008-EF, 22 October 2008**. Regulation of Law No. 28933 modified by Law No. 29213, which creates the System of Coordination and Response of the State in International Investment Disputes.
[46] Ampuero Llerena, 'Investor-State Dispute Prevention Institutions in Latin America – The Case of Peru' (2024) 118 *AJIL Unbound* 248, 249; Ministry of Economy and Finance of Peru, 'Statement of Reasons' Official Letter N° 275-2010-EF/13.03, *El Peruano*, 13 July 2010.
[47] Ministry of Economy and Finance, 'General Directorate of International Economic Affairs, Competition, and Productivity'.

The Special Commission is assisted by a Technical Secretariat, set out within the Ministry of Economy and Finance. The Technical Secretariat is responsible for conducting an initial assessment of the disputes, preparing reports on courses of action strategies to be followed by the Special Commission and other matters necessary to fulfil the Commission functions and to prepare and maintain the minutes of the Special Commission sessions (Law 28933, Article 10).

Members of the Special Commission must 'preferably be qualified professional[s] with experience in investment matters and international investment disputes' in addition to meeting conditions pertaining to criminal and disciplinary convictions, conflicts of interest, citizenship, and ethics (Law 28933, Article 8). The majority of permanent members of the Special Commission are also lawyers, while non-permanent members tend to be engineers or economists, rather than lawyers. For its part, 90% of the Technical Secretariat are lawyers specialised in investment arbitration.

Members of the Special Commission are designated by the head of each Ministry involved through a Ministry resolution.

2.1.6.2 Competence and function

The mechanism addresses disputes arising from agreements entered into between public entities and investors (Peruvian or otherwise), and foreign investors who receive protection under investment agreements between Peru and their home economy. Any Peruvian public entity that receives a communication which could give rise to an international investment dispute must inform the Ministry of Economy and Finance as the SICRECI Coordinator. The Coordinator is mandated to receive and assess information about potential disputes, decide whether to escalate the matter, and transmit the case to the Special Commission when appropriate.

The Special Commission does not have adjudicatory powers and may not issue binding decisions. It is instead mandated (Law 28933, Article 8) to, among others:

- evaluate negotiation prospects and adopt a strategy for direct negotiations;
- participate in direct negotiations with the investor if the applicable dispute mechanism provides for negotiations. For disputes arising from agreements entered into between authorities and investors (Peruvian or otherwise) that confer rights or guarantees to the latter, negotiations may be led by the involved public entity, as determined by the Special Commission. However, in practice, this has never occurred;
- propose the hiring of legal and technical experts for direct negotiation and arbitration or conciliation phases;
- appoint arbitrators, where the applicable dispute settlement mechanism requires it;
- approve the use of resources necessary for negotiations or arbitration; and
- determine the responsibility of the involved public entity for cost-recovery purposes.

The second bullet point (Law 28933, Article 8(c)) theoretically involves SICRECI in negotiations only where the applicable investment agreement provides for negotiation with

investors prior to the initiation of international arbitration. Still it appears that this limitation has little practical effect, so long as investment agreements are concerned. Peru's 2009 Model BIT explicitly requires a six-month cooling-off period,[48] and most of Peru's investment agreements concluded since then adhere closely to this model and incorporate similar provisions. Moreover, even those investment agreements that do not follow the model BIT nevertheless contain cooling-off periods or procedural prerequisites that align with Article 13. As a result, in practice, nearly all of Peru's investment agreements fall within the functional scope of SICRECI, despite the formal limitations imposed by Article 8(c) of Law 28933.

Upon notification of a dispute by a foreign investor, the relevant public entity must inform the Coordinator, which then alerts the President of the Special Commission. The aim of the mechanism is to have a centralised, harmonised approach. This explains why public entities must notify the Coordinator rather than solve the dispute itself. The Special Commission then evaluates the negotiation potential of the dispute, adopts a strategy for amicable settlement and participates in negotiations and propose the hiring of legal counsel. It may also request technical report from relevant public entities of the issue at stake. In the following negotiation stage, called '*etapa de trato directo*', the Special Commission may participate in negotiations, if the relevant agreement provides for such a stage (Law 28933, Article 8(c)). Law 28933 allows the Special Commission to direct the responsible authority to negotiate with the aggrieved investor directly in some cases, but in practice, this has not happened: thus, it has always been the President of the Special Commission who led negotiations with aggrieved investors. If needed, the Special Commission may then propose to hire legal counsel and experts. If a settlement is reached, the Council of Ministers (i.e., the central government of Peru) is informed—and final approval from that collegial body of the executive branch is then required. The process then concludes. If no settlement is reached and the investor commences a formal dispute-resolution process (e.g., arbitration), the Special Commission coordinates Peru's defence.

In case an award is rendered against Peru, the responsible authority bears responsibility for the payment of an award or the execution of a settlement (Law 28933, Article 14). This encourages Peruvian agencies to comply with SICRECI's recommendations on dispute resolution and avoid actions that could engage Peru's international responsibility.

2.1.7 The Philippines: Investment Ombudsman

2.1.7.1 Organisation

The post of Investment Ombudsman was created pursuant to a Presidential Order and a series of Orders of the Office of the Ombudsman.[49]

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[48] Peru, *Model Bilateral Investment Treaty*, 2000, Articles 8.2 and 9.2.

[49] The main orders are as follows:

· **Executive Order No. 180 of 23 November 1999** (Executive Order No. 180), which, among others, 'strengthen[ed] the investment one-stop action center and creat[ed] the position of Investment Ombudsman';

· **Office Order No. 327 of 16 May 2014** (Office Order No. 327) on the creation of an Investment Ombudsman Team;

· **Office Order No. 507 of 31 July 2015** (Office Order No. 507) on the creation of an Investment Ombudsman Secretariat (repealing among others Office Order No. 327); and

· **Office Order No. 133 of 5 February 2016** (Office Order No. 133) on the designation of Deputy Investment Ombudsmen and the strengthening of the Investment Ombudsman Program, modifying Office Order No. 507.

Also relevant to the competence and function of the Investment Ombudsman are:

· **Republic Act 6770**, An Act Providing for the Functional and Structural Organization of the Office of the Ombudsman, and for Other Purposes (1989) (RA6770); and

Upon creation, the Investment Ombudsman was to be appointed by the President and placed under the direct supervision of the Chairman of the Board of Investments (a government authority) (Executive Order No. 180, Section 2). The Office of the Investment Ombudsman also absorbed the 'Investment One-Stop Action Center' of the Board of Investments, which had provided assistance to local and foreign investors (Executive Order No. 180, Section 3).

Under the Office Orders listed in footnote 49, the Investment Ombudsman and his/her team were established within the Office of the Ombudsman. The Overall Deputy Ombudsman of the Office assumes the role of the Investment Ombudsman and the Investment Ombudsman Secretariat (IOS) set up within the Office of the Ombudsman provides support to her or him. Office Order No. 327 established an Investment Ombudsman Team within the Office of the Ombudsman, and Office Order No. 507 created a new Investment Ombudsman Secretariat, led by an Assistant Ombudsman. Office Order No. 133 clarifies that the Overall Deputy Ombudsman in the Office of the Ombudsman assumes the role of the Investment Ombudsman, and other Deputy Ombudsman for Luzon, Visayas, Mindanao and the Military and Other Law Enforcement Officers are designated as Deputy Investment Ombudsmen.

The Ombudsman and her or his Deputies are required to act promptly on complaints filed in any form or manner against officers or employees of the Government (or its sub-division, agency or instrumentality) and enforce their administrative, civil and criminal liability in every case where the evidence warrants in order to promote efficient service by the Government to the people.[50]

The Ombudsman and his or her Deputies must, among others, (i) be members of the Philippines Bar; (ii) have no previous experience of running for any elective national or local office in the election immediately preceding the appointment; and (iii) have been, for ten years or more, a judge or engaged in the practice of law in the Philippines (RA6770, Section 5). They serve for a term of seven years without reappointment (RA6770, Section 7). The Ombudsman may be removed only on impeachment for, and conviction of, culpable violation of the Constitution, treason, bribery, graft and corruption, other high crimes, or betrayal of public trust. A Deputy Ombudsman may be removed from office by the President for the same grounds and after due process (RA6770, Section 8). They enjoy the same ranks and privileges as the Chairman and members of a Constitutional Commission (RA6770, Section 6).

It is assumed that the above rules would apply to the Overall Deputy Ombudsman in the exercise of his or her role as the Investment Ombudsman.

2.1.7.2 Competence and function

The role of the Investment Ombudsman is:

- **to expedite resolution of investor issues and concerns** through prompt action on investors' grievances and speedy resolution of their complaints;

· **Memorandum Circular No. 01**, Guidelines on Handling Requests for Assistance (RAS) and Other Forms of Public Assistance (2013) (Memorandum Circular No. 01).

[50] Office of the Ombudsman website, 'Mandate'.

- **to encourage local and foreign investments** in the economy and improve global competitiveness; and

- to assist in attaining the economy-wide goal of 'inclusive growth and poverty reduction'.[51]

The Investment Ombudsman is assisted by the Investment Ombudsman Secretariat to deal with complaints received from investors (domestic or foreign) on a range of issues that may arise when they consider investing or after they have acquired investments in the Philippines. Office Order No. 507 clarified that the Investment Ombudsman may deal with grievances and complaints relating but not limited to the following concerns:

- delay in the delivery of frontline services relating to the establishment or conduct of business;

- solicitation, demand or request by a government official or employee in exchange for the issuance of licences, permits and certificates, the release of shipments and cargoes, as well as the arbitrary assessment of fees for the conduct of business;

- issuance of licences, permits and certificates, in relation to business, to any person not qualified or legally entitled thereto;

- any other delay or refusal to comply with the referral or Directive of the Investment Ombudsman through the Investment Ombudsman Secretariat or Executive Directors; and

- any act or omission of a public official or employee that is illegal, unjust, improper or inefficient in connection with the foregoing concerns.

The Office of the Ombudsman has the following powers, functions and duties (RA6770, Section 15), and it is presumed that the Investment Ombudsman is empowered to perform similar functions and duties in the context of investment grievances:

- to investigate and prosecute any act or omission of any public officer, employee, office or agency, when such act or omission appears to be illegal, unjust, improper or inefficient. In the exercise of the Ombudsman's primary jurisdiction, the Office may take over, from any investigatory agency of the Government, the investigation of certain cases;

- to direct any officer or employee of the Government to perform and expedite any act or duty required by law, or to stop, prevent, and correct any abuse or impropriety in the performance of duties;

- to direct the officer concerned to take appropriate action against a public officer or employee who is at fault or neglects to perform an act or to discharge duty required by law;

- to request any government agency for assistance and information necessary in the discharge of its responsibilities, and to examine, if necessary, pertinent records and documents;

[51] Office of the Ombudsman, *Primer on the Investment Ombudsman*, 2.

- to determine the causes of inefficiency, red tape, mismanagement, fraud, and corruption in the Government, and make recommendations for their elimination and the observance of high standards of ethics and efficiency.

The information leaflet (called 'Primer') on the Investment Ombudsman published by the Office of the Ombudsman stresses the following three types of actions: 'grievance-handling or public assistance'; 'fact-finding'; and 'preliminary investigation and administrative adjudication'.[52]

The Investment Ombudsman and Deputy Investment Ombudsmen designate an Executive Officer within the Office and up to three Action Officers to address each request for 'assistance', 'fact-finding' or 'preliminary investigation and administrative adjudication'. For high profile fact-finding and investigation/adjudication cases, the Investment Ombudsman and his or her Deputies may create panels as they may deem necessary to expedite their disposition (Office Order No. 133).

For a request for assistance, appropriate actions must be taken within ninety calendar days from receipt of the docketed request by the Action Officer (Memorandum Circular No. 01, Section 7). A request for assistance is broadly defined to include 'any form of grievance or concern seeking redress, relief or public assistance, which does not necessarily amount to a criminal, administrative or forfeiture complaint, wherein the [Office of the Ombudsman] is mandated to intervene within the primary scope of its powers, functions and jurisdiction'.

Any delay or refusal to comply with the referral or directive of the Ombudsman or any Deputy (thus including the Investment Ombudsman) constitutes a ground for administrative disciplinary action against the officer or employee to whom it was addressed (RA6770, Section 26(3)).

2.1.8 Thailand: Office of the Board of Investment

2.1.8.1 Organisation

The Office of the Board of Investment (BOI) was established in 1977, through the enactment of the Investment Promotion Act (IPA).[53] While the BOI's primary mandate is to promote investments that contribute to economic and social development, exports, use of local resources, and industrial modernisation, it provides assistance to investors holding promotion certificates when they face operational hurdles or implementation challenges.

The BOI operates as an administrative body under the authority of the Prime Minister, who serves as Chairperson. The Minister of Industry is the Vice-Chairperson, and up to ten additional members are appointed by the Prime Minister (IPA, Section 6). The Prime Minister may also appoint up to five 'advisors' to serve the Board of Investments (they are described in the IPA as 'competent persons', but no further information is available on their role, qualifications or responsibilities).

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[52] Office of the Ombudsman, *Primer on the Investment Ombudsman*, 2.

[53] Investment Promotion Act B.E. 2520 (1977). The most recent amendments to the Investment Promotion Act are understood to have entered into force on 25 January 2017. As no official English translation appears to be available, we proceeded with informal translation publicly available.

Members and advisors of the BOI are appointed for two-year terms and may be reappointed without limitation (Section 7, IPA).

2.1.8.2 Competence and function

The BOI's mandate to assist investors is derived from its constituting legislation, the Investment Promotion Act, as amended. Its authority focuses on promoting investments in priority sectors and it is not limited to serving as a comprehensive grievance resolution mechanism for all investors.[54]

The BOI is specifically mandated to address 'any problem or obstacle' (Section 51, IPA) faced by promoted investors. 'Promoted investors' mean those who have been granted a promotion certificate for investments meeting the eligibility criteria, such as contributing to economic and social development, engaging in export-oriented production, or utilising local resources (see IPA, Section 18).[55] This mandate does not extend to grievances from investors outside the scope of promoted activities.

When a promoted investor lodges a complaint about such problems or obstacles, the Chairman (namely the Prime Minister) is empowered to render any appropriate assistance or to order the responsible authority to proceed with the assistance without delay' (Section 51, IPA). If the responsible authority cannot comply, it must provide reasons within 15 days. The Chairman may then take further decisions and other authorities must comply with them (Section 53, IPA).

2.1.9 Thailand: Committee on International Investment Protection[56]

2.1.9.1 Organisation

The Committee on International Investment Protection was established in 2019, through the promulgation of Regulation of Prime Minister's office on Work Relating to International Investment Protection, B.E. 2562 (2019) (Regulation 2562).[57] This regulation empowers the Prime Minister to issue administrative rules aimed at strengthening Thailand's framework for international investment protection.

The Committee on International Investment Protection is chaired by the Deputy Prime Minister and vice-chaired by the Minister of Foreign Affairs (Regulation 2562, Section 4). Its composition includes senior officials from the following entities: Ministries of Finance, Foreign Affairs, Agriculture and Cooperatives, Transport, Justice, Public Health, and Industry; the Office of the Council of State; Board of Investment of Thailand; Office of the Judiciary; Office of the Attorney General; Departments of Trade Negotiations, Business Development,

[54] The Investment Promotion Act does not distinguish between categories of investors; instead, its focus lies on the nature of the investment activity, which must satisfy specific criteria to qualify as a 'promoted investment'.

[55] Priority sectors eligible for promotion are designated in BOI Announcements, which are binding instruments issued under Section 16 of the IPA and given legal effect upon publication in the Royal Thai Government Gazette. For example, Announcement No. 9/2565 (2022) identifies biotechnology, medical industries, and digital technology among the areas eligible for promotion. Sectors not included in these announcements fall outside the scope of the BOI's assistance. See Office of the Board of Investment. 'BOI Announcements'.

[56] The description of the Committee on International Investment Protection is based primarily on Thailand's submission to UNCITRAL, 'Information on Thailand's Committee on International Investment Protection'.

[57] Regulation of Prime Minister's office on Work Relating to International Investment Protection, B.E. 2562 (2019). It does not appear to have been amended since its inception, and no official or unofficial English translation appears publicly available; see Thailand's submission to UNCITRAL, 'Information on Thailand's Committee on International Investment Protection'.

Treaties and Legal Affairs, and International Economic Affairs; and the Securities and Exchange Commission, Bank of Thailand, and Export-Import Bank of Thailand.[58]

Administrative and secretarial support is provided by the Department of International Economic Affairs of the Ministry of Foreign Affairs (Regulation 2562, Section 13). This department maintains an 'Investment Protection' webpage, which, while not explicitly referencing the Committee on International Investment Protection, suggests its operational involvement in coordinating Thailand's international investment commitments.[59]

Section 7 of Regulation 2562 authorises the Committee on International Investment Protection to establish subcommittees or working groups as needed. While limited information exists on these subordinate bodies, Thailand's submission to UNCITRAL Working Group III confirms that a dedicated subcommittee for dispute prevention has been formed.[60]

The Committee on International Investment Protection operates under the Office of the Prime Minister and reports its activities, recommendations, and challenges to the Cabinet for acknowledgment and further action (Regulation 2562, Section 11).

2.1.9.2 Competence and function

The mandate of the Committee on International Investment Protection is primarily advisory in nature. It does not directly interact with foreign investors or adjudicate disputes but functions as an internal coordination mechanism to manage Thailand's exposure to potential investment disputes under its international obligations.

The primary functions of the Committee on International Investment Protection encompass the following:

- **recommending and reviewing policies, strategies, plans, and positions** on international investment protection and related agreements for submission to the Cabinet or government agencies (Regulation 2562, Section 5(1));

- **providing guidance, advice, and recommendations** to government agencies to ensure alignment with policies and compliance with Thailand's international investment protection agreements, as well as monitoring and follow-up (Regulation 2562, Section 5(2)); and

- **proposing approaches, measures, or mechanisms to prevent investment disputes** (Sections 5(4), Regulation 2562) and **providing guidance and advise on their resolution**, including settlement, mediation, conciliation, and legal counsel arrangements (Regulation 2562, Section 5(5)).

Government agencies are required to notify the Committee on International Investment Protection without delay if an investment dispute arises or there is reasonable cause to foresee one. In the case of a dispute between the Thai government and a foreign investor, the Committee on International Investment Protection or the responsible authority must propose to

[58] See Thailand's submission to UNCITRAL, 'Information on Thailand's Committee on International Investment Protection', 1.
[59] Department of International Economic Affairs, Ministry of Foreign Affairs of Thailand, 'Investment Protection'.
[60] Thailand's submission to UNCITRAL, 'Information on Thailand's Committee on International Investment Protection', 2.

the Prime Minister for consideration of appointing representatives to address the dispute (Regulation 2562, Section 8).

It is important to note the following:

- The Committee on International Investment Protection does not issue binding decisions or directly resolve grievances.
- Recommendations and guidance are addressed to the Cabinet or competent agencies, which retain authority to act.
- Regulation 2562 does not establish specific timeframes for action, nor are there explicit mechanisms for follow-up oversight of its recommendations.

2.2 MECHANISMS ESTABLISHED PURSUANT TO INVESTMENT AGREEMENTS

2.2.1 Regional Comprehensive Economic Partnership

The Regional Comprehensive Economic Partnership (RCEP) Agreement was signed on 15 November 2020 and entered into force on 1 January 2022 for ten original parties: Australia; Brunei Darussalam; Cambodia; People's Republic of China; Japan; Laos; New Zealand; Singapore; Thailand; and Viet Nam. It then entered into force for the Republic of Korea on 1 February 2022, for Malaysia on 18 March 2022, for Indonesia on 2 January 2023 and for the Philippines on 2 June 2023.

The RCEP was built upon the existing free trade agreements between ASEAN (the Association of Southeast Asian Nations) and its trade partners, with the spirit to strengthen economic linkages and to enhance trade- and investment-related activities as well as to contribute to minimising development gap among the parties.[61]

Chapter 10 of the agreement deals with measures adopted or maintained by Party A relating to an investor of Party B and an investment in the territory of Party A of the investor of Party B that meet certain conditions ('covered investment') (RCEP, Article 10.2).

The RCEP does not contain provisions that deals with the settlement of investment disputes between a Party and an investor of another Party; instead, the Parties are required to enter into discussions on this issue no later than two years after the date of entry into force of the agreement and to conclude the discussions within three years from the date of commencement of discussions.

Separately, **each Party is required to 'endeavour to facilitate' investment among the Parties by, among others, establishing or maintaining entities to provide assistance and advisory services to investors and, subject to its laws and regulations, assisting investors to amicably resolve investment grievances or complaints** (RCEP, Article 10.17). In particular, Article 10.17, paragraph 1(d) encourages each Party to establish or maintain 'contact points, one-stop investment centers, focal points, or other entities … to provide assistance and advisory services to investors'. Paragraph 2(a) then provides that such bodies created pursuant

[61] ASEAN website, 'Regional Comprehensive Economic Partnership (RCEP)'.

to paragraph 1(d) may receive and consider referring or giving due consideration to complaints raised by investors relating to government activities impacting their covered investments.

The mechanisms identified in **Section 2.1** above (Domestic mechanisms) of those APEC member economies which are also RCEP Parties may be regarded as those bodies listed in paragraph 1(d) above. No Party to the RCEP is known to have created a new authority or agency following paragraph 1(d) of this Article.

2.2.2 China-Korea Free Trade Agreement

The Free Trade Agreement between the Government of the People's Republic of China and the Government of the Republic of Korea was signed on 1 June 2015 and entered into force on 20 December 2015.

Chapter 12 (Investment) governs investment-related issues and Article 12.12 deals with the settlement of investment disputes between a Party and an investor of the other Party. Separately, Article 12.19 requires that each Party designate contact points to provide assistance to investors.

In China, the Investment Promotion Agency of Ministry of Commerce is understood to attract foreign investment and promote China's overseas investment.[62] The Agencies Handling Complaints of the People's Republic of China are not explicitly referenced in paragraph 2, but they are supervised by the Ministry of Commerce and the Investment Promotion Agency is part of the same Ministry, and it is assumed that, whichever route a Korean investor may choose to raise grievances or complaints, they may be addressed by appropriate officials within the Ministry of Commerce.

In Korea, KOTRA is the economy-wide organisation responsible for promoting trade and investment under the Ministry of Trade, Industry and Energy, but it also hosts the grievance resolution body that provides support for the Foreign Investment Ombudsman (see Section 2.1.3 above). Thus, it is similarly assumed that, whichever route a Chinese investor may choose to raise grievances or complaints, they may be addressed by appropriate officials within KOTRA.

2.2.3 Indonesia-Korea Comprehensive Economic Partnership Agreement

The Comprehensive Economic Partnership Agreement between Indonesia and the Republic of Korea (IK-CEPA) was signed on 18 December 2020 and entered into force on 1 January 2023. Chapter 7 (Investment) applies to measures adopted or maintained by a Party relating to investors of the other Party and an investment in the territory of one Party of the investor of the other Party that meet certain conditions ('covered investment') (IK-CEPA, Article 7.2).

Article 7.19 governs the settlement of dispute between a Party and an investor of the other Party relating to that investor's investment. Its paragraph 7 provides that if the dispute cannot be resolved within 180 days from the receipt by the disputing Party of the written request for consultations, **the disputing Party may initiate a mediation process, which shall be mandatory for the disputing investor**, with a view towards reaching an amicable settlement. Such a mediation process shall be initiated by a written request delivered by the disputing Party to the disputing investor.

[62] Ministry of Commerce website, 'Function of Investment Promotion Agency of Ministry of Commerce'.

It is up to the host Party to propose mediation, as part of the pre-arbitration consultation process (see **Figure 1.2** above on this process). It is 'mandatory for the disputing investors'; therefore, if the host Party so proposes, the investor appears to have no choice but to agree to mediate. There is also an incentive to do so in any event, because the dispute may be submitted to international arbitration only if a dispute is not resolved by consultations or mediation (IK-CEPA, Article 7.19, paragraph 10).

2.2.4 Investment Agreement under the Mainland and Hong Kong Closer Economic Partnership Arrangement

The Investment Agreement under the Mainland and Hong Kong Closer Economic Partnership Arrangement (PRC-HKC CEPA IA) came into effect on 28 June 2017. Its preamble stipulates that it is aimed to, among others, promote and protect investments by investors of the Mainland (defined to refer to the entire customs territory of China) and the Hong Kong Special Administrative Region, namely Hong Kong, China.

Under Article 17 of the agreement, **the two sides agree to set up the Committee on Investment. Its functions include, among others, 'notification and coordination of investment disputes'**.

Article 19 of this agreement provides a mechanism for 'dispute settlement between a Hong Kong Investor and the Mainland', while Article 20 of this agreement provides a mechanism for 'dispute settlement between a Mainland Investor and Hong Kong'. **Article 19, paragraph 1(ii), and Article 20, paragraph 1(ii), provide that an investor dispute may be resolved through the complaint handling organisations/mechanism for investors from the other party to the agreement in the respective economy.**

The PRC-HKC CEPA IA does not define or list those 'complaint handling organisations' of the Mainland or 'complaint handling mechanism' of Hong Kong, China. The Agencies Handling Complaints of China have been summarised in **Section 2.1.2** above and it is assumed that, if an aggrieved investor of Hong Kong, China were to choose option (ii), it would go to one of those Agencies. We understand that there is no designated organisation or mechanism exclusively to handle investment disputes under the agreement in Hong Kong, China and, where a dispute arises, it is addressed by the relevant government bureaux and/or departments or authorities overseeing the subject matters concerned.

2.2.5 Investment Agreement between the Manila Economic and Cultural Office and the Taipei Economic and Cultural Office

Under this agreement, signed on 7 December 2017 and in force since 1 March 2018, a dispute between a disputing Party (i.e., one of the economies) and a disputing investor (an investor of the other economy) needs to be first resolved through consultations (PHL-CT IA, Article 14(4)). If it is not resolved within 180 days, it may be submitted to arbitration (PHL-CT IA, Article 14(6)).

The Parties have agreed to establish a Joint Implementing Body with a view to accomplishing the objectives of the Agreement (PHL-CT IA, Article 19). The Joint Implementing Body is tasked to set up the Coordination Mechanism by designating representatives from the relevant authorities. The Coordination Mechanism is intended to 'provide assistance in the resolution

of any incidents or activities relating to investors and their investments' and, if such incidents or activities occur, the Joint Implementing Body shall task the Coordination Mechanism to meet for the purpose of addressing such incidents or activities (PHL-CT IA, Article 20).

It is presumed that this Coordination Mechanism may be tasked to address grievances of foreign investors in respect of their existing investments.

3. INVESTORS' PERSPECTIVE

3.1 INTRODUCTION

The Project is aimed to assess the range of options available both to the governing bodies of APEC member economies, as well as businesses, seeking to prevent and mitigate investment disputes. Reflecting this aim, surveys were to include firms and take into account a balanced coverage across APEC member economies and industries.

This Chapter briefly summarises some key outcomes of (i) a survey of APEC Business Advisory Council (ABAC) and (ii) interviews with Japanese businesses, trade organisation and who are stationed in various APEC member economies to advise Japanese investors operating in those economies. Our survey and interviews focussed on the perception of investors on the availability and utility of one-stop contact points, such as the Foreign Investment Ombudsman of the Republic of Korea, that are set up expressly to receive and address investors' grievances and complaints.

3.2 SURVEY OF APEC BUSINESS ADVISORY COUNCIL

The ABAC was created by the APEC Economic Leaders in November 1995 to provide the business perspective on specific areas of cooperation to APEC Leaders, Ministers and Senior Officials. ABAC comprises of up to three members of the private sector from each member economy. ABAC members are appointed by their respective Leaders, and represent a range of business sectors, including small and medium enterprises.[63]

We have sent a questionnaire to ABAC members and their respective business network to survey:

- the extent to which investors are familiar with the existence and function of one-stop contact points; and

- whether and to what extent investors are willing to use, and/or they have used, such mechanisms for the resolution of their grievance and complaints relating to their existing investments.

Extracts from the questionnaire are set out in **Annex 3.1**.[64]

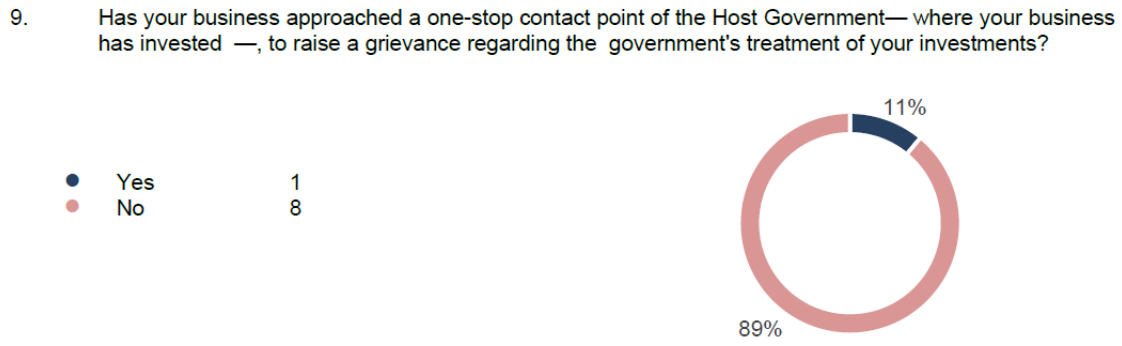
We have received nine responses to some or all of those questions listed in **Annex 3.1**. Some key results are summarised below.

Very few respondents had the experience of approaching one-stop contact points. Figure 3.1 shows that**,** out of the nine respondents, one respondent approached a one-stop contact point to raise a grievance regarding the treatment of its investments.

[63] APEC Business Advisory Council website, 'Founding and Structure'.

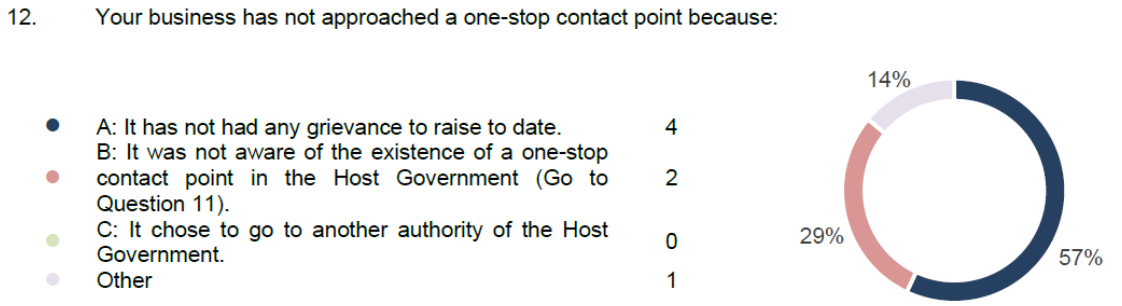
[64] We have also asked a series of questions to ascertain their assessment of the actual experience of using the types of mechanisms that fall within the scope of this Project. However, as explained in the main text, no response was provided to those questions. Thus, those questions are not included in **Annex 3.1**.

Figure 3.1 Experience in approaching one-stop contact points



It may be partly because the existence of one-stop contact points was not well known to those who had grievances and might otherwise have used them. As **Figure 3.2** below shows, out of the other eight respondents who said they had not used one-stop contact points before, four respondents did not have any grievances to raise.

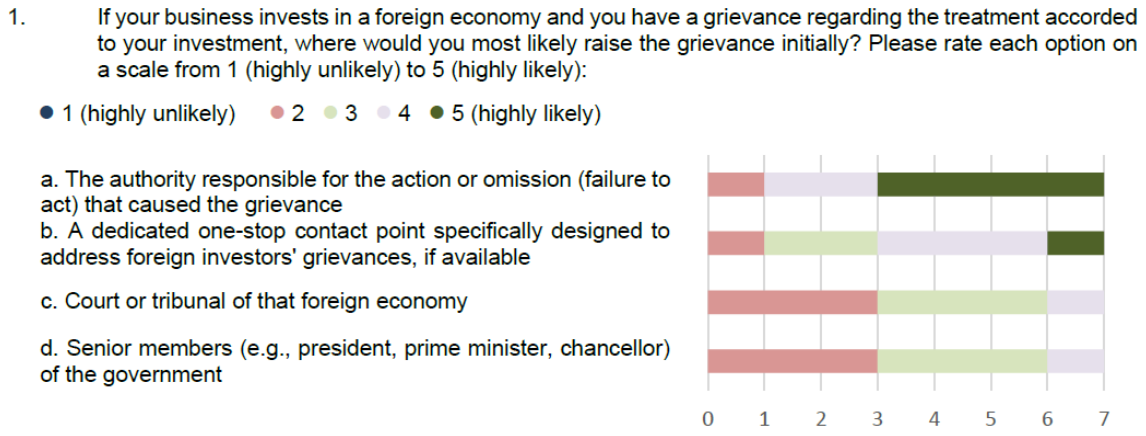
Figure 3.2 Reasons for not approaching one-stop contact points



There were two respondents who stated that they were not aware of the existence of a one-stop contact point. One of them indicated that it would have approached a one-stop contact point, while the other respondent indicated that it would not have done so. Where a respondent indicated that there was no one-stop contact point in the economy in which it invested, the same respondent also answered that it would have so approached had there been one.

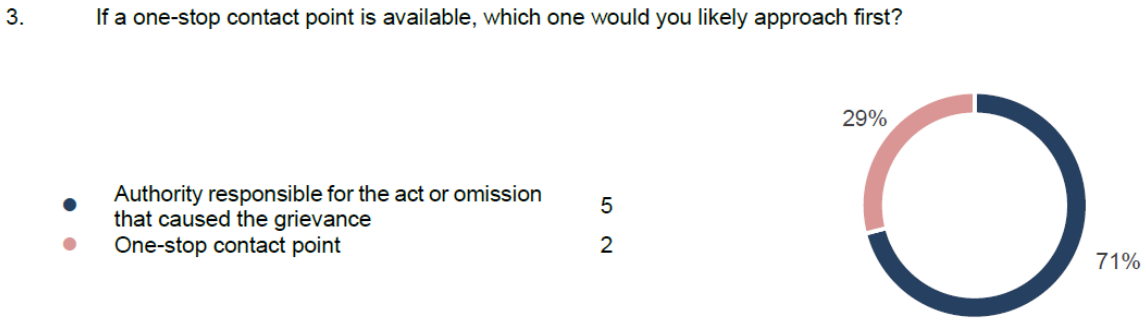
While the respondents generally recognised the usefulness of one-stop contact points as the point to approach when they have grievances, they also indicated that they may decide to approach the authority responsible for the action or omission which caused the grievance in the first place. We have asked respondents to rate four possible options for raising grievances or complaints relating to investments. The responsible authority ranked the highest, as **Figure 3.3** below shows:

Figure 3.3 Where grievances and complaints may be raised



The respondents also indicated that, if they had a choice between a one-stop contact point and the authority responsible for the action or omission in question, they may first approach the responsible authority, as **Figure 3.4** below shows.

Figure 3.4 Choice between one-stop contact point and responsible authority



The result shown in **Figures 3.3** and **3.4** immediately above are in line with a separate survey by the Energy Charter Secretariat in 2022 and summarised in a joint report published by the World Bank Group and the Energy Charter Secretariat.[65] The survey of certain renewable-energy companies (including members of the International Energy Charter Industry Advisory Panel) (IAP Survey) showed that, in the respondents' experience, direct negotiations with the authorities were most effective tool for dispute prevention and mitigation and, more specifically, direct negotiations with the authorities immediately involved were considered somewhat more effective.[66]

3.3 INTERVIEWS WITH JAPANESE STAKEHOLDERS

We have separately interviewed the following Japanese stakeholders to ascertain views of Japanese investors on the availability and utility of one-stop contact points.

[65] World Bank and Energy Charter Secretariat, *Enabling Foreign Direct Investment in the Renewable Energy Sector: Reducing Regulatory Risks and Preventing Investor-State Conflicts* (2023).
[66] World Bank and Energy Charter Secretariat, *Enabling Foreign Direct Investment in the Renewable Energy Sector: Reducing Regulatory Risks and Preventing Investor-State Conflicts* (2023), Figure B4.1.1.

- Japanese businesses (four major companies with multiple lines of businesses, one company operating in the food and beverages, pharmaceutical and health care sector);

- the Japan Business Federation (Keidanren, with a membership of more than 1,500 representative companies of Japan, as well as more than 100 Japan-wide industrial associations and economic organisations); and

- Officials from the Japan External Trade Organization (JETRO, a government-related organisation promoting trade and investment between Japan and other economies) who are or were stationed in APEC member economies and observed Japanese investors' interactions with the authorities of those economies relating to their existing investments.

Annex 3.2 reproduces the questionnaire used for the interviews. In order to maintain the anonymity of the interviewees and the confidentiality of specific examples shared by the interviewees, this Chapter summarises and presents key points arising from the interviews in a generalised manner, without attributing the response to any particular respondent or to a specific economy (within or outside the APEC region).

Relative lack of familiarity with one-stop contact points: one respondent was aware of the Ombuds systems in the Republic of Korea and Brazil, but the other respondents did not know any specific one-stop contact points. Some respondents were aware that several economies established investment-promotion agencies and they would deal with queries from potential investors on how to enter into the market (i.e., pre-establishment). Those respondents also understood that some of such agencies may be informally and unofficially dealing with requests for assistance from investors on their existing investments. Nevertheless, many respondents were not aware of any authority that is specifically mandated to receive and address grievances and complaints from foreign investors on their existing investments.

Other avenues for raising grievances on existing investments: in the economies with which respondents were familiar, they noted that, when foreign investors have grievances on their existing investments, they would normally approach the responsible authority.

Some respondents were aware of foreign investors' experience of bringing a grievance to a committee that is set up under the applicable investment agreement under which their investments are protected. These committees are not explicitly mandated under the applicable investment agreements to deal with grievances of individual investors (rather, they are set up for the purpose of improving the investment environment), but the committee members of the contracting economies are sometimes known to have discussed grievances raised by their investors. That said, the extent to which such committees have been able to take up those issues varies from economy to economy.

Many respondents further noted that, when issues arise with their investments, foreign investors often rely on the connections that their local partners and/or their local counsel have with various authorities for raising grievances.

One-stop contact points may be a positive, although not decisive, factor in the decision whether to invest: no respondent indicated that the existence of a one-stop contact point in an economy would in itself be a negative factor in the decision whether to invest in that economy. Many considered the existence of such a contact point as a positive (albeit not decisive) factor,

while some were more reserved, although they all noted that the utility of a one-stop contact point would depend on its design and authority.

Independence of a one-stop contact point is not necessarily a positive factor: it is important to assess from what the contact point is independent and what power the contact point has as a result of the granted independence. Many respondents would welcome a degree of independence from the responsible authority, especially if the contact point can then decide on investors' grievances effectively as a third party, reflecting not only the responsible authorities' views but those of the aggrieved investors. On the other hand, respondents indicate, if a contact point is independent from the governing body, there is a risk that it is marginalised in the government system and cannot exert much influence in the resolution of investors' grievances.

Facilitation of discussions may prove useful in certain economies: some economies set up contact points and task them to facilitate discussions between aggrieved investors and responsible authorities. Many respondents indicated that a one-stop contact point which only facilitates such discussions may not be of much use for investors. Two respondents noted, however, that, in an economy where a large number of authorities are jointly responsible for a specific issue and there is no institutionalised coordination mechanism, investors may benefit from the existence of an authority that can bring investors and responsible authorities to the table for constructive discussions.

One-stop contact point's role as advisor: a few respondents noted that, as part of its role to address grievances and complaints from investors' grievances and complaints, it would help if a one-stop contact point would be able to address queries on the interpretation and application of law where there are uncertainties that cannot be easily resolved (that may be in itself a complaint), as an investment-promotion agency would do at the pre-investment stage.

Power to direct responsible authorities to adopt corrective measures may be a key feature of a useful one-stop contact point: many respondents noted that it would be important for a one-stop contact point to be empowered to issue a binding decision on investors' grievances and, where relevant, to direct responsible authorities to adopt corrective measures to address those grievances. They note that the process of consultations with (and through) a one-stop contact point would be pointless if the outcome of those consultations is not implemented. As a way to ensure that the responsible authority endorses the decision of the one-stop contact point and adopt corrective measures, some respondents have noted **the importance of reflecting the views of responsible authorities in the decision-making process**.

Experts to join in the deliberation: one respondent suggested that impartial persons with expertise in the issues in question may usefully join the discussion and present views from the relevant industry or business sectors.

No binding decision without investors' consent: many respondents note that the one-stop contact point would normally be comprised of officials or experts appointed by the host economy, investors should not be bound by the decision without their consent.

The one-stop contact point system should not be the exclusive avenue for raising investors' grievances: while respondents recognised the utility of a well-designed one-stop contact point, they stressed that a one-stop contact point should not be the sole point to which investors can have investment grievances resolved. This has three aspects.

- First, the respondents emphasise that investors should be allowed to choose to raise their grievances with responsible authorities even in the presence of a one-stop contact point.

- Second, they would like to maintain the option of resorting to domestic litigation or investment arbitration in case consultations with the one-stop contact point do not yield a satisfactory outcome. They fear that, without the option of domestic litigation or investment arbitration, the resolution of investment disputes would be left in the hands of the one-stop contact point. This is not to say that investors would prefer not to use one-stop contact points; rather, they would like to ensure that all the options (including arbitration) are available to explore resolve the dispute.

- Third, and related to the second point, investors should not be barred from resorting to a formal dispute-resolution mechanism (including arbitration) even where a decision by the one-stop contact point is binding to the economy.

4. ANALYSIS AND KEY FINDINGS

4.1 INTRODUCTION AND ROADMAP

One of the key objectives of the Report is to provide an analysis to support each economy's deliberations on the pros and cons of introducing dispute prevention and mitigation systems, and to offer suggestions for enhancing existing mechanisms.

In **Chapter 2**, this Report summarised the decisions by many APEC member economies to introduce new mechanisms to address grievances and complaints at an early stage and in a coordinated and/or centralised manner. Those member economies have introduced dispute prevention and mitigation mechanisms without eliminating formal dispute-resolution processes (including investment arbitration) – rather than introducing those mechanisms as a substitute for or alternative to such processes – and with a view to increasing the chances of achieving settlement before the commencement of formal proceedings. There have also been efforts by APEC member economies to introduce mechanisms for resolving investment disputes before they are submitted to formal processes. Compared to their efforts to establish mechanisms under domestic law, we have not found many APEC member economies jointly creating inter-economy bodies empowered to address investors' grievances and complaints pursuant to Investment Agreements.

Chapter 3 highlighted some insights into the perspectives of investors as potential users of dispute prevention and mitigation mechanisms. They generally hold a positive view of the role which a one-stop contact point – part of the dispute prevention and mitigation mechanisms that we have researched – can usefully play. At the same time, they noted that the utility of such contact points may depend on how they are designed and what powers they are granted under the applicable legislation. They also stressed that dispute prevention and mitigation mechanisms should complement existing formal dispute-resolution processes, rather than replacing them to the detriment of investors.

The institutional arrangements of the Target Mechanisms and their competence and functions reflect the constitution, governing system and political cultures of relevant member economies. One system may or may not necessarily work across member economies, and there is no defined set of 'best practice' mechanisms that can be simply copied and pasted into the systems of other economies.

With this in mind, and with a view to contributing to APEC member economies' discussions on whether to introduce a dispute prevention and mitigation mechanism and how to construct such a mechanism, this Report undertakes the following analyses in this concluding Chapter.

First, **Section 4.2** will categorise the Target Mechanisms by highlighting certain organisational elements and their competences and functions. There is no single or correct way of categorising such mechanisms, and this Report has relied on the lists of typical competences and functions in previous studies by UNCITRAL, the World Bank, and the Energy Charter Secretariat (see **Section 4.2.2**). These studies identify such competences and functions as typical characteristics of many dispute prevention and mitigation mechanisms. The purpose of this categorisation is to highlight the divergence in APEC member economies' approaches establishing dispute prevention and mitigation mechanisms. Those prior studies and the list of typical competences

and functions of dispute prevention and mitigation mechanisms would help to highlight the key differences in their approaches. The categorisation would then guide the preparation of a checklist (see **Section 4.4** below) of constitutional, structural and functional issues which economies may wish to consider when designing a mechanism.

More specifically, **Section 4.2** will categorise them, in a table format, by looking at the aspects summarised in **Figure 4.1** below:

Figure 4.1 Organisational elements, competences and functions used in this Report to categorise the Target Mechanisms

Was a new entity created to establish the Target Mechanism, or was an existing entity used for that purpose? (see **Table 4.1**)

Is the Target Mechanism a semi-independent office; an office within a single agency; or an inter-agency body? (see **Table 4.2**)

Is the Target Mechanism established within or outside the system for promoting inward investments? (e.g. the Ministry of Economy, investment-promotion agency) (see **Table 4.3**)

Does the Target Mechanism involve, as members, representatives of the responsible authority? (see **Table 4.4**)

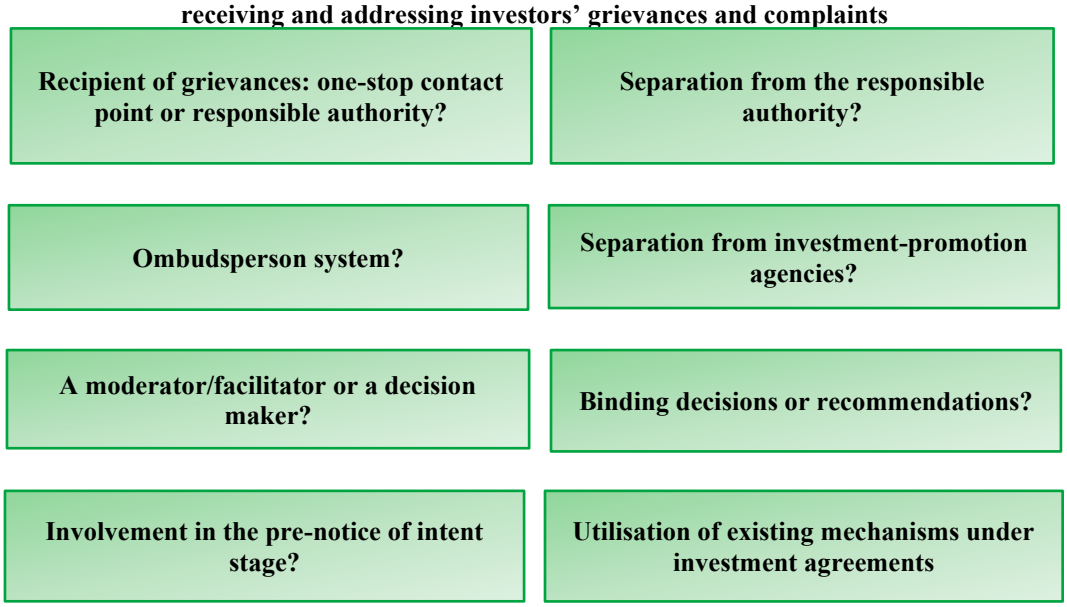
What power is granted to the Target Mechanism and what functions does it perform? (see **Table 4.5**)

Section 4.2 will also identify different types of mechanisms that APEC member economies have introduced pursuant to Investment Agreements. As will be seen in **Section 4.2.3**, APEC member economies have mostly agreed in Investment Agreements that each contracting economy shall establish, or shall endeavour to establish, a mechanism pursuant to domestic legislation that which a mechanism can be introduced and what competence and functions can be granted to such a mechanism, and seek to categorise the Target Mechanisms using those parameters. This categorisation will provide an overview of different policy choices made by the APEC member economies in introducing the Target Mechanisms.

Second, **Section 4.3** will briefly refer to publicly available information on the past performance of the Target Mechanisms in addressing investors' grievances and complaints.

Third, **Section 4.4** will present a 'checklist' which economies may find useful to consult when deciding whether to introduce a mechanism or considering adjustments to existing mechanisms. The checklist will offer for consideration those points listed in **Figure 4.2** immediately below:

Figure 4.2 Checklist for designing a mechanism for receiving and addressing investors' grievances and complaints



The checklist reflects the different choices made by APEC member economies in designing their respective Target Mechanisms (see **Section 4.2**).

Fourth and finally, **Section 4.5** will offer additional thoughts on the utility of dispute prevention and mitigation mechanisms, including their limitations in addressing certain types of grievances and the broader range of measures that may be adopted to minimise the risk of investment grievances occurring in the first place.

4.2 TYPOLOGY: CATEGORISATION OF TARGET MECHANISMS IN ACCORDANCE WITH THEIR CONSTITUTION AND FUNCTIONS

4.2.1 Constitution and structure of the Target Mechanisms established pursuant to internal legislation

This section categorises the Target Mechanisms established pursuant to internal legislation by focussing on certain constitutional and structural aspects.

Economies may establish a new entity to introduce a mechanism for addressing foreign investors' grievances. Others use an existing entity and expand its function to deal with such grievances. The choice should not necessarily affect a mechanism's effectiveness. **Table 4.1** below shows how the APEC member economies have introduced the Target Mechanisms summarised in **Section 2.2** above.

Table 4.1 New entity or existing entity

	CHL	PRC	ROK	MEX	PE	PHL	THA
New entity	✓		✓	✓	✓		✓
Existing entity		✓				✓	✓ Note

Note: Thailand's Office of Board of Investment existed from 1977 and, although unclear from the sources (thus indicated in a different mark), it may be the case that its power was expanded at some point after the establishment to be able to deal with problems that promoted investors experience.

Some Target Mechanisms are called 'Ombudsman', while others are called 'Committee' or 'Commission'. The next **Table 4.2** shows whether the Target Mechanism of each APEC member economy is an Ombudsperson-style, semi-independent office;[67] an office within a single agency; or an inter-agency body.

Table 4.2 Organisational type of the Target Mechanisms

	CHL	PRC	ROK	MEX	PE	PHL	THA
Ombudsperson / semi-independent office			✓			✓	
Single agency	✓	✓		✓			✓
Inter-agency body	✓	✓	✓		✓		✓

The categorisation shown in the table is based on the following understanding:

- **Chile**: the International Dispute Defence Unit (UDCI) is a unit within the Ministry of Foreign Affairs and leads Chile's efforts to resolve investment disputes before they escalate into formal dispute-resolution mechanisms. It also works closely with the Inter-ministerial Committee, a coordination body with permanent and non-permanent members from different ministries and agencies, in seeking an amicable solution.

- **People's Republic of China**: the Ministry of Commerce acts as the National Center for Complaints of Foreign-Invested Enterprises. The same Ministry also coordinates, facilitates, and supervises the handling of complaints relating to foreign investments through a Joint Meeting.

- **Republic of Korea**: the Foreign Investment Ombudsman is a semi-independent official appointed by the President. Korea also has a coordination body, the Task Force, led by the Ministry of Justice.

- **Mexico**: the Office of the General Counsel is a unit within the Ministry of Economy. It has no members from other authorities.

- **Peru**: the Special Commission is a coordination body with permanent and non-permanent members from different ministries and agencies.

- **The Philippines**: the Investment Ombudsman is a Deputy Investment Ombudsman within the Office of the Ombudsman.

- **Thailand**: the Office of the Board of Investment is understood to act independently in addressing problems experienced by promoted investors. A separate coordination body –

[67] An ombudsperson (or 'ombuds') is an independent or semi-independent institutional officer appointed by the legislature or another high-level authority to serve as a neutral intermediary between stakeholders and public authorities: see UNCTAD, *Investor–State Disputes: Prevention and Alternatives to Arbitration* (2010), xxvi.

Committee on International Investment Protection – is chaired by the Deputy Prime Minister and includes senior officials from different ministries and agencies.

Some economies have established mechanisms to address investors' grievances within the system for promoting inward investments. This system may be managed by the Ministry of Economy or a dedicated investment-promotion agency. Others have placed such a mechanism outside the government structure responsible for investment promotion. This distinction may be of interest, as the interests of such investment-promotion bodies may not always align with those of other mechanisms designed to address investors' grievances. Different economies have adopted different options. **Table 4.3** below shows the choices made by APEC member economies in establishing their respective Target Mechanisms.

Table 4.3 Within or outside investment-promotion authority

	CHL	PRC	ROK	MEX	PE	PHL	THA
Within the authority responsible for investment promotion		✓	✓	✓	✓		✓
Outside the authority responsible for investment promotion	✓		✓			✓	✓

The categorisation shown in the table is based on the following understanding:

- **Chile**: the International Disputes Defence Unit (UDCI) is a unit within the Ministry of Foreign Affairs. The Inter-ministerial Committee has the Minister of Finance and Minister of Foreign Affairs (or their representatives) as permanent members, and assisted by a unit within the Ministry of Foreign Affairs.

- **People's Republic of China**: the Ministry of Commerce is responsible for coordinating the mechanism for addressing investors' grievances. The Ministry of Commerce also hosts China's Investment Promotion Agency.

- **Republic of Korea**: the Task Force is chaired by the Vice Minister of Justice. The Foreign Investment Ombudsman is a semi-independent official, but she or he is supported by the grievance settlement body that is set up within the Korea Trade-Investment Promotion Agency (KOTRA); this point is reflected by a different mark for Korea.

- **Mexico**: the Ministry of Economy hosts the Office of General Counsel. The same Ministry launched 'Invest in Mexico' in 2022 to attract and promote inward direct investments, although we understand that such functions are carried out by a different unit within the Ministry.

- **Peru**: the Ministry of Economy and Finance plays the coordinating role in the system of coordination and response, as well as investment promotion activities.

- **The Philippines**: the Office of the Ombudsman is independent from any ministries or agencies.

- **Thailand**: the Office of the Board of Investment was set up to attract inward investments. The Committee on International Investment Protection is not housed within any authority promoting investments, and its functions do not include the promotion of investments.

When deciding who will participate in a coordination body, it is useful to consider whether the responsible authority (see **Box 1.5** above for the definition) is part of the body tasked with addressing investors' grievances. **Table 4.4** indicates whether each Target Mechanism has a representative of the responsible authority as a member ('Yes') or the Target Mechanism has no such representative as a member, permanent or not ('No'). The table denotes 'Yes' where such a representative may be included as a non-permanent member for a specific grievance for which the authority has responsibility and/or expertise.

Table 4.4 Participation by the responsible authority

	CHL	PRC	ROK	MEX	PE	PHL	THA
Yes	Inter-Ministerial Committee	Joint Meeting	Task Force		Special Commission		Committee on International Investment Protection
No	UDCI	Agencies Handling Complaints	Foreign Investment Ombudsman	Office of the General Counsel		Investment Ombudsman	Office of the Board of Investment

4.2.2 Functions and powers granted to Target Mechanisms established pursuant to internal legislation

Different studies have proposed different typologies of functions performed by dispute prevention and mitigation mechanisms. For example, the 2023 report jointly authored by the World Bank and the Energy Charter Secretariat contains the following list of functions which dispute prevention and mitigation mechanisms may typically perform:[68]

- to analyse potential incompatibilities between investment-related domestic legal provisions and international treaties binding on the host economy;
- to communicate between public authorities, coordinate information collection and dissemination;
- to lead discussions with the aggrieved investor;
- to identify the public entities involved in the conflict and transmit the case to the suitable agency; and
- to consider investors' appeals against administrative decisions taken by public agencies during investment activities.

Again, to the extent relevant to the Project, UNCITRAL's 2025 Draft toolkit notes the following in relation to the functions that may be performed by dispute prevention and

[68] World Bank and Energy Charter Secretariat, *Enabling Foreign Direct Investment in the Renewable Energy Sector: Reducing Regulatory Risks and Preventing Investor-State Conflicts* (2023), 40-44.

mitigation mechanisms (referred to as a 'coordination body' in UNCITRAL's text).[69] These functions are understood to be based on UNCITRAL's review of various mechanisms around the world.

- In some instances, the coordination body is responsible for dispute prevention and mitigation only, while in other instances, the body is in charge of dispute prevention and the management of international investment disputes.

- The coordination body may be vested with the power to analyse and identify inconsistencies or gaps in regulations and laws related to investment. It may also identify problematic interpretation or implementation by other governmental bodies and recommend ways to address such issues.

- The coordination body could also provide advice to governmental and related agencies on how to handle grievances of investors.

- The coordination body may be authorised to collect information from competent governmental agencies (note: 'responsible authorities' in this Report).

- The coordination body may request the cooperation of the relevant agencies, including their officials, issue recommendations, and monitor their implementation.

- Governing entities may be required to alert and inform the coordination body whenever they become aware of a potential investment dispute.

- The coordination body may act as the focal point for communicating with investors.

In light of the above, this Report identifies the functions listed in **Figure 4.3** below that may be theoretically performed by a dispute prevention and mitigation mechanism of an APEC member economy that falls within the scope of the Project:

[69] UNCITRAL, 'Possible Reform of Investor-State Dispute Settlement (ISDS): Draft toolkit on prevention and mitigation of international investment disputes' (2025), paras 50-58.

Figure 4.3 List of functions used for categorising the Target Mechanisms

1. to **advise responsible authorities** on how to deal with potential grievances and complaints of an investor before the investor issues a notice of intent, either on its initiative or in response to a request from the responsible authority

2. to **receive directly from investors grievances and complaints** relating to existing investments

3. to **facilitate discussions** between the aggrieved investor and the responsible authority, before or after the investor files a notice of intent

4. to **lead discussions** with aggrieved investors, before or after the investor files a notice of intent

5. to **request the disclosure of information and documentation** from the responsible authority

6. to **coordinate different ministries and agencies** in the formulation of handling strategies

7. to **issue recommendations** to the responsible authority for implementation

8. to **issue binding decisions** on what corrective measures are to be implemented

9. to **manage investment disputes** after investors resort to formal dispute-resolution processes (e.g., investment arbitration)

Table 4.5 on the next page identifies those functions which are performed by the Target Mechanisms established under domestic legislation (the functions listed above are listed in the table in the same order):

Table 4.5 Categorisation of functions performed by the Target Mechanisms established under internal legislation

		CHL		PRC	ROK		MEX	PE	PHL	THA	
		UDCI	Inter-ministerial Committee	Agencies Handling Complaints	Foreign Investment Ombudsman	Task Force	Office of General Counsel	SICRECI	Investment Ombudsman	Committee	BOI
1	Advise responsible authorities on how to deal with potential grievances	✓ (Note 1)				✓ (Note 4)		✓ (Note 1)			
2	Receive grievances directly from investors	✓ (Note 2)		●	●				●		●
3	Facilitate discussions between investors and responsible authorities	●		●			●				
4	Lead discussions with investors	●			●			●	●		
5	Request the disclosure of information and documentation	●		●	●		●	●	●		
6	Coordinate ministries and agencies	●	●			●		●		●	
7	Issue recommendations	●	✓ (Note 3)	●	●					●	
8	Issue binding decisions								✓ (Note 5)		✓ (Note 5)
9	Manage investment disputes	●				●	●	●			

Note 1: in principle, Chile's UDCI and Peru's SICRECI will address investors' grievances and complaints once a notice of intent or request for consultations from an investor is forwarded to them. However, we understand that they may be informally approached by other ministries and agencies prior to receipt of a notice of intent for advice on how to address investment complaints.

Note 2: grievances may reach the UDCI in various ways, including being directly approached by investors. In such cases, an investor's direct approaching may trigger informal conversations and, depending on the outcome of such conversations, the grievance may be resolved without being escalated with a formal request for consultations.

Note 3: in Chile, while most functions are performed by the UDCI, it is the Inter-Ministerial Committee that is mandated to provide advice and recommendations to the President regarding investment disputes.

Note 4: Korea's Task Force is notified if a law, administrative decision or policy that is planned to be implemented or is already implemented may affect the property rights of a foreign investor. In that specific area, the Task Force appears to be called early in the process to assess the likelihood of a formal claim.

Note 5: The Philippines Investment Ombudsman may issue a referral or directive, and any delay or refusal to comply with such referral or directive constitutes a ground for administrative disciplinary action. Thailand's Office of the Board of Investment is empowered to 'order' responsible authorities to assist investors without delay. For either mechanism, it is not clear to what extent the responsible authorities have complied with, or would comply with, the decisions by those mechanisms.

4.2.3 A typology of Target Mechanisms established pursuant to Investment Agreements

Our survey of mechanisms established pursuant to Investment Agreements has identified the following types of arrangements:

- an Investment Agreement requires or encourages each contracting economy to establish a dispute prevention and mitigation mechanism under domestic law. No inter-economy body is created under such an Investment Agreement (RCEP, the China-Korea Free Trade Agreement, and the PRC-HKC CEPA IA);

- an inter-economy body is created under an Investment Agreement to assist in the resolution of issues experienced by investors (PHL-CT IA); and

- an Investment Agreement requires that an aggrieved investor and the host economy seek an amicable settlement through mediation before the investor commences a formal dispute-resolution mechanism (IK-CEPA).

We have not been able to identify, in the 122 Investment Agreements that we have reviewed, inter-economy mechanisms that are specifically empowered to address investors' grievances and complaints and/or investment disputes. We have noted that the ASEAN Comprehensive Investment Agreement tasks the AIA Council to 'facilitate the avoidance and settlement of disputes arising from [the Comprehensive Investment Agreement]',[70] but it appears the Council does not deal with specific grievances or complaints by individual investors.[71]

It seems that most Investment Agreements leave it to each contracting economy to decide how to address individual, specific grievances and complaints from investors on the treatment of their existing investments. We are aware of mechanisms in Investment Agreements for contracting economies to discuss general issues relating to the improvement of investment environment and the protection of inward investments. Still, such mechanisms do not appear to be formally utilised to address individual grievances and complaints. This does not necessarily suggest any deficiency in the system. It is primarily for the host economy to address investors' individual and specific grievances and complaints. Besides, contracting economies may not necessarily wish to elevate grievances and complaints to the inter-economy level too quickly. Moreover, most contracting parties have agreed to arbitration between the host economy and an aggrieved investor as the dispute-settlement mechanism. As such, while early dispute resolution is encouraged, inter-economy, cooperative institutions to address grievances jointly appear rare in the Investment Agreement practice.

4.3 PAST PERFORMANCE: DATA ON THE NUMBER AND TYPES OF INVESTORS' GRIEVANCES ADDRESSED BY TARGET MECHANISMS

In **Section 4.2**, we have seen how different APEC member economies have used different systems to establish mechanisms for receiving and addressing investors' grievances and complaints. We have also observed the different powers granted to different Target Mechanisms and the different functions that each Target Mechanism is mandated to perform.

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[70] ASEAN Comprehensive Investment Agreement, Section C, Article 42 (Institutional Arrangements), paragraph 3(e).
[71] We have been informed of this point from the PSU based on its correspondence with the ASEAN Secretariat.

The information on the constitution, powers and functions of each Target Mechanism is largely based on publicly available information. The same level of information is not always publicly available regarding the extent to which each Target Mechanism is in fact utilised for resolving investors' grievances and complaints. The lack of information is understandable, given that aggrieved investors and host economies would normally discuss, in confidence, the alleged breach of the applicable investment agreements arising from the treatment of investments by public authorities, without publicly referring to the existence or contents of such discussions.

To the extent that public information is available, it does not necessarily show how a mechanism is utilised or what portion of grievances and complaints submitted to it have been, or have not been, resolved. It is also not clear from the available information whether a given grievance or complaint could have developed into arbitration under the applicable investment agreement had it not been resolved.

Notwithstanding these limitations, it may still be useful to review the information that is available to us, in order to see the frequency at which investors approach a given Target Mechanism to raise grievances and complaints, and the subject areas where such grievances and complaints have been raised. This section summarises one specific example of settlement which an investor reached with Peru, and also presents some figures made available by Chile's UDCI, the Philippines Investment Ombudsman, and Korea's Foreign Investment Ombudsman.

Peru: In 2010, the Peruvian Ministry of Energy and Mines entered into a concession contract with Aby Transmisión Sur S.A. for the construction of a transmission line. In the course of implementing the project, delays arose in the commencement of commercial operations and in the installation of certain components. As a result, the Ministry of Energy and Mines imposed penalties and withheld the return of two performance guarantees (*cartas fianzas*), alleging contractual breaches and the need to assess the resulting damages.

These measures gave rise to a dispute concerning the legality of the penalties and the grounds for retaining the guarantees. The Special Commission recommended pursuing a negotiated settlement. After the Special Commission proposed a settlement agreement to the Council of Ministers, the agreement was authorised by Supreme Resolution No. 013-2016-EF, dated 5 July 2016.[72] The Ministers of Economy and Finance, Energy and Mines, Justice and Human Rights, and Foreign Affairs, co-signed the Supreme Resolution. It also empowered the President of the Special Commission to execute the agreement on behalf of Peru.

Publicly available information does not seem to reveal other settlement agreements reached with investors and authorised by Supreme Resolutions.

Chile: The UDCI's role of consulting and negotiating with foreign investors, even before a formal arbitration request, had been exercised by other mechanisms before its inception in 2023 (e.g., by the Foreign Investment Arbitration Defence Program (*Programa de Defensa de Arbitrajes de Inversión Extranjera*)).[73] We have found no public records about the performance of these mechanisms, but the UDCI has kindly shared with us the following information about four instances over the last five years in which the unit or its predecessor intervened. No case has resulted in agreements or economic compensations:

[72] Supreme Resolution No. 013-2016-EF, 5 July 2016.
[73] *Estado Diario*, 'Chile's State Defence in Investment Disputes' (2020).

- In a first instance, the UDCI's predecessor was involved after several investors submitted notices of intent and requested consultations with Chile under the applicable investment agreements. Although no agreement was reached during the negotiations, the UDCI managed to discuss the scope of the monetary compensation sought by investors. While two out of four investors started domestic court proceedings, no international arbitration has been commenced thus far.

- In a second instance, the UDCI was involved when notices of intent were submitted by foreign investors pursuant to the applicable investment agreements, requesting amicable consultations in relation to Chile's regulations governing private health insurance. The issue was aggravated by the decisions of domestic courts and became too wide-reaching to be addressed as an individual investment matter, so it was ultimately resolved by passing a new law. In the process, the UDCI advised the responsible authorities on how to address the investors' grievances. At the closing of this report, one foreign health insurance company initiated international arbitration at ICSID.

- In a third instance, after receiving a request, the UDCI declined to enter into consultations with a foreign investing shell company. This case has been brought to international arbitration after the UDCI's involvement. However, after the ICSID tribunal denied the investor's request for provisional measures, an agreement has been reached. The agreed terms include the withdrawal of domestic and international complaints by the investor, the enforcement of certain guarantees against the investor, and the payment of a compensation by the investor to Chile, including payment of costs incurred by Chile in the international arbitration.[74] The ICSID arbitration was terminated through the issuance of an award incorporating the agreement between the parties.

- Lastly, there has been at least one instance of direct informal conversations with investors where the escalation to formal consultation under the applicable investment agreement was prevented.

As mentioned above, the UDCI may be asked to assist in reviewing draft final decisions to be issued by responsible authorities. The UDCI may provide feedback on how the reasoning is presented and thus help ensure that each legal issue has been properly addressed in the decisions. It normally would not recommend changing the substance of a determination reached by the responsible authority.

In addition, as also mentioned above, the UDCI coordinates the implementation of the Inter-ministerial Committee's recommendation with the relevant Ministries and responsible authorities.

The UDCI has not actively sought the public's general view about the way that investment-related complaints have been handled by the UDCI and the Inter-ministerial Committee. Still, the UDCI has informed us that it has received positive feedback from both public bodies with which it has collaborated and private investors with whom the UDCI has interacted. In particular, participants of the Inter-ministerial Committee have appreciated the opportunity to discuss potential conflicts among all relevant political actors at an early stage, as well as the UDCI's role in preventing and mitigating investment disputes. According to the UDCI, one of

[74] Undersecretariat of Telecommunications website. 'Government Reaches Agreement with Wom to Finalise 5G Project: State to Be Compensated 950,000 UF [*Unidad de Fomento*, a Chilean unit of account] for Breaches and Guarantees of 352,900 UF to Be Collected' (2025).

the reasons why its functions have been well regarded is the coordination with technical counterparts at the Ministries and responsible authorities before discussing potential alternatives with other relevant public authorities.

The Philippines: the Office of the Ombudsman published its annual reports up to 2019. The reports for 2017, 2018 and 2019 contain the following information on the number of requests received and disposed of by the Investment Ombudsman, as summarised in **Table 4.6** below.[75] No additional information is available on those requests, and we have not been able to ascertain whether the underlying complaints relate to the treatment of foreign investments already in the Philippines that might potentially lead to investment arbitration under the applicable investment agreements.

Table 4.6 Number of requests received and disposed of by the Investment Ombudsman, 2017-2019

Year	Requests handled	Requests disposed of
2017	23	21
2018	7	9 (incl. 2 carried over from 2017)
2019	9	7

Republic of Korea: The Foreign Investment Ombudsman is required to report its activities to the Ministry of Trade, Industry and Energy. Under the Enforcement Decree of the Foreign Investment Promotion Act, the Foreign Investment Ombudsman is required to analyse the results of settling complaints raised by foreign-invested companies on a quarterly basis and report the analysis to the Minister of Trade, Industry and Energy within one month after the end of each quarter. Given the confidentiality requirements (see above), the data included in the quarterly reports are not made available to the public (nor have we found copies of such reports in English).

The Foreign Investment Ombudsman is also required to issue Annual Reports 'in order to promote the improvement of regulations on complaints from foreign investors and foreign-invested companies' (Foreign Investment Promotion Act, Article 15-2, paragraph 7). Those Annual Reports include data on the number of grievances addressed by the Foreign Investment Ombudsman, which is compiled and shown in **Tables 4.7** and **4.8** below. In summary:

- In the period 2010-2024, where data are easily obtainable, the Foreign Investment Ombudsman has constantly addressed around 300-400 grievances per calendar year. In 2024, the Ombudsman addressed 427 grievances.

- In the period 2019-2024, where data on grievances by subject area are easily obtainable, the Foreign Investment Ombudsman has received a large number of grievances in the following subject areas year after year: 'Standard, Certification & Inspection', 'Natural Environment & Resource Management' and 'Labour Relations & Occupational Safety' (these are highlighted in yellow in **Table 4.7**). There is also a separate category called 'Investment Incentives'; a gradual increase in the number of grievances in this field may be an interesting trend to analyse, in particular if the facts underlying these grievances may involve an unreasonable withdrawal of, or changes to, conditions of the incentives initially granted.

[75] Office of the Ombudsman, *Annual Report 2017*, 16; *Annual Report 2018*, 16 and *Annual Report 2019*, 15.

The 2024 Annual Report of the Foreign Investment Ombudsman noted the large number of grievances in those subject-areas and observed that the figures showed 'a higher need for supports in specialized and professional areas'.[76] This may, in turn, suggest that it would be useful to include specialists or experts in the subject matter of grievances and complaints within the dispute prevention and mitigation mechanism.

The Office of the Foreign Investment Ombudsman has also released anonymised information on 110 representative cases in which the Ombudsman and the grievance settlement body succeeded in addressing investors' grievances. The summary is available at: https://ombudsman.kotra.or.kr/ob-en/ob/i-2639/dstrss/front/case-list.do. Those 110 cases are categorised into 21 categories, broadly following those subject areas according to which the data is categorised in the Annual Reports. The summary does not indicate whether the aggrieved investors claimed a violation of their rights under the applicable investment agreements. Nor does the summary enable a detailed analysis of each representative case.

[76] Foreign Investment Ombudsman. *Annual Report 2024*, 21.

Table 4.7 Number of grievances raised by subject area, 2019-2024

Subject areas	2019	2020	2021	2022	2023	2024
Standard, Certification & Inspection	47	61	105	40	72	44
Visa & Immigration	20	37	30	17	22	17
Tax and Accounting	19	36	28	14	18	24
Intellectual Property	19	14	28	17	18	17
Construction, Site, Road & Electricity	12	4	26	18	16	56
Natural Environment & Resource Management	38	60	21	75	63	68
Investment Incentives	9	14	17	36	47	37
Health Case & Medical Welfare	38	21	14	47	41	34
Sales, Distribution & Advertisement	9	7	14	18	17	15
Customs & Trade	10	18	13	6	10	8
Labour Relations & Occupational Safety	28	21	11	47	26	29
Investment System and Procedures	6	10	7	19	14	15
Civil Disputes	2	1	6	-	-	-
Finance & Foreign Exchange	22	15	6	8	12	9
Living Condition & Unfair Treatment/Discrimination	11	3	5	11	6	18
Labour Disputes	-	-	2	1	1	2
Research & Development	3	4	1	1	1	5
Fair Trade / Win-Win Corporation	-	-	-	1	3	5
Private Disputes	-		-	-	2	1
Others	39	31	26	7	16	19

Source: Annual Reports of the Foreign Investment Ombudsman for 2021, 2022, 2023 and 2024. The data for 2016-2018 are available in the 2020 Annual Report, but the list of subject areas ('Classification') is different from that in the Annual Reports for 2021-2024 and, thus, it has not been possible to include the data in this table.

Table 4.8 Number of Resolved Grievances, by types of measures, 2010-2024

Year	Total Number of Grievances	Types of Measures (called 'Resolution Type' in the Annual Reports)		
		Legislative Improvement	Administrative Intervention	Home Doctor Resolution
2010	378	13	38	327
2011	376	12	56	308
2012	363	6	104	253
2013	383	5	98	280
2014	436	9	112	315
2015	462	14	111	337
2016	409	16	106	287
2017	291	12	92	187
2018	269	7	107	155
2019	332	24	232	76
2020	357	14	243	100
2021	360	14	264	82
2022	387	17	258	112
2023	406	18	277	111
2024	427	20	265	142

Source: Annual Reports of the Foreign Investment Ombudsman for 2021, 2022, 2023 and 2024.

Notes: According to the Annual Reports of the Office of the Foreign Investment Ombudsman, there are three categories of measures adopted in response to grievances raised by foreign investors and foreign-invested companies. There categories are not defined or explained in the Foreign Investment Promotion Act or the Enforcement Decree of the same Act.

1. **Legislative Improvement**: 'regulatory reforms and/or changing in law by cooperating with relevant agencies and local governments to resolve grievances of a foreign-invested company'. This type of assistance is given where amendments to existing laws and/or regulations are required to address systemic issues.
2. **Administrative Intervention**: 'resolving grievances by providing appropriate procedural interpretation or support from an existing legal framework'. This refers to the cases where responsible authorities (as defined in Box 1.5) took actions to resolve grievances and complaints, for example by issuing an authoritative interpretation of the relevant legislation, verifying the relevant facts or issuing a decision by the responsible officer.
3. **Home Doctor Resolution**: 'grievances solved by Home Doctor's consultation, support, etc.'. This refers to cases where a Home Doctor was able to address a given grievance or complaint without input from the responsible authority.

4.4 CHECKLIST: NON-EXHAUSTIVE LIST OF ISSUES TO CONSIDER WHEN INTRODUCING OR DEVELOPING A MECHANISM FOR ADDRESSING INVESTORS' GRIEVANCES

The typology outlined in **Section 4.2** above reveals variations in the institutional design and functional capacity of mechanisms handling investors' grievances and complaints across APEC member economies. As explained in the Roadmap at **Section 4.1** above, this section seeks to draw on the insights and offer the following checklist for policymakers when designing a new dispute prevention mechanism or adjusting an existing mechanism. The checklist distils several key design questions that economies may wish to consider when introducing or refining their mechanisms for handling investors' grievances and complaints.

4.4.1 Recipient of grievances: one-stop contact point or responsible authority?

One key divergence in the practice of APEC member economies is whether the established mechanism receives various grievances and complaints relating to existing investments directly from aggrieved investors, or the mechanism is informed of such grievances and complaints from other ministries and agencies, presumably from those responsible authorities with whom investors first approach and communicate such grievances and complaints.

As summarised in **Chapter 3**, investors appear to prefer the option of discussing problems regarding their existing investments with responsible authorities (see **Box 1.5** for the definition). Reflecting investors' preference, it may be appropriate to empower the responsible authority as the point of initial contact and discussion on grievances and complaints relating to existing investments, in particular in an economy where each ministry and agency is autonomous and functions on its own, or there is an established system for a lead agency to coordinate the work of different ministries and agencies on the same issue.

Conversely, in an economy where there are a large number of ministries and agencies, several ministries and agencies would often share responsibility and there may be no established system for deciding who will lead discussions between those ministries and agencies. In such instances, the existence of a one-stop contact point may be beneficial to investors. This is because (i) investors will always know which entity to go to when faced with problems with their investments; (ii) they are not required to liaise with multiple ministries and agencies; and (iii) there may be a lower risk of different views being communicated to investors by different ministries and agencies.

4.4.2 Separation from the responsible authority?

Chile's Inter-ministerial Committee, Korea's Task Force and Peru's Special Commission within the SICRECI system all include, on an *ad hoc* basis, representatives of responsible authorities, depending on the nature of investors' grievances and complaints. Those representatives are understood to participate in the decision-making process of those coordination bodies, including in discussions on possible settlement terms or remedial/corrective measures to address investors' grievances and complaints.

In contrast, Chile's UDCI, China's Agencies Handling Complaints, Korea's Foreign Investment Ombudsman, the Investment Ombudsman of the Philippines and Thailand's Office of the Board of Investment do not appear to incorporate representatives of other ministries or agencies, including responsible authorities, in their respective offices or support teams. Instead,

they seek to reflect the positions of responsible authorities by requesting information and documentation and seeking their collaboration through recommended steps to address grievances.

In discussing how to address investors' grievances and complaints, a coordination body may benefit from having as a member a representative of the responsible authority. This may help to ensure that the responsible authority's views are properly reflected in the discussions within the coordination body and may also help to secure better cooperation from that authority in implementing settlement terms. At the same time, it might be seen as a potential weakness of the mechanism if the responsible authority participates in the decision-making process. Investors may see it as an indication that the coordination body is unlikely to decide against the interests of the responsible authority. That perception may arise, for example, in an economy where there is no concentration of power within the governing system and no culture of a key office taking a final decision for other ministries and agencies to follow.

There are pros and cons to having the authority (allegedly) responsible for investors' grievances and complaints in the decision-making process, and there is no single, 'best practice' type answer. Each economy is invited to reflect on its system and devise ways and means to ensure a balance between the efficiency of the decision-making process and the public perception of fairness.

4.4.3 Ombudsperson system?

Related to the point discussed at **Section 4.4.2** above, an ombudsperson (an independent or semi-independent institutional officer appointed by the legislature or another high-level authority to serve as a neutral intermediary between stakeholders and public authorities[77]) may be a viable option if an economy were to establish a one-stop contact point for the early resolution of grievances and complaints relating to existing foreign investments.

Her or his independence from the governing body may be a positive factor for investors to consider using his or her service, if investors see that the independence signifies a fair and impartial decision-making process. On the other hand, an ombudsperson may be seen as lacking the power to resolve grievances and complaints if the independence effectively means that she or he is marginalised and cannot exert any power or influence over the responsible authority to take remedial measures or agree to accept settlement terms. If the responsible authority could, in reality, ignore the measures recommended by the ombudsperson because of the lack of real power, it may not be perceived as an effective resolution mechanism.

4.4.4 Separation from investment-promotion agencies?

Many APEC member economies are understood to have a self-standing agency, or a unit within an existing ministry, that seeks to promote inward investments. The joint report by the World Bank and the Energy Charter Secretariat in 2023 explained that the first step in implementing grievance mechanisms entails the establishment of a lead agency that identifies, tracks and manages projects at risk and investor issues. To develop this point further, the report offered a brief analysis of the option of establishing a lead agency within an investment-promotion agency. The analysis noted that the benefits of this option include 'easy access to investors' and an 'easy issue collection process', while it also considered that the mandate may be limited,

[77] UNCTAD, *Investor–State Disputes: Prevention and Alternatives to Arbitration* (2010), xxvi.

that some confusion may arise between grievance management and broader aftercare services, and that the investment-promotion agency may find it difficult to focus on high-risk cases.[78]

As this joint report notes, investors may find it easier to go to the investment-promotion agency which assisted them in the first place when they sought to enter the market. The agency may have facilitated investors' efforts in obtaining necessary permits and approvals, and in dealing with labour and human resources issues. Similar types of issues may arise at the post-establishment phase and the investment-promotion agency may be seen to be able to assist investors in those instances.

On the other hand, investment-promotion agencies are naturally aimed at promoting and retaining inward investments, and they have vested interests in seeking to ensure that investors remain. Such agencies might find it difficult to address investors' grievances and complaints at the post-establishment stage in a fair and impartial manner. This might work in investors' favour in some instances, but the responsible authorities may not necessarily cooperate with such agencies.

The coordination mechanisms identified in APEC member economies are hosted by different ministries. Peru's Special Commission within SICRECI is chaired by a senior representative of the Ministry of Economy and Finance, under which exists the Private Investment Promotion Agency. In contrast, Chile's Inter-ministerial Committee is co-headed by the Minister of Finance and the Minister of Foreign Affairs, while Thailand's Committee on International Investment Protection is headed by the Deputy Prime Minister. Those coordination bodies are separate from the investment-promotion agency or the economic ministries which would normally supervise such an agency.

4.4.5 A moderator/facilitator or a decision maker?

From an investor's perspective, a one-stop contact point with the power to make a decision on how to resolve its grievances and complaints may be preferable. It may be the case in particular if the one-stop contact point were the sole contact point for investors to raise grievances and complaints. If they were to invest time and resources in order to have their grievances and complaints resolved by the designated contact point, they would naturally expect that their concerns are properly addressed and that decisions are made in response.

At the same time, a one-stop contact point that focuses on facilitating meaningful discussions between aggrieved investors and responsible authorities may still be useful in certain economies. Such a contact point may be useful in particular where a large number of ministries and agencies are involved in a decision-making process and someone needs to play a coordinating role to achieve consensus on any issue. An effective coordinator may bring investors and responsible authorities to the negotiation table, which may already be an achievement in itself in certain economies.

4.4.6 Binding decisions or recommendations?

The Chairman of Thailand's Office of the Board of Investment may direct responsible authorities to assist aggrieved investors who hold promotion certificates, and such decision may become final and binding on those authorities. The Philippines' Investment Ombudsman

[78] World Bank and Energy Charter Secretariat, *Enabling Foreign Direct Investment in the Renewable Energy Sector: Reducing Regulatory Risks and Preventing Investor-State Conflicts* (2023), 57, Table 5.2.

may issue a referral or directive, and any delay or refusal to comply with such referral or directive constitutes grounds for administrative disciplinary action. The Foreign Investment Ombudsman of Korea may only issue recommendations, but the responsible authority must provide explanations if it cannot implement the recommended measures. In such cases, the inter-ministerial Foreign Investment Committee would place the non-compliance on its agenda for deliberation.

Irrespective of the form a decision takes, it would be important that the responsible authority be bound to adopt those measures to address investors' grievances and complaints. If a recommendation is to be issued, there must be some consequence for the responsible authority's decision not to implement the recommended measures.

One point of clarification: a binding decision does not necessarily have to be the final decision. A decision by a one-stop contact point would basically be an administrative decision in many economies and, as such, it should be subject to the appropriate process for raising administrative complaints. Investors should not be barred from claiming that the decision itself and/or the process for reaching that decision is in violation of the applicable investment agreements.

4.4.7 Involvement in the pre-notice of intent stage?

Many Target Mechanisms are understood to become involved in addressing investors' grievances and complaints after a notice of intent is submitted or is forthcoming. In UNCITRAL's parlance, those mechanisms are mandated to function at the dispute mitigation phase.

There may be a valid reason for limiting the involvement of such mechanisms to the dispute mitigation phase, rather than the dispute prevention phase. Before a notice of intent is served, an investor (or its local operating entity) may simply raise concerns about the potentially adverse effects of a measure on its businesses, and the investor's grievance or complaint may not yet be fully expressed in legal terms. At this stage, an investor may not necessarily have any investment agreement in mind. The responsible authority may be competent to address such a grievance or complaint. If an entity designed to handle investment disputes were to start negotiating with the investor at this stage, it might unintentionally elevate an investor's grievance into an investment dispute too early.

At the same time, it is important that the responsible authority dealing with investors' grievances and complaints before the issuance of a notice of intent can receive advice on the potential implications of relevant investment agreements for the legality or legitimacy of the disputed measure. This can lower the chance that an investor may later successfully claim that its grievance or complaint was dealt with in a manner that breached the applicable investment agreement. The body that would be responsible for managing an investment dispute at a later stage (if the investor decides to go to arbitration) may be well placed to provide such advice.

4.4.8 Utilisation of existing mechanisms under investment agreements

The Target Mechanisms established pursuant to Investment Agreements (see **Section 1.3.2** above) mostly leave it to each contracting economy to (endeavour to) establish a contact point that would provide assistance in resolving grievances, complaints, difficulties, etc. of investors. Still, some of them seek to resolve such grievances through an inter-economy body.

Many Investment Agreements that we have reviewed envisage the establishment of a joint committee or a similar body. In an agreement solely aimed at the promotion and protection of investments, such a body may already be tasked with addressing issues arising under that agreement. Its mandate may include improving the investment environment or determining the concrete treatment that should be accorded to foreign investments in line with the obligations under that agreement. In an agreement that more broadly covers a wide range of trade and investment issues, there may be a specific joint committee on investment, or an overarching joint committee may be empowered to create a sub-committee to address investment issues.

Such a committee is typically composed of senior representatives from the contracting economies and is not a standing body. It may not be suitable for addressing grievances or complaints from individual investors. However, where there is a new piece of legislation or a new administrative decision that may affect a number of investors, or where there is a structural issue that, if left unresolved, may lead to investment disputes, discussions between the contracting economies may lead to an early resolution. Even if the joint committee itself may not be able to consider and decide on such issues, it may agree to establish a working group or a communication channel between the contracting economies to facilitate discussions within the framework of the applicable investment agreement.

4.4.9 A brief summary of the checklist

Table 4.9 below summarises the eight points in the checklist that have been discussed above.

Table 4.9 Checklist in a summary form

Checklist	Summary and points to consider	APEC member economies' practice
Recipient of grievances: one-stop contact point or responsible authority? (Section 4.4.1)	• A one-stop contact point may be tasked to receive all types of grievances and complaints from any investor, irrespective of their nature (e.g., Korea's Foreign Investment Ombudsman). • Alternatively, the authority responsible for a measure that has caused loss or damage may be mandated to receive grievances and complaints arising from that measure. • Consider who is best placed to receive and respond to investors' grievances, in light of the particular governing system.	See Table 4.5, Row 2 'Receive grievances directly from investors'
Separation from the responsible authority? (Section 4.4.2)	• The mechanism may include representatives from the authority responsible for a measure that has caused loss or damage in the decision-making process (e.g., Chile's Inter-ministerial Committee, Peru's Special Commission). • Alternatively, an entity with no representation from the responsible authority can be empowered to request cooperation from that authority (e.g., China's Agencies Handling Complaints). • Consider the best way to secure collaboration of the responsible authority. • Consider whether it strengthens or weakens the decision-making process if representatives of the responsible authority participate in the process.	See Table 4.4 'Participation by the responsible authority'

Checklist	Summary and points to consider	APEC member economies' practice
Ombudsperson system? (Section 4.4.3)	• The relevant office may be an Ombudsperson (i.e., maintaining a degree of independence from the executive branch) (e.g., Korea's Foreign Investment Ombudsman). • Alternatively, it may be a single agency (China's Agencies Handling Complaints) or an inter-agency body (Chile's Inter-ministerial Committee). • Consider whether independence would strengthen the office's power to address investors' grievances and complaints, or it may marginalise the office. Consider the political cultures and assess whether the responsible authority would comply with directions from other authorities.	See Table 4.2 'Organisational type of the Target Mechanisms'
Separation from investment-promotion agencies? (Section 4.4.4)	• An office responsible for investment-promotion agency may be tasked to address investors' grievances and complaints regarding their existing investments (e.g., China's Agencies Handling Complaints within the Ministry of Commerce). • Alternatively, a separate entity can be tasked to deal with such grievances and complaints (e.g., the Philippines' Investment Ombudsman). • Consider how investors have used the services offered by the investment-promotion agency. They may find it easier to speak to that agency. • Consider whether the investment-promotion agency may find it difficult for it to deal with grievances and complaints from investors whom it helped establish investments in the first place.	See Table 4.3 'Within or outside investment-promotion authority'
A moderator / facilitator or a decision maker? (Section 4.4.5)	• The one-stop contact point may decide how to address investors' grievances and complaints (subject to final approval by a higher office) (e.g., Chile's UDCI, Peru's Special Commission). • Alternatively, it can be mandated to facilitate discussions between aggrieved investors and the responsible authority (e.g., Mexico's Office of the General Counsel). • Take into account investors' preference for a single body with the decision-making power. • Consider if the political system needs a facilitator to bring to the table aggrieved investors and a number of responsible authorities for discussion.	See Table 4.5, Row 3 'Facilitate discussions between investors and responsible authorities', Row 7 'Issue recommendations' and Row 8 'Issue binding decisions'
Binding decisions or recommendations (Section 4.4.6)	• The one-stop contact point may be empowered to issue a binding decision and demand that the responsible authority implement remedial measures. • Alternatively, may be able to issue non-binding recommendations (e.g., China's Agencies Handling Complaints). • The objective is to ensure that the responsible authority will decide to cooperate and implement the necessary remedial measures. Consider whether the	See Table 4.5, Row 7 'Issue recommendations' and Row 8 'Issue binding decisions'

Checklist	Summary and points to consider	APEC member economies' practice
	power to issue binding decisions may achieve that objective.	
Involvement in the pre-notice of intent stage? (Section 4.4.7)	• A mechanism may be triggered when an investor formally requests consultations (e.g., Mexico's Office of General Counsel). • Alternatively, it could be triggered at an earlier stage (e.g. Korea's Foreign Investment Ombudsman, the Philippines' Investment Ombudsman). • Consider whether it is better to keep a low profile in discussing with investors before they decide to make a formal request for consultation. • Consider also whether the responsible authority dealing with investors may require legal and strategic advice from other offices so as to reduce the risk of investment disputes.	See Table 4.5, Row 2 'Receive grievances directly from investors' for examples of those mechanism that could be triggered at an earlier stage
Utilisation of existing mechanisms under investment agreements (Section 4.4.8)	• Investment agreements may have an inter-economy mechanism for discussing investment-related issues. • Consider if such a mechanism could be utilised to address certain types of grievances and complaints. • Consider if such a mechanism could be utilised to establish a forum for discussing investors' concerns.	See Sections 2.2 and 4.2.3

4.5 ADDITIONAL THOUGHTS ON DISPUTE PREVENTION AND MITIGATION

The Project had a specific objective of identifying APEC member economies' practice of setting up one-stop contact points to receive and address investors' grievances and complaints and mechanisms for coordinating the work of different authorities in addressing such grievances and complaints. In assessing those examples and deciding whether to introduce a similar mechanism, it may be useful to place the discussion on dispute prevention and mitigation mechanisms in a broader context. This **Section 4.5** identifies two policy aspects not addressed above which economies may wish to acknowledge and assess in deciding how to design a mechanism for addressing investors' grievances and complaints.

4.5.1 Inherent limitation of mechanisms for addressing investors' grievances

As discussed in **Section 1.1.1**, investment agreements impose a series of obligations on contracting economies. Any act or omission by the legislative branch, the executive branch, or the judiciary could amount to a breach of the obligations under such agreements. Just to give a couple of examples, a piece of legislation may be in breach of the applicable investment agreement if it seeks to retroactively deprive investors of the rights already acquired under earlier legislation. A decision of a domestic court may be in breach of such an agreement if the decision causes loss or damage to a foreign investor and it was rendered while disregarding the investor's right to a fair trial or due process.

The UNCITRAL Secretariat noted in the 2025 version of the Draft toolkit on prevention and mitigation of international investment disputes that '[i]n the examples surveyed, an investor grievance or feedback mechanism, like dispute prevention or mitigation more broadly, is not

intended to address grievances or feedback arising out of the conduct of the judiciary but is instead focused on the conduct of the executive branch, whether central or decentralized'.[79] Given the separation of powers, many economies would find it difficult to institutionalise a system in which one office within the executive branch can undo, or otherwise eliminate the effect of, a decision of the judiciary that affect the rights of investors in a manner that breaches the applicable investment agreement.

The UNCITRAL Secretariat also noted that the mechanisms that were surveyed 'may also address grievances or feedback arising from legislative activities resulting in the enactment of laws and regulations'. Again, given the separation of powers, many economies would find it difficult to institutionalise a system in which one office within the executive branch can repeal a piece of legislation just because it negatively affects investors' interests or decide not to apply certain legislation despite clear legal provisions. (The UNCITRAL Draft toolkit refers to an example of Algeria where a commission 'rules on appeals filed by investors who consider themselves aggrieved by the application of the law relating to investment'. This may be related more to the application of the law by the executive branch, rather than the content of the law itself.)

The Report has stressed why a one-stop contact point or coordination body that address investors' grievances *should not* be established *as an alternative to* traditional dispute-resolution mechanisms (including investment arbitration). What is discussed in this **Section 4.5.1** is yet another reason why such mechanisms should not be an alternative, because the scope of such mechanisms would be inherently limited given the separation of powers. If an economy were to decide to introduce a mechanism for addressing investors' grievances, it is strongly recommended that the right of aggrieved investors to resort to arbitration be preserved. A well-designed mechanism *in complement to* the traditional mechanisms would still be beneficial to both economies and investors.

4.5.2 A broader approach to dispute prevention

This Project is titled 'Research and survey on the Dispute Prevention and Mitigation System in APEC Economies', and it has focused on the mechanisms for the early resolution of investors' grievances and complaints, before they are elevated to a formal dispute-resolution mechanism (including investment arbitration).

As touched upon in **Section 1.1.1**, dispute prevention could be a much wider concept and a series of measures can be taken and mechanisms may be installed for that purpose.

Dispute prevention may start with ensuring that different branches of an economy are familiar with the obligations under applicable investment agreements. It may involve information sharing and educational and training sessions. Efforts to prevent investment disputes can also be made when an investor seeks to enter the market and make investments. Transparency in the legal framework and in the process for the admission of investments, as well as consistency in decisions adopted by different authorities at different levels of the governing system, would all contribute to reducing the risk of complaints or grievances at a later stage.

One key aspect of dispute prevention is to strike the right balance between an economy's right to regulate and its efforts to promote and protect foreign investments – a balance that many

[79] UNCITRAL, 'Possible Reform of Investor-State Dispute Settlement (ISDS): Draft toolkit on prevention and mitigation of international investment disputes' (2025), para. 26.

investment agreements are in fact understood to preserve and to which more recent investment agreements explicitly give prominence. With a view to ensuring that a measure is justifiable and defensible and deemed to be a legitimate exercise of the right to regulate, each economy may wish to consider identifying and documenting the reasons behind adopting or amending legislation or adopting an administrative decision and the process through which the decision was considered legitimate and defensible. In this process, authorities would typically consider why the purpose behind the measure is legitimate; seek to ensure that the adverse impact of the measure (if any) is proportionate to its aim; and seek to avoid adopting measures that are arbitrary, discriminatory or irrational.

Some investment agreements may already seek to require each contracting economy to provide investors with a reasonable opportunity to express their views. A 2020 study on APEC's Non-Binding Principles for Domestic Regulation of the Services Sector noted that seven APEC member economies enacted laws and set consultation timeframes for draft laws and regulations; and that five APEC member economies observed a 60-day comment period for primary laws.[80] With or without such provisions, and irrespective of whether domestic law requires consultation with investors (foreign or domestic), each economy may wish to consider giving investors an opportunity to voice their views. This is not to deny the right of each economy to revise legislation for legitimate reasons and update the system, or the right to adopt a particular measure for legitimate causes. What is suggested is a procedural safeguard in the exercise of that right: the relevant authorities should be seen to have properly taken into account views and opinions expressed by investors, either through a public comment procedure (responding to a set of questions addressed to the general public) or through individual consultations. Through these dialogues, the economy can gain a concrete understanding of the risks of investment disputes associated with the legislation or measure and, by making transparent policy decisions based on such understanding and preserving them as contemporaneous documents, enhance its capacity to prevent and mitigate future investment disputes.

This Project has also focused on how to address grievances and complaints of *foreign* investors in relation to their existing inward investments. It may be worth considering whether dispute prevention and mitigation mechanisms should be available only to foreign investors, or also to domestic investors. Many of the points discussed above would improve the investment environment for foreign and domestic investors alike. Many local businesses would encounter similar administrative issues as foreign companies in their investment activities, and including domestic investors in the development of investment policies could improve fairness and overall business environment. Even limiting the discussion to a one-stop contact point, there may be no justification to hear foreign investors' grievances and complaints on some general measures, while providing no opportunity for domestic investors to express their views.

[80] APEC, *Study on APEC's Non-binding Principles for Domestic Regulation of the Services Sector: A Focus on Domestic Regulations in Trade Agreements* (2021), 16.

Annex 3.1 – Extracts from the ABAC Survey Questionnaire

Section I: Awareness

1. If your business invests in a foreign economy and you have a grievance regarding the treatment accorded to your investment, where would you most likely raise the grievance initially? Please rate each option on a scale from 1 (highly unlikely) to 5 (highly likely):

	1 (highly unlikely)	2	3	4	5 (highly likely)
1. The authority responsible for the action or omission (failure to act) that caused the grievance	○	○	○	○	○
2. A dedicated one-stop contact point specifically designed to address foreign investors' grievances, if available	○	○	○	○	○
3. Court or tribunal of that foreign economy	○	○	○	○	○
4. Senior members (e.g., president, prime minister, chancellor) of the government)	○	○	○	○	○

2. If your business would raise a grievance with government officials or offices other than those listed in Question 1 above, please list them.

3. If a one-stop contact point is available, which one would you likely approach first?
   - ○ Authority responsible for the act or omission that caused the grievance
   - ○ One-stop contact point

4. If you rated 4 or 5 on Question 1.a above, what would be the most likely reason for going to that authority?
   - ○ You know official(s) in that authority.
   - ○ The official(s) in that authority are more familiar with the action or decision (or lack thereof) in question than other authorities.
   - ○ The authority can decide what corrective measure(s) to adopt in order to address the grievance.
   - ○ Other

5. If you rated 4 or 5 on Question 1.b above, what would be the most likely reason for going to that one-stop contact point?
   - ○ Such a one-stop contact point is dedicated to resolving foreign investors' grievances irrespective of their nature.
   - ○ Such a one-stop contact point can coordinate the response from different authorities.
   - ○ Such a one-stop contact point is independent from the authority responsible for the act or omission that caused the grievance.
   - ○ Other

6. If you rated 1 or 2 on Question 1.b above, what would be the most likely reason?
   - ○ You are unsure of the capabilities and limitations of a one-stop contact point.
   - ○ A one-stop contact point may lack the necessary expertise to understand the

subject matter of the grievance.
- ○ A one-stop contact point may not have the authority to enforce corrective measures.
- ○ A one-stop contact point may not be impartial.
- ○ Other

7. How does the existence of a one-stop contact point in the Host Government in which your business invests (or plans to invest) influence your decision to make a new investment or increase existing investments in that foreign economy? Please rate on a scale from 1 (highly unlikely) to 5 (highly likely).
   - ○ 1 (highly unlikely)
   - ○ 2
   - ○ 3
   - ○ 4
   - ○ 5 (highly likely)

8. How does the presence of a one-stop contact point influence on your confidence in the investment climate of the economy in which your business invests (or plans to invest)? Please rate on a scale from 1 (highly unlikely) to 5 (highly likely).
   - ○ 1 (highly unlikely)
   - ○ 2
   - ○ 3
   - ○ 4
   - ○ 5 (highly likely)

Section II: Usage and Effectiveness

9. Has your business approached a one-stop contact point of the Host Government— where your business has invested—, to raise a grievance regarding the government's treatment of your investments?
   - ○ Yes
   - ○ No

If you answered "Yes" to Question 9, please proceed to Questions 10 and 11.

If you answered "No" to Question 9, please proceed to Questions 10A and 11A.

10. Has your business had the experience of approaching a one-stop contact point in one of the 21 APEC Economies?
    - ○ Yes
    - ○ No
    - ○ Both an APEC member and a non-APEC member

11. Has your business approached a one-stop contact point more than once?
    - ○ Once
    - ○ More than once

10A. Your business has not approached a one-stop contact point because:
    - ○ A: It has not had any grievance to raise to date.

- ○ B: It was not aware of the existence of a one-stop contact point in the Host Government (Go to Question 11).
- ○ C: It chose to go to another authority of the Host Government.
- ○ Other

11A. Would you consider using the one-stop contact point if you were aware that one exists?

- ○ Yes
- ○ No

Annex 3.2 – Guiding Questionnaire for Japanese Business Stakeholders

1. [*To Japanese businesses*] Did you know that some governments have established a "one-stop contact point" system to centrally receive complaints from foreign investors (parent companies) and their local subsidiaries regarding the establishment, revision, or abolition of laws and regulations or any specific measures by the host government? If so,

   (A) How did you hear about it?

   (B) Is it a positive factor for your company, when finally deciding whether to invest in an economy, that that economy has a one-stop contact point system?

2. [*To Japanese businesses*] If your company or its local subsidiary wants to file a complaint against the economy they are investing in, and the economy has established a one-stop contact point system, will you consider making a complaint to that system? Or would you consider directly addressing the relevant ministries and agencies that are responsible for the laws/regulations and measures in question?

3. [*To Japanese businesses*] If a host government has an organ (such as a department within the relevant ministry or an independent administrative agency) to promote inward investment (for example JETRO in Japan), would you consider, or have you considered filing a complaint with such an organ?

4. [*To JETRO and Keidanren*] If a foreign investor complains about the treatment of its investments by the host government, the foreign investor may refer the dispute to international arbitration under the arbitration provisions of investment agreements, or file a lawsuit in the courts of the host government. We would like to hear your views on the proposition that the early resolution of investment disputes by host governments through systems other than international arbitration and domestic court proceedings (including the "one-stop contact point" system) will contribute to the promotion of investment by Japanese companies.

5. [*To JETRO and Keidanren*] Assuming that a host government requires that economy-wide or regional organizations other than its courts (including the one-stop contact point system) handle and resolve complaints by a foreign investor prior to requesting consultations with the authorities or during the consultations, what do you think about the proposition that such a move will contribute to the promotion of investment by Japanese companies and the improvement of the investment environment?

6. [*To JETRO and Keidanren*] Did you know that some economies (e.g., South Korea) already have a one-stop contact point? We would appreciate it if you could give us your opinions and comments regarding the existing one-stop contact point.

7. [*To JETRO and Keidanren*] We would like to hear your opinion on the proposition that having a one-stop contact point in the economy in which you plan to invest can be a positive factor for companies when finally deciding whether to invest.

8. [*To all the interviewees*] What kind of characteristics may prompt Japanese investors to use a contact-point system, either before triggering the investment-arbitration process or in parallel with the arbitration proceedings? Please consider in particular the following characteristics:

(A) The one-stop contact point is (to a certain extent) independent from the executive branch.

(B) The one-stop contact point has the authority to make decisions regarding the resolution of complaints and investment disputes.

(C) The one-stop contact point does not have the authority to make decisions but only facilitates discussions between investors and the executive branch.

(D) The one-stop contact point consults with foreign investors on behalf of the executive branch, and foreign investors are not obliged to hold separate consultations with relevant ministries or agencies.

(E) The one-stop contact point may make binding decisions as a solution for complaints. In other words, the relevant ministries and agencies must comply with the decisions made by the one-stop contact point, and if they violate such obligations, they may be subject to administrative trials.

(F) Relevant ministries and agencies are participating in the one-stop contact point's decision-making process.

9. [*To JETRO and Keidanren*] Do you know of any cases in which a Japanese corporation (or its local subsidiary) filed a complaint about the treatment of its investment to the contact point established by the host government? If you know, please provide the following details.

(A) Company name, company size, field of business, etc.

(B) In which economy did they use the contact point(s)?

(C) What kind of complaint did they make?

(D) Were they satisfied with the response of the one-stop contact point?

(E) If a solution was proposed by the host government, was the solution satisfactory?

(F) If they were dissatisfied with the solution, did the Japanese corporation contact another institution (including the courts) in the host economy. or use dispute resolution methods such as investment arbitration or mediation.

10. [*To Japanese businesses*] If there is a one-stop contact point system in the economy in which your company is investing in, has your company or local subsidiary ever filed a complaint to such a system?

11. [*To Japanese businesses*] If the answer to 10. is "No",

(A) Is it because there has never been the need to file a complaint, or because you have filed a complaint to other organizations that are not the one-stop contact point (including relevant ministries and courts)?

(B) If you have filed a complaint to another organization, what kind of complaint did you file with which institution, and why did you not file a complaint with the one-stop contact point?

12. [*To Japanese businesses*] If the answer to 10. is "Yes", please tell us about the following points. In addition, if you have used the one-stop contact point multiple times, please include some of the cases in your answer.

(A) In which economy did you use the contact point(s)?

(B) What kind of complaint did you make?

(C) Was the complaint filed directly by your company or by a local subsidiary?

(D) Were you satisfied with the response of the one-stop contact point? In particular, were you able to file the complaint quickly and smoothly, how long did it take to respond, how much information was provided during the process, and was the authority and response of the staff appropriate.

(E) If a solution was proposed to a complaint by your company or a local subsidiary, was the solution satisfactory?

(F) If you were dissatisfied with the solution, did you contact another institution (including the courts) in the host economy. or use dispute resolution methods such as investment arbitration or mediation?

13. [*To Japanese businesses*] If a foreign investor complains about the treatment of its investments by the host government, the foreign investor may refer the dispute to international arbitration under the arbitration provisions of investment agreements, or file a lawsuit in the courts of the host government. We would like to hear your views on what kind of alternative/complementary system (not limited to the one-stop contact point system) will enable complaints and investment disputes to be solved more quickly and economically.

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