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Possible reform of investor-State dispute settlement (ISDS)

Draft toolkit on prevention and mitigation of international investment disputes

Note by the Secretariat

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Introduction

1. At its thirty-ninth session in October 2020, Working Group III undertook a preliminary consideration of the topic of dispute prevention and mitigation based on document [A/CN.9/WG.III/WP.190](#) and requested the Secretariat to pursue further work ([A/CN.9/1044](#), para. 26). At the forty-fifth session in March 2023, a draft legislative guide on investment dispute prevention and mitigation ([A/CN.9/WG.III/WP.228](#)) was prepared jointly with the World Bank Group along with an informal document containing a compilation of the best practices.¹ The Secretariat was requested to revise the text into a non-prescriptive guidance document on means to prevent and mitigate disputes, including examples of best practices, which would aim to mainly assist States ([A/CN.9/1131](#), para. 52).
2. At its forty-seventh session in January 2024, Working Group III considered the draft guidelines on prevention and mitigation of international investment disputes ([A/CN.9/WG.III/WP.235](#)). In view of the limited time, the Secretariat was tasked with updating the draft guidelines based on written comments as well as inputs received during the seventh intersessional meeting of Working Group III (7–8 March 2024, Brussels, [A/CN.9/WG.III/WP.242](#)) ([A/CN.9/1161](#), para. 112).
3. At its forty-eighth session in April 2024, Working Group III considered the revised version of the draft guidelines.² After discussion, the Secretariat was tasked to prepare the text as a toolkit compiling different States' practices and reflecting the deliberations of the Working Group ([A/CN.9/1167](#), paras. 80–83) and present it to the Commission for its consideration.
4. At its fifty-seventh session, the Commission considered the draft toolkit on dispute prevention and mitigation ([A/CN.9/1185](#)) and requested the secretariat to circulate the draft toolkit for comments and feedback by States,³ on the basis of which an updated version of the toolkit could be prepared.⁴ The secretariat was further requested to report on the progress made and inform the Commission when the toolkit was ready for finalization.⁵
5. Accordingly, this Note contains in the annex a revised draft toolkit on prevention and mitigation of international investment disputes for consideration and adoption by the Commission. The draft toolkit is a descriptive document setting out various strategies and measures that have been adopted by States to prevent and mitigate investment disputes involving foreign investors.

¹ Available at https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/wg_iii_compilation_on_dispute_prevention_and_summary.pdf.

² Available at https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/wp.235_rev_clean.pdf.

³ Comments received from States are available at <https://uncitral.un.org/en/investmentmediationanddispute prevention> in the language they were received.

⁴ *Official Records of the General Assembly, Seventy-ninth Session, Supplement No. 17 (A/79/17)*, para. 168.

⁵ *Ibid.*, para. 169.

Annex

Draft toolkit on prevention and mitigation of international investment disputes

A. Introduction

1. The Toolkit on Prevention and Mitigation of International Investment Disputes (the “Toolkit”) sets out examples of strategies and measures that have been adopted by States to prevent and mitigate investment disputes involving foreign investors. In the Toolkit, “international investment disputes” refer to a wide range of disputes between a foreign investor and a State or any constituent subdivision of a State or any agency of a State. These disputes arise out of a treaty providing for the protection of investments or investors, legislation governing foreign investments or an investment contract (referred to collectively as “investment instruments”).
2. “Dispute prevention” refers to the handling of a grievance of a foreign investor before it develops into a disagreement framed in legal terms. As such, it includes the handling of grievances, which may be expressed as disagreements in non-legal terms, for example, through media coverage or other informal complaints. A disagreement is usually framed in legal terms when the investor expresses its intent to seek recourse to arbitration or litigation. This is when “dispute mitigation” begins, which may also involve amicable settlement, including through mediation. If the dispute is not settled and the investor escalates the disagreement into a “legal” dispute by formally seeking recourse to arbitration or litigation, dispute mitigation gives way to “dispute management”. The Toolkit focuses on the dispute prevention and mitigation phases.⁶
3. The Toolkit illustrates how States and regional economic integration organizations (REIOs) have set up and implemented dispute prevention and mitigation systems (references to “States” hereinafter include REIOs, while references to a single ‘State’ do not).
4. As a non-prescriptive document, the Toolkit does not contain specific recommendations nor aim to list best practices. This is because whether and how to implement a dispute prevention and mitigation system falls under the sovereign regulatory powers of a State. The Toolkit also does not impose any legal requirements binding upon States. It should not be used to interpret any provision of investment instruments, nor should it form the basis of a claim against a State or be used in any way by a claimant in raising such a claim. It is entirely left to States on how to make use of the information in the Toolkit, taking into consideration factors such as the organizational structure of the State or government and ways to address investor’s rights and obligations.
5. Investors also have a significant role in preventing and mitigating disputes by complying with local regulations and acting with due diligence. Additionally, States can support investors in adhering to local regulations, thereby helping to prevent and mitigating disputes. This principle applies broadly, though specific practices may vary depending on the legal and regulatory frameworks of the host and supporting States. However, the primary focus of the Toolkit is to inform States about measures undertaken by other States. By providing insights into their practices in setting up and implementing dispute prevention and mitigation systems, the Toolkit aims to offer ideas that governments could employ to proactively address potential conflicts and foster a stable and predictable investment climate. A coherent and effective dispute prevention and mitigation system could result in the attraction and retention of foreign investments, as it would demonstrate the State’s commitment to risk management, stability and maintaining a healthy relationship with investors.⁷

⁶ See World Bank, *Managing Investor Issues through Retention Mechanisms* (2021), p. 8.

⁷ See World Bank, *Retention and Expansion of Foreign Direct Investment, Political Risk and Policy Responses* (2019), pp. 41–43.

6. This Section provides an introduction and explains the purpose and scope of the Toolkit. Section B discusses the various strategies and measures adopted by States to improve communication with investors. Section C illustrates States' efforts to ensure coordination among governmental and related agencies, including information-sharing and identifying or establishing a coordination body. Section D describes States' efforts to ensure coordination and cooperation with other governments. Section E deals with other related issues that arise with regard to dispute prevention and mitigation. Finally, Sections F and G contain a list of reference material, including the practices of States as well as guidance material prepared by international organizations.

B. Communication with investors

7. Effective communication with investors can help dispute prevention and mitigation. By maintaining transparent and open lines of communication, potential issues can be addressed early on, misunderstandings can be avoided and conflicts resolved more smoothly. Additionally, clear communication helps to manage expectations and build trust, which can help maintain positive relationships with investors. In general, an effective communication channel with investors throughout the lifecycle of their investment could be useful.

8. Some States have found that effective communication with investors can be achieved by providing a mechanism for investor feedback on potential policy changes. Similarly, States have found that simply providing information may not always suffice and that policy choices may need to be explained and conveyed in a different manner, for example by a high level or senior official who may be involved in the communication in addition to working-level support, as high-level engagement can enhance the credibility and seriousness of the State's commitment to maintain a constructive relationship with investors. However, such engagement should not be understood as a binding assurance from the State and does not release investors from their duty to stay continuously informed about any legal, procedural, or regulatory requirements.

9. Some States have established one or more focal points, for example, a one-stop-shop online or single information portal.⁸ These focal points help address queries from investors and potential investors. In some cases, streamlining communication through focal points has expedited the process and prevented potential confusion caused by multiple responses from different governmental agencies. Such an approach has also promoted clarity and transparency.

1. Easy access to information

10. Information about investment policy, including relevant laws and regulations, could be made easily accessible to facilitate investment and expansion.⁹ Some States have found that prospective investors need information on how to establish their investment, the regulatory framework that will govern their investment, the applicable laws and compliance procedures, and information about main public or related agencies that investors may need to interact with (referred to generally as "competent governmental agency or agencies" in the Toolkit). During this phase, communication with investors is generally established by investment promotion agencies or as part of promotional activities. For instance, Brazil's Direct Investment Ombudsman serves as a first point of contact for prospective investors, so that they may inquire about legislation, procedural and regulatory requirements. Similarly, the Algerian Agency for the Promotion of Investments (AAPI) is responsible for providing information services in all areas useful for investment, managing the investor's digital platform, and handling investor complaints. The Single Window for major projects and foreign investments, located within the AAPI, acts as a single point of contact for carrying

⁸ Investment Facilitation for Development (IFD) Agreement, article 22.1.

⁹ See IFD Agreement, articles 6-8.

out all the steps necessary for the realization of major investment projects and foreign investments.¹⁰ The Republic of Türkiye launched an Investment Process Guide as a comprehensive and interactive tool for local and international investors to gain clarity on the bureaucratic procedures required for investing and to provide them with detailed guidance on its regulatory landscape more effectively.¹¹

11. Investors may obtain a better understanding of the regulatory regime, including information that can aid them in making informed decisions throughout the lifecycle of their investment. For example, information about any changes to the regulatory framework can enable investors to assess whether to expand or diversify their investment.¹² In this regard, Morocco's adoption of simplified administrative processes, including tacit approval measures under Law No. 55-19, contributed positively to more predictable business climate, and reduced potential sources of conflict. Morocco has also enhanced its institutional framework to manage investment-related issues. The Ministry of Investment, Convergence, and Evaluation of Public Policies, the National Investment Commission, and the Moroccan Investment and Export Development Agency (AMDIE) play crucial roles in this regard. These bodies facilitate investment processes, provide support to investors, and offer conciliation services to resolve disputes amicably.¹³

12. Contact information of focal points or other appropriate mechanisms to respond to inquiries from investors and to assist them in obtaining relevant information about government measures could be included in a single information portal. In case of any complaint, investors would need information on the competent governmental agency and ways to submit any complaints.

13. However, facilitating access to and providing such information should not form the basis of any expectation of investors, as investors should conduct extensive due diligence prior to making the investment, including on the economic, technical, and legal aspects of the host State.

14. In certain jurisdictions, technology has been employed to enhance communication with investors and provide valuable information; and businesses have noted this as a significant resource. The website "InvestJordan" operated by the Ministry of Investment of Jordan is one example.¹⁴ The European Union also operates a portal providing information to investors on trade, investment, and procurement spanning all EU member States.¹⁵ In Algeria, the "Digital Investor Platform" guides, supports and monitors investments since their registration and during the period of their operation to simplify business process and improve communication between investors and the economic administration.¹⁶ In Saudi Arabia, the "Invest in Saudi Arabia" platform facilitates communication with investors and provides support. The Ministry of Investment organizes workshops to promote and explore investment opportunities. Additionally, the National Center for Documents and Archives publishes regulations and updates online, ensuring investors have access to accurate information. The Official Translation Division translates and publishes official documents to help investors understand local laws and regulations. These initiatives enhance communication with investors by providing clear, accessible information and

¹⁰ See comments from the Government of People's Democratic Republic of Algeria on document A/CN.9/1185 (Draft toolkit on prevention and mitigation of international investment disputes), available at https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/contribution_algerie_boite_a_outils.pdf.

¹¹ See comments from the Government of Republic of Türkiye's on document A/CN.9/1185, available at <https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/turkey.pdf>.

¹² See IFD Agreement, articles 6-7.

¹³ See comments from the Government of Kingdom of Morocco on document A/CN.9/1185, available at <https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/morocco.pdf>.

¹⁴ InvestJordan, available at <https://invest.jo/>. See also Invest KOREA (available at <https://www.investkorea.org>), InvestQatar (available at <https://www.invest.qa/en>) and United Kingdom of Great Britain and Northern Ireland platform (available at <https://www.great.gov.uk/international/investment/>).

¹⁵ Access2Markets portal, available at <https://trade.ec.europa.eu/access-to-markets/en/home>.

¹⁶ Digital Investor's Platform, available at <https://api.dz/plateforme-numerique-delinvestisseur/>.

direct support, which helps prevent misunderstandings and disputes. By ensuring investors are well-informed and supported, these measures contribute to a more stable and transparent investment environment, reducing the likelihood of conflicts.¹⁷ In Morocco, the Ministry of Economy and Finance, through the Judicial Agency of the Kingdom (AJR), provides legal support through an online consultation platform (“Mouwakaba”) and a legal hotline.¹⁸

15. Such portals allow investors to access information about regulatory requirements, obtain responses to frequently asked questions, contact competent governmental agencies and file grievances and monitor progress. Live chatbots have also been incorporated into the portals to respond to questions or to direct enquiries to the competent governmental agency or officials. For instance, Republic of Türkiye launched an Investment Assistant Chatbot project that enables all visitors, particularly investors, to access comprehensive information about its international direct investment environment in more than 100 languages via the official website.¹⁹

16. Some States have centralized information on their investment obligations (including information about dispute resolution clauses in investment treaties or joint declarations by States). This can provide investors with greater transparency and predictability regarding the legal framework in which they operate. Such information can also be helpful to policymakers as they can manage their obligations and take informed decisions. For example, Peru’s State Coordination and Response System for International Investment Disputes is responsible for compiling information on investment agreements and treaties that refer to international dispute settlement mechanisms.²⁰

2. Investor Feedback on Policy Issues

17. Investors may be impacted by changes to the regulatory framework as well as the introduction of specific measures. To reduce grievances of investors and mitigate the likelihood of claims being raised at a later stage, some States have taken a proactive approach by providing means for investors to provide feedback regarding potential changes to the regulatory framework or introduction of measures to the extent possible.

18. Some States have introduced consultation procedures to seek inputs from interested parties, including investors, before changes are made to laws or regulations and before introducing specific measures that may potentially affect the interest of such parties.²¹ In Morocco, the 2011 Constitution mandates that public authorities conduct consultations when making decisions and policies.²² Proactive consultation processes, such as those implemented by Morocco, involving publication of draft laws and public participation through legislative bodies and government agencies, can enhance transparency and investor engagement, mitigating potential grievances. At the national level in Argentina, draft laws are published on the congressional website, allowing for public participation and *ex ante* evaluation of regulatory projects.

¹⁷ See comments from the Kingdom of Saudi Arabia on document A/CN.9/1185, available at https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/nv_20.pdf.

¹⁸ See comments from the Government of Kingdom of Morocco on document A/CN.9/1185, available at <https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/morocco.pdf>.

¹⁹ See comments from the Government of Republic of Türkiye’s on document A/CN.9/1185, available at <https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/turkey.pdf>.

²⁰ Article 3 of the Law Establishing the Coordination and Response System for International Investment Disputes (No. 28933, 15 December 2006).

²¹ For example, article 10.3 of the IFD Agreement suggests that investors should be given a reasonable opportunity to comment on proposed laws, regulations or measures and that comments received should be considered, to the extent practicable and in a manner consistent with the respective legal system.

²² See comments from the Government of Kingdom of Morocco on document A/CN.9/1185, available at <https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/morocco.pdf>.

However, at the provincial and municipal levels, draft laws and decrees are typically not published, and public hearings are often not conducted.²³ Some States emphasize the need to discuss legislation publicly to foster transparency and enhance public engagement in the rule and policymaking process. Such engagement is sometimes facilitated through platforms like the Private Sector Feedback Platform²⁴ and the Public Consultation Platform²⁵ operated by the National Competitiveness Center of Saudi Arabia.

19. Additionally, some States integrate consultation processes with regulatory impact assessments.²⁶ For example, the Business Regulatory Review Agency of Zambia has the authority to approve a proposed law or policy based on an assessment of its impact on the business environment.²⁷

20. Involving investors in consultations on future policies or regulations may mitigate future disputes as investors would have a forum to voice concerns about how a policy or regulation might affect them negatively. This process does not affect the inherent regulatory power of the States but contributes to making of informed policy choices and considering their potential impact. Gradual implementation of new laws or regulations may pre-empt grievances by providing investors sufficient time to make adjustments.

21. The concept of consultations is also embodied in investment agreements of some States. For example, article 340 of the Strategic Partnership, Trade and Cooperation Agreement between the United Kingdom of Great Britain and Northern Ireland and Moldova provides that each Party shall ensure that measures aimed at protecting the environment or labour conditions that may affect trade or investment are developed, introduced and implemented in a transparent manner, with due notice and public consultation, and with appropriate and timely communication to, and consultation of, non-State actors.

3. Investor grievance or feedback mechanism

22. Timing is an important factor in preventing a grievance from escalating into a dispute. The earlier problems are addressed, the higher the likelihood for a solution. A grievance or feedback mechanism provides investors who consider themselves to have been negatively affected with a process to voice their concerns. It allows investors to lodge complaints, for example, with regard to the denial of a permit by a municipal authority or the possible negative consequences of proposed changes to a regulation.

23. In some States, grievance or feedback mechanisms are established by law or regulation, while in others, they are established by less formal instruments, such as an administrative instruction or as an internal government procedure. The relevant instruments establishing the mechanism often specify the scope of grievances or feedback to be handled, the process for submitting a grievance or feedback, the internal procedure for handling them, and the time frames for the overall process. Additionally, not all States have mechanisms for resolving investor grievances as described. Some federal States may have difficulties in creating a mechanism that can effectively resolve certain investor grievances, when these are based on decisions

²³ See comments by the Government of the Republic of Argentina on A/CN.9/1185, available at https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/comentarios_de_la_republica_argentina.pdf.

²⁴ Available at <https://www.ncc.gov.sa/en/Visuals/Pages/default.aspx>.

²⁵ Available at <https://www.ncc.gov.sa/en/Istitlaa/Pages/default.aspx>.

²⁶ Regulatory impact assessment refers to a systemic approach to critically assessing the positive and negative effects of proposed and existing regulations and non-regulatory alternatives. It encompasses a range of methods and is an important element of an evidence-based approach to policymaking. See OECD, Regulatory Impact Assessment, OECD Best Practice Principles for Regulatory Policy (2020), available at www.oecd.org/gov/regulatory-policy/regulatory-impact-assessment-7a9638cb-en.htm.

²⁷ See section 6 of the Business Regulatory Act.

taken by subnational bodies within the framework of their powers.²⁸ Time frames may be adjusted on a case-by-case basis, taking into account, for example, the complexity of the issues. In this case, investors may be informed about the expected time frame and given regular updates.

24. An investor may be invited, but not necessarily required, to utilize the grievance or feedback mechanism prior to raising a claim or otherwise utilizing the dispute resolution mechanism under the investment instrument. In any case, the grievance or feedback mechanism may complement any such dispute resolution mechanism and could be referred to in investment instruments. Institutionalizing investor grievance mechanisms at regional and national levels, such as Morocco's Regional Investment Centers (CRI)²⁹, can effectively resolve disputes at an early stage. Saudi Arabia similarly highlights the value of legally backed grievance procedures, including administrative appeals and alternative dispute resolution methods stipulated explicitly in national investment laws.

25. The grievance or feedback mechanism would usually require the outcome to be communicated to the investor and the competent government agency to follow-up and implement any decision or recommendation resulting therefrom. If the investor is not satisfied with the outcome, there may be a possibility to appeal. If the grievance or feedback cannot be handled effectively, for example, due to the lack of cooperation among the governmental agencies or the political sensitivity of the issues at stake, it may be brought to the attention of a higher political authority (for example, an inter-ministerial committee or the office of the prime minister or the president).³⁰

26. In 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. The mechanism may also address grievances or feedback arising from legislative activities resulting in the enactment of laws and regulations. In Algeria, the National High Commission for Investment-related Appeals acting as the appellate body against decisions taken by the Director General of AAPI, rules on appeals filed by investors who consider themselves aggrieved by the application of the law relating to investment. Algeria has also established specialized commercial courts to decide commercial matters by conciliation.

27. The experience of the World Bank in supporting governments to set up investor grievance mechanisms may be useful. The World Bank suggests that a minimum institutional infrastructure be in place to enable governments to identify, track and manage grievances as early as possible.³¹ It further suggests the empowerment of a government agency and the establishment of an intergovernmental mechanism for systematically addressing grievances. The government agency would be responsible for bringing grievances to the attention of high-level government bodies to address the issues before they escalate further.³² The World Bank also suggests the establishment of an early alert mechanism for the government body to become aware of grievances as soon as they arise and a tracking tool to monitor whether the grievance is resolved. It further suggests problem-solving methods (leveraging information-sharing tools, analysis of legal and economic implications of grievances

²⁸ See comments by the Government of the Republic of Argentina on [A/CN.9/1185](#), available at https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/comentarios_de_la_republica_argentina.pdf.

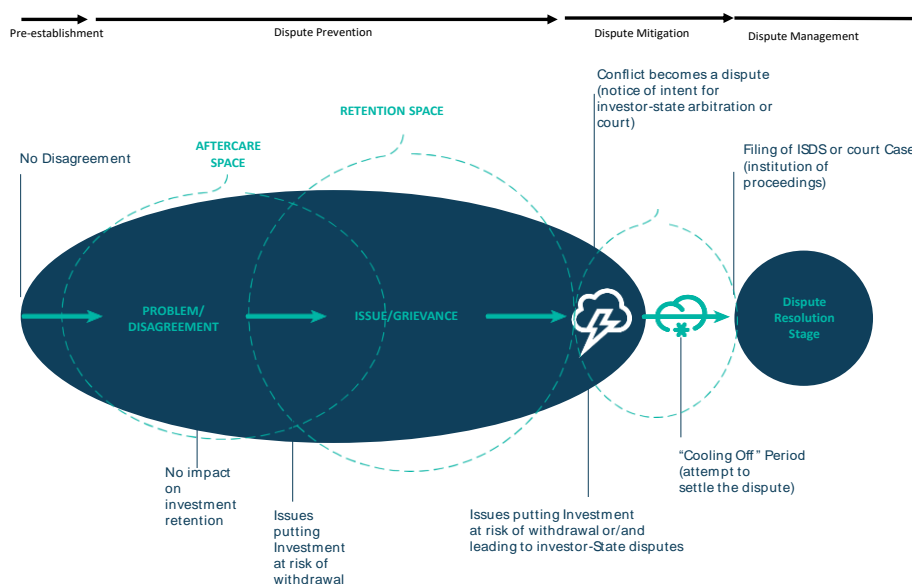
²⁹ Morocco's CRIs are designed to facilitate investment processes and resolve disputes between investors and public administrations. Established under Law No. 47-18, the CRIs operate as public institutions with legal entity and financial autonomy.

³⁰ The Ethiopian system serves as an example: issues not solved by the Ethiopian Investment Commission are escalated to the Ethiopia Investment Board, an inter-ministerial body. See articles 25 to 27, [Proclamation No. 1180/2020](#), 2 April 2020; see also World Bank Managing, p. 16.

³¹ See World Bank, *supra* note 4, pp. 39–45.

³² *Ibid.*, p. 43.

and standard coordination/operating procedures) and in case a solution cannot be reached at a technical level, a mechanism to elevate the issues to higher political levels.



28. States where the World Bank Group assisted in establishing investor grievance mechanisms include Brazil, Dominican Republic, Ethiopia, Georgia, Jordan, Rwanda and Viet Nam.³³

29. For example, the competencies of the Direct Investment Ombudsman of Brazil include providing support and guidance to investors by recommending solutions to grievances and proposing improvements to legislation or administrative procedures.³⁴ In the Dominican Republic, the National Dispute Prevention System optimizes the public sector's response to international disputes, ensuring efficient and timely coordination. In Ethiopia, the Investment Proclamation outlines the right of any investor who has grievance to lodge a complaint (art. 25) and further sets forth the procedure for submitting complaints with regard to decisions of any federal government executive body (art. 27) and decisions of the Ethiopian Investment Commission (art. 26). Issues not solved by the Ethiopian Investment Commission are escalated to the Ethiopia Investment Board, an interministerial body. In Vietnam, the Decree elaborating some articles of the Law on Investment entitle the investor to report difficulties and propositions related to application and implementation of laws to competent authorities (art. 9(1)) and to file complaints, denunciations and administrative lawsuits if there is a presumption of the administrative decision or act being unlawful and infringing upon their legitimate rights and interests (art. 9(3)).³⁵ Moreover, the resolution of investment disputes is specifically regulated in its 2020 Investment Law.³⁶

30. In Georgia, the Business Ombudsman acts as a moderator to resolve grievances between businesses and government entities. It investigates complaints, facilitates dialogue and proposes solutions to promote transparency and fairness in business-government relations, ultimately fostering a better environment for business growth and investment. Similarly, the Jordan Investment Commission administers the investor grievance mechanism.³⁷

³³ See World Bank, *supra* note 4, pp. 15–18.

³⁴ See Decree on the Creation, Structure and Attributions of the Direct Investment Ombudsman. See also the Brazilian Cooperation and Facilitation Agreement (CFIA) Model, article 23.

³⁵ See Decree No. 31/2021/ND-CP on elaboration of some articles of the Law on Investment (26 March 2021), article 9.

³⁶ See Law on Investment (No. 61/2020/QH14, 17 June 2020), article 14.

³⁷ See Investment Environment Law (2022), article 44 and Investment Environment Regulation

31. In Rwanda, the Private Investment Committee is tasked with discussing investors' issues and proposing acceleration measures for resolution.³⁸ An investor grievance mechanism is administered by the Reinvestment and Aftercare Department of the Rwanda Development Board.³⁹ In Korea, the Presidential Directive⁴⁰ imposes an obligation on governmental authorities to notify the Ministry of Justice in case of pending or potential investment disputes. This Directive aims to properly identify grievances that may evolve into possible disputes and to avoid unnecessary redundancy.

C. Coordination among governmental and related agencies

32. Effective communication as well as coordination among governmental and related agencies can assist with dispute prevention and mitigation. Depending on the government structure and the type of investment at stake, a number of governmental and related agencies (including those at subnational level, such as provinces, states, and municipalities) may be involved in the coordination. This would include agencies that negotiate and conclude investment instruments, those whose measures may have an impact on investors, and those with a role in preventing and mitigating disputes as well as those in charge of dispute management.⁴¹

33. This may be challenging for States with large economies and different levels of government approval and would likely require additional efforts, for example, leveraging technology for information-sharing, training and capacity-building to facilitate inter-agency understanding and cooperation.

34. The following outlines possible means to ensure effective coordination among governmental and related agencies, namely by sharing information and identifying or establishing a coordination body.

1. Information-sharing

35. Sharing of information among governmental and related agencies can prevent and mitigate disputes. It ensures that the relevant agencies are informed of the circumstances and underlying issues. It can build consistency and coherence at the different levels of investment policymaking.⁴²

36. Information to be shared among the agencies would usually relate to investment treaties, investment contracts, dispute settlement clauses and models thereof. Such information could assist in avoiding having inconsistent investment instruments. Sharing ways to harmonize dispute settlement clauses can already bring a great deal of consistency and standardization. This could be done by providing model clauses ready to be used in negotiations of future instruments, and criteria on the extent to which such model clauses can be further developed and departed from in such situations.⁴³

(2023) articles 181–186. Additional information available at www.jic.gov.jo/en/investors-grievance-scope/.

³⁸ Article 15(3) of the Law on Investment Promotion and Facilitation.

³⁹ Article 7(1) of the Law governing Rwanda Development Board.

⁴⁰ Presidential Directive No.468—Regulation on Prevention and Management of International Investment Disputes (“Directive”) obligates governmental agencies and other public entities to notify (to the Intergovernmental Dispute Resolution Committee) in the event there is a possibility of a new ISDS case arising (Article 7).

⁴¹ An example of such a coordination body is South Korea's Office of the Foreign Investment Ombudsman (OFIO). The OFIO handles grievances from foreign investors and coordinates with relevant government agencies to resolve issues. If an investor faces a problem with a municipal authority, the OFIO would involve the municipal authority in the coordination process.

⁴² See principle 1 of the Islamic Development Bank (IsDB) – UNCTAD Non-binding Guiding Principles for Investment Policies, which states: “All policies that impact on investment should be coherent and synergetic at the national, regional and international levels as well as between these different levels of investment policymaking.”

⁴³ The UNCITRAL Model Provisions on Mediation for International Investment Disputes serves the

37. In Peru, the criteria for the formulation of dispute settlement clauses are set forth in a legislation (inclusion of a cooling-off period, use of neutral dispute resolution means, allocation of costs relating to arbitration and conciliation, and obligation of the investor to notify the system coordinator in addition to the counterpart).⁴⁴ In the Dominican Republic, the Vice Ministry of Foreign Trade of the Ministry of Industry, Commerce and MSMEs through the Directorate of Dispute Prevention and Resolution, is empowered to propose and review dispute settlement clauses or provisions to be included in prospective investment instruments.⁴⁵

38. Information-sharing could further ensure coherence in measures taken by the agencies as well as in handling grievances. An early warning mechanism is a process designed to identify and flag potential issues or risks before they escalate into significant problems or disputes.⁴⁶ An example of this type of mechanism in the Dominican Republic is the National System for Dispute Prevention (SNPC), whereby any public entity must notify the Directorate of Dispute Prevention and Resolution of the Vice Ministry of Foreign Trade of a potential dispute within three business days of being informed or becoming aware of it.⁴⁷

39. Some States have established a knowledge management system to ensure the transfer and preservation of knowledge of public officials dealing with investors and to keep track of solutions used to resolve prior grievances. For instance, in Korea the Foreign Investment-related Regulatory Information Service that is operated by the Office of the Foreign Investment Ombudsman provides an online regulatory information service, together with the Regulatory Reform Committee of the Office for Government Policy Coordination, in order to collect and reflect opinions from foreign-invested companies that may be neglected during the legislation process. The service offers regulations related to foreign investment in English, and delivers positions of foreign-invested companies to related agencies.⁴⁸ Information sharing could provide a vehicle for properly informing peer agencies about investment-related issues and for promoting interaction among the staff members whose collaboration may later be sought in the context of handling grievances.⁴⁹ For instance, at the dispute management stage, in Algeria, the General Directorate of the Treasury Judicial Agency through its Sub-Directorate coordinates with concerned ministerial departments and public bodies to analyse notifications of disputes involving foreign investors and represent the State in procedures for the amicable settlement of these disputes.

40. There are various means of sharing information among governmental and related agencies, including online platforms, handbooks, and capacity-building events where public officials involved in foreign investments share information on investment policies, developments and current disputes. In the Republic of Korea, ISDS handbooks and booklets are being published and circulated to provide general information on dispute prevention and the meaning of key provisions of IIAs. For example, the recently published “ISDS Prevent Checklist booklet” provides government officers with customized information and solutions on ISDS prevention

same rationale, aiming to promote the use of mediation in resolving investment disputes. See also the UNCITRAL Guidelines on Mediation for International Investment Disputes. See also article 7(1) of the Energy Charter Conference, Model Instrument on Management of Investment Disputes.

⁴⁴ Article 13 of the Law Establishing the Coordination and Response System for International Investment Disputes.

⁴⁵ Article 4 of Decree No. 303-2015.

⁴⁶ See article 8 of the Energy Charter Conference, Model Instrument on Management of Investment Disputes.

⁴⁷ Article 6 of Decree No. 303-2015 and Article 6 of Resolution No. 270-2023 of the Ministry of Industry, Commerce and MSMEs

⁴⁸ See Comments from the Government of the Republic of Korea on document A/CN.9/1185, available at https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/republic_of_korea_final.pdf, p.4; see also <https://www.investkorea.org/ik-en/cntnts/i-450/web.do>.

⁴⁹ See World Bank, *supra* note 4, p. 66.

and mitigation based on actual case analysis.⁵⁰ Upon request from government agencies, local municipalities or public entities, the Ministry of Justice provides lectures and seminars on ISDS prevention based on those handbooks.⁵¹ Viet Nam has prepared a handbook for implementing international investment commitments, with an aim to assist officials about the practical application of the governments' treaties and related obligations and help them make better use of the government's legal resources.⁵²

41. Regional intergovernmental organizations, such as the Asia-Pacific Economic Cooperation (APEC), have also provided similar tools. APEC published in 2020 its Handbook on Obligations in International Investment Treaties, which provides an overview of the obligations contained in international investment treaties and the risks that governments face in the event they violate those obligations, potentially triggering investor grievance.⁵³ Through the dissemination of these tools, public officials may become more aware of the potential consequences of their decisions, understand the underlying investment framework, and build the capacity to better manage investment-related inquiries and grievances.

2. Identifying or establishing a coordination body

42. As information-sharing can ensure coherent and consistent approaches, a dedicated coordination body or bodies dealing with investment issues could play an important role in preventing and mitigating disputes. While some common features can be drawn among government practices, it is important to note that there is no one-size-fits-all approach and that identifying or establishing such body or bodies may also differ depending on the form or structure of the government.

43. In identifying or establishing a coordination body, States have generally followed three different approaches: (i) creating a single coordination agency; (ii) distributing dispute prevention and mitigation functions among different agencies each having a specific role or handling certain grievances; or (iii) a hybrid approach establishing a committee or commission composed of governmental and related agencies, including ministries and specialized entities, with one of the agencies performing the secretariat function.⁵⁴

44. A single coordination agency has been established either as an autonomous body or within an existing ministry or a governmental agency. For example, a number of States have assigned the ombudsman to function as a coordination body (for example, Brazil, Georgia, Greece, Kazakhstan,⁵⁵ Mongolia,⁵⁶ Philippines, Republic of Korea, Russian Federation and Ukraine). Others have a designated investment promotion agency to function as the coordination body (for example, Chile's InvestChile, Georgia's Invest in Georgia). In others, the coordination body has been established under a single ministry. For example, the Litigation Directorate of the Ministry of Finance of Bulgaria coordinates the representation in disputes. In Czechia, prevention and management of investment disputes fall within the competence of the Investment Protection Unit at the Ministry of Finance. In Colombia, the Directorate of Foreign Investment and Services established within the Ministry of Commerce provides the function. In Chile, the Director General of International Economic Relations of the Ministry of Foreign Affairs is responsible for coordinating the international dispute

⁵⁰ Available at <https://korea.kr/briefing/pressReleaseView.do?newsId=156660255>.

⁵¹ Submission from the Republic of Korea, 31 July 2019 (A/CN.9/WG.III/WP.179), p. 5.

⁵² Association of Southeast Asian Nations, "Viet Nam finalises Handbook for Implementing International Investment Commitments", 9 November 2021, available at <https://asean.org/viet-nam-finalises-handbook-for-implementing-international-investment-commitments/>.

⁵³ APEC, Handbook on Obligations in International Investment Treaties, p. 5.

⁵⁴ World Bank Group, *supra* note 4.

⁵⁵ Article 12.1 of the Law on Investments.

⁵⁶ Investor Protection Council.

settlement procedures.⁵⁷ In 2023, Korea established a separate division within the Ministry of Justice dedicated to ISDS prevention and mitigation. Apart from monitoring potential disputes by reviewing government policies, measures, laws, and regulations, this division is also responsible for providing legal advice regarding potential treaty violations of any administrative or governmental institution upon request.⁵⁸ In Panama, the Office of Investment Arbitration (OIA) is the coordination body in charge of mitigation and management of international investment disputes involving foreign investors. Governmental entities must alert and inform the OIA whenever they become aware of a potential investment dispute.⁵⁹ In the Dominican Republic, the Directorate of Dispute Prevention and Resolution of the Ministry of Industry, Commerce and MSMEs manages and represents the country in investment disputes.⁶⁰

45. In some States, the coordination is done by a committee composed of several ministries and/or governmental agencies. In Egypt, for instance, the ministerial committee on investment contracts dispute resolution has been established within the Cabinet of Ministers to settle disputes arising from investment contracts.⁶¹ The Committee examines the divergence in views and disagreements arising between the parties to the contract and may settle the dispute with their consent. In Saudi Arabia, the Investment Council was created to improve communication between the public and private sectors. Established by Cabinet Resolution No. 111 dated 6/2/1445 AH, the Council is linked to the Supreme National Investment Committee. Its main goal is to identify and address challenges faced by the private sector in investing within the Kingdom. The Council plays a key role in coordinating efforts among various government agencies and stakeholders to streamline investment processes, propose solutions, and create a more favourable environment for both domestic and foreign investments.⁶²

46. In China, the Ministry of Commerce, in conjunction with other relevant departments under the State Council, established an interministerial joint meeting system to handle complaints of foreign-invested enterprises. The joint meeting coordinates and facilitates the handling of complaints at the central government level and further guides and supervises the handling of such complaints at the regional level.⁶³ In Costa Rica, an inter-institutional commission for the resolution of disputes in trade and investment matters was created.⁶⁴ In Croatia, a decision was taken in 2013 to create an interdepartmental commission to respond to requests from foreign investors in connection with disputes arising from investment treaties. In Thailand, the Committee on International Investment Protection serves as a national overseeing body to formulate policies on international investment protection, supervise implementation of its international investment agreements (IIAs), and to prevent and settle international investment disputes. By ensuring that interconnected issues are

⁵⁷ Article 7 of the Decree on the Creation of an Inter-ministerial Committee for the Defence of the State in International Investment Disputes and Regulation of Coordination for Resolution of Such Disputes.

⁵⁸ See Comments from the Government of the Republic of Korea on document A/CN.9/1185, available at https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/republic_of_korea_final.pdf.

⁵⁹ See Comments from the Government of Panama on document A/CN.9/1185, available at <https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/pacomml.pdf>.

⁶⁰ See Comments from the Government of the Dominican Republic on document A/CN.9/1185, available at https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/resolucion_270-2023_-_snpc.pdf.

⁶¹ Articles 88 and 89 of the Investment Law.

⁶² See comments from the Kingdom of Saudi Arabia on document A/CN.9/1185, available at https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/nv_20.pdf.

⁶³ Article 5 of Rules on Handling Complaints of Foreign-Invested Enterprises. The Department of Foreign Investment Administration of the Ministry of Commerce serves as the office of joint meeting and is responsible for the daily work and guiding and supervising the work of the National Center for Complaints of Foreign-Invested Enterprises.

⁶⁴ Article 3 of the Regulations for the Prevention and Handling of International Disputes in Trade and Investment Matters.

addressed consistently and in a well-coordinated manner, the Committee aims to reduce the silo mentality of government agencies and raise awareness of Thailand's obligations under IIAs.⁶⁵

47. Whether it is a single coordination body, multiple agencies, or an inter-institutional committee, the internal operating procedures (composition of the authority, the monitoring and evaluation systems and to whom the authority is reporting) would need to be adapted for each State with an aim to ensure the efficiency of the authority and its legitimacy as well as to avoid conflicts of interest, lack of neutrality or vested interests. The way the authority is perceived by the investors, governmental officials, and other stakeholders could impact its success. Therefore, there could be merit in establishing a system of accountability in the institutional design and operating procedures of the authority.

48. As noted, the operational structure of the coordination body may vary depending on the jurisdiction and the identified needs. However, often its legal status, position in the government hierarchy, staffing structure, budget and reporting mechanism, among others, are set forth in the instrument establishing the coordination body. For example, in Costa Rica, the composition and functions of the coordination body (Comisión Interinstitucional para la Solución de Controversias Internacionales, CISC) are clearly outlined in the regulation.⁶⁶

49. In some jurisdictions, it was found that an independent entity playing an oversight role over the administration, as opposed to a collaborative role with and within the administration, has led to more bureaucracy and confrontation and limited its effectiveness to address the regulatory risks derived from government conduct.⁶⁷

3. Functions of a coordination body

50. The functions of the coordination body may vary. In some instances, the coordination body is responsible for dispute prevention and mitigation only. In other instances, the coordination body is in charge of dispute prevention and management of international investment disputes (including mediation and arbitration proceedings). The coordination body managing the investment disputes may also have the mandate to manage other types of disputes such as trade disputes. In certain cases, the coordination body is responsible for dealing with all investment disputes, whether they involve domestic or foreign investors. In other instances, the coordination body has a broader competence, covering all types of disputes involving the State, including before courts. The following lists some of the common functions of the coordination body.

51. As mentioned, information-sharing is one of the key functions that is often carried out by the coordination body, as it facilitates communication and cooperation among governmental and related agencies. The coordination body may act as a central repository of investment instruments and relevant court or arbitral decisions interpreting such instruments. Such a role can contribute to raising awareness and building capacity within the government as well as at the subnational level. It could address the knowledge gaps that often exist among governmental bodies and enhance the capacity of governmental bodies based on accumulated knowledge on the meaning and implications of investment obligations and how they should be implemented.

52. Capacity-building activities could target government officials at various levels including specialized agencies as well as subnational entities such as provinces, federated states and municipalities. The main objective would be to identify potential

⁶⁵ See Information on Thailand's Committee on International Investment Protection, available at https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/thailands_inputs_to_the_draft_toolkit.pdf.

⁶⁶ See articles 4 and 5 of the Regulation for the Prevention and Handling of International Disputes in Trade and Investment Matters.

⁶⁷ See World Bank, *supra* note 4, p. 62.

non-compliant measures and ensure, to the extent possible, that conduct is consistent with investment obligations.

53. The repository function could also allow the coordination body to provide analysis of, for example: (i) economic sectors which are most likely to give rise to disputes; (ii) recurring grievances or disputes; (iii) key legal obligations contained in investment instruments; and (iv) gaps in domestic legislation for compliance with legal obligations contained in investment treaties. In the Dominican Republic, the Directorate of Dispute Prevention and Resolution monitors investor complaints and analyses disputes to understand which government entities are most frequently implicated.

54. The coordination body may also review the existing stock of investment instruments with the aim of identifying obligations that may potentially lead to disputes (for example, those perceived as being too broad or unclear), analyse and identify inconsistencies or gaps in regulations and laws related to investment, or provide advice to governmental and related agencies on how to handle grievances of investors.

55. 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. Moreover, the coordination body may have the role of consolidating recommendations from various governmental bodies, including ombudspersons, or regional grievance channels, or public-private dialogue platforms, regarding ways to improve the legislation or its implementation, including administrative procedures.⁶⁸

56. The coordination body could also provide advice to governmental and related agencies on how to handle grievances of investors. This would ensure that agencies faced with investor grievances have a constant communication channel with the coordination body, which may recommend ways to handle the grievance. Additionally, for contracts prone to disputes, such as large contracts, strategic investments, or public-private partnerships (PPPs), the coordination body may be required to conduct due diligence and evaluate prospective investments based on legal, technical, and financial criteria to assess their seriousness.⁶⁹

57. In order to perform its functions, the coordination body may be authorized to collect information from competent governmental agencies (as well as from investors). In Ukraine, the Business Ombudsman Council may request and receive from State authorities and other entities information and documents necessary for processing complaints.⁷⁰ The coordination body may request the cooperation of the relevant agencies including their officials, issue recommendations and monitor their implementation. In some States, governing entities must alert and inform the coordination body whenever they become aware of a potential investment dispute. In China, local agencies handling complaints are required to regularly submit records to the coordination agency.⁷¹

58. In some jurisdictions, the coordination body, in addition to facilitating coordination among the government and related agencies, have acted as the focal point for communicating with investors and providing necessary assistance, including through an investor grievance mechanism (see section B above) and for cooperation with other governments (see section D below).

⁶⁸ For instance, the National Competitiveness Center (NCC) in the Kingdom of Saudi Arabia, <https://www.ncc.gov.sa/en/Pages/default.aspx>.

⁶⁹ See e.g., the Public Private Partnership Guidelines of Rwanda detailing the type of due diligence and evaluation required for the PPP bidders, p. 46, <https://rdb.rw/wp-content/uploads/2018/08/PPP-Guidelines.pdf>.

⁷⁰ Article 6(1) of Resolution on the Establishment of the Business Ombudsman Council.

⁷¹ Article 25 of the Rules on Handling Complaints of Foreign-Invested Enterprises.

D. Coordination and cooperation with other governments

59. Establishing and institutionalizing intergovernmental coordination with authorities of other States could help ensure effective cooperation and mutual assistance in dispute prevention or mitigation.⁷² For instance, to facilitate intergovernmental understanding and cooperation, Korea has established the Foreign Investment Committee under the Ministry of Trade, Industry and Energy to deliberate on matters concerning integration and coordination of the measures by competent Ministries, to enhance the environment for foreign investment, and an intergovernmental Task Force, comprising the Ministry of Economy and Finance, Ministry of Trade, Industry and Energy, Ministry of Foreign Affairs, Financial Services Commission and other relevant authorities to effectively and substantially manage pending or potential investment disputes.⁷³ Intergovernmental coordination may also help address any perception of bias in favour of a State that an investor may have when formulating a grievance.

60. One example of achieving such coordination is by setting up a joint committee or commission in investment treaties to promote a regular exchange of information for improving the investment environment and monitoring the implementation of investment treaties.⁷⁴ During the dispute mitigation phase, joint committees may intervene to issue a joint interpretation of specific provisions of the treaty, which might be at the origin of discrepancies between the investor and the host State. Joint committees create an avenue for effective application of the investment treaty by facilitating the exchange of best practices in order to adapt to evolving policy concerns through periodic reviews. Another appropriate forum for exchanging information and sharing best practices would be the Advisory Centre on International Investment Dispute Resolution, once established and operational.⁷⁵

61. Some investment treaties envisage that such a body can play a role in preventing grievances from escalating into a dispute by facilitating consultations with investors. For example, article 4(4)(d) of the Morocco-Nigeria BIT notes that the joint committee shall seek to resolve any issues or disputes concerning the parties' investment in an amicable manner. Similar wording is found in article 17(4)(e) of the Brazil-Ethiopia BIT. Article 27(3)(g) of the Israel-United Arab Emirates BIT (2020) lists as one of the functions of the joint committee on investments the consideration of issues or matters related to the implementation of the agreement, including solving problems, obstacles and dispute resolution before its submission to arbitration. Article 18 of the Brazil-India BIT (2020) envisages a dispute prevention procedure within the joint committee established in accordance with article 13.

62. As such, a joint committee may function to mitigate a dispute under a specific agreement. If there is any grievance or dispute about the application or interpretation of a provision of the agreement, the joint committee may prepare a report to resolve the issue indicating if a specific measure adopted by the State was in breach of the agreement. This mechanism, since it is provided by both Parties of the agreement, could avoid a litigation about the issue. Furthermore, the private sector, civil society

⁷² Under article 26.1 of the IFD Agreement, focal points or other mechanisms for communicating with investors may be assigned the function of responding to questions from other governments. Article 14.4(f) of the Brazil-India BIT (2020) provides that the national focal point or ombudsman is to report its activities and actions to the joint committee, when appropriate.

⁷³ See Comments from the Government of the Republic of Korea on document A/CN.9/1185, available at https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/republic_of_korea_final.pdf, p.5.

⁷⁴ See article 25 of Japan-Georgia BIT (2021); article 10.1 of UK-Turkey FTA; article 6.1 of Armenia-Singapore BIT; and chapter 12 of the Pacific Agreement on Closer Economic Relations Plus. Article 26.2 of the IFD Agreement mentions the areas of intergovernmental cooperation. They include exchange of information and sharing of experiences, exchange of information on domestic investors and the promotion of facilitation agendas with a view to increasing investment for development, including investment in and by micro, small and medium-sized enterprises.

⁷⁵ See Statute of the Advisory Centre on International Investment Dispute Resolution, article 6(1)(d).

and other agencies can be invited to share their views in the procedure. For example, under article 17(4)(d) of the Brazil-Ethiopia BIT and article 18(4)(d) of the Ecuador-Brazil BIT, the joint committee is responsible for consulting with the private sector and civil society, when applicable, on their views on specific issues related to the work of the joint committee.

E. Other related issues

1. Financial and human resources

63. When designing and implementing a dispute prevention and mitigation system, special arrangements may need to be made for prompt access to funding and resources.⁷⁶ Establishment and operation of a coordination body would likely incur financial costs and human resources.

64. For example, States may make offers of settlement sums to address an investor's grievance before it escalates into a legal dispute. These settlements aim to resolve issues amicably and prevent them from reaching the threshold of a formal legal dispute. These costs are usually incurred on an ad hoc basis and do not necessarily follow the budgetary cycles of governments. In addition, due to internal regulations and budgetary constraints of some States, it may not be possible to set aside funds outside of budget cycles to compensate investors.

65. There may be different methods of allocating resources, for example, to the coordination body, if so established, or to the governmental or related agency that is responsible for the grievance or dispute.

2. Exoneration of liability of government officials

66. Government officials may play a key role in preventing and mitigating disputes. However, the fear of incurring liability for their action (for example, charges of corruption) may impede their engagement in full. They may refrain from taking necessary decisions and attempting to prevent disputes.

67. In some jurisdictions, government officials are not held accountable for any act performed or omission made in connection with dispute prevention and mitigation, except in the case of wilful misconduct or gross negligence. Offering such protection could reassure their cooperation and full engagement in dispute prevention and mitigation.⁷⁷

3. Confidentiality

68. For grievances to be handled successfully, parties involved (investors and competent agencies alike) may need to be assured that any confidential information exchanged during the process will not be made public, unless agreed otherwise.⁷⁸ Maintaining confidentiality during the dispute mitigation phase is crucial to ensure that communications and documents do not prejudice the rights of the disputing parties in later stages of dispute resolution. Therefore, it is necessary to find a balance between information that may need to be made available to the public including within the government agencies (for example, due to public interest, social impact or domestic regulations requiring disclosure) and information that must be kept confidential. For instance, explicit legal protections for investor confidentiality,

⁷⁶ See, for example, articles 11 and 12 of the Dominican Republic's Presidential Decree No. 303-2015 addressing the budget and expenses. Article 12 provides that the entity responsible for actions or omissions leading to the claim shall be responsible for covering the expenses.

⁷⁷ For example, the UNCITRAL Compilation of Best Practices on Investment Dispute Prevention and Mitigation and the Academic Forum on ISDS Concept Paper provide insights into how different jurisdictions handle accountability and protection for government officials involved in these processes.

⁷⁸ See articles 20 and 21 of the Energy Charter, Model Instrument on Management of Investment Disputes. See also articles 13 and 14 of the Dominican Republic's Presidential Decree No. 303-2015.

including commercial and personal data, as demonstrated by Saudi Arabia's Personal Data Protection Law, can enhance investor trust in dispute prevention and mitigation systems.⁷⁹

F. Practice by States

Algeria

Law No. 22-13 of July 12, 2022, amending and supplementing Law No. 08-09 of February 25, 2008, establishing the Code of Civil and Administrative Procedure (article 536 bis 4).

Law No. 22-18 of July 24, 2022, relating to investment.

Presidential Decree No. 22-296 of September 4, 2022, establishing the composition and operation of the National High Commission for Investment-Related Appeals.

Executive Decree No. 22-298 of September 8, 2022, amended and supplemented, establishing the organization and operation of the Algerian Investment Promotion Agency.

Executive Decree No. 24-150 of April 30, 2024, amending and supplementing Executive Decree No. 21-252 of June 6, 2021, organizing the central administration of the Ministry of Finance (Article 9bis).

Digital Investor's Platform, available at <https://aapi.dz/plateforme-numerique-delinvestisseur/>.

Brazil

Decree on the Creation, Structure and Attributions of the Direct Investment Ombudsman, (No. 8.863, 28 September 2016, amended by Decree No. 9.770, 22 April 2019), available at https://www.planalto.gov.br/ccivil_03/_Ato2019-2022/2019/Decreto/D9770.htm#art1.

Brazilian Cooperation and Facilitation Agreement (CFIA) Model (2016), available at <https://investmentpolicy.unctad.org/international-investment-agreements/treaty-files/4786/download>.

See article 14.4. (f) of the Investment Cooperation and Facilitation Treaty between the Federative Republic of Brazil and the Republic of India (available at <https://investmentpolicy.unctad.org/international-investment-agreements/treaty-files/5912/download>).

Direct Investment Ombudsman, (available at <https://oid.economia.gov.br/en>).

Bulgaria

Litigation Directorate under the Ministry of Finance, <http://www.minfin.bg/en/page/938>.

Chile

Decree on the Creation of an Inter-ministerial Committee for the Defence of the State in International Investment Disputes and Regulation of Coordination for Resolution of Such Disputes (No. 125, 23 August 2016), available at <https://www.leychile.cl/N?i=1098279&f=2016-12-27&p=>.

InvestChile, available at <https://investchile.gob.cl/>.

China

⁷⁹ See comments from the Kingdom of Saudi Arabia on document A/CN.9/1185, available at https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/nv_20.pdf.

Rules on Handling Complaints of Foreign-Invested Enterprises, Order of the Ministry of Commerce of the People's Republic of China, 2020 No. 3, available at <https://fdi.mofcom.gov.cn/EN/complaintsDetail.html?id=21>.

Colombia

Decree on the regulation of prevention and management of international investment disputes (No. 1939 of 2013), available at <https://www.suin-juriscol.gov.co/viewDocument.asp?id=1373623>.

Costa Rica

Regulation for the Prevention and Handling of International Disputes in Trade and Investment Matters (No. 35452 35452-MP-COMEX, 11 August 2009), available at http://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm_texto_completo.aspx?param1=NRTC&nValor1=1&nValor2=66133&nValor3=77622&strTipM=TC.

Dominican Republic

Presidential Decree No. 303-2015, 1 October 2015, available at <https://studylib.es/doc/5157825/decreto-sistema-de-prevenci%C3%B3n-de-controversias-no.-303-15>.

Resolution No. 270-2023, Ministry of Industry, Commerce and MSMEs (29 November 2023)

Egypt

Investment Law (No. 72, 31 May 2017), available at <https://investmentpolicy.unctad.org/investment-laws/laws/167/egypt-investment-law->.

Ethiopia

Investment Proclamation (No. 1180/2020, 2 April 2020), available at <https://investethiopia.gov.et/resources/publications/>.

Ethiopian Investment Commission, available at <https://investethiopia.gov.et/>.

European Union

Access2Markets portal, available at <https://trade.ec.europa.eu/access-to-markets/en/home>.

Georgia

Law on the Business Ombudsman (No. 3612-IIS28, 28 May 2015), available at <https://businessombudsman.ge/en/legislation>.

Law on Promotion and Guarantees of Investment Activity (No. 3425 of 30 June 2006) available at <https://matsne.gov.ge/en/document/view/33304?publication=15>.

Business Ombudsman, available at <https://businessombudsman.ge/en>.

Invest in Georgia, available at <https://www.investingorgia.org/>.

Greece

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Investor's Support Service, available at <https://www.enterprisegreece.gov.gr/en/invest-in-greece/investment-support-services>.

Investor's Ombudsman, available at <https://www.enterprisegreece.gov.gr/en/invest-in-greece/investors-ombudsman>.

Japan

Office of INVEST JAPAN, available at http://www.invest-japan.go.jp/link/contact/en_index.html.

Jordan

Investment Environment Law (No. 21 of 16 October 2022), available at <https://www.moin.gov.jo/EN/List/Laws>.

Investment Environment Regulation (No. 7 of 2023), available at <https://www.moin.gov.jo/EN/List/Regulation>.

InvestJordan website, available at <https://invest.jo/home-page>.

Kazakhstan

Law on Investments (No. 373-II, 8 January 2003 and amended 12 June 2014), available at <https://investmentpolicy.unctad.org/investment-laws/laws/98/kazakhstan-investment-law>.

Mongolia

Investor Protection Council, available at <https://ipc.gov.mn/>.

Peru

Law Establishing the Coordination and Response System for International Investment Disputes (No. 28933, 15 December 2006), available at <https://docs.peru.justia.com/federales/leyes/28933-dec-15-2006.pdf>.

International Institute for Sustainable Development, Peru's State Coordination and Response System for International Investment Disputes in Investment Treaty News (14 January 2013), available at <https://www.iisd.org/itn/en/2013/01/14/perus-state-coordination-and-response-system-for-international-investment-disputes/#:~:text=SICRECI%20comprises%20the%20Coordinator%2C%20a,that%20contain%20investment-related%20provisions>.

Carlos Jose Valderrama, Peru: Best practices for confronting international lawsuits brought by private investors in ICSID Review - Foreign Investment Law Journal, Volume 33, Issue 1, Winter 2018, Pages 103–124, available at <https://doi.org/10.1093/icsidreview/six024>.

Carlos Jose Valderrama, Investor-State Dispute Prevention: The Perspective of Peru in Public Actors in International Investment Law, Special Issue of the European Yearbook of International Economic Law, 2021, available at https://link.springer.com/chapter/10.1007/978-3-030-58916-5_7.

Philippines

Investment ombudsman, available at <https://www.ombudsman.gov.ph/investment-ombudsman/> and <https://www.ombudsman.gov.ph/docs/investmentOmbudsman/investmentomb.pdf>.

Qatar

InvestQatar, available at <https://www.invest.qa/en>.

Saudi Arabia

Private Sector Feedback Platform, available at <https://www.ncc.gov.sa/en/Visuals/Pages/default.aspx>.

Public Consultation Platform, available at <https://www.ncc.gov.sa/en/Istitlaa/Pages/default.aspx>.

Invest in Saudi Arabia website available at <https://investsaudi.sa/en/investor/guide>.

National Competitiveness Center (NCC) website available at <https://www.ncc.gov.sa/en/Pages/default.aspx>.

Republic of Korea

Foreign Investment Promotion Act (Act No. 14389, 26 July 2017), available at https://elaw.klri.re.kr/eng_service/lawView.do?hseq=44627&lang=ENG.

Enforcement Decree of the Foreign Investment Promotion Act (Presidential Decree No. 28212, 26 July 2017), available at https://elaw.klri.re.kr/eng_service/lawView.do?hseq=44628&lang=ENG.

Foreign Investment Ombudsman, available at <https://www.investkorea.org/ik-en/cntnts/i-450/web.do>.

Office of the Foreign Investment Ombudsman, available at <https://ombudsman.kotra.or.kr/ob-en/index.do>.

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Russian Federation

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Rwanda

Law on Investment Promotion and Facilitation (No. 006/2021, 5 February 2021) available at <https://rdb.rw/wp-content/uploads/2021/04/new-investment-law-2021.pdf>.

Law governing Rwanda Development Board (No. 056/2023, 11 November 2023), available at <https://www.minijust.gov.rw/index.php?eID=dumpFile&t=f&f=86189&token=db7b7a84e76a6720ea23e2e649b7d90e41f26ed7>.

Reinvestment and Investor Aftercare Department of the Rwanda Development Board, available at <https://rdb.rw/reinvestment-investor-aftercare/>.

Thailand

Regulation of Prime Minister's office on Work Relating to International Investment Protection B.E. 2562 (2019)

Tunisia

Law on the Representation of the State, public establishments of an administrative nature, and companies subject to State supervision before the courts (No. 88-13, 7 March 1988), available at <https://www.ilo.org/dyn/natlex/docs/SERIAL/6633/6527/F591060864/TUN-6633.pdf>.

Ukraine

Cabinet of Ministers' Resolution on the Establishment of the Business Ombudsman Council (26 November 2014) available at https://boi.org.ua/wp-content/uploads/2023/08/boi__cmu_regulation_eng_.pdf.

Business Ombudsman Council, available at <https://boi.org.ua/en/about/>.

United Kingdom

Invest in the United Kingdom platform, available at <https://www.great.gov.uk/international/investment/>.

United States of America

SelectUSA Investment Advisory Council (IAC), available at <https://www.trade.gov/selectusa-investment-advisory-council>.

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