

Compilation of best practices on investment dispute prevention and mitigation

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I. Introduction

1. Upon the request of the Working Group, the Secretariat collected and compiled information on how dispute prevention and mitigation is being implemented in various States. The compilation is the result of consultations with States, the World Bank Group and other inter-governmental organizations, as well as non-governmental organizations. Additional inputs would be welcome to further update the compilation.

2. This paper is not an official document and is provided for information purposes only. It provides a summary of the various approaches taken by States on dispute prevention and mitigation and contains tables with references to the relevant governmental bodies and related texts, all of which formed the basis of the draft legislative guide on dispute prevention and mitigation ([A/CN.9/WG.III/WP.228](#)).

II. Summary of common features

3. The compilation in chapter III outlines various strategies adopted by States to prevent and mitigate investment disputes, including by establishing dispute prevention mechanisms, dedicated communication channels with aggrieved investors and management of disputes. Matters covered by the compilation include (i) coordination among ministries and governmental agencies (intra-governmental coordination), consisting of information sharing, raising of awareness on legal obligations from investment instruments, (ii) empowerment of a governmental authority to handle investment grievances before they escalate into disputes, (iii) empowerment of an authority in settling investment disputes, (iv) the provision by the State of administrative and budgetary means of resolving disputes, and (v) inter-governmental coordination.¹

4. The compilation shows that States have taken different approaches in preventing and mitigating disputes which are adapted to their institutional framework and needs. Furthermore, the terminology differs from one country to another, and this may create confusion. For the sake of clarity, a glossary of terms is proposed under recommendation 2 of the draft legislative guide on investment disputes and mitigation (see [A/CN.9/WG.III/WP.228](#)).

5. In any event, the lesson to be drawn is that there is no “one size fits all” solution. However, beyond this variety, it is possible to identify common features of the systems put in place. They generally involve the establishment or designation of a centralized agency aimed at gathering information and facilitating coordination in dealing with grievances as well as potential or actual investment disputes. This is referred to in this Note as intra-governmental coordination. These coordinating agencies have different roles, depending on the jurisdictions.

6. While intra-governmental coordination is crucial, investment disputes may arise nonetheless, and therefore strong and clear communication channels with aggrieved investors must be established. These communication channels may include or be complemented by proposals for alternative means to address grievances and disputes as well as by the setting up of dispute management mechanisms.²

7. The dispute prevention and mitigation practises have not been developed with the sole goal of avoiding disputes (see also [A/CN.9/1044](#), para. 23), but are generally part of a broader strategy on investment policy. Such strategy usually includes attracting, protecting, expanding and retaining investments which bring value to the country and contribute to its sustainable development. Dispute prevention may also contribute more broadly to policies on governance.

8. Among the various dispute prevention and mitigation mechanisms, the most common features are the establishment of a dedicated agency (Lead Agency) to communicate with aggrieved investors, to coordinate with relevant governmental and decentralized authorities to address grievances and establish systematic communication channels within the different parts of the government dealing with investors.

¹ See, for instance, UNCTAD - Investment Advisory Series, Best Practices in Investment for Development: How to prevent and manage investor-State disputes: Lessons from Peru, Section V, https://unctad.org/system/files/official-document/webdiaepcb2011d9_en.pdf.

² IISD – Investment Dispute Prevention and Management Agencies: Toward a more informed policy discussion (Bonnitcha, J., Williams Z.), <https://www.iisd.org/system/files/2021-10/investment-dispute-prevention-management-agencies-policy-discussion.pdf>.

1. Form of the Lead Agency

a) Single Lead Agency

9. While many States have decided to entrust a Lead Agency to deal with investment grievances and disputes, its structure varies.³ The Lead Agency may be an autonomous entity, detached from the central administration, (e.g., ombudsman) or part of an existing entity such as a ministry or investment promotion agency. The latter institutional set up is frequent since the investment promotion agency (IPA) is the first entry door for investors. IPAs also accompany the investor along its journey providing information, assistance and advocacy services. Therefore, including dispute prevention in the IPA's mandate is often seen as a natural extension of that mandate.⁴

10. When the Lead Agency is hosted by the IPA, however, the focus might be on promotion, aftercare and retention rather than dispute prevention *per se*. Indeed, retention's main purpose is to avoid divestment due to operational or political risks. Operational risks can put the survival of the investment at risk, but they are not likely to trigger potential disputes and the responsibility of the State. Therefore, when countries wish to focus on avoiding grievances and disputes, they might prefer the establishment of a dedicated Lead Agency.

11. The mandate of that Lead Agency may vary. In some instances, the Lead Agency may be responsible for dispute prevention only; in other instances, the Lead Agency may be in charge of dispute prevention and management of international investment disputes (including mediation and arbitration proceedings). The Lead Agency managing the international investment disputes may also have the mandate to manage other types of international disputes such like trade disputes. In certain States, the Lead Agency is responsible for dealing with all investment disputes, whether they involve domestic or foreign investors. In other instances, the Lead Agency may have a broader competence, covering all types of disputes involving the State, including before courts.⁵

b) Multiple agencies

12. When no Lead Agency has been established, the responsibility of dealing with an investment grievance/dispute may be assigned on a case-by-case basis to a specific agency that has handled the negotiations or concluded the investment instrument on the basis of which a dispute arises, or which is at the source of the measure triggering the grievance/dispute.⁶

c) Inter-institutional Committee

13. In some States, the Lead Agency is a committee composed of several ministries and/or governmental institutions. The Lead Agency may comprise representatives of the various institutions or ministries and usually has a secretariat.⁷

14. Whether it is single Lead Agency, multiple agencies, or an inter-institutional committee, the internal operating procedures of the authority put in place⁸ to prevent disputes should be adapted to the political economy of the State in order to ensure not only the efficiency of the authority but also its legitimacy and avoid conflict of interests, lack of neutrality or vested interests.⁹ The way the authority is

³ See, for instance, World Bank Group - Managing Investor Issues Through Retention Mechanisms, 2021 (by Kher, P., Obadia, E., and Chun, D.) referring to examples of such agencies in various jurisdictions, available at <https://documents.worldbank.org/en/publication/documents-reports/documentdetail/978811614610086665/managing-investor-grievances-through-innovative-mechanisms> ('World Bank Group 2021').

⁴ See the examples of Ethiopia and Rwanda described in World Bank Group 2021. For Ethiopia, the investor grievance management mechanism is part of the Ethiopian Investment Commission. In Rwanda, the Systematic Investment Retention Mechanism is part of the Reinvestment and Investor Aftercare Department within the Rwanda Development Board.

⁵ See, for example, the "chef du contentieux de l'Etat" in Tunisia which represents the State and public entities before all jurisdictions, including national and foreign courts as well as international arbitration fora. Law n°88-13 of 7 March 1988 on the representation of the State, public establishments of an administrative nature, and companies subject to State supervision before the courts, available at <https://www.ilo.org/dyn/natlex/docs/SERIAL/6633/6527/F591060864/TUN-6633.pdf>.

⁶ For instance, if the grievance or dispute is due to a new regulation impacting one or several investors, this would usually be handled by the agency or ministry issuing the regulation.

⁷ See, for example, the Brazilian Direct Investment Ombudsman (DIO) comprising seven ministries, Decree No. 9.770/ 22 April 2019, Art. 3, http://www.planalto.gov.br/ccivil_03/_ato2019-2022/2019/decreto/D9770.htm

⁸ By operating procedures, the Note refers in particular to the composition of the authority, the monitoring and evaluation systems and to whom the authority is reporting.

⁹ IISD, note 4, pp. 10 and 33. IISD notes that the dispute prevention and management agencies may be "vulnerable to capture" and that there is no discussion on accountability mechanisms. The World Bank Group 2021 describes several examples of such agencies and mentions the reporting and escalation systems which function as accountability mechanisms (see examples of Ethiopia and Rwanda at p. 16).

perceived by the investors, governmental officials, and other stakeholders is crucial to its success. Therefore, the institutional design and operating procedures of the authority should include a system to account for its actions.

d) Inter-Governmental Commissions

15. Some treaties have also established joint commissions. These are inter-governmental bodies that may even be supported by a secretariat. To ensure their effectiveness, some States have embedded the legal structure for the commission in their international investment agreements (IIA(s)). The treaty parties are required to discuss grievances and consult on disputes within this commission.¹⁰

2. Functions of the Lead Agency

a) Inward functions in relation to other governmental bodies

Repository function

16. The Lead Agency may function as a central repository of investment instruments, monitor and keep track of legal obligations towards foreign investors and investment projects. Other governmental bodies would be required to inform the Lead Agency either prior to the negotiation or once they have negotiated an investment instrument.¹¹

Harmonization of dispute settlement clauses

17. States have also devised ways of fostering consistency of the dispute settlement provisions contained in various investment instruments. In this context, the Lead Agency can be vested with the power to propose and review dispute settlement clauses or provisions to be included in prospective investment instruments.¹²

18. A similar result may also be achieved by setting out, in legislation, a set of criteria¹³ for the formulation of dispute settlement clauses in prospective investment instruments.¹⁴ States may also consider harmonization of dispute settlement clauses by formulating a model international investment agreement, which may function as guidelines for negotiators. Furthermore, Government officials negotiating investment contracts should have access to the model international investment agreement to ensure that they negotiate contracts consistent with the provisions of that model IIA.¹⁵

19. The Lead Agency should be involved in the drafting of the said legislation and the model IIA. At a minimum, it should be consulted.

Preventive stocktaking

20. The Lead Agency may be mandated to review the existing stock of IIAs, with the aim of identifying obligations that may potentially lead to disputes because, for example, they are too broad or unclear. For instance, the Lead Agency may establish a database of obligations undertaken in various IIAs. In particular, it may focus on potential obligations that may arise due to investors invoking a most favored nation clause.¹⁶ This exercise may motivate the renegotiation of IIAs with problematic provisions. The Lead Agency may adopt a similar approach towards investment contracts and flag the contracts which could possibly be renegotiated.

¹⁰ See for instance Morocco-Nigeria BIT (2016), Art. 4; USMCA (2018), Art. 24.26; and Brazil – Ethiopia BIT (2018), Art. 17.

¹¹ The system in Peru is an example. See Article 5, Law No. 28933, December 2006, available at <https://docs.peru.justia.com/federales/leyes/28933-dec-15-2006.pdf>.

¹² The system adopted by the Dominican Republic is an example. See Article 4, Decree No. 303-2015, available in Spanish at <https://studylib.es/doc/5157825/decreto-sistema-de-prevenci%C3%B3n-de-controversias-no.-303-15>.

¹³ Examples of criteria include the definition of the range of disputes that can be subject to ISDS, the scope of ISDS, the cooling-off period, the use of ADR methods, the local litigation requirement as a precondition to ISDS (or the absence of such requirement), the advance consent to arbitration or the case-by-case consent, description of the arbitral process, provisions on transparency, etc...

¹⁴ This is the approach adopted Peru. See Article 13, Law No. 28933, December 2006, available at <https://docs.peru.justia.com/federales/leyes/28933-dec-15-2006.pdf>.

¹⁵ For instance, the South African Development Community (SADC) Model BIT 2012, has been drafted to act as a guideline for Government negotiating future investment treaties, while also serving as an educational tool for Government officials.

¹⁶ Although the scope of most-favored nation clauses tends to be more limited with treaty drafting and arbitral tribunals' interpretations, it remains useful for States to keep track of the various obligations they have in their IIAs. More recent treaties introduce most-favored nation clauses with limited scopes excluding from the definition of treatment substantive provisions of other treaties (e.g., Art. 8.7 of CETA between Canada and the EU (2016)) and arbitrators tend to limit the scope of the provision to *de facto* discrimination (see e.g., awards rendered in ICSID Case No. ARB/10/24 and ICSID Case No. ARB/12/06).

21. Furthermore, the Lead Agency may extend its analytical review to existing investment-related legislation to identify the potential gaps and contradictions with IIAs on substantive obligations and dispute settlement provisions.

22. This stocktaking may be completed by an analysis of the State's past investment disputes to identify any recurring issue. States may also conduct a survey of domestic investors and foreign investors already established in the country to identify recurring problems that they have experienced with regard to government conduct which may lead to potential disputes.

23. These different analyses and gathering of data should enable the State to develop a dispute prevention and mitigation strategy tailored to its needs and focused on avoiding potential causes of disputes.

Alert mechanism

24. In addition to empowering the Lead Agency with the monitoring of legal obligations, States have established systems to monitor the occurrence and emergence of investment disputes. Under such a system, State entities must alert and inform the Lead Agency whenever they become aware of a potential investment dispute. Alert mechanisms may also exist within a system addressing grievances, where subnational grievance channels report matters pertaining to the grievances they receive and make sure information is consolidated at the level of the central government.¹⁷

25. An efficient alert mechanism would encourage investors to approach the Lead Agency in case of a grievance, upon which the Lead Agency could alert and liaise with the relevant Governmental entity.

Awareness and capacity building

26. The repository role and the alert system contribute to raising awareness and building capacity within the Government as well as at the subnational level regarding investment-related legal obligations and investment disputes. Nevertheless, knowledge gaps unfortunately often exist among governmental bodies and need to be reduced.¹⁸ The capacity building function of the Lead Agency entails the dissemination with other governmental bodies of accumulated knowledge on the meaning and implications of investment obligations and how they should be implemented. This can consist of training programs and the dissemination of publications such as handbooks or a dedicated web page containing current and relevant information.¹⁹

27. The target audience of capacity building activities should include specialized agencies as well as sub-national entities such as provinces, federated states and municipalities. Indeed, measures and actions by specialized agencies and sub-national entities are the primary driver for disputes.²⁰ Similarly, key Government officials at various levels – central and sub-national – may be responsible for complying with obligations under investment treaties and contracts, and therefore, need to be aware of the commitments taken by the State on their behalf in such instruments and their implications (A/CN.9/WG.III/WP.190, para. 20). The main objective of capacity building is to identify potential non-compliant measures and ensure, to the extent possible, that Government conduct is consistent with investment obligations.

Stocktaking and review of regulatory and administrative practices

28. A Lead Agency may be vested with the power to analyze and identify inconsistencies or gaps in regulations and laws related to investment, including the investment law. It may also identify problematic interpretation or implementation by other governmental bodies and recommend ways to address such issues. The Lead Agency may also 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

¹⁷ The system in China is an example. See Chapter IV, 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>.

¹⁸ As noted in the submission from the Government of Thailand (A/CN.9/WG.III/WP.162, para. 11).

¹⁹ Countries could develop handbooks similar to the Handbook on Obligations in International Investment Treaties published by the Asia-Pacific Economic Cooperation Secretariat in 2020, https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/apec_handbook_on_obligations_in_iit.pdf.

²⁰ See World Bank Group 2021, p. 15. See also, World Bank Group - Retention and expansion of foreign direct investment: Political risk and policy responses, 2019 (by Ehandi, R., Nimac, I. and Chun, D.), pp. 45 and 60, available at <https://openknowledge.worldbank.org/bitstream/handle/10986/33082/Political-Risk-and-Policy-Responses.pdf?sequence=1&isAllowed=y> ('World Bank Group 2019').

administrative procedures. Such a role of the Lead Agency can be facilitated if it is established clearly within the hierarchical structure of the Government and is empowered to that effect.

29. Additionally, with respect to contracts prone to disputes, such as large contracts or strategic investments or even for public-private partnerships (PPPs), the Lead Agency may be mandated to carry out a due diligence and evaluate prospective investments according to criteria linked to the legal, technical, and financial aspects of the proposed projects to measure their seriousness.²¹

b) Outward functions in relation to the investor

30. Effective communication with investors should take place throughout the entire phase of the investment, both pre- and post-establishment. During the pre-establishment phase, prospective investors may inquire about legislative, procedural, and regulatory requirements to invest in the State. During this phase, communication channels with investors are generally established by investment promotion agencies or are part of the promotional activities of the State. At the post-establishment phase, investors may encounter issues affecting their operations and may inquire about expansion or diversification of existing investments.

31. During the pre-establishment phase, the Lead Agency may provide investors with information on the investment legal framework of the State.²² This could reduce the probability of disputes arising from an alleged breach of the investor's legitimate expectations, as investors would obtain a better understanding of the current regulatory regime and be informed whether any assurances given by a specific governmental entity are binding under domestic law.

32. During the post-establishment phase, the Lead Agency may service a grievance mechanism (see para. 35 below).²³ In addition, the State may put in place a system to prevent disputes arising out of changes in policies or regulations. In that respect, the Lead Agency may engage with investors to gain their input on any future policies or regulations that a Government entity may draft. Typically, this takes the form of a public-private dialogue platform.²⁴ Furthermore, the Lead Agency or a distinct governmental body may also be in charge of regulatory impact assessment.²⁵ If the Lead Agency does not have this specific mandate, it could gather the investors' comments and convey them to the competent governmental body. Involving investors in consultations on future policies or regulations would mitigate future disputes as investors would have a forum to voice concerns about how a policy or regulation might affect them negatively. Such a process would not hinder the State to regulate but help make an informed policy choice and consider potential impact.²⁶

Grievance mechanism

33. The Lead Agency may support the functions of a grievance mechanism to which investors can directly bring the problems they face due to governmental conduct, and which provides an internal administrative or intra-governmental process to solve such problems. The figure below from the World Bank Group illustrates the investor-State conflict continuum and shows where the grievance mechanism (called retention space in the figure) is located on this continuum. The different phases of facilitation/aftercare and dispute prevention/mitigation/management were added by the Secretariat.

²¹ 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://rdbrw/wp-content/uploads/2018/08/PPP-Guidelines.pdf>.

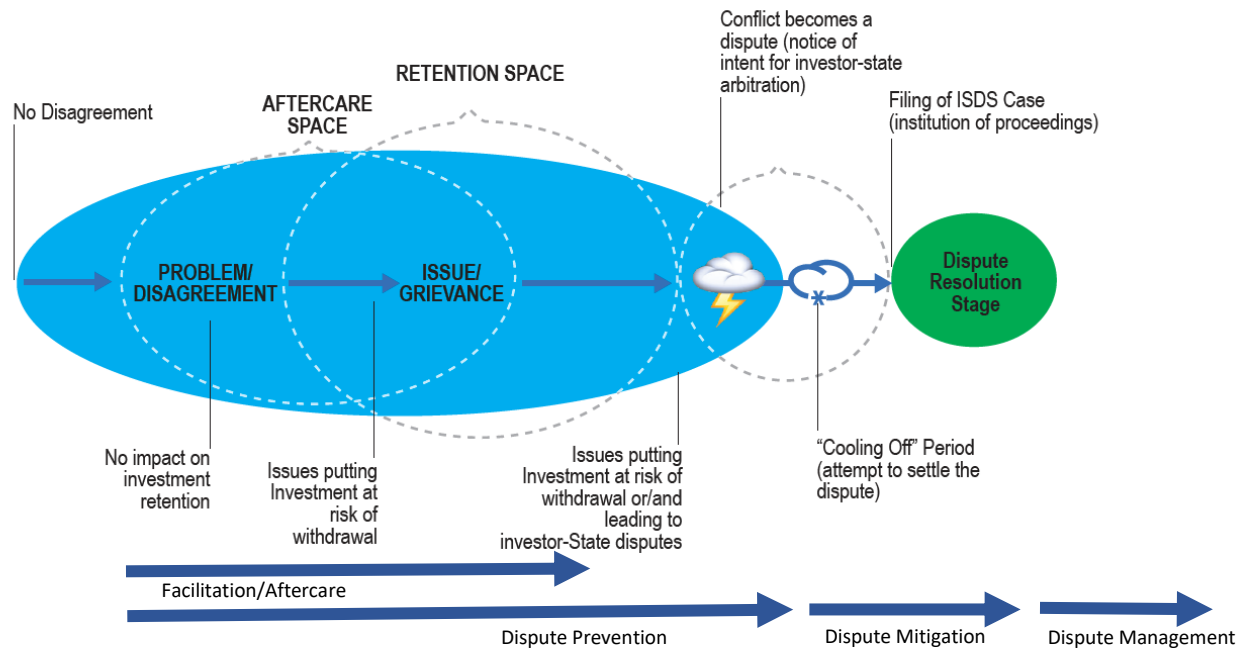
²² For instance, Brazil's Direct Investments Ombudsman serves as a first point of contact for prospective investors, so they may inquire about legislation, procedural and regulatory requirements.

²³ For instance, the South Korea Office of the Foreign Investment Ombudsman (OFIO) provides aftercare services to address investor grievances.

²⁴ For instance, the National Competitiveness Center (NCC) in the Kingdom of Saudi Arabia, <https://www.ncc.gov.sa/en/Pages/default.aspx>.

²⁵ For instance, the Business Regulatory Review Agency (BRRA) in the Republic of Zambia the mandate of which includes performing regulatory impact assessment of the proposed policies affecting the business environment (Section 6 of the Business Regulatory Act No. 3 of 2014, <https://www.parliament.gov.zm/sites/default/files/documents/acts/Business%20Regulatory%20Act%20No.%203%20of%202014.pdf>).

²⁶ This idea is supported by Art. 340 on Transparency of the Moldova - United Kingdom Partnership, Trade and Cooperation Agreement (2020), which reads as follows: "Each Party, in accordance with its domestic law and Chapter 12 (Transparency) of Title V (Trade and Trade-related Matters) of this Agreement, shall ensure that any measure aimed at protecting the environment or labour conditions that may affect trade or investment is 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."



34. The level of formality of the role, procedures, and structure of the Lead Agency incorporating a grievance mechanism varies. Some Lead Agencies may circumscribe their role to liaising with relevant State entities to convey the concerns and informally facilitating the solving of the issues, while others may in addition to the interaction with the State entities, issue administrative recommendations or decisions with a binding power on the State entity concerned. The procedures may be simple or more elaborated with the inclusion, for instance, of detailed hearing procedures. As for the structure, the grievance mechanism may include a two-tier system similar to an appeals mechanism.²⁷ It may also be split into different entities for the regional and the national levels.²⁸

35. The competence of the Lead Agency regarding such a grievance mechanism may vary from one country to another. For instance, distinctions are sometimes made between grievances in relation to approvals, permits or licences, and other claims involving the State or one of its entities as well as claims arising out of an investment contract.²⁹ Another possible distinction is between grievances involving foreign investors and those involving domestic investors (with no foreign participation).

36. The degree of separation of the Lead Agency hosting the grievance mechanism from the rest of the administration also varies. It can be an autonomous office detached from the central administration of the country or the Lead Agency may be an existing administration or agency such as the national investment promotion agency.³⁰ In this regard, it has been noted that for some countries a completely independent entity with an oversight role over the administration has been seen as less effective in addressing Government conduct.³¹

37. It may also be noted that the grievance mechanism, like dispute prevention or mitigation more broadly, is not intended to address grievances arising out of the conduct of the judiciary, but is instead focused on the conduct of the executive branch of the Government, whether central or decentralized.³²

²⁷ When the decision in the first instance is unsatisfactory or the relevant state entity refuses to comply with the recommendation, the grievance can be escalated to an entity of a higher tier. The Ethiopian system is an example. See Articles 25 to 27, Proclamation No. 1180/2020, 2 April 2020, available at <https://investmentpolicy.unctad.org/investment-laws/laws/318/ethiopia-investment-proclamation-no1180-2020>. See also World Bank Group 2021, p. 16.

²⁸ When the grievance mechanism is composed of regional and national levels, the “jurisdiction” of each tier corresponds to the level of matters which the grievance application concerns – regional entities hear complaints about regional measures while the national entity hears complaints about national measures - and therefore the national and regional systems are each more or less self-contained.

²⁹ See Part V, Chapters I, II and III of the Law of Egypt No. 72 of 2017 Promulgating the Investment Law, available at <https://investmentpolicy.unctad.org/investment-laws/laws/167/egypt-investment-law->.

³⁰ See World Bank Group 2021, p. 12 for a comparison of the different institutional setups.

³¹ World Bank Group 2019, p. 62.

³² *Ibid.*, p. 44.

The mechanism may also address grievances arising from legislative activities resulting in the enactment of laws and regulations.³³

Recourse to alternative dispute resolution (ADR) methods

38. The Lead Agency can be mandated to use negotiation, mediation, or early neutral evaluation.³⁴ These methods can be used by the Lead Agency to handle and solve grievances even if they have not reached the level of disputes.³⁵

Dispute mitigation

39. The Lead Agency may have the mandate to mitigate disputes, that is to say handle disputes when the investor has expressed its intent to bring the claim(s) to courts or arbitration, but before the formal institution of proceedings.³⁶

40. In this regard, to make dispute mitigation more systematic, States should include provisions in their investment instruments directing the aggrieved investor to the identified Lead Agency or authority in charge of receiving notifications about a dispute.

41. During this phase, the Lead Agency may attempt to settle investment disputes amicably with the use of alternative dispute resolution methods.³⁷ This mandate is often linked with the alert mechanism (see para. 26 above) where potential disputes identified through that mechanism are submitted to the Lead Agency.

42. In order for the Lead Agency to engage in alternative dispute resolution, a clear and express authorization or mandate to represent the State in investment disputes and use ADR methods is required to address potential concerns of liability of public officials engaging in the process.³⁸ Such a framework may also allay doubts on the part of the investor about engaging with the Lead Agency and using these ADR methods.³⁹

43. The Lead Agency or a distinct authority may also be established as a permanent negotiating body, responsible for negotiating settlements with foreign investors who raise disputes.⁴⁰

44. This mandate of dispute mitigation has substantial overlap with the legal dispute management phase (see para. 48 below). However, already at this stage of dispute mitigation, the relevant State entities should be required to collaborate with the Lead Agency in an effort to reach such amicable resolution based on a robust analysis of the case.

45. In some instances (see para. 15 above), instead of a Lead Agency, an inter-institutional committee may be in charge of dispute mitigation and may involve the specific State entities which have a close connection to the dispute (by way of being involved in the negotiation of the underlying investment contract or agreement, or being in charge of the economic activity of the disputing investor). The approach adopted is decided on a case-by-case basis.

³³ See the example of Jordan described in World Bank Group 2021, p. 19.

³⁴ In “early neutral evaluation” a neutral party will hear each party’s submissions and provide its opinion on the likely outcome of the case. This may be particularly helpful for the successful conclusion of negotiations with investors as it will enable the State and the investor to proceed with dispute resolution in an effective manner, thus complementing other alternative dispute resolutions methods.

³⁵ See A/CN.9/WG.III/WP.218, para. 7.

³⁶ For instance, the Jordanian Grievance Committee has the mandate of handling disputes during the cooling-off period set forth in the relevant IIA or contract. See Art. 3(b) of the Regulation number (163) of 2019 on Investors Grievance Mechanism issued in accordance with Articles 43 and 46 of the Investment Law number 30 of 2014, <https://www.moin.gov.jo/wp-content/uploads/2020/01/Investment-regulation-translation-of-published-document-v6-clean.pdf>.

³⁷ Julien Chaisse, Leïla Choukroune and Sufian Jusoh (eds), *Handbook of International Investment Law and Policy* (Springer 2021) 779.

³⁸ See for instance Carballo A. and Nitschke F. – Investment Dispute Management: The importance of the domestic dimension (2022), Columbia FDI Perspective No. 345 available at <https://ccsi.columbia.edu/sites/default/files/content/docs/fdi%20perspectives/No%20345%20-%20Leyda%20and%20Nitschke%20%20-%20FINAL.pdf>.

³⁹ As illustrated in Franck S. and Joubin-Bret A. – Investor-State Mediation: A Simulation (2013) p. 97, available at <https://academic.oup.com/icsidreview/article/29/1/90/2356630>. See also the current discussion in Working Group III on mediation treaty provisions that should be more conducive to mediation, A/CN.9/1134, para 143.

⁴⁰ See, for instance, Bosnia’s *Decision on the Establishing the Negotiating Body of Bosnia and Herzegovina for the Peaceful Settlement of International Investment Disputes*, Official Gazette of Bosnia and Herzegovina, No. 17/18, enacted on 24 November 2017.

Extension to the legal dispute management phase

46. The consolidated coordination applied during the dispute prevention/mitigation effort is often extended to the legal dispute management phase when the proceedings (before the courts or arbitral tribunal) are formally instituted. The Lead Agency in charge of the dispute prevention/mitigation efforts or a distinct authority may be appointed as the pre-determined authorized representative of the State and is given the task of coordinating the defence efforts internally with other State entities. This task requires certain powers and autonomies, such as the power to ask for information and witnesses from other State entities, the autonomy in formulating the legal defence strategy and hiring of experts (including legal counsel), and the allocation of budget from the State.

3. Challenges in designing and implementing a dispute prevention strategy

47. States may encounter difficulties in designing and implementing a dispute prevention strategy. With respect to the design phase, States may lack relevant information on the reasons leading to disputes. Lack of transparency of ISDS proceedings may further make this task difficult. Past surveys and World Bank Group's studies show that investment disputes emerge from host State misconduct, in particular intra-governmental coordinating failures, and that the three main political risks for investors leading to divestment or cancellation of planned investment are (i) the lack of transparency and predictability in dealing with public agencies, (ii) sudden change in the laws and regulations, and (iii) delays in obtaining necessary Government permits.⁴¹ However, these reasons may differ between States. Consequently, when designing a dispute prevention strategy, States should engage in a thorough diagnostic.

48. Diagnostics should include an analysis of the foreign direct investment (FDI) policy and performance of the State, that is to say, the types of FDI the country is attracting and the FDI flows, as well as the issues encountered by foreign investors and the State's experience in ISDS. This requires information from Government institutions dealing with investors, and surveys of established investors. Indeed, active engagement of key stakeholders, including established investors, may be necessary because most investors facing severe issues cancel or revoke their investment rather than invoking ISDS.⁴²

49. Regarding implementation of the dispute prevention strategy, States may experience limitations imposed by lack of technical capacity and resources.

50. For both types of challenges, States may get assistance from international organizations. Furthermore, the Advisory Centre, if established, may contribute to the collection of data and assist States in developing effective strategies for dispute prevention with the exchange of information and capacity-building.

⁴¹ Other reasons include transfer and convertibility restrictions, breach of contract, and expropriation. See, World Bank Group 2019, p. 25 (Figure 18).

⁴² Ibid, p. 33.

III. Compilation of best practices

The following contains three tables respectively outlining:

- the national best practices for dispute prevention and mitigation, as well as management of disputes for those entities whose mandate includes this function
- best practices at the multinational level, including inter-governmental cooperation; and
- legal instruments used for the institutional setup of the relevant governmental body.

Table 1. Compilation of National Best Practices

Period	Action	Institutional Options / Best practices (examples and links)
Pre-Dispute	<p>- Stocktaking of Investment Obligations: map and update agreements with ISDS provisions, keep track of joint declarations between host and home countries, be aware of decisions that might affect the application of the investment treaty during the negotiation stage.</p> <p>- Centralize information.</p>	<p>Czech Republic. Overview of the Czech Republic’s bilateral and multilateral agreements for promotion and protection of investments and related news are published and regularly updated by the Ministry of Finance on its webpage (in Czech). https://www.mfcr.cz/cs/legislativa/dohody-o-podpore-a-ochrane-investic</p> <p>Kyrgyz Republic. Article 3. The Authority of the Centre. <i>Regulation on the Judicial Representation Centre of the Government of the Kyrgyz Republic</i>, Regulation of 12 February 2014 No 89, as amended by the Resolution of the KR Government of 10 June 2014 No 320, 7 September 2016 No. 487. https://cis-legislation.com/document.fwx?rgn=65682#A40A0SOVRL</p> <p>Republic of Chile. Article 3. Functions of the General Directorate of International Economic Relations. <i>Creation of an Inter-ministerial Committee for Defence of the State in International Investment Disputes and Regulation of Coordination for Resolution of such Disputes</i>. Decree 125. 23 August 2016 (publication 27 December 2016). https://www.leychile.cl/N?i=1098279&f=2016-12-27&p=</p> <p>Republic of Peru. Article 5. General Procedures of the State Coordination and Response System for International Investment Disputes. A) Notification of signing of investment agreements and treaties. B) Alert in the event of a dispute. Article 13. Binding criteria for drafting of dispute settlement clauses. <i>Coordination and Response System for International Investment Disputes (SICRECI in Spanish SICRECI)</i>. Law No. 28933, December 2006. https://docs.peru.justia.com/federales/leyes/28933-dec-15-2006.pdf.</p>
	<p>- Identify and monitor sensitive sectors: contacts within certain relevant agencies and information exchange.</p>	<p>Arab Republic of Egypt. Article 71 (3). Chapter II – The General authority for investment and free zones. <i>Law No. 72 of 2017 Promulgating the Investment Law</i>. https://investmentpolicy.unctad.org/investment-laws/laws/167/egypt-investment-law-.</p> <p>Republic of Colombia. Directorate of Foreign Investment and Services established within Ministry of Commerce. High-Level Government Instance for the prevention and management of international investment disputes. See Decree No. 1939 of 2013. https://www.suin-juriscol.gov.co/viewDocument.asp?id=1373623.</p>

		<p>Republic of Peru. Article 5. General Procedures of the State Coordination and Response System for International Investment Disputes. A) Notification of signing of investment agreements and treaties. B) Alert in the event of a dispute. Coordination and Response System for International Investment Disputes (SICRECI in Spanish). Law No. 28933, December 2006. https://docs.peru.justia.com/federales/leyes/28933-dec-15-2006.pdf.</p>
	<p>- Communication channel: identify obstacles to investment and day-to-day contact with investors.</p> <p>- Establish an integrated information sharing system.</p>	<p>Hashemite Kingdom of Jordan. Article 11. Computerized Grievance System. <i>Regulation number 163 on Investors Grievance Mechanism</i>, issued in accordance with Articles 43 and 46 of the Investment Law Number 30 of 2014. https://www.moin.gov.jo/en/investors-grievance-scope/ (new regulations should be issued to implement the new Law No. (21) of 2022, Investment Environment Law, Published in the Official Gazette No. (5821) on 16/10/2022, https://www.moin.gov.jo/en/investment-law-3/).</p> <p>People's Republic of China. Chapter IV. Administrative System of Complaint Handling. Articles 24-28. <i>National Complaint Centre for Foreign-invested Enterprises (NCCFE)</i>. http://fdi.mofcom.gov.cn/EN/complaintsDetail.html?id=21.</p> <p>Republic of Peru. <i>Coordination and Response System for International Investment Disputes (SICRECI in Spanish)</i>. Law No. 28933, December 2006. https://docs.peru.justia.com/federales/leyes/28933-dec-15-2006.pdfecember.</p>
	<p>-Establish a central investment contact point: Central Authority can be a new agency or within Investment Promotion Agency (IPA) or Inter-Ministerial Committee for grievances; can be a single authority for both dispute prevention and management and dispute prevention or separate ones.</p> <p>- Ensure coordination in case work is split between agencies (e.g., between promoting investment, ongoing communication with investors, and resolving disputes).</p>	<p>Federative Republic of Brazil. Article 18. Focal Point or Ombudsperson. <i>Brazilian Cooperation and Facilitation Agreement (CFIA (2016))</i>. https://investmentpolicy.unctad.org/international-investment-agreements/treaty-files/4786/download FN.⁴³</p> <p>Energy Charter Treaty. Article 4. General Principles. Article 5. Content of Coordination. Article 9. Responsible body. <i>Energy Charter Treaty: Model Instrument on Management of Investment Disputes</i>, CCDEC 2018 26. https://www.energychartertreaty.org/model-instrument/.⁴⁴</p> <p style="text-align: center;">a) Competence</p> <p>a.1) Single Responsible Body dealing with prevention of investment disputes</p> <p>Czech Republic. The Ministry of Finance. See Section 4(1) of Act No 2/1969 Coll. on Establishing Ministries and Other Institutions of Central Government of the Czech Republic, as amended (in Czech). https://www.mfcr.cz/cs/legislativa/legislativni-dokumenty/1969/zakon-c-2-1969-sb-3322. See also description of the tasks of the International Arbitration and Investment Protection Unit at the Ministry of Finance (in Czech), https://www.mfcr.cz/cs/o-ministerstvu/zakladni-informace/organizacni-struktura/sekce-09/odbor-71-legislativa-a-sporne-agendy/oddeleni-7103-mezinarodni-arbitraz-a-oc</p>

⁴³ This is not a national law but a model treaty provision. The best practices foreseen at the treaty level were enacted the national level by the Decree No. 8863, 28 September 2016 on the Creation, Structure and Attributions of the Foreign Direct Investment Ombudsman, available at https://www.planalto.gov.br/ccivil_03/ato2015-2018/2016/decreto/d8863.htm. This document is only available in Portuguese. The model provision is available in English and is accessible to a broader audience.

⁴⁴ Treaty level.

		<p>Arab Republic of Egypt. Section V, in particular Chapter II and III: The General authority for investment and free zones. <i>Law No. 72 of 2017 Promulgating the Investment Law</i>. https://investmentpolicy.unctad.org/investment-laws/laws/167/egypt-investment-law-.</p> <p>Kyrgyz Republic. Article 2. Object and Purpose of the Centre. <i>Regulation on the Judicial Representation Centre of the Government of the Kyrgyz Republic</i>, Regulation of 12 February 2014 No 89, as amended by the Resolution of the KR Government of 10 June 2014 No 320, 7 September 2016 No 487. https://cis-legislation.com/document.fwx?rgn=65682#A40A0SOVRL.</p> <p>Republic of Chile. <i>Creation of an Inter-ministerial Committee for Defence of the State in International Investment Disputes and Regulation of Coordination for Resolution of such Disputes. Decree 125</i>. 23 August 2016 (publication 27 December 2016). https://www.leychile.cl/N?i=1098279&f=2016-12-27&p=.</p> <p>Republic of Colombia. <i>Directorate of Foreign Investment and Services established within Ministry of Commerce. High-Level Government Instance for the prevention and management of international investment disputes</i>. See Decree No. 1939 2013. https://www.suin-juriscol.gov.co/viewDocument.asp?id=1373623.</p> <p>Republic of Peru. Article 7. Special Commission. <i>Coordination and Response System for International Investment Disputes (SICRECI in Spanish)</i>. Law No. 28933, December 2006. https://docs.peru.justia.com/federales/leyes/28933-dec-15-2006.pdf.</p> <p>Republic of Slovakia: Ministry of Finance (the arbitration team) - prevention of arbitration disputes by means of communicating and consulting with other state organs in cases of potential arbitration disputes; communication with allegedly damaged investor in so called consultation or cooling-off period or even before with the aim, if possible, to prevent arbitration proceedings; monitoring of potential harmful legislation and consulting the change thereof respecting international obligations of the Slovak Republic set for in international investment protection treaties. <i>Rules for International treaty conclusion and treaty practice</i> available only in Slovak here: https://www.mzv.sk/documents/10182/12865/pravidla_pre_uzatvaranie_medzinarodnych_zmluv.pdf/942aae94-a41c-4332-a758-cdbe98d01ef4.</p> <p>a.2) Broad Competence: trade disputes are under the control of the Responsible Body</p> <p>Dominican Republic. Articles 2-4. <i>High-Level Government Instance for the prevention and management of international investment disputes</i>. Decrees No. 303-2015; https://studylib.es/doc/5157825/decreto-sistema-de-prevenci%C3%B3n-de-controversias-no.-303-15.</p> <p>Republic of Costa Rica. Article 3. Creation of the Inter-institutional Commission for Settlement of International Trade and Investment Disputes. <i>Regulations for the Prevention and Management of International Trade and Investment Disputes</i> No. 35452-MP-COMEX.</p>
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⁴⁵ **I.** The Government of the Republic of Croatia created an Inter-Departmental Commission to act on requests from foreign investors in connection with disputes arising from bilateral treaties of the Republic of Croatia in the field of providing incentives for and protecting investments (hereafter the “Commission”).

II. The task of the Commission is to examine requests from foreign investors to resolve disputes which arise on the basis of bilateral treaties of the Republic of Croatia in the field of providing incentives for and protecting investments (hereafter the “Request”) and the procedure in respect of the requests listed, in particular: analysis of the investor’s request; the gathering of information required from the competent bodies connected with resolving the requests listed; and proposals of the Government of the Republic of Croatia to proceedings with respect to the investor’s request.

III. The Commission is to be run by: the Head of the State Office for Commercial Policy, the Commission Chairman; the Deputy Minister for the Economy, the Commission’s Deputy Chairman and its members: the Deputy Minister of Foreign and European affairs, the Deputy Minister of Justice, the Deputy Minister of Finance, the Head of the State Office for the Management of State Property, the Deputy Chief Public Prosecutor of the Republic of Croatia and the Director of the State Property Management Agency.

	<p><i>Disputes (SICRECI in Spanish)</i>. Articles 4-8 Law No. 28933, December 2006. https://docs.peru.justia.com/federales/leyes/28933-dec-15-2006.pdf.</p> <p>b.2) Single Ministry or Agency</p> <p>Canada. Trade Law Bureau of the Department of Foreign Affairs and Trade (JLT). JLT provides litigation services, legal training, and legal advice to all government departments on all aspects of international trade law. It advises on, and actively participates in, the negotiation and subsequent implementation of international trade and investment agreements. The goal of the Bureau is to ensure that the federal government receives coherent, high-quality, and timely legal advice on international trade law matters. JLT is a joint unit with staff from both the Department of Justice and DFAIT, https://www.justice.gc.ca/eng/rp-pr/cp-pm/eval/rep-rap/13/plse-sdpe/p2.html</p> <p>Czech Republic. The Ministry of Finance. See Section 4(1) of Act No 2/1969 Coll. on Establishing Ministries and Other Institutions of Central Government of the Czech Republic, as amended (in Czech). https://www.mfcr.cz/cs/legislativa/legislativni-dokumenty/1969/zakon-c-2-1969-sb-3322. See also description of the tasks of the International Arbitration and Investment Protection Unit at the Ministry of Finance (in Czech), https://www.mfcr.cz/cs/o-ministerstvu/zakladni-informace/organizacni-struktura/sekce-09/odbor-71-legislativa-a-sporne-agendy/oddeleni-7103-mezinarodni-arbitraze-a-oc</p> <p>People’s Republic of Bulgaria. <i>Litigation Directorate</i> under the Ministry of Finance. http://www.minfin.bg/en/page/938.</p> <p>Republic of Chile. <i>Committee on Foreign Investment (CIE Chile)</i>. https://investchile.gob.cl/.</p> <p>Republic of Latvia. <i>State Chancellery</i>. Informative Report on the Representation of the State Interests in International Investment Disputes, 44. § 17 November 2015. http://www.likumi.lv/doc.php?id=277962.</p> <p>Republic of Mexico. <i>Promexico</i> in combination with Secretary of Economy’s Legal Advisor for Negotiations General Directorate once a conflict escalates into investment arbitration. http://www.promexico.gob.mx/.</p> <p>Republic of Slovakia. Ministry of Finance (Dispute management and Breach of Treaty). Law No. 575/2001 (zákon č. 575/2001 Z. z. o organizácii činnosti vlády a organizácii ústrednej štátnej správy v znení neskorších predpisov). https://wipo.lex.wipo.int/en/text/366578.</p> <p>United States of America. US Department of State. http://www.state.gov/s/l/c3433.htm.</p> <p>Republic of Vietnam. Chapter 1: General Provisions. Chapter 2: Coordination in stage when foreign investors make complaints and questions. Chapter 3: Coordination in stage when international investment disputes are resolved at international arbitration or competent foreign tribunals. Chapter 4: Coordination in stage of executing the judgements, decision on resolution of international investment dispute of international arbitration or competent foreign tribunals. Chapter 5: Hiring of Barristers, technical experts and</p>
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		<p>invitation of witnesses in serve of resolution of international investment disputes. <i>Decision No. 04/2014/QĐ of the Prime Minister on promulgation of regulation on coordination in resolution of international investment disputes.</i> Hanoi, 14 January 2014. https://vanbanphapluat.co/decision-no-04-2014-qd-ttg-on-coordination-in-resolution-of-international-investment-disputes.</p>
	<p>- Capacity building and raising awareness on investment instrument provisions and commitments.</p>	<p>Arab Republic of Egypt. Article 71. Chapter II – The General authority for investment and free zones. <i>Law No. 72 of 2017 Promulgating the Investment Law.</i> https://investmentpolicy.unctad.org/investment-laws/laws/167/egypt-investment-law-.</p> <p>Czech Republic. Overview of Czech Republic’s bilateral and multilateral agreements for promotion and protection of investments and related news are published and regularly updated by the Ministry of finance on its webpage (in Czech). https://www.mfcr.cz/cs/legislativa/dohody-o-podpore-a-ochrane-investic</p> <p>Republic of Colombia. Directorate of Foreign Investment and Services of the Ministry of Trade, Industry and Tourism: distribution of handbooks explaining investment protection. Training with local government, chambers of commerce and associations.⁴⁶</p> <p>Republic of Korea. Korean Government issues ISDS handbooks and booklets in order to provide general information on dispute prevention and the meaning of key provisions of IIAs (A/CN.9/WG.III/WP.179, p. 5-7).</p> <p>Republic of Mexico. Secretary of Economy’s Legal Advisor for Negotiations General Directorate: handbook on investment treaty obligations and training.⁴⁷</p> <p>People’s Republic of China. Article 6. Competences of the Ministry of Commerce. <i>National Complaint Centre for Foreign-invested Enterprises (NCCFE).</i> Available at http://fdi.mofcom.gov.cn/EN/complaintsDetail.html?id=21.</p>
	<p>- Make agencies liable for enacting measures contrary to investment instrument provisions (involve agencies).</p>	<p>Energy Charter Treaty. Article 26. Liability. Model Instrument on Management of Investment Disputes -CCDEC 2018 26. https://www.energychartertreaty.org/model-instrument/.⁴⁸</p> <p>Georgia. Article 9. Analysis of the legislation of Georgia. Article 10. Practice analysis. <i>Law of Georgia on Business Ombudsman of Georgia</i> No. 3612-IIS, 28 May 2015. www.ilo.org/dyn/natlex/docs/ELECTRONIC/104528/127562/F-2073887338/ombudsman.pdf.</p>

⁴⁶ Energy Charter Secretariat (2016). Best practices in investment conflict prevention and management. Special Paper Series. Brussels, September 2016. <https://www.energycharter.org/what-we-do/publications/best-practices-in-investment-conflict-prevention-and-management/>, p. 11.

⁴⁷ Energy Charter Secretariat (2016). Best practices in investment conflict prevention and management. Special Paper Series. Brussels, September 2016. <https://www.energycharter.org/what-we-do/publications/best-practices-in-investment-conflict-prevention-and-management/>, p. 13.

⁴⁸ Treaty level.

		<p>Republic of Peru. Coordination and Response System for International Investment Disputes (SICRECI in Spanish). Law No. 28933, December 2006. Article 15. Liability of the Special Commission. https://docs.peru.justia.com/federales/leyes/28933-dec-15-2006.pdf.</p>
	<p>- Institutional System for Dispute Prevention and Management.</p>	<p>1) Foreign Investment Ombudsperson</p> <p>Federative Republic of Brazil. <i>Creation, Structure and Attributions of the Direct Investment Ombudsman</i>. Decree No. 8863, 28 September 2016. https://www.planalto.gov.br/ccivil_03/_ato2015-2018/2016/decreto/d8863.htm and Decree No. 9770, 22 April 2019. https://www.planalto.gov.br/ccivil_03/_Ato2019-2022/2019/Decreto/D9770.htm#art1. The Ombudsperson's role is to act as a facilitator of the relationship between the investors and host country government, both in terms of dialogue with the relevant authorities and the provision of government support with the ultimate goal of improving the business environment and to attract and maintain investments. The main responsibilities of the Ombudsperson involve the following-up on requests and inquiries made by the other Party or investors of the other Party with the competent authorities and inform the stakeholders on the results of its actions. It is also the Ombudsperson's responsibility to assess, in consultation with relevant government authorities, the complaints received from the other Party or investors of the other Party and to issue recommendations to the Joint Committee regarding actions necessary to improve the investment environment (Federative Republic of Brazil. <i>Creation, Structure and Attributions of the Direct Investment Ombudsman</i>. Decree No. 8863, 28 September 2016; §7 §8 Submission from the Government of Brazil (A/CN.9/WG.III/WP.171). Article 18. National Focal Point. <i>Brazilian Cooperation and Facilitation Agreement (CFIA) Model (2016)</i>. https://investmentpolicy.unctad.org/international-investment-agreements/treaty-files/4786/download. Legal basis for the international regulations of the Direct Investment Ombudsman, GECEX Resolution No. 43 of 4 May 2020. https://oid.economia.gov.br/en/menus/8.</p> <p>Greece. <i>Invest in Greece Ombudsman</i>. Law 4146 of April 2013. the 'Creation of a Development Friendly Environment for Strategic and Private Investments. https://www.enterprisegreece.gov.gr/en/invest-in-greece/ombudsman/investor-ombudsman.</p> <p>Georgia. Article 6. Powers of Business Ombudsman. Article 7. Office and the Deputy of the Business Ombudsman. Article 8 Review of an Application. <i>Law of Georgia on Business Ombudsman of Georgia No. 3612-IIS28</i> May 2015. www.ilo.org/dyn/natlex/docs/ELECTRONIC/104528/127562/F-2073887338/ombudsman.pdf.</p> <p>Japan. <i>The Office of Trade and investment Ombudsman</i>. https://www8.cao.go.jp/kisei-kaikaku/oto/english/oto_about_e.html. Office of Invest Japan. http://www.invest-japan.go.jp/link/contact/en_index.html.</p>

Kazakhstan. Article 12-1. Investment Ombudsman. *Investment Agency Ombudsman* of the Law № 373-II On Investments, 8 January 2003, as amended 12 June 2014. <https://investmentpolicy.unctad.org/investment-laws/laws/98/kazakhstan-investment-law>.

Mongolia. *Foreign Investment Ombudsman Council*. Established by Mongolian National Chamber of Commerce and Industry.⁴⁹

Philippines. *The Investment Ombudsman*. Legal Basis: Sec. 15 (2), (3) RA 6770; Sec. 13 (2), Article XI, 1987 Constitution 2. Sec. 26 (1), (3) RA 6770; Rule IV, AO No. 07, as amended 3. Office Order No. 327 & 337, series of 2014. <https://www.ombudsman.gov.ph/docs/investmentOmbudsman/investmentomb.pdf>.

Republic of Korea. Korean Office of the Foreign Investment Ombudsman (OFIO). Legal Basis for Foreign Investment Ombudsman System: (a) Paragraphs 1, 2, and 10, Article 15-2 of the *Foreign Investment Promotion Act*; and (b) Paragraph 2, Article 21-4 of the *Enforcement Decree of the Foreign Investment Promotion Act*. Legal Basis for the Function of the Office of the Foreign Investment Ombudsman: (a) Paragraphs 3–6, Article 15-2 of the *Foreign Investment Promotion Act*; and (b) Paragraphs 2–5, Article 21-3 of the *Enforcement Decree of the Foreign Investment for corrective measures*. Legal Basis for Operation of the Grievance Settlement Body: Paragraph 2, 3 and 5, 8, Article 21-4 of the *Enforcement Decree of the Foreign Investment*. <https://ombudsman.kotra.or.kr/eng/au/poelb.do>.

Russian Federation. *Federal Law on the Ombudsman for Entrepreneur's Rights*, 7 May 2013 (in Russian). <http://pravo.gov.ru/proxy/ips/?docbody=&nd=102165152&rdk=2>.

Ukraine. *Business Ombudsman Council*. <https://boi.org.ua/en/about/>.

United States of America. Select USA's Ombudsman. <https://content.govdelivery.com/accounts/USITATRADE/bulletins/d25cc>.

2) Coordinator Responsible for Dispute Prevention

People's Republic of China. Article 5. Inter-ministerial joint meeting systems for complaints of foreign-invested enterprises. *National Complaint Centre for Foreign-invested Enterprises (NCCFE)*. <http://fdi.mofcom.gov.cn/EN/complaintsDetail.html?id=21>.

Republic of Peru. Article 6. Coordinator. *Coordination and Response System for International Investment Disputes (SICRECI in Spanish)*. Law No. 28933, December 2006. <https://docs.peru.justia.com/federales/leyes/28933-dec-15-2006.pdf>.

Republic of Vietnam. Chapter 1: General Provisions. Chapter 2: Coordination in stage when foreign investors make complaints and questions. Chapter 3: Coordination in stage when international investment disputes are resolved at international arbitration or competent foreign tribunals. Chapter 4: Coordination in stage of executing the judgements, decision on resolution of international investment dispute of international arbitration or competent foreign tribunals. Chapter 5: Hiring of Barristers, technical experts and invitation of witnesses in serve of resolution of international investment disputes. *Decision No. 04/2014/QĐ of the Prime Minister*

	<p><i>on promulgation of regulation on coordination in resolution of international investment disputes.</i> Hanoi, 14 January 2014. https://vanbanphapluat.co/decision-no-04-2014-qd-ttg-on-coordination-in-resolution-of-international-investment-disputes.</p> <p>3) Institution Responsible for Prevention and Management of Disputes</p> <p>Arab Republic of Egypt. Ministerial Committee on investment dispute resolution, Articles 85-87. Ministerial Committee on investment contracts dispute resolution, Articles 88-89; <i>Law No. 72 of 2017 Promulgating the Investment Law</i>. https://investmentpolicy.unctad.org/investment-laws/laws/167/egypt-investment-law-.</p> <p>Czech Republic. Prevention and management of investment disputes falls within the competence of the Ministry of Finance, the central administration body responsible for protection of foreign investment. See Section 4(1) of Act No 2/1969 Coll. on Establishing Ministries and Other Institutions of Central Government of the Czech Republic, as amended (in Czech). https://www.mfcr.cz/cs/legislativa/legislativni-dokumenty/1969/zakon-c-2-1969-sb-3322</p> <p>Dominican Republic. <i>High-Level Government Instance for the prevention and management of international investment disputes.</i> Decree 303-15. This instance is responsible for the prevention and management of international investment disputes and capacity building and awareness raising in matters relating to arbitration. https://studylib.es/doc/5157825/decreto-sistema-de-prevenci%C3%B3n-de-controversias-no.-303-15.</p> <p>Republic of Colombia. Directorate of Foreign Investment and Services established within Ministry of Commerce. <i>High-Level Government Instance for the prevention and management of international investment disputes.</i> See Decree Np. 1939 of 2013. https://www.suin-juriscol.gov.co/viewDocument.asp?id=1373623.</p> <p>4) Investor Grievance Mechanism (“IGM”)⁵⁰</p> <p>Mechanism used to address government-generated political risks or operational risks that may affect investments (e.g., via a new agency or within an Investment Promotion Agency (IPA) or Inter-Ministerial Committee for grievances).</p> <p>The countries where the World Bank Group assisted in the setting up IGM’s or such mechanisms to prevent disputes are Angola, Bosnia and Herzegovina, Brazil, Colombia, Ethiopia, Georgia, Iraq, Jordan, Kyrgyz Republic, Mongolia, Rwanda, and Vietnam.</p>
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⁴⁹ Energy Charter Secretariat (2016). Best practices in investment conflict prevention and management. Special Paper Series. Brussels, September 2016. <https://www.energycharter.org/what-we-do/publications/best-practices-in-investment-conflict-prevention-and-management/>, p. 22.

⁵⁰ It should be noted that terminology varies and overlaps as States have called the relevant body an IGM, ombudsman, dispute prevention mechanism, SIRM (systematic investment retention mechanism) or other names. Nonetheless, the support provided was essentially focused on an IGM as an entity for early detection of investor issues in order to prevent their escalation into legal disputes. Examples of States with a dispute prevention initiative include Georgia and Brazil.

	<p>Arab Republic of Egypt. The Grievance Committee, Articles 83-84. <i>Law No. 72 of 2017 Promulgating the Investment Law.</i> Article 83 provides “One or more committees shall be established in the Authority to examine the complaints filed against the resolutions issued in accordance with the provisions of this Law by the Authority or the authorities concerned with the issuance of the approvals, permits, and licenses.” https://investmentpolicy.unctad.org/investment-laws/laws/167/egypt-investment-law-</p> <p>Brazil. The Direct Investments Ombudsman’s competencies include support and guidance to investors through recommending solutions to their grievances and to propose to public agencies possible improvements in the legislation or in their administrative procedures. Legal basis for the international regulations of the Direct Investment Ombudsman, GECEX Resolution No. 43 of 4 May 2020. https://oid.economia.gov.br/en/menus/8.</p> <p>Ethiopia. Article 25. Right to lodge Complaint. Article 26 Grievance Against the Commission’s Decisions. Article 27 Complaints Against Decisions of the Federal Government. <i>Investment Proclamation. Proclamation No. 1180/2020</i>, 2 April 2020. https://investmentpolicy.unctad.org/investment-laws/laws/318/ethiopia-investment-proclamation-no1180-2020. The IGM is administered by the Ethiopian Investment Commission.</p> <p>Hashemite Kingdom of Jordan. Regulation No. 163 of 2019, Articles 43 and 46 of the Investment Law No. 30 of 2014, and the Grievance Hearing Instructions No. 1 of 2020, Issued Pursuant to Article 7(A)(3) and Article 10 of Regulation No. 163. The IGM came into force on January 24, 2020. IGM administered by the Jordan Investment Commission. https://www.jic.gov.jo/en/investors-grievance-scope/. New Law No. (21) of 2022, Investment Environment Law, Published in the Official Gazette No. (5821) on 16/10/2022, Article 44(A) and (B) “A. Upon a decision issued by the Minister, one or more grievance committees shall be formed in the Ministry under the chairpersonship of the Secretary General of the Ministry. B. The committee shall examine the grievance applications submitted by Investors to verify the due process followed or the decisions issued by the Official Entity.” (New regulations to be issued) https://www.moin.gov.jo/en/investment-law-3/</p> <p>People’s Democratic Republic of Algeria, <i>High National Commission on recourses related to investment</i>, responsible for ruling on recourses exercised by investors. The Commission is competent for disputes related to investment. Article 11, Law no. 22-18 of 25 Dhou El Hidja 1443 corresponding to 24 July 2022 on investment. Presidential Decree no. 22-296 of 7 Safar 1444 corresponding to 4 September 2022 fixing the composition and operation of the High National Commission on recourses related to investment. https://investmentpolicy.unctad.org/investment-laws/laws/339/algeria-algerian-investment-code-2022 and https://www.joradp.dz/FTP/jo-francais/2022/F2022060.pdf.</p> <p>Republic of Vietnam. <i>Law on Investment No. 61/2020/QH14</i> dated 17 June 2020 of the National Assembly. http://amc.edu.vn/xem-van-ban/vsndoc/40/law-no-612020qh14-dated-june-17-2020-on-investment.aspx. IGM Coordinated by pilot Taskforce and Foreign Investment Agency (FIA). Resolution No. 50-NQ/TW dated 20 August 2019 on orientations towards improvement of regulations and policies to enhance quality and efficiency of foreign investment by 2030, Part III.4. https://lawnet.vn/en/vb/Resolution-50-NQ-TW-2019-improvement-of-policies-to-efficiency-of-foreign-investment-7B188.html</p> <p>Rwanda. Chapter II, Article 15(3) provides that the Private Investment Committee has the duty “to discuss investors’ issues and propose acceleration measures to resolve them”. Articles 16(4) reads as follows: “[Rwanda Development Board must] facilitate</p>
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		<p>amicable settlement of disputes that may arise between an investor and a State organ” <i>Law No. 006/2021 of February 5, 2021</i>. https://rdb.rw/wp-content/uploads/2021/04/new-investment-law-2021.pdf. The IGM is administered by the Reinvestment and Aftercare Department of the Rwanda Development Board.</p> <p>Sultanate of Oman. <i>Committee to examine grievances</i> submitted from persons concerned against decisions issued by the ministry or competent bodies. Articles 30 and 31 of the Foreign Capital Investment Law promulgated by Royal Decree 50/2019. https://mjla.gov.om/eng/legislation/decrees/details.aspx?Id=1091&type=L</p>
	<p>- Securing Authority to Negotiate and Settle Budgetary Authority.</p>	<p>Energy Charter Treaty. Article 19. Allocating Expenses for the Resolution of International Investment Disputes. <i>Energy Charter Treaty: Model Instrument on Management of Investment Disputes</i>, CCDEC 2018 26. https://www.energychartertreaty.org/model-instrument/.⁵¹</p> <p>Kyrgyz Republic. Article 3. The Authority of the Centre. Article 5. The Assets of the Centre. <i>Regulation on the Judicial Representation Centre of the Government of the Kyrgyz Republic</i>, Regulation of 12 February 2014 No 89, as amended by the Resolution of the KR Government of 10 June 2014 No 320, 7 September 2016 No 487. https://cis-legislation.com/document.fwx?rgn=65682#A40A0SOVRL.</p> <p>Republic of Peru. Article 14. Allocation of Costs. <i>Coordination and Response System for International Investment Disputes (SICRECI in Spanish)</i>. Law No. 28933, December 2006. https://docs.peru.justia.com/federales/leyes/28933-dec-15-2006.pdf.</p>
	<p>- Consulting Proceedings before Enactment of Legislation.</p> <p>- Submit Proposals regarding the Drafting of Laws.</p>	<p>Czech Republic. Article 8. Draft law. <i>The Government Legislative Rules</i>, Resolution of the Government no. 188 of 19 March 1998, as amended by later resolutions of the Government. https://www.vlada.cz/cz/ppov/lrv/dokumenty/legislativni-pravidla-vlady-91209/ (in Czech). Based on Article 8, the Ministries receive draft laws that are to be submitted to the government to provide comments thereon.</p> <p>Georgia. Article 9. Analysis of the Legislation of Georgia. <i>Law of Georgia on Business Ombudsman of Georgia</i> No. 3612-IIS, 28 May 2015. Article 9 - Analysis of the legislation of Georgia. www.ilo.org/dyn/natlex/docs/ELECTRONIC/104528/127562/F-2073887338/ombudsman.pdf.</p> <p>Kyrgyz Republic. Article 3. The Authority of the Centre. <i>Regulation on the Judicial Representation Centre of the Government of the Kyrgyz Republic</i>, Regulation of 12 February 2014 No. 89, as amended by the Resolution of the KR Government of 10 June 2014 No. 320, 7 September 2016 No. 487. https://cis-legislation.com/document.fwx?rgn=65682#A40A0SOVRL.</p>

⁵¹ Treaty Level.

	- Early Detection of Problems.	<p>Early Detection/Alert Mechanism⁵²</p> <p>Dominican Republic. Article 6. <i>High-Level Government Instance for the prevention and management of international investment disputes.</i> Decree 303-15. https://studylib.es/doc/5157825/decreto-sistema-de-prevenci%C3%B3n-de-controversias-no.-303-15.</p> <p>Energy Charter Treaty. Article 8. Early Alert Mechanism. <i>Energy Charter Treaty: Model Instrument on Management of Investment Disputes - CCDEC 2018 26.</i> https://www.energychartertreaty.org/model-instrument/.⁵³</p> <p>Republic of Colombia. <i>Directorate of Foreign Investment and Services established within Ministry of Commerce. High-Level Government Instance for the prevention and management of international investment disputes.</i> See Decree 1939 of 2013. https://www.suin-juriscol.gov.co/viewDocument.asp?id=1373623.</p> <p>Republic of Peru. Article 5. General Procedures of the State Coordination and Response System for International Investment Disputes. A) Notification of signing of investment agreements and treaties. B) Alert in the event of a dispute. <i>Coordination and Response System for International Investment Disputes (SICRECI in Spanish).</i> Law No. 28933, December 2006. https://docs.peru.justia.com/federales/leyes/28933-dec-15-2006.pdf.</p>
	- Encourage Administrative Review of Investor Problems.	<p>Investor Grievance Mechanism (IGM): mechanism to address government generated political or operational risks that may affect investments. The problem is analyzed from an economic and a legal perspective by the agency hosting the IGM. The agency coordinates with the other agencies involved in the problem based on this assessment. See the references under section 4 above.</p> <p>Czech Republic. The Ministry of Finance reviews investors' notifications of potential breaches of the Czech Republic's agreements on investment promotion and protection. For this purpose, it communicates and coordinates with other administrative authorities as needed. It also participates in negotiations with foreign investors within the time limit set for amicable settlement of disputes by the relevant agreement. The Ministry of Finance is the central administration body responsible for protection of foreign investment. See Section 4(1) of Act No 2/1969 Coll. on Establishing Ministries and Other Institutions of Central Government of the Czech Republic, as amended (in Czech). https://www.mfcr.cz/cs/legislativa/legislativni-dokumenty/1969/zakon-c-2-1969-sb-3322. See also description of the tasks of the International Arbitration and Investment Protection Unit at the Ministry of Finance (in Czech), https://www.mfcr.cz/cs/o-ministerstvu/zakladni-informace/organizacni-struktura/sekce-09/odbor-71-legislativa-a-sporne-agendy/oddeleni-7103-mezinarodni-arbitraze-a-oc</p> <p>Federative Republic of Brazil. <i>Brazilian Cooperation and Facilitation Agreement ("CFIA") Model</i> The dispute prevention mechanism under the CFIA is composed of two distinct phases. In the first phase, the Ombudsperson proactively assesses the complaints received from the other Party or investors of the other Party and recommends adequate actions to resolve it. The Joint Committee operates the second phase, reactively, whenever it receives a written request inquiring about the incompatibility of a specific measure and the Agreement. If a Party considers that a specific measure adopted by the other Party constitutes a breach of the Agreement, it shall submit a written request to the other Party which identifies the specific measure in</p>

⁵² It should be noted that the IGM examples all have this feature too.

⁵³ Treaty level.

		<p>question and presents the relevant allegations of fact and law. Then, the Joint Committee shall meet within sixty days from the date of the request. After that, the Joint Committee shall consider the request in a time frame agreed in the text of the CFIA (normally sixty days) – extendable by mutual agreement – and issue a report identifying the measure in question, the alleged breach of the Agreement, and the affected investments. In its report, the Joint Committee will try to find an amicable solution to the measure in question, which can encompass, for example, a recommendation to the relevant government agency to bring the measure in conformity with the CFIA. Only after the complaining Party has exhausted the dispute prevention procedure through the Ombudsperson and the joint committee without satisfactorily resolving the dispute can Parties initiate arbitral proceedings between States (§10 §11 §12 Submission from the Government of Brazil (A/CN.9/WG.III/WP.171; Article 23 Brazilian Cooperation and Facilitation Agreement (CFIA) Model).</p> <p>People’s Republic of China. Chapter III: Complaint Handling. Article 16-18. <i>National Complaint Centre for Foreign-invested Enterprises (NCCFE)</i>. http://fdi.mofcom.gov.cn/EN/complaintsDetail.html?id=21.</p> <p>Republic of Belarus. Resolution 146, 14 February 2012. On 14 February 2012, the Council of Ministers adopted Resolution No. 146 which sets out the procedure for early pre-court settlement of disputes between Belarus and investors arising out of investment contracts with the Republic of Belarus and bilateral investment treaties concluded by Belarus. The Resolution nominates agencies authorized to deal with investor complaints. The procedure prescribes an initial 15-day period for dealing with the complaint (subject to prolongation that cannot exceed three months) and a 7-day time-limit for production of information requested by the authorized body from other State organs. Every year, the Ministry of Economy shall produce a report analyzing investor complaints and making proposals for elimination of the causes for investment dispute.⁵⁴</p> <p>Republic of Korea. <i>Korean Office of the Foreign Investment Ombudsman (OFIO)</i>. https://ombudsman.kotra.or.kr/eng/au/poelb.do.</p>
	<p>- Designate a Lead Agency that has Coordination Capacity and Legal Power to gather, collect, and coordinate with other governmental agencies.⁵⁵</p> <p>- Assessing the Claim (making all relevant documents available to the leading agency at short notice).</p>	<p>Czech Republic. The Ministry of Finance is the central administration body responsible for protection of foreign investment. See Section 4(1) of Act No 2/1969 Coll. on Establishing Ministries and Other Institutions of Central Government of the Czech Republic, as amended (in Czech). https://www.mfcr.cz/cs/legislativa/legislativni-dokumenty/1969/zakon-c-2-1969-sb-3322. Section 27 of Act No 2/1969 Coll. on Establishing Ministries and Other Institutions of Central Government of the Czech Republic, as amended (in Czech), https://www.mfcr.cz/cs/legislativa/legislativni-dokumenty/1969/zakon-c-2-1969-sb-3322: “Ministries exchange the necessary information and documents. The lower state administration bodies report to them and provide the data required by the relevant ministries to the extent necessary for the performance of their tasks.”</p>

⁵⁴ Information provided by UNCTAD.

⁵⁵ The legal power to gather, collect, and coordinate with other governmental agencies are also common to all IGM projects and have not been repeated here.

	<p>- Ensure Proper Budget for Agency activities.</p>	<p>Dominican Republic. Article 7. Cooperation by public entities and agencies. Article 11 Budget. Article 12 Expenses. <i>High-Level Government Instance for the prevention and management of international investment disputes</i>. Decree 303-2015. https://studylib.es/doc/5157825/decreto-sistema-de-prevenci%C3%B3n-de-controversias-no.-303-15.</p> <p>Republic of Chile. Article 3. Functions of the General Directorate of International Economic Relations. <i>Creation of an Inter-ministerial Committee for Defense of the State in International Investment Disputes and Regulation of Coordination for Resolution of such Disputes</i>. Decree 125. 23 August 2016 (publication 27 December 2016). https://www.leychile.cl/N?i=1098279&f=2016-12-27&p=.</p> <p>Republic of Costa Rica. Article 5. Power of the Inter-institutional Commission for Settlement of International Trade and Investment Disputes. <i>Regulations for the Prevention and Management of International Trade and Investment Disputes No. 35452-MP-COMEX</i>. http://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm_texto_completo.aspx?param1=NRTC&nValor1=1&nValor2=66133&nValor3=77622&strTipM=TC.</p> <p>Republic of Croatia. Article 5. Article 6. Article 7. <i>Rules of Procedure for the work and activities for the Inter-Departmental Commission for handling requests from foreign investors in connection with disputes arising from bilateral treaties of the Republic of Croatia in the area of providing incentives for and protection of investments</i>, January 2017 (draft).⁵⁶</p> <p>Republic of Korea. <i>Korean Office of the Foreign Investment Ombudsman (OFIO)</i>: “request the relevant administrative agency or the foreign investment-related agency to cooperate for the purpose of solving problems experienced by foreign-capital invested companies and performing duties related thereto” (§5 Submission from the Government of Brazil (A/CN.9/WG.III/WP.171). Legal Basis for Operation of the Grievance Settlement Body: Paragraph 2, 3 and 5, 8, Article 21-4 of the <i>Enforcement Decree of the Foreign Investment Promotion Act</i>. https://ombudsman.kotra.or.kr/eng/au/poelb.do.</p>
	<p>- Share case-specific information while ensuring confidentiality (including tax agency).</p>	<p>Dominican Republic. Article 13. Confidentiality of proceedings and information. Article 14. Information to third parties. <i>High-Level Government Instance for the prevention and management of international investment disputes</i>, Decree 303-15. https://studylib.es/doc/5157825/decreto-sistema-de-prevenci%C3%B3n-de-controversias-no.-303-15.</p>

⁵⁶ **Article 5.** The Commission Chairman may also call to the session representatives of other bodies or external specialists with the aim of obtaining specialist opinions and explanations about particular specific matters if the nature of the matter which the Inter-Departmental Commission is handling requires it.

Article 6. Should it be necessary, the Commission may seek additional clarification or documentation from a state administration, local self-governing body, physical or legal entities involved in the request or from another competent authority. The Commission may invite to its session an investor whose request is being handled if this is considered necessary in order to clarify the subject of the request. The Commission Chairman may also authorise individual members of the Commission to summon an applicant to the session in order to clarify the actual state relating to the request or to provide additional documentation. The Commission can appoint and authorise a small working group to gather documentation and examine a particular request of an investor, which will report on its work to all Commission members.

Article 7. The decisions of the Commission shall be passed by a majority of votes. The decisions of the Commission are exempt from the right to access to information in accordance with valid provisions regarding the right to access to information, if there are grounds for suspicion that their disclosure might make it impossible to conduct the process of resolving a dispute effectively, independently, and with impartiality.

		<p>Energy Charter Treaty. Article 20 Confidentiality. <i>Energy Charter Treaty: Model Instrument on Management of Investment Disputes</i>, CCDEC 2018 26. https://www.energychartertreaty.org/model-instrument/.⁵⁷</p> <p>Federative Republic of Brazil. Article 20. <i>Brazilian Cooperation and Facilitation Agreement (CFIA) Model (2016)</i>. https://investmentpolicy.unctad.org/international-investment-agreements/treaty-files/4786/download.</p>
	- Use Alternative Dispute Resolution (ADR) methods (legal mandate to negotiate).	<p>Federative Republic of Brazil. Article 23. <i>Brazilian Cooperation and Facilitation Agreement (CFIA) Model (2016)</i>. https://investmentpolicy.unctad.org/international-investment-agreements/treaty-files/4786/download.</p>
<p>Once Arbitration has Been Initiated / How to Effectively and Efficiently Manage ISDS Arbitration</p>	- Define and Empower Lead Agency or Commission to Negotiate.	<p>Czech Republic. The Ministry of Finance is the central administration body responsible for protection of foreign investment, see Section 4(1) of Act No 2/1969 Coll. on Establishing Ministries and Other Institutions of Central Government of the Czech Republic, as amended (in Czech), https://www.mfcr.cz/cs/legislativa/legislativni-dokumenty/1969/zakon-c-2-1969-sb-3322. Based on this provision, it is responsible for resolving disputes with foreign investor based on agreements on the promotion and protection of investments. See also description of the tasks of the International Arbitration and Investment Protection Unit at the Ministry of Finance (in Czech), https://www.mfcr.cz/cs/o-ministerstvu/zakladni-informace/organizacni-struktura/sekce-09/odbor-71-legislativa-a-sporne-agendy/oddeleni-7103-mezinarodni-arbitraze-a-oc</p> <p>Dominican Republic. Article 9. National Authority for State Defense. Article 10. Functions of the National Authority for State Defence. <i>High-Level Government Instance for the prevention and management of international investment disputes. Decree 303-15</i>, https://studylib.es/doc/5157825/decreto-sistema-de-prevenci%C3%B3n-de-controversias-no.-303-15.</p> <p>Energy Charter Treaty. Article 14. Representation of the Government in International Arbitration Proceedings or Competent. <i>International Energy Charter Treaty: Model Instrument on Management of Investment Disputes</i>, CCDEC 2018 26. https://www.energychartertreaty.org/model-instrument/.⁵⁸</p> <p>Federative Republic of Brazil. Article 23. <i>Brazilian Cooperation and Facilitation Agreement (CFIA) Model</i>. https://investmentpolicy.unctad.org/international-investment-agreements/treaty-files/4786/download.</p> <p>Republic of Chile. Article 7. Responsibility for coordination of international dispute proceedings relation to investments under Free Trade Agreements or International Investment Protection. <i>Creation of an Inter-ministerial Committee for Defence of the State in International Investment Disputes and Regulation of Coordination for Resolution of such Disputes</i>. Decree 125. 23 August 2016 (publication 27 December 2016). https://www.leychile.cl/N?i=1098279&f=2016-12-27&p=.</p> <p>Republic of Colombia. <i>Artículo 8.</i> Negociaciones extrajudiciales con inversionistas <i>Artículo 9.</i> Grupo de Apoyo Interinstitucional. <i>Artículo 10.</i> La defensa del Estado en el arbitraje internacional de inversión. <i>Directorate of Foreign Investment and Services</i></p>

⁵⁷ Treaty Level.

⁵⁸ Treaty Level.

		<p><i>established within Ministry of Commerce. High-Level Government Instance for the prevention and management of international investment disputes. Decree 1939 of 2013. https://www.suin-juriscol.gov.co/viewDocument.asp?id=1373623.</i></p> <p>Republic of Latvia. <i>Procedures ensuring representation in international investment disputes.</i> Legal Provision no 228, Riga 3 May 2017, Latvijas Vēstnesis", 89 (5916), 09.05.2017. OP number: 2017/89.2.⁵⁹</p>
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⁵⁹ 1. This Regulation prescribes the procedures by which the representation of the interests of Latvia (hereinafter "the representation") shall be ensured in the settlement of international investment disputes, and also procedures for the cooperation, decision making and circulation of information of the institutions involved in the dispute. 2. The representation in international investment disputes (hereinafter "the dispute") shall be ensured by the State Chancellery in cooperation with the institutions involved in the dispute, other responsible institutions within the competence of which the issues related to the respective dispute lie, and also by attracting external experts if it is necessary for ensuring the representation. 3. When exercising the representation, the State Chancellery shall, in accordance with the procedures specified in laws and regulations, prepare the necessary documents based on the information provided by the institutions involved in the dispute and other responsible institutions, and also by complying with the procedural conditions and time periods specified in the rules governing the operation of the relevant international arbitral tribunal, rulings given by the international arbitral tribunal, and the relevant international treaty on the promotion and protection of investments, and shall take appropriate actions in accordance with the decisions of the Prime Minister and the Cabinet. 4. If a submission on a potential dispute has been received, the State Chancellery shall submit to the Prime Minister the preliminary assessment of the submission and proposals for follow up actions (if based on the preliminary assessment of the submission there is a prima facie possibility for a potential dispute). At least the following information shall be included in the preliminary assessment of the submission: 4.1. nature of the potential dispute; 4.2. preliminary (prima facie) assessment of the validity of the submission; 4.3. proposals for follow up actions; 4.4. proposals for the necessity to develop the preliminary or main position of the State; 4.5. proposals for the necessity to form a working group for the evaluation of the submission and preparation of the preliminary or main position of the State. 5. The preliminary position of the State shall be prepared if at the moment when the submission is received and the preliminary position is being prepared the international arbitration proceedings have not been initiated in accordance with the rules governing the operation of the relevant international arbitral tribunal. The preliminary position of the State shall include the following information: 5.1. nature of the potential dispute and the legal basis of the submission; 5.2. analysis of the position of the submitter; 5.3. possible action scenarios of the State and their feasibility analysis; 5.4. other information related to the resolution of the potential international investment dispute. 6. The main position of the State shall be prepared if the international arbitration proceedings have been initiated in accordance with the rules governing the operation of the relevant international arbitral tribunal. In addition to the information indicated in Sub-paragraphs 5.1, 5.2 and 5.3 of this Regulation, the following information shall also be included in the main position of the State: 6.1. representation strategy; 6.2. other information related to the resolution of the dispute before the international arbitral tribunal. 7. The preliminary and main position of the State shall be prepared in the form of an informative statement by attaching the draft protocol decision of the Cabinet meeting on the follow up actions thereto, and shall be submitted for examination to the Cabinet in accordance with the specified procedures. 8. If the Prime Minister or the Cabinet has ordered the formation of a working group for the evaluation of the submission and development of the preliminary or main position of the State, the State Chancellery shall send an invitation to the relevant institutions to delegate a representative for the participation in the working group within a specified period of time. The institution shall delegate a representative who is competent in the field of the relevant dispute. 9. The composition of the working group, its tasks to be carried out, deadlines for their execution, and, if necessary, also other issues related to the work of the working group shall be specified by the order of the Director of the State Chancellery. 10. The representative of the State Chancellery shall lead the working group and ensure the development of the preliminary and main position of the State for submitting to the Cabinet. 11. The institutions involved in the dispute and other responsible institutions shall, according to their competence, provide their opinion, assessment, documents and other information that is necessary for ensuring the representation within the time period specified by the State Chancellery or working group (if such has been formed). The submitter of information shall be responsible for the correctness and validity of the prepared information. 12. After receipt of the final ruling of the international arbitral tribunal, the State Chancellery shall prepare an informative statement on the assessment of the judgment of the international arbitral tribunal and proposals for follow up actions, and submit them to the Cabinet in accordance with the specified procedures. 13. The State Chancellery shall inform the Prime Minister and the Cabinet on the progress in the settlement of the dispute as necessary, but at least once a year. 14. Public communication regarding the representation in disputes shall be ensured by the State Chancellery or other institution determined by the Cabinet. 15. The State Chancellery shall publish on its website the following information on the international arbitration proceedings initiated against the State in which the composition of the arbitral tribunal has been determined, unless it has been otherwise provided for in the applicable international treaty on the promotion and protection of investments, rules governing the operation of the relevant international arbitral tribunal or an agreement between the parties of the dispute: 15.1. the title of the case; 15.2. the date of receipt of the notification of the commencement of international arbitration proceedings; 15.3. the name and surname or the firm name, and the country of origin of the claimant; 15.4. international treaty on the promotion and protection of investments which forms the basis for the dispute; 15.5. the applicable rules governing the operation of the relevant international arbitral tribunal; 15.6. the institution which will settle the dispute (if such has been determined);

	- Ensure funds for defense, specialized advisors, and legal costs.	Energy Charter Treaty. Article 17. Hiring of Legal Counsel. Article 18. Hiring of Technical Experts and Invitation of Witnesses <i>Energy Charter Treaty: Model Instrument on Management of Investment Disputes</i> , CCDEC 2018 26. https://www.energychartertreaty.org/model-instrument/ . ⁶⁰
	- Regulate extension of the arbitration agreement to non-signatory parties, including public administration bodies.	Republic of Ecuador. <i>Executive Decree No. 165-2021, introducing the Regulations to the Arbitration and Mediation Act</i> , 18 August 2021. Article 6 of the Regulations states that an arbitration agreement binds (1) those parties whose consent to arbitration, according to the principles of good faith, derives from their active and decisive participation in the negotiation, execution, performance, or termination of the contract that either contains the arbitration agreement or to which the arbitration agreement is related; (2) those parties that claim any rights or benefits arising out of that contract; and (3) any relevant administrative bodies. https://www.fielweb.com/App_Themes/InformacionInteres/Decreto_Ejecutivo_No._165_20210718190912.pdf

15.7. economic sector; 15.8. the requested award or compensation (if indicated); 15.9. composition of the international arbitral tribunal (if applicable) 16. The State Chancellery may also publish other information not referred to in Paragraph 15 of this Regulation that is related to the dispute, if this is permissible in accordance with the applicable international treaty on the promotion and protection of investments, rules governing the operation of the relevant international arbitral tribunal, rulings of the international arbitral tribunal or an agreement between the parties of the dispute.

⁶⁰ Treaty Level.

Table 2. International Best Practices

Action	Institutional Options / Best Practices
Information Sharing / Sharing of Best Practices.	<p>Energy Charter Treaty: Model Instrument on Management of Investment. Disputes, CCDEC 2018 26. https://www.energychartertreaty.org/model-instrument/.</p> <p>United States-Mexico-Canada Agreement 2020. Article 31.22 <i>Advisory Committee on Private Commercial Disputes</i> comprising persons with expertise or experience in the resolution of private international commercial disputes. Role of the committee: encourage, facilitate, and promote through education, the use of arbitration, mediation, online dispute resolution, and other procedures for the prevention and resolution of international commercial disputes between private parties in the free trade area. https://ustr.gov/sites/default/files/files/agreements/FTA/USMCA/Text/31%20Dispute%20Settlement.pdf.</p>
State-State Cooperation in Dispute Prevention.	<p>Joint Committees</p> <p>Federative Republic of Brazil. Article 17(4). <i>Brazilian Cooperation and Facilitation Agreement (CFIA) Model.</i> https://investmentpolicy.unctad.org/international-investment-agreements/treaty-files/4786/download.⁶¹ 13 BITs. The Joint Committee, composed of government representatives of both Parties, is in charge of monitoring the implementation of the Agreement, the sharing of information regarding investment opportunities, bilateral investment cooperation, facilitation initiatives, and, above all, joint action to prevent disputes and amicable settlement of any issues involving bilateral investment. In order to develop its tasks in detail as well as to work closely with investors, the Joint Committee has the possibility to establish ad hoc working groups and to invite the private sector to participate in it (§9 Submission from the Government of Brazil (A/CN.9/WG.III/WP.171).</p> <p>Georgia - Japan BIT (2021). Article 25. https://edit.wti.org/app.php/document/show/42b87d4c-17b9-4513-8971-22ea86083661.</p> <p>China - EU Comprehensive Agreement on Investment (2021). Section VI. Institutional and Final Provisions. Subsection 1. Institutional Provisions, https://edit.wti.org/app.php/document/show/29817b74-3d47-46e2-8dbf-dd9dc6aa15a9.</p> <p>Turkey - United Kingdom FTA (2020). Chapter 10. Administrative and Institutional Provisions. https://edit.wti.org/app.php/document/show/aa6d2e00-868a-47d4-a3c2-feeb4b96856d?textBlockId=ac8577ed-7147-4206-85a2-a83305e65f41&page=3.</p> <p>Brazil - India BIT (2020). Articles 13 and 18. https://edit.wti.org/app.php/document/show/9202d96e-45c6-4051-a632-4244791c3460.</p> <p>Israel - United Arab Emirates BIT (2020). Article 27. https://edit.wti.org/app.php/document/show/d2873992-1579-41b7-8de7-1509b1c75291?textBlockId=8fb1e95c-2335-4b5b-a6cc-7012e6579c07&page=3.</p>

⁶¹ This is not a national law but a model treaty provision. The best practices foreseen at the treaty level were enacted at the national level by the Decree No. 8863, 28 September 2016 on the Creation, Structure and Attributions of the Foreign Direct Investment Ombudsman. https://www.planalto.gov.br/ccivil_03/_ato2015-2018/2016/decreto/d8863.htm. Please note that this document is only available in Portuguese. The model provision is available in English and is accessible to a broader audience.

- Armenia - Singapore Agreement on Trade in Services and Investment (2019).** Chapter 6. Institutional, General and Final Provisions. <https://edit.wti.org/app.php/document/show/e4f11dd2-9504-47b4-93fc-f2886dce62c1?textBlockId=735c78bc-6e5f-4101-80e9-3ff3a1516522&page=5>.
- Brazil - Ecuador BIT (2019).** Article 18. <https://edit.wti.org/app.php/document/show/68226e63-ef4d-4fdd-a197-1b7799dd8393>.
- Brazil - Morocco BIT (2019).** Article 14. <https://edit.wti.org/app.php/document/show/cb06a3ac-7014-4312-a265-7d3ccd0f1074>.
- Brazil - United Arab Emirates BIT (2019).** Article 18. <https://edit.wti.org/app.php/document/show/4495627e-228a-4e99-989c-6365d6de19d4>.
- Australia - Indonesia Comprehensive Economic Partnership Agreement (2019).** Chapter 18. <https://edit.wti.org/app.php/document/show/e19cba47-4727-4c6c-aeb8-7537c6ce845a?textBlockId=879cb3a9-a51a-4601-ba52-1633ece509a7&page=17>.
- Armenia - Korea, Republic of BIT (2018).** <https://edit.wti.org/app.php/document/show/35dab1e5-aaa3-4837-a6c2-906fe6892040>.
- EFTA - Indonesia FTA (2018).** Chapter 8. <https://edit.wti.org/app.php/document/show/efa4a106-15f3-4ef8-bf29-5c219c390de1?textBlockId=ff143144-a063-4c86-93cd-4d4f76ed9b73&page=4>.
- Brazil - Guyana BIT (2018).** Article 18. <https://edit.wti.org/app.php/document/show/dc06dac6-49f3-487f-b7cf-9dff59e9c160>.
- Argentina - Japan BIT (2018).** Article 30. <https://edit.wti.org/app.php/document/show/97ef583a-d24c-4474-a9bf-aec76d0864d8?textBlockId=af617ffd-5ba6-46fa-9df6-6cd316d6c886&page=3>.
- Japan - Jordan BIT (2018).** Article 25. <https://edit.wti.org/app.php/document/show/b24132af-223f-49e0-8c7b-51817c11e74e?textBlockId=e0cbdae7-f7b4-4eac-a838-95a6b40e0bf2&page=2>.
- Brazil - Chile FTA (2018).** Article 8.18. <https://edit.wti.org/app.php/document/show/e62cfb4c-abbf-43d9-ae34-a15c7d057ab4?textBlockId=68891351-08eb-4f5d-9533-52bf0f08cf4e&page=6>.
- Ecuador - EFTA FTA (2018).** Article 18. <https://edit.wti.org/app.php/document/show/f04082d4-32f1-496f-8e76-a7c88e06e35b>.
- Brazil - Suriname BIT (2018).** Article 18. <https://edit.wti.org/app.php/document/show/a7e6f60d-eb56-4f06-a544-6c100f491b28>.
- Congo - Morocco BIT (2018).** Article 10. <https://edit.wti.org/app.php/document/show/27a65cf8-336e-442f-8ba1-0711cbc9c1ce>.
- Japan - United Arab Emirates BIT (2018).** Article 23. <https://edit.wti.org/app.php/document/show/805f058a-7994-4e4a-97f7-32957ebc31d1?textBlockId=962b0423-d388-4bc1-8b50-d4d700a8441b&page=2>

	<p>Brazil - Ethiopia BIT (2018). Article 17. https://edit.wti.org/app.php/document/show/170818de-5902-41ea-a63d-8fa6c86a8eec.</p> <p>Armenia - Japan BIT (2018). Article 26. https://edit.wti.org/app.php/document/show/be13d8b3-43b0-48ba-a9e1-d8b85e33f2da?textBlockId=d47fc9ff-60b4-4f81-b1ea-6cabbec54897&page=2.</p> <p>Pacific Agreement on Closer Economic Relations (PACER). Plus Chapter 12. https://edit.wti.org/app.php/document/show/cc9cb87f-7324-430a-8e91-cd6e601fd666?textBlockId=be00d7fa-c335-4c8c-b971-d19188c145b3&page=2.</p> <p>Israel - Japan BIT (2017). Article 26. https://edit.wti.org/app.php/document/show/8df6d623-f3a8-4f5c-9eb8-50630502b05b?textBlockId=97a752de-1582-4c5f-8358-71adde99f7b6&page=2.</p> <p>Morocco - Nigeria BIT (2016). Article 4. https://edit.wti.org/app.php/document/show/bde2bcf4-e20b-4d05-a3f1-5b9eb86d3b3b.</p> <p>EFTA - Georgia FTA (2016). Chapter 11. https://edit.wti.org/app.php/document/show/a4d5822e-f06b-4e5e-968e-1f3219752ac3?textBlockId=6b7939ac-078d-4437-9f30-ba105cfd3546&page=5.</p> <p>Brazil - Peru ETEA (2016). Article 215. https://edit.wti.org/app.php/document/show/b552b9a1-1f6c-4000-b3fc-c8e31dc6de1a.</p> <p>EFTA - Philippines FTA (2016). Chapter 12. Article 12. https://edit.wti.org/app.php/document/show/01d03e6c-30b7-43e4-a255-487f3517230b?textBlockId=f16e103f-231d-46c7-8d5c-bea233de1604&page=1.</p> <p>Iran, Islamic Republic of - Japan BIT (2016). Article 20. https://edit.wti.org/app.php/document/show/abaa0db3-5397-4a58-ae1a-e936eb7c6b8a?textBlockId=beba7550-ecd8-46d2-b1e0-f689e9c2eb31&page=1.</p> <p><i>Binding interpretations of underlying obligations in a treaty</i></p> <p>Article IX.2 WTO Agreement, §26 Submission from the European Union and its member States (A/CN.9/WG.III/WP.159/Add.1); Submission from the Governments of Chile, Israel, Japan, Mexico and Peru (A/CN.9/WG.III/WP.182)).</p>
Establish Cooling-Off Period Before Beginning of Arbitration / Settling Period.	This is common practice among states at the treaty level. ⁶² https://www.jus.uio.no/pluricourts/english/projects/leginvest/academic-forum/papers/2020/isds-af-mediation-paper-16-march-2020.pdf .
Technical Assistance and Capacity Building.	<p>UNCTAD. Investment Policy Framework for Sustainable Development (first launched in 2012 and updated in 2015), the Reform Package for the International Investment Regime (2018), and the recently launched International Investment Agreements Reform Accelerator (2020).</p> <p>UNCTAD Technical Cooperation. https://unctad.org/projects/formal-requests-for-technical-cooperation.</p>

⁶² “An UNCTAD database of 2577 mapped International Investment Agreements search shows 627 treaties containing a provision for Voluntary ADR (conciliation / mediation), No treaty containing a provision for Compulsory ADR (conciliation / mediation), 1813 treaties containing no provision, 2 treaties inconclusive”. Catherine Kessedjian, Anne van Aaken, Runar Lie, Loukas Mistelis, ‘Mediation in Future Investor-State Dispute Settlement’, Academic Forum on ISDS Concept Paper 2020/16, 5 March 2020.

	<p>Assistance mechanism to ensure that all disputing parties can operate effectively in a dispute context. Aid least developed and developing countries in litigation in international investment disputes and possibly in other aspects of the application of international investment law (§38 Submission from the European Union and its member States (A/CN.9/WG.III/WP.159/Add.1 and §18 Submission from the Government of Morocco (A/CN.9/WG.III/WP.161).</p> <p>World Bank Technical Assistance. https://www.worldbank.org/en/topic/investment-climate#1.</p>
International Resources.	<p>UNCTAD Investment Policy Hub. https://investmentpolicy.unctad.org/investment-dispute-settlement.</p> <p>UNCTAD Technical Cooperation. https://unctad.org/projects/formal-requests-for-technical-cooperation.</p> <p>World Bank Group, Investment Climate. https://www.worldbank.org/en/topic/investment-climate#1.</p> <p>Energy Charter Treaty. <i>Energy Charter Treaty: Model Instrument on Management of Investment Disputes</i>, CCDEC 2018 26. https://www.energychartertreaty.org/model-instrument/. Article 5. Content of Coordination. Article 6. Centralisation of Information and Transparency. Article 8. Early Alert Mechanism. Article 14. Representation of the Government in International Arbitration Proceedings or Competent. Article 18. Hiring of Legal Counsel. Article 18. Hiring of Technical Experts and Invitation of Witnesses. Article 20 Confidentiality. Article 26. Liability.</p> <p>Literature: Investor-State Dispute Prevention Strategies Selected Case Studies by USAID, APEC, 2013 (see Investment Disputes No. 35452-MP-COMEX); Retention and Expansion of Foreign Direct Investment: Political Risk and Policy Responses. https://openknowledge.worldbank.org/handle/10986/33082; Managing Investor Grievances through Retention Mechanisms, https://documents1.worldbank.org/curated/en/978811614610086665/pdf/Managing-Investor-Grievances-Through-Retention-Mechanisms.pdf</p>

Table 3. Legal Instrument Used for Institutional Setting

Legal Instrument Used for Institutional Setting	States
Act	Czech Republic; Republic of Korea
Decision	Vietnam
Decree / Proclamation	Algeria; Brazil; Chile; Dominican Republic; Ecuador; Republic of Korea
Law	Algeria; Egypt; Georgia; Kazakhstan; Oman; Peru; Rwanda
Legal Provision	Latvia
Order	China
Proclamation	Costa Rica; Ethiopia
Regulation	Hashemite Kingdom of Jordan, Kyrgyz Republic
Resolution	Belarus, Hashemite Kingdom of Jordan
Treaty / Model Treaty	Brazil; Energy Charter Treaty; United States-Mexico-Canada Agreement