



Columbia Center
on Sustainable Investment

A JOINT CENTER OF COLUMBIA LAW SCHOOL
AND THE EARTH INSTITUTE, COLUMBIA UNIVERSITY

Columbia FDI Perspectives

Perspectives on topical foreign direct investment issues

No. 273 March 9, 2020

Editor-in-Chief: Karl P. Sauvant (Karl.Sauvant@law.columbia.edu)

Managing Editor: Alexa Busser (alexa.busser@columbia.edu)

The useful institution of an investment ombudsperson*

by

Ricardo Figueiredo de Oliveira**

As part of efforts to attract, retain and expand FDI, several countries have created different grievance-redress mechanisms. One of these consists of an “investment ombudsperson,” which plays the role of a facilitator between foreign investors and the relevant public agencies to deal with their concerns. In this way, it is possible in a single government body to address investors’ issues regarding laws and administrative procedures and to handle post-investment difficulties involving government agencies in specific areas such as labor, taxation, environment, finance, and infrastructure.

The Republic of Korea’s model is a worldwide reference point for grievance redress mechanisms. The Office of the Foreign Investment Ombudsman (OFIO), a grievance-resolution center and an advocacy body for foreign investors established in 1998, has played a crucial role in improving the country’s business environment for foreign investors. After different iterations since its establishment, the OFIO now has a unique connection with the aftercare services that the Korea Trade-Investment Promotion Agency (KOTRA) offers to investors, working in a complementary way.¹ To be effective, investment ombudspersons must have high-level government empowerment, the support of the bodies involved and good governance to request detailed information from the administrative agencies and public entities deemed relevant and crucial to the resolution of foreign investor grievances.

Countries wishing to pursue Korea’s success do not necessarily need to replicate the Korean model, but they must ensure that the solutions for regulatory or administrative improvements presented by ombudspersons can be discussed and possibly adopted by a policy-making lead agency and/or the appropriate bodies within their areas of competence, ensuring impartiality and legitimacy.

In Brazil, the National Congress did not ratify the bilateral investment treaties signed during the 1990s, due to many concerns about this approach, mainly regarding the investor-state dispute-settlement (ISDS) provisions that are now under review in the

UNCITRAL.² Thus, it was necessary to elaborate a new approach toward international investment agreements: the Cooperation and Facilitation Investment Agreement (CFIA), approved in 2013 by the Foreign Trade Board (CAMEX), the Brazilian foreign trade and investment policy-making lead agency.

The foundations or pillars of CFIA go beyond protection provisions. They focus on cooperation and investment facilitation to increase confidence and investment flows, such as improving institutional governance, establishing mechanisms for mitigating risks and preventing disputes, and developing thematic agendas for investment cooperation and facilitation.

As one of the mechanisms for improving institutional governance, strengthening the investment climate and preventing disputes, CFIA introduced the investment ombudsperson concept, inspired by the Korean model. The Brazilian Direct Investment Ombudsman (DIO) was established within CAMEX, making the necessary adaptations for Brazil, a federative country.³

Unlike OFIO's structure,⁴ Brazil needed to develop its structure to meet the inherent needs of a federative country. Accordingly, the DIO coordinates a Focal Point Network comprised of main agencies and entities of the public administration at the national and subnational levels (including the investment promotion agencies) that work together to deal with investors' concerns. Thus, the DIO can handle complaints related to the federal government and to Brazil's different states, respecting their regulatory competencies.

Given that investments are made at the subnational level, ombudspersons must indeed coordinate closely with the relevant agencies and entities of subnational governments, to obtain information and their engagement to support investors. At the same time, maintaining the confidentiality of requests, inquiries and information received from investors needs to be guaranteed. To improve the Direct Investment Ombudsman institution, CAMEX is cooperating with the World Bank through a technical-assistance project grounded in analytical work, stakeholders' consultations and international experience.⁵

Over time, investment ombudspersons may identify systemic grievances reported by foreign investors related to legislation or administrative procedures that should be addressed. A specific lead agency should then be empowered to address the ombudspersons' recommendations. In the Republic of Korea, the investment ombudsperson is also chairperson of the Regulatory Reform Committee, responsible for improving regulations. Brazil has no regulatory reform committee. But the Direct Investment Ombudsman institution is represented in the National Investment Committee, which is the policy-making lead agency within CAMEX, and where it can suggest investment regulatory reforms to improve the investment climate in the country.

Therefore, investment ombudspersons are critical in providing insights to policymakers to make regulatory adjustments and undertake possible reforms to make the business environment more attractive for foreign investors. Countries should consider establishing an investment ombudsperson that can coordinate with policymakers at the national and subnational levels to best respond to investors' needs and to benefit the country's economy.

* **The *Columbia FDI Perspectives* are a forum for public debate. The views expressed by the author(s) do not reflect the opinions of CCSI or Columbia University or our partners and supporters. *Columbia FDI Perspectives* (ISSN 2158-3579) is a peer-reviewed series.**

** Ricardo Figueiredo de Oliveira (ricardo.oliveira@mdic.gov.br) is a foreign trade analyst working at the Ministry of Economy of Brazil. The author is grateful to Felipe Hees, Ivan Nimac and an anonymous reviewer for their helpful peer reviews.

¹ [Françoise Nicolas, Stephen Thomsen and Mi-Hyun Bang, "Lessons from investment policy reform in Korea," OECD Working Papers on International Investment, no. 2013/02 \(2013\).](#)

² Working Group III: Investor-State Dispute Settlement Reform – working documents available at: https://uncitral.un.org/en/working_groups/3/investor-state.

³ Established by the Decree 8663/2016. The DIO website is available at <http://oid.economia.gov.br/en>.

⁴ Available at <http://ombudsman.kotra.or.kr/eng/au/org.do>.

⁵ The World Bank Group assists governments in establishing and/or implementing their own mechanisms.

The material in this Perspective may be reprinted if accompanied by the following acknowledgment: "Ricardo Figueiredo de Oliveira, 'The useful institution of an investment ombudsperson,' Columbia FDI Perspectives, March 9, 2020. Reprinted with permission from the Columbia Center on Sustainable Investment (www.ccsi.columbia.edu). " A copy should kindly be sent to the Columbia Center on Sustainable Investment at ccsi@law.columbia.edu.

For further information, including information regarding submission to the *Perspectives*, please contact: Columbia Center on Sustainable Investment, Alexa Busser, alexa.busser@columbia.edu.

The Columbia Center on Sustainable Investment (CCSI), a joint center of Columbia Law School and the Earth Institute at Columbia University, is a leading applied research center and forum dedicated to the study, practice and discussion of sustainable international investment. Our mission is to develop and disseminate practical approaches and solutions, as well as to analyze topical policy-oriented issues, in order to maximize the impact of international investment for sustainable development. The Center undertakes its mission through interdisciplinary research, advisory projects, multi-stakeholder dialogue, educational programs, and the development of resources and tools. For more information, visit us at <http://www.ccsi.columbia.edu>.

Most recent *Columbia FDI Perspectives*

- No. 272, Wolfgang Alschner, 'Squaring bilateralism with multilateralism: What investment law reformers can learn from the international tax regime,' February 24, 2020
- No. 271, Julien Chaisse, 'The Regional Comprehensive Economic Partnership's investment chapter: One step forward, two steps back?,' February 10, 2020.
- No. 270, Paulo Cavallo, 'Learning from Brazil's bilateral investment treaties,' January 27, 2020
- No. 269, Orlando F. Cabrera C., 'The US-Mexico-Canada Agreement: the new gold standard to enforce investment treaty protection?,' January 13, 2020
- No. 268, Xavier M. Forneris, 'Political risk: Not just the investor's affair,' December 30, 2019

All previous *FDI Perspectives* are available at <http://ccsi.columbia.edu/publications/columbia-fdi-perspectives/>.