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# INTERNATIONAL DISPUTE RESOLUTION CONFERENCE 2019

**New Era of Global Collaboration**

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# Investor-State Mediation: Challenges of Detection, Prevention, and Management Systems

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## Investor-state dispute settlement (ISDS)

- Overall number of known ISDS claims to more than 850
- International Centre for Settlement of Investment Disputes (ICSID) as main forum
- Major development in international economic law
- Reshaping of international law by investment tribunals?
  
- Relative share of cases against Asia States is on the rise (India, Pakistan, Kazakhstan)
- Also, relative share of cases against developed States is on the rise Services sector is becoming the main target of investors claims

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## What are ISDS Cases About?

- Most ISDS cases concern administrative acts by the executive branches of governments affecting foreign investors

Violations (or allegations) of contracts or concessions,  
Revocations or denials of licences or permits,  
Breaches of contract,  
**Legislative acts rarely challenged.**

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## Reforming *bit by bit*

The (non)-system of international investment law still in infancy

Current fragmented state of international investment law there is neither an easy nor a quick solution to the challenges posed

However tangible improvements at reach:

Clarification of substantive rules,  
Transparency (Mauritius Convention),  
Investment Court System,  
**Detection, Prevention, and Management Systems**

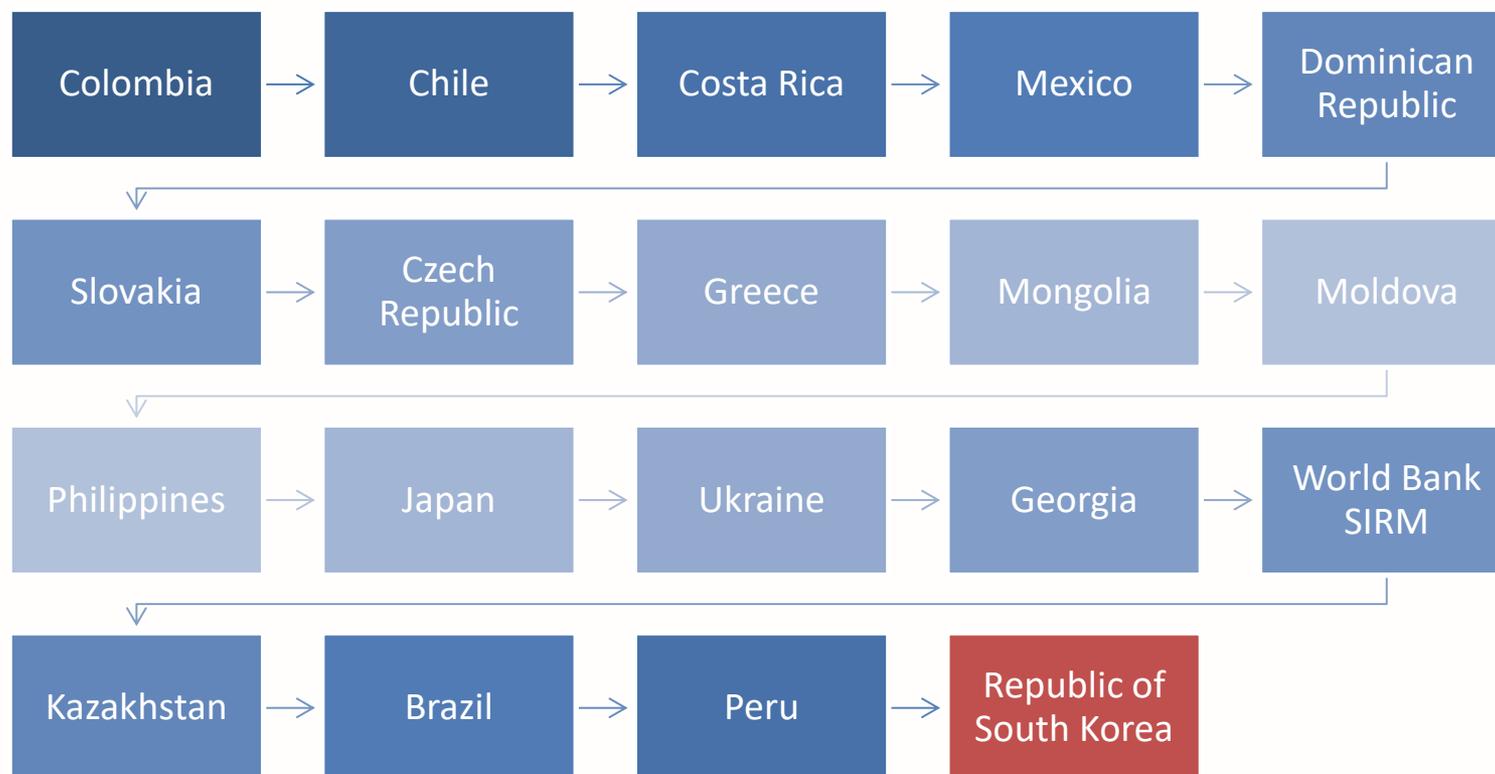
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## Investment Prevention: World Map



## Investment Prevention: The Korean example

The Investment Ombudsman is a public office with a significant degree of independence that is charged with investigating and addressing investment complaints.

The office of investment ombudsman usually resolves grievances by mediating between the investor and the state agency in question.

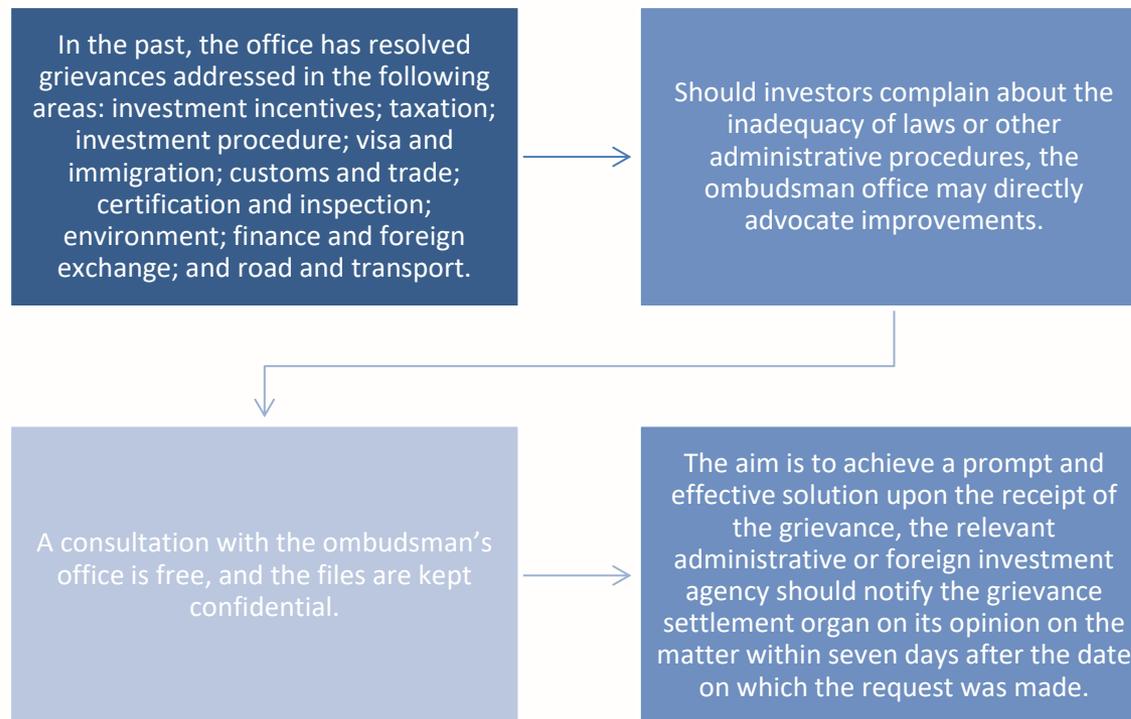
The Investment Ombudsman may also issue recommendations (binding or non-binding) to state institutions regarding the regulatory framework and the investment climate.

The involvement of the ombudsman may be beneficial for an investor due to the fact that the integrity of the institution is built upon its independence with regard to other state agencies.

Moreover, the prevention has two major advantages

- 1) maintaining negotiations concerning grievances, which are self-contained from the agency directly involved in the dispute
- 2) Negotiations on 'without prejudice' basis, prevents the investor from being discouraged to report unfavourable treatment by the state authorities

## Procedure Key features



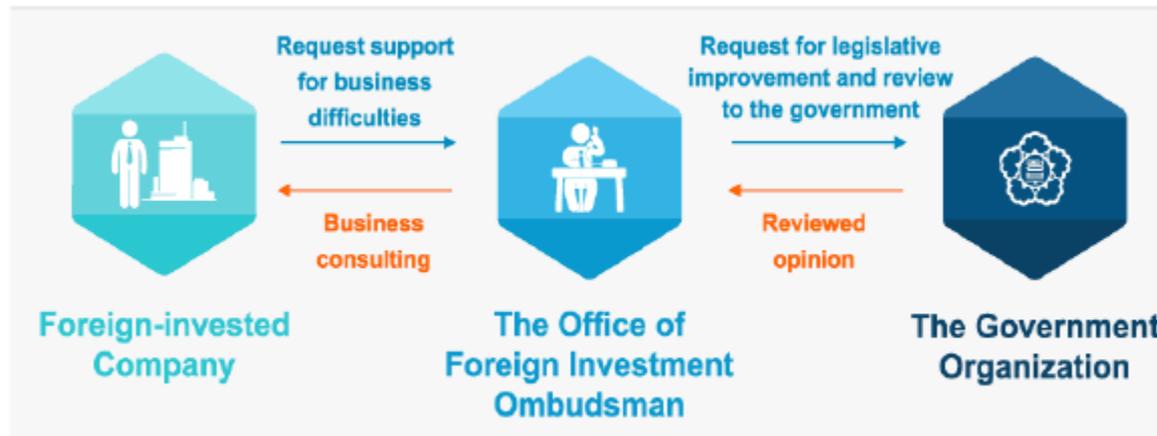
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## Procedure Key features



Source: Foreign Investment Ombudsman (KOTRA)

## Conclusion: Preventing (or reducing) future disputes before international arbitration

### First level:

Government to strengthen legal system to ensure effective compliance with international obligations,

Government must require more close coordination and cooperation between the ministries in rule-making process.

### Second level:

Establish efficient dispute prevention mechanism that can prevent a conflict from escalating to the level of a dispute

For investors, an ombud office provides an institutional interlocutor to turn to, an official channel to address issues and problems at an early stage,

can remain at the informal level but can also constitute a formal approach to the host government and a request to resolve the issue.

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*Thank you and keep in touch*



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