Report: 6th virtual meeting of the Commentary Group on a Multilateral Framework on Investment Facilitation for Development

The 6th virtual meeting of the Investment Facilitation Commentary Group took place virtually on 18 February 2021 (EDT), 15:00 to 16:30 Central European Time (CET).

The meeting focused on how to structure effective mechanisms to identify and resolve investment-related issues early, before they become a risk to the investment climate or lead to legal disputes. Good practice elements are summarized in this report, and also provided in the form of draft text as Annex III and Annex IV to this report.

The meeting was chaired by Matthew Stephenson, Policy and Community Lead, International Trade and Investment, World Economic Forum. Opening remarks were made by Priyanka Kher, Private Sector Specialist, Investment Policy and Promotion, World Bank Group. The meeting included the following panellists: Lilanie Gudeta, Legal Advisor, Ethiopian Investment Commission, Anthony L. Assassa, Board Member, European Chamber of Commerce and Industry in Lao PDR and Director of Operations, BDO Francophone West Africa, Philippe Yvergniaux, Director of International Cooperation, Business France, and Sebastian Reil, Manager, FDI Center. Concluding remarks were made by Karl P. Sauvant, Resident Senior Fellow, Columbia University/CCSI.

A list of the participating members in the meeting and the programme are attached to this report.

Discussion highlights

I. The importance of a grievance management mechanism

During the meeting, there was a consensus that the establishment of grievance management mechanisms would be useful for both developed and developing countries, and should be included in the WTO Investment Facilitation for Development Framework (IFF4D). An effective grievance management mechanism helps to prevent disputes by identifying and resolving investment-related issues early. Grievances that are not resolved can become a risk to the investment climate, affect investment retention, or can flare into legal disputes, which may be costly. Investor grievance management is a basic investment facilitation measure. From World Bank data, it appears that most grievances arise from a lack of coordination and cooperation among the different government agencies and from a lack of awareness and understanding by government officials of the legal and economic implications of their day-to-day actions on foreign investors. When governments do not take into consideration the effects that their actions have on investors, investments may be withdrawn. This especially affects small and medium-size enterprises (SMEs), as they do not have the financial stability to continue operations when faced with policy and regulatory challenges, unlike larger multinational enterprises (MNEs) that may continue to operate.

II. Structuring grievance management mechanisms

i. The World Bank's investment grievance management tool

The World Bank developed an investor grievance management tool that provides host country governments with a minimum institutional capacity to detect investor-related issues and to resolve them in a timely and effective manner. This is especially important to identify which issues might be high-risk and prioritise addressing those so they do not risk becoming legal disputes with commensurate financial and reputational costs or lead to divestment. Although grievance management mechanisms require country specific customisation, several common elements have been identified, as described below.

Institutional set up: The establishment of a lead agency that is politically empowered through official designation. There is an advantage in having the lead agency be independent from other parts of the government, since this creates separation from the office or institution that may have created the grievance. However, it was stated that often governments prefer to take corrective actions in-house, confidentially, and consequently may not establish an independent lead agency. In any event, there should be an escalation mechanism that can address issues that are not resolved or that require a political decision. An escalation mechanism is important from an enforcement perspective, as there may need to be adjudication by a higher body.

Operating procedures for issues management: All issues and related information should be captured, using a tracking tool. Given limited resources and capacity, there should be a filtering mechanism: complaints with a higher risk of turning into a dispute or resulting in divestment should be prioritised. In this regard, economic and legal assessments should be made regarding potential legal and economic implications if an issue is not resolved. It was noted during the discussion that, if prioritisation is assessed by economic impact or investment size, SMEs will usually not qualify; however, these are the companies that need assistance the most, as they do not have many resources. As stated above, in the event that there is no resolution, there should be a possibility of escalating the complaint to a higher body. Follow-up on implementation should be taken by the lead agency.

Impact management: A tracking tool assessing the impact of resolved issues, including investment and jobs retained and the number of grievances resolved overall, can be established.

ii. Ethiopia case study - investment grievance handling from a developing country's perspective

Ethiopia has implemented a grievance management system that includes a systematic and formalised procedure to detect, track and manage grievances. The aim of the system is to improve the retention and expansion of foreign direct investment (FDI) and address grievances before they escalate into investment disputes. There is a lead entity that received the mandate, the Grievance Management Unit, which reports directly to the Commissioner within the Ethiopian Investment Commission (EIC). The unit has the mandate of detecting, analysing and proposing solutions for issues related to established investors. Investor issues that fall within the mandate of the Unit must meet the following three criteria:

a) ***The grievance is claimed against a federal government executive body's final administrative decision.*** The reason is that Ethiopia's federal structure means it cannot intervene in regional matters. This raises a challenge, as grievances may be brought about through the actions of regional governments. Although, formally, the Unit cannot address regional grievances, the EIC can informally provide assistance through facilitating resolution. As a practical matter, some of the grievances in Ethiopia were resolved in an informal manner with the Unit's help, due to informal relationships with regional officers.

b) ***The grievance is based on an action that could violate or affect rights and protections guaranteed to investors in domestic laws and/or in international investment treaties.***

c) ***Resolving grievances requires a policy/regulatory/administrative intervention.***

iii. France case study - investment grievance handling from a developed country's perspective

Business France puts substantial focus on aftercare and policy advocacy through the following mechanisms:

Regional collaboration: Maintaining a strong relationship with regional partners.
Policy advocacy: Business France publishes a yearly report that includes proposed improvements to investment-related regulations and operations based on issues and grievances raised by investors. Many proposals are taken into account by the government. This is a preventive approach for grievance management.
Review of new regulations: Before a new regulation is put into effect, a review process must be performed to analyse the implications of the regulation on the attractiveness and economic competitiveness of France. This also changes the approach of the agency towards investors. The agency needs to see investors as customers that need services and assistance in order to conduct their business.
Aftercare: Business France puts significant emphasis on aftercare. Increasing the amount of aftercare provided increases investor confidence in the investment regime.

III. Grievance management elements that should be included in the IFF4D

Key point of contact: Investors need to have a contact person to whom they can turn once an issue/grievance occurs. It was mentioned that independence of the key point of contact is important.
Alert mechanism and a clear and efficient process with time limits: There should be an alert mechanism to catch issues/grievances early (see Annex IV). In order to address the issue in a speedy manner, there should also be a clear and efficient process within the agency, with time limits for different stages.
Clear process for coordination as well as information sharing: Usually, investors deal with multiple agencies, and the grievance can be related to multiple governmental agencies. In order to deal with this issue, the secondment of investment promotion agencies officials into related ministries or *vice versa* can assist. Good cooperation among government agencies is also important.
Regionalisation: Having governmental contact persons or offices at the regional level is important as it positions the relevant investment officials closer to investors' operations. The problem with this approach is the need for higher capacity in the lead agency. In any event, there should be transparency on responsibilities and activities among the involved agencies, both at the national and regional levels.
Digitalization*:* The streamlining of processes and the creation of an online platforms where investors can track the status of their complaints should be undertaken.

For an example text of good practice elements for the design of an Investment Grievance Mechanism, see Annex III.

Annex I: Participating members in the 5th Commentary Group meeting

First Name	Last Name	Affiliation
Anthony L.	Assassa	Board Member, European Chamber of Commerce and Industry in Lao PDR and Director of Operations, BDO Francophone West Africa
Mohammed	Baba	Investor Relations Department, Nigerian Investment Promotion Commission
Simon	Galpin	Managing Director of the Bahrain Economic Development Board
Yofi	Grant	Chief Executive Officer, Ghana Investment Promotion Centre (GIPC), Ghana
Khalil	Hamdani	Visiting Professor, Lahore School of Economics
Joseph	Hanson	Senior investment promotion officer, Gahana Investment Promotion Centre (GIPC)
Hazem	Mulhim	Chief Executive Officer, EastNets
Sebastian	Reil	Senior FDI Consultant, FDI Center
Karl P.	Sauvant	Resident Senior Fellow, Columbia University, CCSI
Matthew	Stephenson	Policy and Community Lead, International Trade and Investment, World Economic Forum
Markus	Thill	President, Africa, Robert Bosch
Philippe	Yvergniaux	Director of International Cooperation, Business France
Speakers		
Anthony L.	Assassa	Board Member, European Chamber of Commerce and Industry in Lao PDR and Director of Operations, BDO Francophone West Africa
Lilanie	Gudeta	Legal Advisor, Ethiopian Investment Commission
Priyanka	Kher	Private Sector Specialist, Investment Policy and Promotion, World Bank Group
Sebastian	Reil	Senior FDI Consultant, FDI Center
Karl P.	Sauvant	Columbia Center on Sustainable Investment (CCSI)
Matthew	Stephenson	Policy and Community Lead, International Trade and Investment, World Economic Forum.
Philippe	Yvergniaux	Director of International Cooperation, Business France
Secretariat		
Edgard	Carneiro Vieira	Policy Analyst and Engagement Specialist, International Trade and Investment, World Economic Forum
Yardenne	Kagan	Project Officer, Investment Facilitation for Development ITC/DIE project, International Trade Centre

Quan	Zhao	Trade Policy Advisor, Division for Market Development, International Trade Centre

Annex II: Invitation and agenda

d·i·e Deutsches Institut für Entwicklungspolitik

German Development Institute

International Trade Centre

WORLD ECONOMIC FORUM

COMMITTED TO IMPROVING THE STATE OF THE WORLD

INVITATION: 18 February 2021, 6th VIRTUAL MEETING OF THE COMMENTARY GROUP ON A MULTILATERAL FRAMEWORK ON INVESTMENT FACILITATION FOR DEVELOPMENT

Dear Colleague,

We would like to invite you to participate in the 6th meeting of the Investment Facilitation Commentary Group, to take place virtually on 18 February 2021, from 09:00 to 10:30 Eastern Daylight Time (EDT), 15:00 to 16:30 Central European Time (CET).

As a reminder, the Commentary Group's mandate is to provide input on the content of the framework being developed at the WTO to facilitate cross-border investment and increase its development impact.

The 6th meeting will focus on how to structure effective mechanisms to identify and resolve investment-related issues early, before they become a risk to the investment climate or even a legal dispute.

As background documents, please find the following attached:

a) The undated *Inventory of Concrete Measures to Facilitate the Flow of Sustainable FDI*, available at https://www.intracen.org/itc/Investment-Facilitation-for-Development/.
b) The summaries of the 1st, 2nd, 3rd, 4th and 5th Commentary Group meetings (which were shared with WTO negotiators), available at https://www.intracen.org/itc/Investment-Facilitation-for-Development/.
c) The Informal Consolidated Text of the WTO Structured Discussions on Investment Facilitation for Development, February 4, 2021, available here. For the meeting you might want to go over Section IV, 18: Contact/Focal points/Ombudsperson types and mechanisms.

As with previous meetings, a summary of the discussions will be made available to the WTO negotiations on Investment Facilitation for Development.

Moderator: **Matthew Stephenson**, Policy and Community Lead, International Trade and Investment, World Economic Forum

Opening remarks: **Priyanka Kher**, Private Sector Specialist, Investment Policy and Promotion, World Bank Group

Panelists:

Lilanie Gudeta, Legal Advisor, Ethiopian Investment Commission

Anthony L. Assassa, Board Member, European Chamber of Commerce and Industry in Lao PDR and Director of Operations, BDO Francophone West Africa

Philippe Yvergniaux, Director of International Cooperation, Business France

Sebastian Reil, Manager, FDI Center

Concluding remarks: **Karl P. Sauvant**, Resident Senior Fellow, Columbia University/CCSI

To join the meeting, kindly click on the link below shortly before 15:00 am CET on 18 February and follow the instructions. If you are not able to connect online, you could connect using the dial-up options provided at the end of this email.

Join Zoom Meeting

If you face any technical difficulties or have general questions, please do not hesitate to contact Yardenne Kagan (ykagan@intracen.org).

With best regards,

Karl P. Sauvant
Columbia University/CCSI
1 212 593-4294
karlsauvant@gmail.com

Matthew Stephenson
World Economic Forum
41 79 265 8986
Matthew.Stephenson@weforum.org

cc Rajesh Aggarwal (ITC), Axel Berger (DIE), Sean Doherty (WEF), Yardenne Kagan (ITC), Jean-Sébastien Roure (ITC), Quan Zhao (ITC)

Bios of speakers

Anthony L. Assassa

Anthony L. Assassa is an international expert covering Asia and Africa coverage with professional services offered to investors and businesses in Audit, Accounting and Tax, Advisory fields. He is currently serving as Board Member of the Executive Committee of the EuroCham Laos (the European Chamber of Commerce and Industry in Laos) and as Director for an international audit firm in Africa. With a focus on implementing executive plans and views in a context of increasing uncertainty, his references include the OECD, the Customs and Tax Authority of Congo DRC, Cameroon and Comoros, and multinationals operating in Energy (Renewables, Oil and Gaz), Mining, Financial Services, Consumer Goods and Logistics.

Lilanie Gudeta

Lilanie Gudeta is a legal advisor at the Ethiopian Investment Commission (EIC), currently leading the Investment Grievance Management Procedure unit at EIC. She also works on various assignments as per the direction of the EIC management with a special focus on the Industry Parks Division. Prior to joining the EIC, she has served in litigation and legal consulting for various private companies in Ethiopia. She holds a Master's in Business Law and an MA in Environment and Sustainable Development.

Priyanka Kher

Priyanka Kher is a Private Sector Specialist in the Investment Climate Unit of the World Bank Group. She leads research and policy advisory projects in developing countries in Asia and Africa on investment climate reforms, dispute prevention, investment retention and expansion and international trade and investment law. Prior to joining the World Bank Group, she practiced law at law firms in India and Singapore. She has also worked with UNCTAD and the Commonwealth Secretariat on investment policy. She holds a master's degree in law from Harvard Law School and is a dual qualified attorney admitted to practice in New York and India.

Sebastian Reil

Sebastian Reil is a Manager at FDI Center, a leading advisory firm in the field of foreign direct investment. He works with countries, regions, cities, special economic zones, and industrial parks from around the world to develop and implement successful strategies for attracting and retaining investment. Previously, he worked as a management consultant and as a researcher at a think tank on topics of industrial development. He holds master's degrees from Peking University and the University of Groningen as well as a bachelor's degree from Heidelberg University.

Karl P. Sauvant

Karl P. Sauvant introduced the idea of an International Support Program for Sustainable Investment Facilitation in the E15 Task Force on Investment Policy in 2015. From there, the proposal was taken forward in the WTO. He has written extensively on this subject (see https://ssrn.com/author=2461782), participated in various events relating to it and currently assists the ITC and DIE on a project on Investment Facilitation for Development. He retired in 2005 as Director of UNCTAD's Investment Division and established, in 2006, what is now the Columbia Center on Sustainable Investment (CCSI). In 2012, he stepped down as its Executive Director, to focus his work, as a CCSI Resident Senior Fellow, on teaching, research and writing.

Matthew Stephenson

Matthew Stephenson is Policy and Community Lead for International Trade and Investment at the World Economic Forum, where he manages the Global Investment Policy and Practice initiative. Previously, he worked at the IFC, where he led the workstream on outward FDI. He has also worked at the OECD on Africa and investment and served as a diplomat for the U.S. Department of State, leading the economic team on Afghanistan and managing economic programs in the Middle East. He is a member of the T20 Task Force on Trade and Investment. He has a PhD from the Graduate Institute in Geneva, a master's from the Harvard Kennedy School and a bachelor's from Oxford University.

Philippe Yvergniaux

Philippe Yvergniaux has 27 years' experience in FDI attraction, as international director then general manager of French regional IPAs from 1993 to 2005, then country director at Invest in France Agency for the British Isles (2005-2009) and North America (2009-2015); in January 2015 he was appointed Director of International Cooperation at Business France. In this role, he is charged with leading efforts to develop partnerships with, and provide technical assistance to, trade and investment promotion agencies throughout the world. Prior to 1992, Philippe worked as a civil engineer on rural development projects in Africa, Indonesia, and Haiti. He is married with 4 children and 4 grandchildren.

Annex III: Example text of good practice elements for the design of an Investment Grievance Mechanism

INVESTMENT GRIEVANCE MECHANISM

Each Member shall [to the extent practicable and] in a manner consistent with its legal system designate, maintain or establish a mechanism with the responsibility to receive, resolve and track grievances. The mechanism shall, inter alia, exhibit the following good practice principles:

(a) A designated 'lead agency' that as a first step would determine if an investor complaint constitutes a grievance or not (a grievance being actions that have broken legal commitments and thus for which there could be legal consequences or lead divestment/loss of investment)'

  (i) If the complaint does not constitute a grievance, then it would be referred to the aftercare mechanism;

  (ii) If the complaint does constitute a grievance, then it would be referred to the IGM.

(b) The lead agency would be responsible for implementing the IGM empowered with problem-solving methods to coordinate with relevant government agencies, obtain information from them and effectively solve grievances (examples of methods are: simple exchanges of information, peer pressure or legal advisory opinions);

(c) Continuous information sharing by the lead agency to other institutions on content and breadth of the obligations included in different international investment agreements and domestic law;

(d) Early Alert Mechanisms that enable the lead agency to learn about grievances as early as possible, either passively or actively (e.g., coupled with aftercare programs);

(e) Filtering and assessment of grievances to allow for prioritization, based on two types of assessment: economic (value and jobs at risk, potential tax losses) and legal (potential current and future liability arising from the grievance, impact on the investment project);

(f) Escalation mechanisms that foresee elevation of a grievance to political decision-makers if it cannot be solved at the technical level;

(g) Use of a tracking tool which quantifies the investment at risk, retained, expanded or lost, allowing to evaluate the effectiveness of the IGM and to inform policy advocacy.

(h) Sustained financial resources and staffing with sufficient legal and economic expertise.

Source: Research by the World Bank Group.

Annex IV: Investment alert mechanism

Identifying and addressing investors' complaints at an early stage is key to prevent the escalation of complaints to legal grievances and to investor-state disputes. It also enables governments to respond to complaints in a transparent, fair and timely manner, and it improves investors' perceptions of investor protection.

"Early warning" systems have been piloted by ITC in trade through its Trade Obstacle Alert (see, https://ntmsurvey.intracen.org/what-we-do/trade-obstacle-alert/). Such a mechanism involves setting up an online platform to collect complaints information, determining whether these complaints could constitute legal grievances, identifying patterns of complaints, and addressing complaints through cooperation among the regulatory agencies.

Example text for an investment alert mechanism provision

Investment Alert Mechanism

1. Each member shall, to the extent practicable, establish an Investment Alert Mechanism to address investment-related complaints before they become legal grievances. The Investment Alert Mechanism shall be comprised of the agencies responsible for investment and shall ensure cooperation of the agencies involved.

2. The Investment Alert Mechanism shall:
- provide channels, such as a hotline or an online platform for parties in an investment, including investors and actors affected by the investment, to transmit information about complaints related to the investment;
- register complaints in a database and circulate information about complaints to the relevant investment agencies;
- identify which complaints have the potential to be become legal grievances as those actions contravene legal commitments, and prioritize resolution of these grievances, such as through an Investor Grievance Mechanism;
- provide timely remedy to complaints, including resolution through the coordination among the investment agencies, or providing guidance on the process to remedy complaints;
- to the extent practicable, make publicly available information about complaints and grievances and actions taken to address them.

Source: Karl P. Sauvant, Matthew Stephenson, Khalil Hamdani, and Yardenne Kagan, "An Inventory of Concrete Measures to Facilitate the Flow of Sustainable FDI: What? Why? How?" (Geneva and Bonn: International Trade Centre and German Development Institute / Deutsches Institut für Entwicklungspolitk, November 2020), available here.