Ombudsman Services for Foreign Investors As a Dispute Prevention and FDI Promotion Measures

Submitted by: Korea Trade-Investment Promotion Agency (KOTRA)
Ombudsman Services for Foreign Investors
as a Dispute Prevention & FDI Promotion Measures

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Order of Presentation

I. Shift from Foreign Debt Financing to FDI Attraction Regime
II. Importance of Aftercare Services
III. Achievements of the Ombudsman’s Office
IV. Some Cases of Grievance Resolutions
V. Upgrades to the Ombudsman System
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I. Shift from Foreign Debt Financing to FDI Attraction Regime

- Little reliance on FDI until the Asian financial crisis in 97/98
- Resorting to foreign licensing to cultivate indigenous capability through reverse engineering of imported capital, parts, and finished goods, etc.
- Sharp contrast to FDI-led industrialization models such as Malaysia and other developing nations
- One of the lowest FDI to GDP ratios in the world
Korea’s Low Level of FDI: Traditional Reliance on Foreign Borrowing

### International Comparison of Inbound FDI

<table>
<thead>
<tr>
<th></th>
<th>Inflow of FDI/Total Fixed Capital Formation (%)</th>
<th>Inward Stock of FDI as a Percentage of GDP</th>
</tr>
</thead>
<tbody>
<tr>
<td>Developed Economies</td>
<td>13.4</td>
<td>17.1</td>
</tr>
<tr>
<td>Developing Economies</td>
<td>13.0</td>
<td>13.1</td>
</tr>
<tr>
<td>EU</td>
<td>19.4</td>
<td>23.4</td>
</tr>
<tr>
<td>UK</td>
<td>37.2</td>
<td>37.0</td>
</tr>
<tr>
<td>US</td>
<td>9.4</td>
<td>10.9</td>
</tr>
<tr>
<td>Netherlands</td>
<td>5.2</td>
<td>71.0</td>
</tr>
<tr>
<td>Africa</td>
<td>27.3</td>
<td>27.0</td>
</tr>
<tr>
<td>Asia</td>
<td>11.4</td>
<td>11.0</td>
</tr>
<tr>
<td>Latin America</td>
<td>11.4</td>
<td>14.4</td>
</tr>
<tr>
<td>China</td>
<td>6.4</td>
<td>6.0</td>
</tr>
<tr>
<td>Hong Kong</td>
<td>108.5</td>
<td>130.4</td>
</tr>
<tr>
<td>Malaysia</td>
<td>18.6</td>
<td>20.6</td>
</tr>
<tr>
<td>South Korea</td>
<td>1.8</td>
<td>0.9</td>
</tr>
<tr>
<td>Singapore</td>
<td>90.2</td>
<td>78.7</td>
</tr>
<tr>
<td>Thailand</td>
<td>16.2</td>
<td>17.1</td>
</tr>
</tbody>
</table>

UNCTAD, World Investment Report 2009

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Korea’s Shift Towards FDI Attraction

- Under IMF direction and WTO principles, Korea switched to a proactive in-bound promotion of FDI to overcome shortage of foreign exchange during Asian financial crisis of 1997/8

- Under the Lee Myung-Bak administration, Korea is now more engaged than ever in such mega-trends as the globalization of ICT and the drive to free trade
  - Cross-border movement of goods, service and investment
  - Fragmentation of production and supply chains
  - Korea’s rush towards outbound FDI due to rise of China
  - Making Korea as a business hub in Northeast Asia
Priority Agenda of Lee Myung-Bak Government

- Lee Myung-Bak Government has set a business-friendly environment as a top national priority geared towards a knowledge-based economy.

- Presidential Council on National Competitiveness was established to address the issue of FDI attraction by inviting heads of foreign business associations in Korea as regular members.

II. Importance of Aftercare Services
As reinvestment by existing foreign companies shared more than 50 percent of total inbound FDI, the aftercare service is becoming increasingly important and pointed out as an effective tool for cross-border investment facilitation by the UNCTAD, OECD and APEC.

Trends of Korea’s FDI

Source: The Ministry of Knowledge Economy

Total Foreign-invested Companies Included in the Fortune 500 Listed in Korea

<table>
<thead>
<tr>
<th>Year</th>
<th>Total</th>
<th>F 500</th>
<th>EUROPE</th>
<th>ASIA</th>
<th>NORTH AMERICA</th>
</tr>
</thead>
<tbody>
<tr>
<td>2002</td>
<td>10,318</td>
<td>223</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2003</td>
<td>11,484</td>
<td>247</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2004</td>
<td>12,955</td>
<td>263</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2005</td>
<td>14,771</td>
<td>264</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2007</td>
<td>14,583</td>
<td>245</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
The creation of friendly attitude and reputation from the foreign investors in Korea through word of mouth, hence having significant influence over the decision-making of the new foreign investors.

One of the best policies for FDI is to offer quality aftercare services.

Responsible Partner Award given by the EUCCK (December 8, 2008)
- Investment Ombudsman was honored with the Responsible Partner Award, given by the European Union Chamber of Commerce in Korea at their 2008 Korea-EU Industrial Cooperation Day awards ceremony for his efforts to assist companies from Europe pursue business in Korea.

The aftercare service for the foreign-invested companies is one of the most effective core strategies in the foreign investment promotion.

III. Achievements of the Ombudsman’s Office

“Both grievance resolution and aftercare services tend to prevent potential legal disputes!”
Historical Background

- Oct. 1999  Office of the Foreign Investment Ombudsman (OFIO) was established by the Foreign Investment Promotion Act. - Staffed with “Home-Doctors,” specialists in taxation, tariffs, construction, labor, Finance, law, IPR, technology, etc.

- May 2006  OFIO strengthened by the reorganization of Invest Korea

- May 2006  Dr. Choong Yong Ahn appointed the second Foreign Investment Ombudsman

- Oct. 2007  OFIO received WAIPA (World Association of Investment Promotion Agency) Excellence Award

- Dec. 2008  OFIO also received the Responsible Partner Award from EUCCK

- June. 2009  Dr. Choong Yong Ahn reappointed the second term of Foreign Investment Ombudsman

- June. 2010  Dr. Choong Yong Ahn was appointed as Chairman of the Presidential Regulatory Reform Committee

Investment Ombudsman Aftercare Services

- Foreign Investment Ombudsman is appointed by the President of Republic of Korea on the recommendation of the Minister of Knowledge Economy

  - Valuable role as an advocate in resolving difficulties on behalf of foreign investors, thus providing unobstructed paths for optimum business performance

  - Foreign investment promotion through rationalization and improvement of the investment system, customs and practices of Korea.
Ombudsman Appointed as Chairman of the Presidential Regulatory Reform Committee

The Chairmanship is expected to bolster the Ombudsman's role of improving foreign investment environment by reviewing new regulations and pursuing regulatory reforms.

Serves as a Member of the Presidential Council on National Competitiveness

Ombudsman has expressed a wide range of recommendations on deregulation to remove existing impediments to foreign investment.

Membership in the PCNC allows Ombudsman to address grievance issues directly to various ministers and heads of relevant government authorities.
Organization

CEO of KOTRA

Invest KOREA

Overseas
Strategy & IR
Promotion Team
Support Office
Aftercare Team

39 Overseas Offices (KBC)
3 teams
4 teams
3 teams
1 team

Identification Planning Promotion Support Aftercare

Invest KOREA

Attracting FDI

- Promoting FDI in Korea (Discovering potential overseas investors)
- Providing administrative support for FDI attraction
- Facilitating foreign business entry and establishment
- Conducting surveys on investment conditions in Korea and PR activities
- Improving investment environment

License/Permit Applications
FDI Reporting
Project Manager
One-Stop Service

Foreign-invested Firm Registration
**Aftercare Services by Investment Ombudsman within KOTRA**

**Role of Investment Ombudsman**
Investment Ombudsman's effort in his role of foreign investment promotion, through rationalization & improvement of the investment system, customs and practices of Korea.

**Contribution to the Sustainable Growth of the Korean Economy**

**Aftercare Services of Ombudsman’s Office**
The Ombudsman Office’s “Home Doctor” system delivers one-stop services to resolve a variety of grievances.

http://www.i-ombudsman.or.kr
Various Approaches to Grievances

Preemptive Measures to Prevent Grievances

Meetings with foreign-invested companies and relevant government officials have been held as often as possible.

These meetings served as a platform for compiling difficulties and complaints from the foreign-invested companies and reinforced networking between the local government authorities and relevant FDI companies.

Grievance Resolution Record

Resolution Rate (%)

<table>
<thead>
<tr>
<th>Year</th>
<th>Resolution Rate (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2000</td>
<td>27.2%</td>
</tr>
<tr>
<td>2001</td>
<td>428</td>
</tr>
<tr>
<td>2002</td>
<td>103</td>
</tr>
<tr>
<td>2003</td>
<td>144</td>
</tr>
<tr>
<td>2004</td>
<td>112</td>
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<tr>
<td>2005</td>
<td>102</td>
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<td>2006</td>
<td>96</td>
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<tr>
<td>2007</td>
<td>87</td>
</tr>
<tr>
<td>2008</td>
<td>92</td>
</tr>
<tr>
<td>2009</td>
<td>94</td>
</tr>
</tbody>
</table>

Unit: Cases

Source: Office of the Foreign Investment Ombudsman
Performance of Grievance Resolution (2009)

Grievance Filing by Category (Unit: % of Case, 2009)

- **Investment Incentive**: 11%
- **Investment Process**: 9%
- **Taxation & Tariffs**: 16%
- **Others**: 29%
- **Finance & F/X**: 4%
- **Construction**: 10%
- **Labor & HR Management**: 10%
- **Certification & Inspection**: 6%
- **Visa & Immigration**: 7%

Recently, taxation and tariffs, and investment incentives replaced labor issues as the most frequently filed grievances, although labor issues still have the biggest impact on Korea's FDI environment.

Grievance Resolution Performance (Unit: Number of Case, 2009)

<table>
<thead>
<tr>
<th>Classification</th>
<th>System Improvement</th>
<th>Administrative Intervention</th>
<th>In-house Resolution</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>No. of Cases Filed</td>
<td>24</td>
<td>62</td>
<td>279</td>
<td>365</td>
</tr>
</tbody>
</table>

Source: Office of the Foreign Investment Ombudsman

Ombudsman’s Activities (Major Events in 2009)

**2009 Job Fair for Foreign Companies**
- **Date**: November 6 to 7, 2009
- **Venue**: COEX, Seoul
  - Highly effective to recruit qualified employees
  - Golden opportunity to advertise corporate brand

**2009 CEO Forum**
- **Date**: November 25th, 2009
- **Venue**: Ritz Carlton Hotel, Seoul
Some Cases of Grievance Resolutions

Grievance Resolution Cases (1)

Blackberry Services Enter Korean Market

Company T’s Complaint

Obligatory installation of WPI (Wireless Internet Platform for Interoperability) for every mobile internet-capable communications device sold in Korea to enhance competitiveness of Korea's IT sector.

Consequently, Blackberry service, with no need for WPI, was banned from launching its service in Korea.

Ombudsman’s Actions

Ombudsman endeavored for almost two years to bring the matter to the priority attention of the Prime Minister, Senior Secretaries at Blue House, Minister of MOCT, and the floor leaders of the National Assembly.

The regulation was considered a matter of unreasonable enforcement of domestic standards and a typical non-tariff barrier.

Result

Company T obtained business approval for corporate users of Blackberry services.

PDA phones have been granted an exemption from the WPI requirement.
Grievance Resolution Cases (2)

Most High-tech Firms Remained in a New City Development (I)

Investor Complaints in Dongtan New City

Many of the foreign-invested companies in Dongtan City were unexpectedly forced to move their plants due to its new city development plan with enlarged residential area.

Ombudsman’s Actions

- Ombudsman underwent a series of joint meetings with the relevant government authorities including the Prime Minister, Ministry of Land, Transport and Maritime Affairs and Korea Land Corporation.

Result

- The urban-type, high-tech industries were allowed to stay in the area.

Grievance Resolution Cases (3)

Non-tax Payment by Foreign Companies reduced substantially (II)

Additional Investor Complaints in Dongtan New City

These remaining companies were subjected to non-tax payment due to expected capital gains of factory sites as nearby land becomes high rise residential area.

Ombudsman’s Actions

- Ombudsman underwent again a series of joint meetings with the relevant government authorities including the Prime Minister, ministers and senior secretaries to the president to mitigate unexpected tax burden on the part of foreign investors.

Result

- The non-tax payment imposed on the remaining companies was reduced by 89% (April 15th 2009 by MOSF), which they could pay in installments.
Grievance Resolution Cases (4)

Verdict of the first trial overturned to get refund

Company O’ Complaint
Following the bankruptcy of an importer that rented liquid cargo storage tanks, foreign companies in the storage tank industry were sued for compensation in the amount of 9 billion KRW.

Ombudsman’s Actions
- OIO collected extensive evidence on international cargo transportation customs and practices through a series of interviews with companies in the relevant industries, research of overseas cases, and visits to Japan, HK, Netherlands and Singapore.
- Published a policy report on international best practices.

Result
- 9 billion KRW was refunded
- The High Court has taken the publication as admissible evidence and overturned the judgment of the first trial based on international customs and practices.

Grievance Resolutions Cases (5)

Post-Imposition of Tariffs on Tariff-exempted Capital goods was cancelled

Company T’s Complaint
The tariff exemption system on capital goods purchased within 3 years up to registered capital amount from the date of bringing in the investment capital is allowed as an incentive for FDI promotion. This system was interpreted contrary to its original objective on the grounds of a high court verdict applied to an M&A case.

Ombudsman’s Actions
- Ombudsman argued that the incentive system was misinterpreted to the point of incoherence to the Custom Appeal Committee and high level government authorities.

Result
- The foreign company got the refund for the tariff paid (Dec. 30th 2008)
- Seoul Main Customs Office decided in the capital goods purchased even in the case of green field FDI should be excluded from tariff exemption. Hence, Customs imposed a tariff of 3.7 billion KRW, which was originally exempted (Oct. 2008).
Fingerprinting Required in Accusation CasesFiled by Labor Unions

**Company M's Complaint**

When labor law violation cases are filed by labor unions, non-Korean CEOs are required to have all their fingerprints taken every time they’re called in for investigation while Koreans are not.

- If a labor union files several cases against its non-Korean employer, abusing this law, the employer would be subject to fingerprinting numerous times, leading to a violation of human rights as well as a negative influence on FDI attraction.

**Ombudsman’s Actions**

The Ombudsman proposed revision of the practice to relevant agencies including the Korean National Policy Agency.

**Result**

With the Ombudsman’s proposition accepted, now fingerprinting would take place only once.

Difficulties in Importing Food Product Materials Newly Subject to Inspection

**Company A's Complaint**

As part of an effort to curb the spread of foot-and-mouth disease, the National Veterinary Research and Quarantine Service (NVRQS) announced all imported food product materials containing egg content would be subject to inspection by the Korean Customs Service upon entry into the country.

- As a result, a foreign-invested company importing premix containing egg flour faced a possible suspension of production due to the lengthy delay in receiving the shipment.

**Ombudsman’s Actions**

Ombudsman brought the issue to the attention of relevant government officials.

**Result**

Pre-pasteurized premix was made an exception to the inspection requirement, allowing the company to obtain its shipment on time.
Grievance Resolution Cases (8)

Grievance Related to Introduction of New Haechi Taxis by City of Seoul

Automaker’s Complaint

The Seoul Metropolitan Government announced its plan to change the color of commercial taxis to orange starting Feb. 1, 2010 as part of its initiative to transform Seoul into a global design city.

Unlike local automakers, foreign automakers would require at least one year of preparation to introduce the new color.

⇒ Therefore, they requested postponing the introduction date of new taxis. However, the request was rejected by the city of Seoul.

Ombudsman’s Actions

In an effort to resolve the issue, the Ombudsman organized a meeting between relevant automakers and the Seoul Government.

⇒ The Ombudsman also requested the cooperation and support of the Seoul Metropolitan Government and Prime Minister’s Office.

Result

The introduction date of new taxis was postponed to after August 2010 for Automaker R.

Grievance Resolution Cases (9)

Difficulties in Constructing Oil Tank Facilities

Company O’s Complaint

Yeosu Regional Maritime Affairs and Port Office requested the project plan of oil tank storage and jetty facilities to shift near to the coast, leading to increased costs on the part of the foreign-invested company constructing the facilities.

Ombudsman’s Actions

The Ombudsman visited the Ministry of Land, Transport and Maritime Affairs (MLTM) and Yeosu Regional Maritime Affairs and Port Office to discuss the issue.

Result

An agreement was made to conduct a maritime transport safety evaluation to finalize the plan for the facilities.
Grievance Resolution Cases (10)

Delay in Launching Factory Construction

Company E’s Complaint
A foreign-invested company faced difficulties in launching the construction of a factory site, faced a refusal of the expropriation of private land, leading to the delay by the city of Cheonan to grant permission for the factory construction.

Ombudsman’s Actions
The Ombudsman discussed the issue with the acting governor of Chungnam Province.

Result
Taking into account the planned expropriation of land, the city of Cheonan granted permission to launch the construction.

V. Upgrades to the Ombudsman System
Strengths of the Ombudsman System

- Credibility and Facility:
  - Civilian status of Foreign Investment Ombudsman and Home Doctors
  - Implementation of a friendly, objective approach
  - Strict confidentiality of sensitive information concerning grievances

- Objectivity and Flexibility:
  - Bridging the gap between government bodies responsible of granting permissions and licenses and foreign investors who often have a tendency to avoid direct contact with government

- Operation of Home Doctor System:
  - One-on-one, one-stop services provided by Home Doctors

- Expertise:
  - Home Doctors with expertise in various fields
  - Know-how and expertise accumulated over past 10 years

Development of network with foreign investors through continuous contacts and communication

Recognition of the Ombudsman's Office by the International Community

- WAIPA Award 2007 (March 9th 2007, Geneva, Switzerland)
  - Presented to KOTRA for Excellence in Aftercare Service at the Annual World Investment Conference

- Responsible Partner Award given by the EUCCK (December 8th 2008)
  - Investment Ombudsman was honored with the Responsible Partner Award, presented by the EUCCK at the Chamber’s 2008 Korea/EU Industrial Cooperation Day awards ceremony for his efforts in assisting European companies pursue business in Korea.
Global Benchmarking of Korea’s Ombudsman System (1)

Ombudsman System is Emulated by a Number of Foreign Countries

- Ombudsman has made presentations on the Ombudsman System at various global conferences and meetings.
  - UNCTAD Meeting, Geneva, Switzerland (November 23rd~24th, 2006)
  - OECD Conference, Paris, France (March 27th, 2008)
  - APEC Seminar, Lima, Peru (May 19th, 2008)
  - Turkey Investment Forum (February 11, 2009)

- Latin American countries, especially, Argentina and Brazil plan to adopt a Korean type model.
- Central Asian countries, including Uzbekistan & Kazakhstan, have invited the Ombudsman and Home Doctors to give a presentation to benchmark Korea’s Ombudsman system.
- World Bank has also expressed interest in the Korean Ombudsman system as a success story.

Global Benchmarking of Korea’s Ombudsman System (2)

Study Tour on FDI Aftercare Service by UNCTAD/WAIPA

- The study tour group, composed of 12 relevant personnel from the investment promotion agencies of 11 countries, visited to Korea to gain insight into the country’s FDI aftercare service in depth through presentations on actual grievance cases.

An UNCTAD/WAIPA study tour group visited the Ombudsman’s Office, March 30th to April 3th 2009, to benchmark Korea’s successful ombudsman system.
VI. Projects in Progress on behalf of Foreign Investors

Reinforcement of the Reach of the Ombudsman

Foreign Investment Promotion Act has been newly amended (April, 2010)

- To request the relevant authorities to submit internal data and provide cooperation for on-site visits.
- To recommend system improvements.
  - Effective from October, 2010

The amendment helps the Ombudsman’s office effectively execute the grievance resolution processes, on-site.
Reinforcement of the Reach of the Ombudsman(2)

Reinforcement of Nation-wide Foreign Investment Aftercare Services Through Joint Efforts With Local Governments

- Grievance resolution performance has been added to the evaluation criteria for local governments' foreign investment promotion activities.
  ⇒ Beginning in 2010, joint evaluation of local governments' grievance resolution performance is to be conducted based on the previous year's records.

The law in force:
Foreign investment promotion offices of local governments submit quarterly reports on grievance resolution performance to the Foreign Investment Ombudsman.

V. Concluding Remarks
Still-existing Caveats for Korea’s FDI Environment

To realize the goal of becoming a business hub, Korea still needs to address:

- Xenophobic mentality
- High wages
- Occasionally militant and unlawful labor activities
- Need to enhance various absorptive capacities to move toward advanced open-economy status

Why do Grievances Continue to Rise Despite Proactive Aftercare Services?

- Like many other countries, Korea’s legal system is not able to embrace "Real World Problems" due to rapid change in business environment
- Both institution-building and legal enactment require a time-consuming consensus building process
- In-depth research on international best practice requires a comprehensive and comparative analytic studies
- There exist Acts, Enforcements, Rules and Ordinances, which are inconsistent with each other, and inconsistencies between ministries, creating a “gray area” subject to arbitrary interpretation by public officials
Korea’s Future FDI Policy

Rugman’s FSA-CSA Matrix

Korea’s Country Specific Advantage (CSA)
- Location
- Logistics
- IT
- Skilled Labor Force

Most desirable FDI policy for Korea

- Most desirable
- Weak
- Strong

MNCs’s Firm Specific Advantages (FSA)
- R&D
- Global Best Practices
- Tech Transfers

Korea’s Future FDI Policy

Korea will host and Chair G-20 Leaders’ Summit Meeting, November 2010 to address “TILF”

- New financial architecture and IMF reform
- Promotion of trade and investment liberalization and facilitation
  ➻ Korea emphasized “Standstill” on protectionist measures and roll-back to pre-crisis period at the G-20 meeting
  ➻ Push toward the completion of DDA
- Green growth initiatives to address Climate Change
- Knowledge sharing programs : Sharing development experiences with developing economies
- Reflection of Non G-20 members’ views
  ➻ Korea aims to become a world class FDI destination
Concluding Remarks to Foreign Investors

The Ombudsman Office as a trustworthy advocate and dedicated supporter of foreign investors, always considers the interests of foreign invested companies as the top priority, attending to each difficulty from their perspective.

Knock on the Door of the OFIO Anytime

Your Reliable Partner: The Ombudsman

High-quality FDI by Multinational Companies

Thank You Very Much

Q&A