



ON SOME MODELS OF INVESTORS GRIEVANCE MECHANISM

Investment Council discussed on the important role of the state mechanisms for resolving the complaints of investors since the early phases of these complaints and the possibility to include such a mechanism in the Investment Law.

*Elvis Zerva
Legal Expert*

Investment Council
Secretariat

July 2018

I. INTRODUCTION

In the meeting No. 12 held on 18 June 2018, the Investment Council (IC) discussed on the "Legal Framework On Investments, Current Debates and Challenges". The purpose of the meeting was to discuss how motivating and easy applicable is the current legal framework on investments as well as to facilitate the process of drafting an updated legal framework with good international practices in this field.

The discussion was also raised in the context of the country's EU and regional integration processes within the Reform of the Regional Economic Zone (REA) and the Regional Investment Agenda (RIRA), which aims inter alia to harmonize the legal and regulatory framework on investment in the country with best international practices.

On the above basis, the IC Secretariat provided to IC members a *Summary Papper* on the investment climate in the country by presenting the main aspects of the discussions on the legal framework on investments, the context of the amendments in the current legislation since the adoption of the Law "On

Foreign Investments" in 1993 to date, the work and valuable opinions of foreign and domestic experts who assist the reforms in this regard, as well as the consultation process in the working groups and interest groups during 2018.

One of the proposed pillars for potential improvements in the legal framework on investments is the provision in the relevant law of a specific Investment Grievance Mechanism (IGM). To encourage discussions about the most effective and applicable models, the IC Secretariat prepared a comparative analysis on the applicable IGM models in 6 countries with different characteristics.

This matrix which is already part of the material presented to IC members, is summarized as follows in a synthetic way by bringing the main pillars of the functioning of this mechanism in Macedonia, Serbia, Croatia, Greece, Ukraine and Georgia.

II. SOME INTERNATIONAL MODELS

	MACEDONIA ¹	SERBIA ²
LEGAL FRAMEWORK – INSTITUTIONS	There is no specific law on foreign investment. The legal framework contains separate laws, where the most important one is the Law for Companies (2004). The institution dealing with the promotion of investment opportunities is Invest Macedonia-Agency of the Government of Macedonia. There is no proper mechanism for investor grievance.	<i>Law No. 89/2015 "On Investments" (Foreign & local investments) (Art.3/2).</i> Development Agency of Serbia (under Ministry of Economy) is the institution which addresses the investors complains (Art. 18/1) regarding the work of institutions.
OBJECTIVE	N/A	The agency does not have any specific objectives to address the investors complains, despite the fact that the law in a declarative way has foreseen the treatment of investors disputes as part of the <i>aftercare</i> services. The agency was established to implement development, expertise and operational activities for promoting and implementing direct investments, promote and increase exports, development and enhancement of business competitiveness, raise reputation and development

¹ <http://www.investinmacedonia.com/>

² <http://ras.gov.rs/en>

		of the Republic of Serbia in the area of economy and regional development (Art. 27).
AREA OF COMPETENCIES	N/A	<p>The scope of competences of the Agency in regards to the approach for addressing the complaints and type of complaints that could address is not clearly defined. The Agency has the competence to investigate promptly the investor’s complaints and inform them about the measures taken within 15 days from the submission of the complaint. <i>(Development Agency of Serbia shall immediately on receipt of the complaint, investigate the content of the complaint and take measures within its jurisdiction???)</i> to eliminate complaints against the work of public authorities- (Art.18/2).</p> <p>It is foreseen that only in the declarative way the government institutions should address with urgency the rights of the investors as relates to the implementation and support of the investment (Art.16/2) and only when this does not happen, the Agency is put into motion as per investor's complaint.</p>
ISSUES NOT ADDRESSED	N/A	<ol style="list-style-type: none"> 1. Complaints related to issues in the area of competences of the National Bank of Serbia (establishment and functioning of banks and other financial institutions); 2. Complaints for issues in the area of competences of the Commission for the Protection of the Competition (Art. 18)

	CROATIA³	GREECE⁴
LEGAL FRAMEWORK – INSTITUTIONS	<p>There is no specific law on foreign investment. The law for companies defines the judicial form of organisation of the local and foreign investors. The institution dealing with the promotion of investment opportunities is Agency for Investment and Competitiveness - Agency of the Government of Croatia. There is no proper mechanism for investor complaint grievance.</p>	<p>The legal framework for investments in Greece is based on 2 main laws: The new law for investment 4399/2016 which addresses small investment issues and Law 4146/2013 which addresses strategic investment issues. Enterprise Greece is the agency which operates under the supervision of Ministry of Economy, Development and Tourism to attract investments in Greece. There is a dedicated model to address the investors' complaints. In April 2013, it was approved law 4146/2013 "Establishing a friendly environment for development for strategic and private investments". This law set up the Investor Ombudsman as a structure within Enterprise Greece. Promoted as a structure promoted by the Government and its recommendations/suggestions implemented by the relevant institutions. The model of Investor Ombudsman in Greece is similar to the one of South Korea (foreign investment ombudsman (OFIO)); and investment ombudsman (Philippine and Kazakhstan).</p>

³ <http://www.ficc.hr/objectives/>

⁴ <https://www.enterprisegreece.gov.gr/en/invest-in-greece/ombudsman>

<p style="text-align: center;">OBJECTIVE</p>	<p>There are no specific objectives to address the investor grievances. The agency intends to provide investors full services for implementing investing projects, to propose measures for the improvement of the business environment and to promote Croatia as a desirable investing destination.</p>	<p>Investor Ombudsman acts as a mediator for the investor in resolving specific disputes or other difficulties raised in any phase of the licensing procedure and for specific delays in the implementation of investing projects. The investor which faces impediments for aspects related to licensing procedures is served by the <i>Investor Ombudsman</i>. An <i>account manager</i> registers the investor's complaint and problems faced during the licensing procedure and identify those documents which are decisive for explaining the main causes of delay and main factors which influence negatively in the implementation of specific investment projects. <i>Investor Ombudsman</i> reviews specific issues of each individual case and collaborates with the competent authorities to accelerate the resolution of complex issues. It mediates on behalf of the investor during licensing procedures, aiming to resolve bureaucratic impediments, delays, disputes or other difficulties related to the state services. It should be highlighted that the <i>Investor Ombudsman</i> has strong political support and, consequently, it has proved to be a very effective institution.</p>
<p style="text-align: center;">AREA OF COMPETENCIES</p>	<p style="text-align: center;">N/A</p>	<p>a) Private investment projects of 2,000,000 Euros or more which deal with delays, disputes or other difficulties arising during each stage of the licensing procedure.</p>

		<p>b) <i>Investor Ombudsman</i> acts as a statutory intermediary for the investor in order to settle of the complex issues that arise during the licensing procedure to the competent licensing authorities.</p> <p>c) <i>Investor Ombudsman</i> identifies key issues encountered by investors during the licensing procedure and presents concrete decision-making proposals for decision-making institutions to legal improvements.</p>
ISSUES NOT ADDRESSED	N/A	<p>a) Cases that are currently being reviewed by the competent courts or those judged by them.</p> <p>b)The <i>Investor Ombudsman</i> does not handle complaints about transparency issues to public authorities, but can provide general information.</p> <p>c) The <i>Investor Ombudsman</i> does not interfere in any kind of dispute between private parties.</p>

	UKRAINE ⁵	GEORGIA ⁶
LEGAL FRAMEWORK – INSTITUTIONS	<p>The legal framework for investment in Ukraine consists of several laws, with the main ones being: a) The Law "On Investment Activity" (1991), which sets out the general principles for investment; b) Law "On the Protection of Foreign Investments" (1991); c) The Law "On the Foreign Investment Scheme" (1996). There is no proper mechanism dedicated to investor complaint grievance. Specific about Ukraine is the fact that it has a Business Ombudsman Council set up in 2014 ("sui generis" institution) with a decision of the Ukrainian Government and following an "Anti-Corruption Initiative" Memorandum signed between the Ukrainian Government, the EBRD and the OECD, Chambers of Commerce and Trade Unions. It is not an institution solely for solving investor complaints.</p>	<p>The legal framework for investment consists of two laws; these are:</p> <p>a) the Law on State Promotion and Investment Guarantees dated 12 November 1996;</p> <p>b) The Law on State Promotion and Incentives dated June 30, 2006.</p> <p>Invest in Georgia-Georgia's National Investment Agency is a government agency that promotes investment opportunities in Georgia and serves as the intermediary/facilitator of investor communication with the administration institutions.</p>
OBJECTIVE	<p>The Business Council Ombudsman (BCO) is an advisory structure of the Ukrainian Government, which has as a goal the transparency of the activity of central and local institutions with the objective of preventing corruption and/or other violations of legitimate business interests. BCO consists of: a) Business Ombudsman; b) 2 Deputy Ombudsmen; c) Secretariat.</p>	<p>The agency is different from Georgia Business Ombudsman, a separate institution and not a grievance mechanism for investors, but an institution that is available to businesses in general and mainly focuses on tax issues. The Business Ombudsman was established in 2015 and replaced Tax</p>

⁵ <https://boi.org.ua/en/about/legal-acts>

⁶ <http://businessombudsman.ge/files/laws/Law%20on%20Business%20Ombudsman%20-%20ENG.pdf>

<http://businessombudsman.ge/en/about-us/the-office-of-the-business-ombudsman-of-georgia>

		<p>Ombudsman Institution in function until 2011. Business Ombudsman is appointed by the Prime Minister with the approval of the Speaker of Parliament. Business Ombudsman supervises the protection of the rights and legitimacies associated with the entrepreneurial activities (there is no clear definition of what are included in these activities) from violations of an administrative body. Business Ombudsman: a) Examines specific or group claims submitted for violations by the administrative bodies during the activity of the entrepreneur; b) detects and identifies errors in legislation and practice; c) conduct activities of a consultative and informative nature. The Business Ombudsman prepares recommendations for the administrative body to put in place the rights of the subjects in cases of verification of violations. (<i>Article 6</i>)</p>
<p>AREA OF COMPETENCIES</p>	<p>Any natural or legal person who makes business in Ukraine may file a complaint with the BCO. The complaint is investigated by the BCO and a reply is given within 3 months for the usual cases and if the case is complex the deadline for the response may be longer. The Business Ombudsman is the mediator of the dispute settlement between the parties. When disputes are</p>	<p>Not clearly set out in the law the field of competence, but from the spirit of the law it seems that the sphere of action is related to tax and fiscal matters. BO Reports are submitted to: The Georgian Government, the Financial Budgetary Committee and Sectoral Economy and</p>

	<p>resolved by conciliation, the investigation ends. Nonetheless, this Business Ombudsman can make relevant recommendations to the Government. Complaints addressed by the Business Ombudsman relate to a) administrative procedures; b) civil and c) criminal offenses committed against the business by the institutions. The typology of complaints includes but is not limited to: a) tax and tax issues; b) Issues relating to customs procedures; c) Issues related to business registration; d) Issues related to criminal proceedings initiated against businesses; e) Issues related to local authorities; etc.</p>	<p>Economic Policy Committee of the Parliament of Georgia.</p>
<p>ISSUES NOT ADDRESSED</p>	<p>a) Complaints related to business-business disputes; b) Appeals related to disputes that are to be review before the competent courts or those judged by them, or when these disputes are related to the decisions of the courts; c) Business complaints when the business has not exhausted at least an administrative appeal procedure under the legal framework regulating the activity of the institution against which the complaint is filed. (Art.6-Rules of Procedure). Business Ombudsman does not review complaints about illegal practices of institutions for which 1 year has passed.</p>	<p>N/A</p>

III. DIFFERENCES AND SIMILARITIES

1. Purpose for setting up these mechanisms is to provide legal guarantee on the application of rule of law, the application of the principle of predictability and the effective ability of investors to put in place their violated or denied rights by the administration.

2. The positive aspects of IGM can be summarized as follows:
 - A simple, fast and cost-free alternative to solving investor complaints;
 - An opportunity for the institution responsible for the IGM to better understand the business issues and to promote at the same time the services of the institutions in the framework of facilitating the investment climate;
 - Existence of an IGM serves to institutions to have a clearer idea of systemic issues and their systemic solution.
 - Guarantees a quick response to the unprocessed investor's complaint without bureaucratic procedures.

3. Macedonia and Croatia do not have a specific IGM model because they do not have a special law on investments/foreign investments.
4. Serbia has an IGM model which is mainly described declaratively in the pertinent law on investments as a general guarantee for investors, but it is not clear how complaints are handled, which complaints can be filed or the deadline for their review.
5. Greece has an interesting model of Business Ombudsman adapted since 2013 under the umbrella of Enterprise Greece (Investment Promotion Agency) focusing not to solve the issues and complains as part of the administrative appeal, but in function of the mediation for solving complaints in their preliminary stage. The Jurisdiction of Business Ombudsman is limited only to complaints related to the licensing procedures of investors.
6. Ukraine has a special “sui generis” model for addressing the investors’ complaints, which can be put into function only upon the exhaustion of at least an administrative appeal procedure. Rather than an IGM model in the classical sense, Business Council Ombudsman is similar more to an institution such as the People’s Advocate in Albania.

7. In Georgia operates Georgia Business Ombudsman as a separate institution and not as an IGM. This institution addresses business complaints related mainly to tax and related procedures, similar to Taxpayers' Advocate in Albania. Georgia Business Ombudsman was established in 2015 and it replaced Tax Ombudsman functional until 2011.
8. Yet, there is no consolidated international practice regarding the way of organization and functioning of these mechanisms, as well as on the competencies or the nature of the respective institution charged with this mediation role. Meanwhile, addressing investors' complaints about the actions or inactions of the public administration is very important to prevent legal conflicts which may go to the administrative jurisdiction, judicial or international arbitration jurisdiction. Such mechanisms economize time and costs in finding appropriate solutions at a mediation stage.
9. These mechanisms are considered as part of the aftercare service provided by the Investment Promotion Agencies or other institutions which are established for the purpose of mediating conflicts between the investors (business) and the public administration. Preparation of a certain model is related to the legal and institutional framework in place in a given country as well as on issues that are intended to be solved through the implementation of a such mechanism, thus remaining dependent on the Government's decision-making.

This summary contains general information obtained from laws, sub-legal acts or other public domain parts of the public domain. The information contained in this Summary is not exhaustive and does not replace the professional assistance or counseling you may need or the appropriate institutions. No part of these pages, whether text or image, can be used for any purpose other than the one specified. The Investment Council, a platform supported by the European Bank for Reconstruction and Development (EBRD) and the Albanian Government to promote public-private dialogue in the investment climate in the country. The Investment Council is supported by the EBRD-funded technical secretariat and addresses major business concerns by providing direct and practical recommendations to the Government on legal and institutional interventions to improve the business climate.