

Shri P. Chidambaram
Hon'ble Cabinet Minister
Ministry of Finance
132 C, North Block
New Delhi 110 001

2012.09.15

Dear Shri Chidamabaram,

Greetings!

Investment Ombudsman and Investment Aftercare Team

The Economic Times headlines today: "Welcome back, Government" says it all. Our heartiest congratulations--with a huge sigh of relief.

To attract higher investment flows, both foreign and domestic, one vital policy measure which needs to be looked into is the issue of investment facilitation so that investors' comfort levels are better. One of the measures which can help hugely is to establish a better investment climate is to institutionalise an Aftercare Service for Investors, which should include an Ombudsman to assist investors in overcoming the maze of barriers which exist at all levels.

Korea has done well in this regard, and worthy of being emulated, with suitable indigenisation. One crucial factor in indigenisation the system is to take our States on board, not so easy but not insurmountable. Attached herewith please a Note on the subject for your kind perusal. This Note captures in some depth the Korean system along with few others.

I am sure that the government is well aware of the issues and perhaps of the experiences already narrated, but this mail with enclosures may act as a flag.

Looking forward to your valued response, I remain,

With warm regards,

Pradeep S Mehta,
Secretary General, CUTS International, and
Chairman, Mng Committee, CUTS Institute for Regulation & Competition,

Copy to

1. Deputy Chairman, Planning Commission of India
2. Cabinet Secretary, Cabinet Secretariat, Rashtrapati Bhawan
3. Secretary, Department of Economic Affairs, Ministry of Finance
4. Member-Industry, Planning Commission of India

AFTERCARE — REACHING OUT TO INVESTOR COMMUNITY

The Importance of Aftercare Services to Existing & Potential Foreign Investors

Attracting new investors is traditionally the main activity of investment promotion. Investor aftercare services are an often neglected part of investment promotion. At the same time, an effective aftercare programme can significantly boost overall inward foreign direct investment (FDI) to a country.

According to UNCTAD's data, there are already some 850,000 foreign affiliates around the world. Every time a transnational corporation (TNC) needs to reorganise its international activities, it will carefully assess what role these affiliates can play in the future. By working consciously and proactively, investment promotion agencies (IPAs) can influence such TNC decisions¹.

UNCTAD points out the need for the individual economies to pay close attention to the problems faced by transnational enterprises and work effectively to address their grievances. As a result, UNCTAD has placed greater emphasis on global investment aftercare and related advocacy measures. By improving the investment environment for existing investors, it would be a very effective way of improving international investor relations.

A strong case can be made for IPAs to engage in aftercare. Firstly, it is a good way of making efficient use of IPA resources, since focusing on the established investors is less costly than marketing a location to new ones abroad. Secondly, aftercare services by IPAs may help to realise the potential benefits from inward FDI, such as technology transfer, local supply chain development and further job creation. In addition, satisfied TNCs can also be good promoters of a host location.

What is aftercare?

IPAs often have different understandings of what aftercare implies. The most complete definition is possibly that of Young and Hood² who define aftercare as “comprising all potential services offered at the company level by Governments and their agencies, designed to facilitate both the successful start-up and the continuing development of a foreign affiliate in a host country or region with a view towards maximizing its contribution to the local economic development”.

Categories

To structure the wide range of services that an IPA could offer under the heading of aftercare, it can be useful to group those under three headings: (a) administrative services; (b) operational services; and (c) strategic services.³

- a. *Administrative services* that facilitate the operations of foreign firms. These may include obtaining business licences and work permits, finding housing for expatriates and schools for their children.
- b. *Operational services* that support the effective and efficient operations of foreign firms. They include support for training, identifying local suppliers and cluster development to improve productivity and competitiveness.
- c. *Strategic services* that influence the future direction of the firm, the development of new capabilities and the corporate development path in the host region. Their aim is to make sure that foreign affiliates stay and continue to expand or upgrade their business activities. They may

¹ http://unctad.org/en/docs/webiteia20082_en.pdf

² Young, S. and Hood, N. (1994): “Designing developmental after-care programmes for foreign direct investors in the European Union”, *Transnational Corporations*, 3(2), pp.45–72, UNCTAD

³ The distinction is based on the work of Igor Ansoff (1987); *Corporate Strategy*, Penguin, pp. 22–24.

include support to the development of new, higher value added products, nurturing local suppliers to international standards, and policy advocacy.

Examples:

1. Costa Rican Investment Promotion Agency (CINDE):

CINDE is one of the leading investment promotion agencies in Latin America, with a good track record and well-documented success stories in investor targeting.

The agency's mission statement not only highlights the organization's role in attracting FDI to Costa Rica, but also its commitment to quality services for investors and its responsibilities as a facilitating agent. On its website (www.cinde.org), one can find information on CINDE's post-establishment services, which include specialized support to companies that wish to expand operations in the country or diversify their product ranges. The service expands to networking support with other companies and institutions in the country and the organisation of informative seminars on issues of interest to investors. The support could also involve CINDE's office in New York, which is in direct contact with United States-based headquarters of companies operating in Costa Rica.

The aftercare service also includes consultations with the business community on the frequency and degree of difficulty of obstacles encountered by investors. Recurring problems are presented to the relevant authorities and the process of removing identified obstacles is monitored by CINDE-coordinated, sector-specific working groups especially established for this purpose. When a desired set of outcomes occurs from this process, workshops are organised to inform businesses of the new changes in policies and regulations.

Two successful aftercare cases recorded in 2006 include: (a) the publication of a decree that opened the possibility for manufacturing companies to temporarily introduce moulding equipment into the premises of small and medium-sized local suppliers; and (b) the creation of a special migratory regime for TNC executives and their families that fast-track a series of procedures related to the granting of visas, temporary residencies and working permits.

As noted on the CINDE website, the strategy behind these efforts is to establish strong relationships with the investor community in Costa Rica, anticipating their needs and problems, and to ensure client satisfaction.

Source: UNCTAD & CINDE.

2. The Foreign Investment Ombudsman and the Investment Aftercare Team in the Republic of Korea

The increasing trend of new investment and reinvestment by existing foreign companies has raised the importance of aftercare services in South Korea. The aftercare service for the foreign invested companies is one of the more effective core strategies in the foreign investment promotion.

The Office of the Foreign Investment Ombudsman (OFIO) was created as a non-profit organisation within KOTRA (Korea Trade-Investment Promotion Agency) to help improve the investment environment and

promote the success of foreign-invested companies in Korea by providing assistance in resolving difficulties the companies face both in business management and in daily life.

The OFIO was established in October 1999 by the Foreign Investment Promotion Act. Foreign Investment Ombudsman was appointed by the President of Republic of Korea on the recommendation of the Minister of Knowledge Economy. He plays a valuable role as an advocate in resolving difficulties on behalf of foreign investors, thus providing unobstructed paths for optimum business performance.

Over the last decade, the OFIO has resolved 3,565 grievances filed by foreign-invested companies and as claimed “it continues to give every complaint the individual attention necessary to facilitate business operations and to ensure that the decision to invest in Korea is the wisest and most rewarding possible”.

As a part of aftercare services, the OFIO operates a "Home Doctor" system, which acts as liaison to find solutions for grievances filed by foreign companies. They look for solutions on a case-by-case basis in consultation with relevant government institutions. By law, the ombudsman system ensures prompt cooperation from these agencies. As a part of pre-emptive measure to prevent grievances, meetings are conducted with foreign-invested companies and relevant government officials have been held as often as possible. These meetings serve 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.

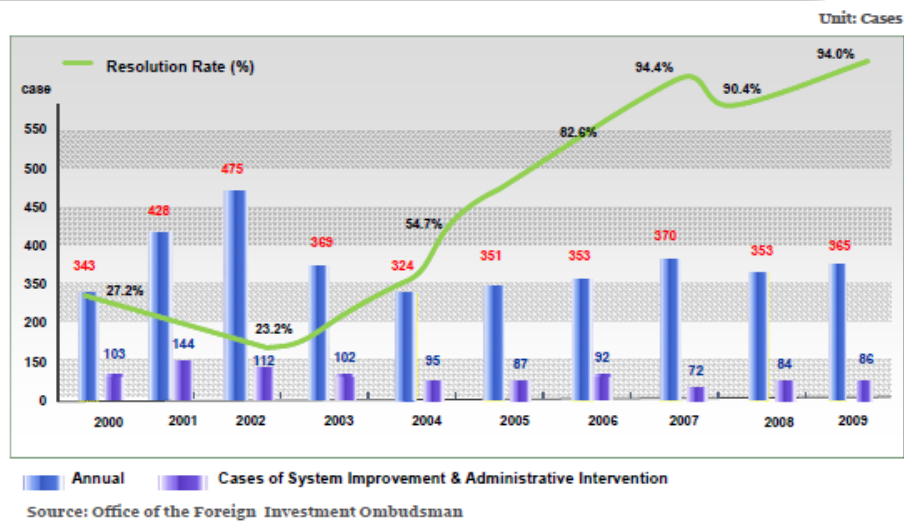
Ombudsman has been appointed as Chairman of the Presidential Regulatory Reform Committee in June 16, 2010. The Chairmanship is expected to bolster the Ombudsman's role of improving foreign investment environment by reviewing new regulations and pursuing regulatory reforms. Membership in the PCNC allows Ombudsman to address grievance issues directly to various ministers and heads of relevant government authorities.

Global Benchmarking of Korea's Ombudsman System:

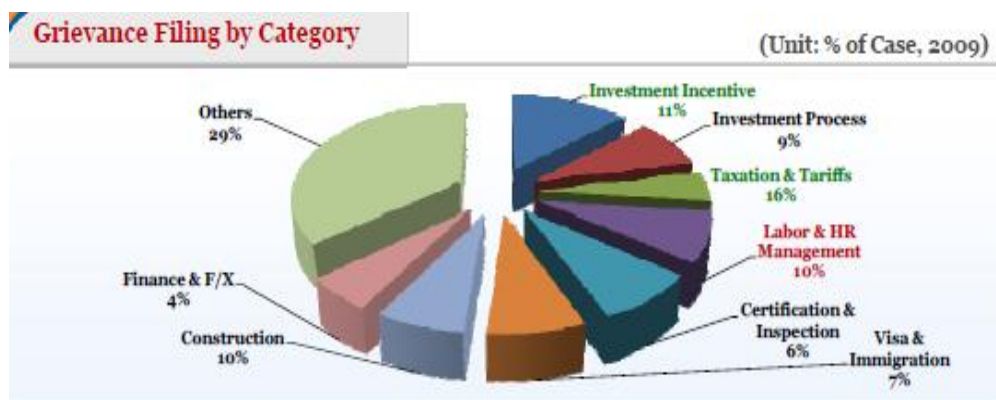
An UNCTAD/WAIPA study tour group visited the Ombudsman's Office, March 30th to April 3th 2009, to benchmark Korea's successful ombudsman system on FDI Aftercare Service.

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 aftercare service in depth through presentations on actual grievance cases.

Grievance Resolution Record



Performance of Grievance Resolution (2009)



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

Classification	System Improvement	Administrative Intervention	In-house Resolution	Total
No. of Cases Filed	24	62	279	365

Source: Office of the Foreign Investment Ombudsman

Some Cases of Grievance Resolutions

Case 1: Most High-tech Firms Remained in a New City Development.

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.

The Ombudsman undertook 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. As a result, the urban-type, high-tech industries were allowed to stay in the area.

Case 2: Non-tax Payment by Foreign Companies reduced substantially.

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. The Ombudsman undertook 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.

As a result, the non-tax payment imposed on the remaining companies was reduced by 89% (April 15th 2009 by MOSF), which they could pay in instalments.

Case 3: Post-Imposition of Tariffs on Tariff-exempted Capital goods was cancelled.

According to company T's complaint, the tariff exemption system on capital goods purchased within three 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 in an M&A case.

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)

The Ombudsman argued that the incentive system was misinterpreted to the point of incoherence to the Custom Appeal Committee and high level government authorities. As a result, the foreign company got the refund for the tariff paid (Dec. 30th 2008)

Case 4: 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 colour 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 colour. Therefore, they requested postponing the introduction date of new taxis. However, the request was rejected by the city of Seoul.

In an effort to resolve the issue, the Ombudsman organised 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.

As a result, the introduction date of new taxis was postponed to after August 2010 for Automaker.

Case 5: Delay in Launching Factory Construction.

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

The Ombudsman discussed the issue with the Acting Governor of Chungnam Province. As a result, taking into account the planned expropriation of land, the city of Cheonan granted permission to launch the construction.

Source: KOTRA (2010): Ombudsman Services for Foreign Investors As a Dispute Prevention and FDI Promotion Measures, 2010/IEG/WKSP1/012.

3. The South East England Development Agency (SEEDA) in the United Kingdom

SEEDA offers established strategic investors in the South-East a comprehensive aftercare programme to help them fulfil their business potential. A strategic investor is defined by SEEDA as one who is active in an important location or industry sector, has a group HQ in the South-East or is otherwise locally prominent. SEEDA has seven investor development managers, each of whom is based in the sub region for which he or she is responsible. Each member of this team helps managers of at least 50 strategic companies to grow the business, as well as flagging up potential difficulties and ensuring that investors' views are heard by policymakers at regional and national government levels. Investor development managers work with and build upon the achievement of SEEDA's local partners, providing an extra resource to ensure that the service to investors is uniformly comprehensive across the South-East.

Source: SEEDA website (www.seeda.co.uk).

4. The Merseyside (United Kingdom) Aftercare Programme

The aftercare programme for Liverpool and Merseyside was set up in 2003 to encourage inward investment in the Liverpool City Region, and is one of the first programmes of its kind run on a local basis. Just two years into the programme, it has helped safeguard 1,340 jobs, created 300 new positions and generated £87 million of capital investment.

The Aftercare Team consists of six experienced Business Account Managers, who work alongside existing subnational inward investment agencies across Merseyside. The team aims to build relationships with locally based operations and subsidiaries of national and international companies to give them the support they need to grow and reinvest. The website mentioned below has profiles of the programme's aftercare managers and examples of some of their successes.

Source: www.investmerseyside.com (go to "Investor guide, Aftercare")

Conclusion

IPAs have traditionally focused on attracting and facilitating new investments. The rationale for aftercare relies on an economic development and impact argument. Further, there is also a strong business case for aftercare, based on effective deployment of IPA and, ultimately, public resources. These two arguments, which could be called the business case and the economic development case for aftercare, reinforce each other.

In the course of developing objectives for aftercare activity and in order to implement the service successfully, it is necessary to work very closely with other stakeholders in the process. In such cases, it is useful to develop relatively explicit, good working protocols with such organisations, even possibly extending to service-level agreements, depending on the extent to which collaboration is envisaged. Such organisations could include chambers of commerce, overseas diplomatic or consular organisations, outsourced service providers and government departments.

The Republic of Korea took this idea one step further with the establishment of the Office of the Foreign Investment Ombudsman and its Investment Aftercare Team. Article 23-3 of the Enforcement Decree of the Korean Foreign Investment Promotion Act calls for government organisations to respond within seven days to a request for assistance from the Investment Aftercare Team on grievances reported by foreign investors.