

Promoting Greater Investment Permanence and Expansion in Colombia: Considerations to Establish an Investment Ombuds Unit¹

Key messages

Recent WBG research shows that around one in four investors in developing countries discontinue their investment projects in developing countries as a result of grievances arising with domestic regulatory agencies. (World Bank 2019) Having gone through the effort to attract investors through costly promotion campaigns and even incentives, it would seem logical to expect that most governments should have policies to promote long term permanence and expansion of investment projects. However, there seems to be a blind side in investment policy. States are multilayered and complex, and conflicts often arise as a result of investors' interaction with many regulatory agencies. Thus, governments often lack any legal infrastructure enabling them to articulate a timely and coherent reaction to address a conflict which may be placing an investment project at risk of being withdrawn. "Investor-State Conflict Management Mechanism (CMMs" aim to provide such legal infrastructure. In Colombia, there is no systematic information on how much investment projects are discontinued every year, nor data about the sectors where divestments may tend to concentrate or whether such divestments stem from problems with regulatory agencies or any other factors. Further, although Colombia has undertaken significant efforts to deal with investment-related issues and disputes, the government still lacks an efficient investor-State CMM. This note includes a series of policy options for Colombia on how to customize good practices for setting up an investor-State CMM in the form of an Ombuds unit within the existing structure of the government.

Introduction

Due to its recognized benefits, most countries today—regardless of their level of development—compete for and dedicate significant resources in designing costly promotion campaigns and incentive schemes to attracting foreign direct investment (FDI). (World Bank 2019, 2018) Capturing the full positive spillovers of FDI is a long-term process and requires regulatory certainty and predictability to enable investors undertake strategic business planning in the long term. (Echandi, Krajcovicova, & Qiang 2015),

Having gone through the effort to attract investors host governments should have policies in place to ensure a quick identification and resolution of any problem arising between investors and domestic regulatory agencies which may negatively affect business establishments or operations thereby placing investments at risk of being discontinued. (Forneris, 2019, Arriagada Peters, 2020) However, recent research by the WBG shows that in many countries this is not the case. (World Bank, 2019)

Many factors may lead investors to discontinue their FDI projects. Investments may be disrupted by shifts in firms' production strategies, micro and macroeconomic variables or even political events both at the host country or abroad. Further, not all FDI discontinuation may be necessarily bad, and not all FDI retention may be necessarily good. However, recent research by the WBG has shown that every year in developing countries, around 25 percent of FDI projects are discontinued due to unresolved grievances

¹ This note was prepared by Roberto Echandi (Lead Private Sector Specialist, World Bank) and Daniela Gomez Altamirano (Consultant, World Bank).

arising out between investors and subnational or specialized regulatory agencies. (World Bank, 2019) This is paradoxical considering that contrary to other factors which policy makers cannot control, to ensure a minimum level of coordination and coherence in investment policy implementation should be within governments' reach.

Further, Foreign Direct Investment (FDI) lost as a result of unresolved investor-State grievances may seem puzzling considering that most countries have established not only investment promotion agencies (IPAs) providing aftercare services to FDI, but also attorney general's offices dealing with legal investor-State disputes. (Arriagada Peters, 2020) However, WBG research has shown that most of the FDI lost as a result of investor-State grievances happens well before investors even consider submitting a claim to a legal dispute. They tend to leave "quietly", and such departure occurs in situations where the IPAs services have not been effective to deal with the conflict or in sectors where investors do not even reach out to the IPAs. (Echandi 2019)

Most conflicts leading to FDI withdrawals stem from alleged sudden and adverse regulatory changes, breach of contract, de facto expropriations and transfer and convertibility restrictions. Lack of transparency and predictability in dealing with public agencies and delays in obtaining the necessary government permits to start or operate a business have significantly increased among the factors driving FDI projects to be discontinued. (World Bank, 2019) Such undesired patterns of administrative behavior take place despite domestic legislation and international commitments mandating regulatory bodies to perform their functions taking into account principles of due process, transparency, efficiency, expediency, non-discrimination etc. However, most of the grievances leading to FDI discontinuation are taken by subnational or specialized regulatory agencies, which often excessively focus on performing their mandates, and may oversee or not be familiar with those commitments. (Echandi 2019) Frequency of expropriation and breach of contract has declined over the past decade, albeit they remain the most impactful, while sudden, adverse regulatory changes have persisted in frequency. (World Bank, 2019)

States are multilayered and administratively complex. They often lack any legal infrastructure to enable them to quickly react and timely address a conflict which may be placing an FDI project at risk of being withdrawn. "Investor-State CMMs" aim to provide such legal infrastructure. Investor-State conflict management mechanisms (CMMs) can be defined as problem solving techniques enabling host States and investors to effectively address their grievances at a very early stage, preventing their conflicts from leading to FDI projects being discontinued and exacerbating such problem with an escalation of the grievances into full-blown legal disputes. (Echandi & Gonstead, 2017)

FDI lost as a result of untimely resolution of investor-State grievances is a serious challenge that has tended to remain undetected in most emerging economies. Colombia is no exception. Most governments do not have the tools to monitor how many investors withdraw FDI projects in their jurisdictions, nor do they have systematic data unveiling the factors behind such decisions. Moreover, even fewer governments have mechanisms in place to identify and timely react and address to those grievances as soon as they occur, thereby failing to promote FDI retention and expansion. (World Bank, 2019)

On the basis of good international practices distilled from recent WBG research and pilot projects, this note summarizes an assessment of the institutional framework existing in Colombia to identify, track and address investor-State conflicts placing FDI at risk of being discontinued. Further, this note presents some policy options aiming to translate and operationalize good practices into the Colombian context.

Key challenges

Lack of data

In Colombia, there is no systematic information on how much FDI projects are discontinued every year, nor data about the sectors where divestments may tend to concentrate or whether such divestments stem from problems with regulatory agencies or any other factors. Anecdotal evidence seems to suggest that at least some of the international trends identified by WBG research are present in Colombia.² (ProColombia, see Boxes 1 & 2). However, the country currently lacks the tracking mechanisms to identify, classify and assess the amounts of FDI --and associated jobs-- that Colombia may be losing due to unresolved grievances associated with irregular government conduct.

Tracking and analyzing all FDI lost regardless of its cause may be a daunting task. However, WBG pilots have shown that setting up a tracking tool to register and monitor at least FDI projects at risk of being discontinued due to investor-State grievances associated with government conduct has not been particularly complex. (World Bank, 2019) Such tool may be in the form of a simple excel based tool or a more sophisticated software. This decision is based on the resources, capacity and existing information technology systems used in the country. The most complex challenge is no then setting up the tracking tool, but rather determining the specific inter-agency coordination protocols enabling the State as a whole to timely identify and resolve investor-State grievances, well before the investor gets frustrated and takes the decision to discontinue the investment and even seeking compensation through international arbitration. (World Bank 2019)

Box No. 1

FDI at risk: Example of Anecdotal Evidence Japanese Exporter of Parts

A Japanese company dedicated to the manufacture of high precision metal parts for industries such as automotive, construction and medical devices opens its first plant outside Asia in decides to invest in Colombia. The company invested USD \$ 9.5 million in a plant within a free zone in Bogotá. The plant could not operate until 2 years after it was formally inaugurated.

Reason: The assembly of the plant required a multiplicity of procedures with various state entities taking extremely long periods. Due to this problem, the investor requested the free zone to assist in finding ways to expedite at least the construction permits. The hired team did not take into account a special procedure applicable to electricity connection and the plant did not get any energy and could not operate for 2 years.

Lack of inter-agency conflict management protocols

The government of Colombia currently lacks clear and efficient CMMs enabling the government as a whole to identify and timely address investor-State conflicts placing FDI at risk of discontinuation, and well before an investor decides to seek redress through investor-State dispute settlement (ISDS).

The Colombian context can be better appraised by observing Figure 1, which graphically describes the continuum of Investor-State grievances and disputes. As can be observed below, the establishment of any FDI project starts with a state of agreement between investors and States. In the process of starting

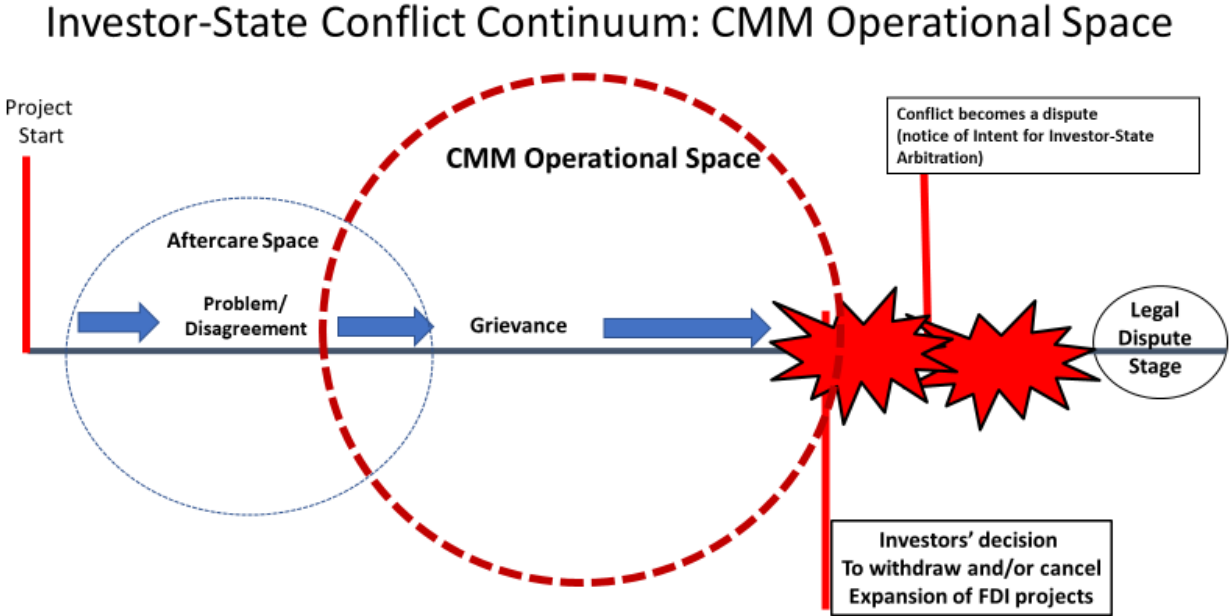
² Anecdotal evidence also shows that there are investment-related conflicts which arise with non-State actors, such as between local communities and investors in natural resource sectors. Most of these types of grievances could be addressed through specific commitments undertaken by investors in public/private contracts or concessions given for exploration and exploitation activities of natural resources. Under Colombian legislation, there are already mechanisms to early address conflicts derived from investor/government contracts, including public/private partnerships (DNP 2020)

operations, problems often arise. If left unattended, such problems tend to escalate into grievances or conflicts, which if not properly resolved, may generate such economic impact that may lead the investor to discontinue the FDI project, and even in a minority of cases, to seek compensation for damages through arbitration.

Contrary to a conflict, a legal dispute is rather an unattended or unresolved conflict which has degraded into a defined, focused disagreement framed in legal terms in which the already affected investor is seeking compensation for the damages generated by the conflict. (Smith & Martinez, 2009, Costantino & Sickles- Merchant, 1996) While conflicts are usually dealt with between parties themselves through flexible use of diverse problem-solving techniques, legal disputes instead entail adjudication by a third party on the basis of legal frameworks. (Echandi 2013) Empirical research shows that by the time an investor notifies the host government of its intention to invoke ISDS, in the overwhelming majority of the cases, the decision to discontinue the FDI project in the host country has already been taken. (Echandi 2019). Thus, protocols to prepare States to face international litigation do very little, if nothing at all, to effectively retain and expand FDI.

Over the last decade, the Government of Colombia has put in place different mechanisms to improve the investment climate in the country and to be better prepared to deal with ISDS. (However, the mandates of existing institutions tend to focus on both of the extremes of the investor-State conflict continuum, leaving a gap in the middle. In this regard, three different instances are particularly relevant for this discussion. ProColombia, which is the country’s main investment promotion agency (IPA); the “Sistema de Facilitacion de Inversiones” (SIFAI), led by the Ministry of Trade, Industry and Tourism (MInCIT) and the “Agencia Nacional Jurídica para la Defensa del Estado (ANJE). (Leyes y Decretos Colombia 2020)

Figure 1



Source: WBG based on Echandi 2013

Regarding ProColombia, part of the mandate of this IPA is to provide aftercare services to investors. In fact, ProColombia has recently launched the “RED Carpet Strategy”, which is a comprehensive package of

institutional, legal and articulation actions to offer investors timely and effective attention, improving the country's positioning as a business destination. These services offered by ProColombia are effective tools for investment facilitation and expansion when the issues affecting investors do not entail serious regulatory issues. (ProColombia 2020)

Aftercare issues usually relate to difficulties encountered by investors to establish themselves and make their investment operational due to administrative requirements, actions or inactions. While these issues may trigger costs and delays, they do not necessarily put the investment at risk of being discontinued nor may entail any potential liability for the State. The CMM typically deals with situations likely to binding constraints to FDI placing the project at risk of being discontinued. Such situations coincide with scenarios in which the regulatory conduct affecting the investors may make the State be liable, such as arbitrary administrative conduct, serious lack of transparency, de facto expropriations, transfers restrictions, and sudden or arbitrary regulatory changes.

Within this context, like any other IPAs in other countries, ProColombia faces two key challenges preventing it from performing the role of a lead agency for a CMM. First, its mandate is to promote and facilitate FDI. Thus, as an IPA, ProColombia's role should not be disciplining other public agencies to ensure that their regulatory functions are performed taking full account of the investment protection guarantees included in Colombian legislation and international commitments. This fact explains why ProColombia does not have the legal attributions nor the political clout to directly resolve investors' grievances when the responsible agency chooses not to cooperate. Second, depending on the sector affected by a grievance, not all FDI projects may see the IPA as their main government counterpart or visualize it as an optimal interlocutor with the government to solve a specific problem. This is particularly the case in specialized sectors such as investment in certain type of services, such as transport, telecommunications, utilities and others or investment in exploitation of natural resources, where investors tend to directly deal with specialized regulatory agencies and do not interact with the IPA neither at their establishment nor afterwards. (World Bank, 2019)

Box. No.2
FDI at risk: Example of Anecdotal Evidence
Chilean Shopping Centers

The investor is a Chilean-owned chain of shopping centers that are distributed in nine cities in Chile, three in Peru and two in Colombia. The Company invests a total of USD 170 million for the establishment of its first two shopping centers in Colombia. Currently the chain intends to carry out an expansion of the shopping center in Cartagena, but so far it has not been possible.

Reason: An invasion of the adjoining terrain to the shopping center occurs. This fact, together with the continuous change of the planning secretary, the Mayor and the local government team, has made progress in the negotiations with the squatters difficult. Additionally, the cumbersome permits and procedures for the expansion of the shopping center, including requests with long waiting times to review land uses and land use planning, have prevented the expansion of the investment.

Source: ProColombia

The Sistema de Facilitación de Inversiones (SIFAI) is a specialized private/public dialogue to identify opportunities for better regulation around the investment climate of Colombia; as well as to promote the implementation of some of them. Managed by the MinCIT in close collaboration with ProColombia, SIFAI has been operating for around a decade. However, only few of such regulatory improvements seem to have been effectively implemented. Part of the problem can be explained by the difficulty of getting the SIFAI members, who are high-level functionaries, to meet. For purposes of investor-State conflict management the SIFAI has other limitations. First, the coverage to regulations at the subnational level is

minimal, it does not have a monitoring and evaluation system that could measure its impact. Second, and more important, despite how useful the SIFAI may be to discuss systemic issues to improve an investment climate agenda, by definition the mechanism does not focus, track nor addresses firm specific problems and grievances that may place FDI projects at risk of being discontinued.

On the other side of the investor-State conflict continuum, the Agencia Nacional de Defensa Jurídica del Estado (ANDJE) is the agency in Colombia that manages conflicts which have already escalated into legal disputes. The ANDJE receives the notices of intent by investors to submit to international arbitration and assumes the representation of the Colombian State in those international litigation processes. (Leyes y Decretos Colombia, 2020) Having a specialized agency dealing with international investor-State disputes is good practice to ensure an appropriate representation of the State in litigation proceedings. However, evidence shows that by the time an investor opts to submit a notice of intent for international arbitration, the decision to discontinue FDI projects have already been taken. Thus, good dispute preparedness is not tantamount to efficient CMMs geared towards ensuring FDI retention and expansion.

In sum, despite the existence of aftercare services by ProColombia, a public/private dialogue through the SIFAI chaired by the MinCIT, and the dispute readiness of the ANDJE, none of these institutions is tracking and measuring the impact of resolving or not investor-State grievances that may be being discontinued as a result of irregular government conduct in Colombia. Further, as shown in Boxes 1 & 2, there seems to be a diffusion in the decision-making processes regarding problems placing FDI projects at risk, leading the Colombian State as a whole, not to timely react to resolve those conflicts.

This is precisely the function that an investor-State CMM could perform. For a reform-oriented government, an investor-State CMM enables a coordinating government agency to bring to the attention of high levels of government problems affecting investments in order to address them before they escalate further. The operation of the CMM includes the following:

- Identify specific patterns and origins of government conduct generating grievances leading to FDI discontinuation and augmenting perceptions of political risks;
 - Measure affected investment as “evidence” to advocate for timely changes; and
 - Strengthen capacity of the “offending” institutions to minimize the recurrence of such events.
- (World Bank, 2019)

Policy Options

General Considerations

Colombia has already established an institutional framework which could easily be adapted to set up an effective CMM comprising both a tracking system to generate data on specific investment projects at risk of discontinuation, and coordination protocols to enable the Colombian government to timely react and address grievances thereby preventing divestments and potential costly disputes.

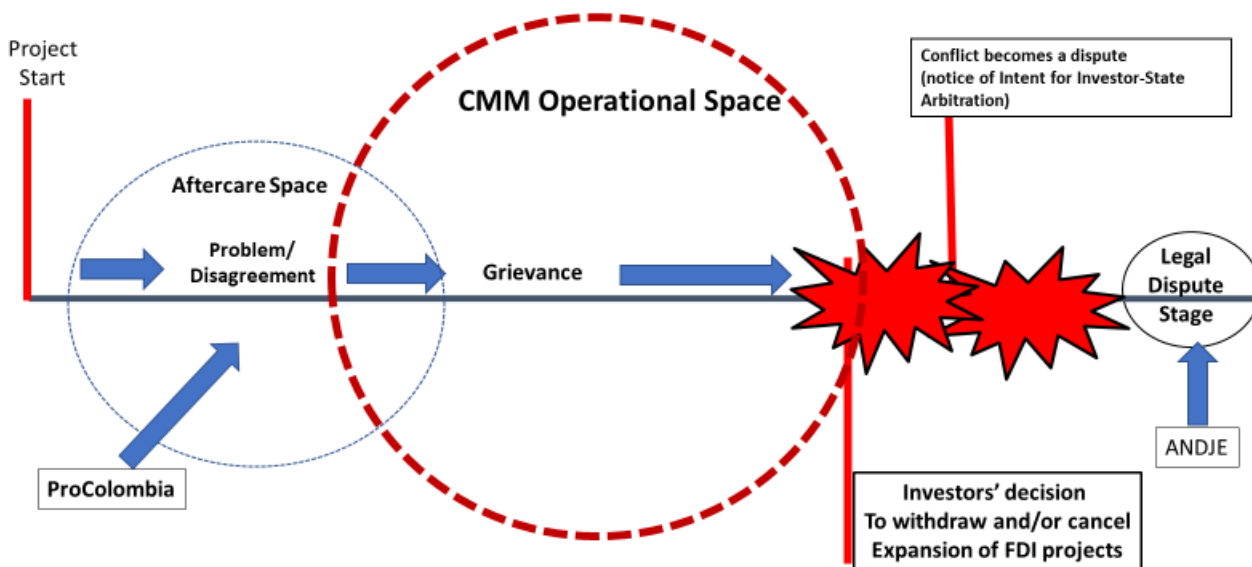
An investor-State CMM could entail the establishment of an Ombuds Unit within the MinCIT, with direct access to a high political level decision making instance (a good option would be a Ministerial Commission chaired by the Presidency). Such step may entail the enactment of a Presidential decree.

The main mandate of the Ombuds unit could be to identify, track and resolve investor-State grievances derived from government conduct which may be placing investment projects at risk of being discontinued, as well as measuring the amounts of investment and jobs retained and expanded (or lost) as a result of

successfully or unsuccessfully resolving those conflicts. Criteria and procedures to determine whether a particular investment project is at risk of being discontinued, and indicators on how to calculate investment and jobs retained and/or expanded are described in Annex 2 of this note.

Figure 2

Investor-State Conflict Continuum: CMM Operational Space



Source: WBG based on Echandi 2013

Establishing an Ombuds Unit within the MinCIT would not entail the establishment of any new agency. Further, as described below, some of its functions of identification of cases and legal analysis, could be undertaken in collaboration with ProColombia and the ANJDE respectively. Once the Ombuds Unit starts generating a record of data of cases addressed, such empirical information could serve as a basis to complement the systemic investment climate reform agenda pursued by the SIFAI.

In order to gradually test the process, and to ensure the CMM contributes to the internationalization agenda of Colombia, the Ombuds Unit could focus on dealing with investment projects at risk of being discontinued, the discontinuation of which may have a negative impact in Colombian exports, regardless of the nationality of the investment projects. Given that under Colombian legislation, there are mechanisms to early address conflicts derived from investor/government contracts, including public/private partnerships, those contractual arrangements could be left under the competent authorities, and outside the scope of the Ombuds Unit. (DNP, 2020)

Customizing good practices on investor-State CMM to Colombia: Possible Process under the Ombuds Unit

The process to be coordinated by the Ombuds Unit would involve six stages: complaint recording, filtering, legal and economic analysis, problem solving – technical level, problem solving - political decision making, and communication and follow-up on implementation. From the outset, it should be clarified

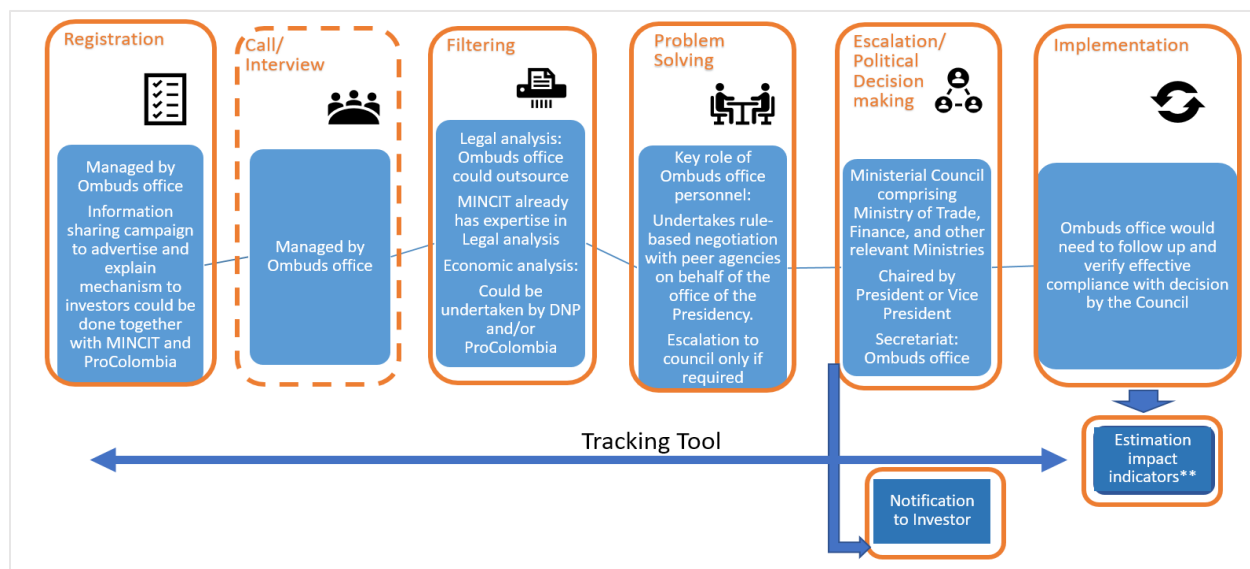
that such process should be open to all investors regardless of their nationality, thereby preventing any political backlash on this grounds.

1. Complaint Registration and Call/Interview: Investors would be informed of the eligibility criteria that grievances would need to comply with in order to fall under the competence of the Ombuds Unit. This would be done through information sharing campaigns undertaken prior the Ombuds Unit starts operating. Further, a tracking tool (which could be as simple as an Excel spreadsheet or a more sophisticated software) will be set up and managed by the Ombuds Unit staff. The first stage of the CMM process would then be the registration of a particular grievance submitted by the investor, which would be facilitated by a simple format including basic data of the problem at hand. ProColombia and the Ombuds unit could mutually benefit from collaboration in this space. Indeed, all problems related to investment aftercare that ProColombia could not easily resolve, could be forwarded to the Ombuds Unit at MinCIT. Further, the Ombuds Office at MinCIT could benefit from the “Red Carpet” program at ProColombia, leveraging the network of contact points of the latter to inform all investors and government officials about the establishment of the Ombuds unit should the Colombian government opted to do so.

2. Call/Interview with the investor: With the available information from registering the case, a member of the Ombuds Unit would conduct a preliminary interview to the investor not only to clarify some sensitive data which the latter may not want to submit in writing, but also to determine the eligibility of the complaint for registration being a “case” under the mechanism.

3. Filtering: this phase is meant to determine if the particular grievance submitted falls within the scope of the mechanism, that is, (i) if the issue arises out of government conduct, (ii) the grievance is placing an investment at risk of being discontinued, and (iii) the conflict is affecting the type of investment the government has opted to prioritize. Further, the filtering entails both a brief economic and legal assessment in order to determine the potential impact of not solving the problem at hand. The economic assessment would entail a broad estimation the investment and jobs at risk if the grievance is not resolved. For such purpose, it is important that the Ombuds Unit is legally empowered to be able to request information from the agencies involved in the conflict and clarifications or additional documents from the investor in order to refine its analysis. The legal assessment would entail a review as to whether the government conduct (or lack thereof) generating the grievance may entail any accountability for the Colombian State under domestic or international norms and disciplines. In this regard, the collaboration of the ANDJE with the Ombuds unit may prove to be particularly useful and timely. Among the mandate of the ANDJE is to “design and propose strategies, plans and actions to prevent anti-juridical conduct by public officials and entities.” (Decreto2269, 2019)

Figure 3. Investment Ombuds Unit Workflow



Source: WBG

4. Problem solving – technical level: This would be the key role of an investment Ombuds unit. Once the Ombuds verifies the legitimacy of the problem raised by the investor, the unit would have to assess the problem at hand and propose a solution to the other peer-agency involved in the conflict. The solution may vary from one case to another and may require different problem-solving techniques, such as rule-based negotiations, interest-based negotiations, power based-negotiations, fact-finding, obtaining third party expert opinion, etc. The goal is to convince the agency at the source of the issue to take a corrective measure or to negotiate a solution with the investor based on interests rather than positions. This is also an opportunity for the Ombuds Unit to share information and indirectly provide capacity building to other public subnational or specialized regulatory agencies on norms and principles of transparency, due process, expediency, proportionality and so on that public entities must respect when undertaking their routine regulatory functions, and that are mandated by Colombian legislation and international commitments.

5. Problem solving – escalation to political decision making: if the Ombuds unit is unable to solve the problem at hand because of lack of cooperation from the other agency or because the question may be too politically sensitive, the Ombuds unit may need to escalate the issue to a higher-local political level. This higher political instance would decide whether to intervene and use its administrative hierarchy to discipline the subnational or specialized agency involved in the conflict, or rather let the investment be lost and enable the investor to seek legal redress through domestic or international dispute settlement. To achieve this goal, an Ombuds unit housed under the MinCIT would need to have direct access to a Ministerial instance chaired by the presidency. Even in cases where the Ombuds unit may have managed to negotiate a solution at a technical level, high-level political endorsement and support may guarantee prompt and effective implementation.

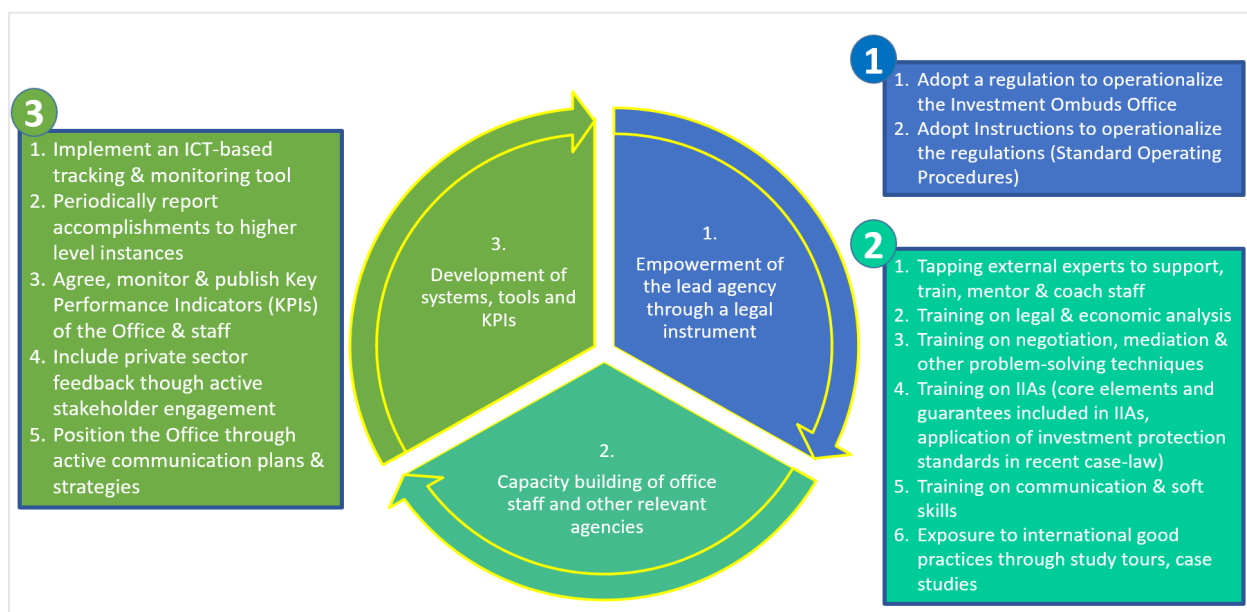
6. Communication and follow-up on implementation: in all situations, whether the request is accepted or rejected, whether a solution is found or not, it is important that the Ombuds unit informs the investor

about the progress and outcome of the process. Although internal negotiations between the Ombuds and the agency causing the grievance may remain confidential, it would be important to let the investor know that its grievance has been given due consideration. For that purpose and in order to track the functioning of the system, the Ombuds unit must monitor the effective implementation of solutions agreed or not the impact of not finding a solution to the case. Further, the Lead Agency should put into a place a feedback loop mechanism to check with the investor’s satisfaction and the impact of the service through a phone call or an online survey or both.

Possible Implementation Steps in Establishment an Investment Ombuds Unit

Once the structure of the Investment Ombuds Office has been agreed upon, several actions need to be undertaken to provide support in establishing an implementing the mechanism. As shown in the chart below, the three main areas of implementation encompasses: (1) enactment of legal mandate by law or decree and the establishment of operational procedures; (2) provision of capacity building to staff members; and (3) development of tools, key performance indicators (KPIs), and (4) communication strategies.

Figure 4. Elements to operationalize the Investment Ombuds Office



The legal mandate for the establishment of the Investment Ombuds Unit could be given by law or Presidential Decree, taking into account the existing framework for ProColombia, the ANDJE and the SIFAI. The cost of setting up such Ombuds Unit should not entail any significant budget. Considering the USD millions that the ANDJE already pays in legal fees for international litigation, if the establishment of the unit could prevent just one dispute, the unit would pay for itself.

An empowered agency through a legal instrument is fundamental to give the necessary “political clout” to run the mechanism. The legal instrument establishing the Investment Ombuds Office should need to include its structure and competence and an overview of its functions. Details on operation may be included in the standard operating procedures (SOPs) or procedural guidelines which may not need to be set up by Decree. Such SOPs could incorporate detailed information for the Members of the Ombuds Unit

on how to assess and manage grievances, how to apply filtering criteria, how to deal with different issues that may arise, and how to comply with the timelines and other requirements of the mechanism. Formulating such guidelines and distributing them to staff can be a simple and useful way to capture the “institutional knowledge” of the most experienced decision-makers in an organization. It can also help to capture and cement the established processes. The SOPs should include template forms and checklists to be followed by staff.

Regarding capacity building, once the Investment Ombuds Unit has been established, regular support and knowledge sharing would be required for other government agencies involved in the mechanism.

This capacity building needs to be carried out on an ongoing basis to update and refresh the knowledge of the relevant agencies. This training could comprised aspects such as negotiation, mediation & other solving-problem techniques; domestic and international instruments mandating key obligations of conduct for Colombian authorities when carrying out their routine administrative functions, communication and soft skills, international good practices on data collection and applying methodologies to estimate impact of the effectiveness of the mechanism.

Regarding development of the tracking tool, it should enable the Ombuds Unit to estimate investment retained, expanded or lost as a consequence of addressing (or not) the grievances. General functions of the tool include the following: data collection, tracking and workflow, automations and optimization, database capabilities, and reporting and analysis. As far as **Key Performance Indicators (KPIs) is concerned**, indicators will need to be established as to set metrics by which performance of the Investment Ombuds Office and its staff can be measured. KPIs typically linked to CMMs are the following: number of grievances solved; amount of investment retained/expanded; number of jobs retained/expanded; cost savings for the private sector by effective grievance handling. Information on these indicators can be collected through short surveys and will also form part of the tracking tool.

1. **Investment retained.** The investment amount includes the total value of assets that an existing investor has identified as at risk. Investment at risk refers broadly to the investor considering withdrawal of the investment amount or cancelling or putting on hold expansion plans. Investors may identify a share of their investment as being at risk, or their entire investment in the country. If grievances are resolved and the firm decides to maintain its investment, then the investment at risk essentially becomes the investment retained.
2. **Jobs retained.** In estimating jobs retained, the same methodology as investment retained is to be used but considering the total jobs the investment offers.
3. **Cost-savings.** The savings that resulted when comparing the costs that the investor expected to incur due to the grievance and the costs the investor actually incurred due to the grievance. These costs are to be calculated using a 12-month reference starting from the date the grievance is registered.

Information Sharing and Awareness-building Campaigns. It is critical for the private sector and other governmental agencies to be aware of the newly established Investment Ombuds Office so that they can make use and benefit from it. It is also important to obtain ongoing feedback from the users of mechanism. Having a communication plan and strategy, which includes the use of multimedia and producing communication products such as brochures and videos, will demonstrate the usefulness and impact of the mechanism, and over time through demonstration solidify reputation. In addition, there needs to be an increase in awareness within other public agencies of the importance of investment for

national development goals and of the methods to deal with investors that are rooted in a sense of service and customer care.

REFERENCES

Arriagada Peters, C. (2020) "Aftercare Matters", in in Columbia FDI Perspectives:

Perspectives on topical foreign direct investment issues, No. 276, 20 April 2020, available at:

<http://ccsi.columbia.edu/files/2018/10/No-276-Arriagada-Peters-FINAL.pdf>

Costantino, C. and Sickles- Merchant, C (1996) *Designing Conflict Management Systems*, (San Francisco: Jossey-Bass)

DNP (2020), Departamento Nacional de Planeación, "Programa de Apoyo a la Participación Privada en Infraestructura", Power Point Presentation, Mimeo

Echandi. R. (2020) "The blind side of international investment law and policy: The need for investor-state conflict management mechanisms fostering investment retention and expansion", in Columbia FDI Perspectives: Perspectives on topical foreign direct investment issues, No. 290, November 2, 2020, available at: <http://ccsi.columbia.edu/files/2018/10/No-290-Echandi-FINAL.pdf>

_____ (2019) "The Debate on Treaty-Based Dispute Settlement: Empirical Evidence (1987-2017) and Policy Implications", *ICSID Review - Foreign Investment Law Journal*, Volume 34, Issue 1, Winter 2019. <https://doi.org/10.1093/icsidreview/siy024>

_____ (2013) "Complementing investor-State dispute resolution: a conceptual framework for investor-State conflict management" in Echandi, R. & Sauvé, P.(Eds), *Prospects in International Investment Law and Policy*, Cambridge University Press,

_____ & Gonstead, M. (2017), "Investor-State Conflict Management: Systemic Investment Response Mechanisms (SIRMS) and Shared Decisions System Design (SDSD)" In Cottier T. & Nadakavukaren, K. (Eds) *Elgar Encyclopedia of International Economic Law*, Edward Elgar Publishing, Cheltenham, U.K. <https://www.e-elgar.com/shop/gbp/elgar-encyclopedia-of-international-economic-law-9781784713539.html>

_____ Krajcovicova, J. & Qiang C.Z. (2015), *The impact of investment policy in a changing global economy : a review of the literature*, World Bank Policy Research Working Paper, No. WPS7437, Washington D.C. <http://documents.worldbank.org/curated/en/664491467994693599/The-impact-of-investment-policy-in-a-changing-global-economy-a-review-of-the-literature>

Fornieris, X. (2019), "Political risk: Not just the investor's affair" , in Columbia FDI Perspectives:

Perspectives on topical foreign direct investment issues, No. 268 December 30, 2019, available at:

<http://ccsi.columbia.edu/files/2018/10/No-268-Fornieris-FINAL.pdf>

Leyes y Decretos Colombia (2020), *Electronic Archive of Laws and Regulations of Colombia*, available at <https://dapre.presidencia.gov.co/normativa/leyes>

ProColombia (2020), "Estrategia RED CARPET", Power Point Presentation, Mimeo.

Smith, S. & Martinez, J. (2009) 'An Analytic Framework for Dispute Systems Design,' Harvard Negotiation Law Review, Vol. 14 , 123-169.

UNCTAD (2011), United Nations Conference on Trade and Development, "Investor-State Disputes: Prevention and Alternatives to Arbitration II", Proceedings of the Washington and Lee University and UNCTAD Joint Symposium on International Investment and Alternative Dispute Resolution, held on 29 March 2010 in Lexington, Virginia, USA (New York and Geneva: United Nations), United Nations, UNCTAD/WEB/DIAE/IA/2010/8.

World Bank. (2019). Retention and Expansion of Foreign Direct Investment (Vol. 2) : Political Risk and Policy Responses World Bank Group. Washington, D.C. : World Bank Group.
<http://documents.worldbank.org/curated/en/387801576142339003/Political-Risk-and-Policy-Responses>