PRIMER ON INVESTMENT FACILITATION FOR DEVELOPMENT

BENEFICIARY: CHILE

DRAFTED BY:

CHOO QIAN KE
JOANELLE TOH
DHAMODARAN SAI SIMRITA
SOO GUO SHENG

National University of Singapore, Faculty of Law
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I. INTRODUCTION

1. On 13 December 2017, 70 members of the World Trade Organization ("WTO") co-sponsored a Joint Ministerial Statement calling for structured discussions on “investment facilitation for development”.¹ The issuance of this statement was precipitated by discussions initiated by a group of developing and least-developed countries, known as the Friends of Investment Facilitation for Development ("FIFD"), on investment facilitation issues.²

2. Since the issuance of the Joint Ministerial Statement, there have been ongoing structured discussions at the WTO on investment facilitation for development with the objective of “developing a multilateral framework on investment facilitation”.³

3. This document serves as a primer on investment facilitation for development to support WTO members in their participation in the ongoing structured discussions. Inasmuch as investment facilitation measures have traditionally not been included in investment agreements, in recent years many countries have been introducing domestic measures to facilitate foreign investment. Such measures have sought to improve transparency of investment measures, streamline administrative procedures, and/or establish institutional mechanisms supporting investment facilitation. With this primer we hope to showcase examples of such domestic practices.

4. The primer is structured as follows: Section II sets out the scope and definition of investment facilitation. Sections III to V discuss each of the following focus areas of investment facilitation for development in the WTO discussions, along with case studies to showcase real-life examples of investment facilitation measures:

   (i) Transparency of investment measures (Section III);

   (ii) Streamlining and expediting administrative procedures and requirements (Section IV);

   and

¹ World Trade Organisation, Joint Ministerial Statement on Investment Facilitation for Development, WTO Doc. WT/MIN(17)/59 (2017) (hereafter WT/MIN(17)/59); the 70 Members comprise Argentina; Australia; Benin; Brazil; Cambodia; Canada; Chile; China; Colombia; Costa Rica; El Salvador; European Union (its 28 member states); Guatemala; Guinea; Honduras; Hong Kong, China; Japan; Kazakhstan; Republic of Korea; State of Kuwait; Kyrgyz Republic; Lao People’s Democratic Republic; Liberia; Macao, China; Malaysia; Mexico; Republic of Moldova; Montenegro; Myanmar; New Zealand; Nicaragua; Nigeria; Pakistan; Panama; Paraguay; Qatar; Russian Federation; Singapore; Switzerland; Tajikistan; Togo; and Uruguay.

² The FIFD originally comprised Argentina; Brazil; China; Colombia; Hong Kong, China; Mexico; Nigeria and Pakistan.

³ WT/MIN(17)/59 (n 1) para 4.
Contact/Focal Point/Ombudsperson Types of Mechanisms, Arrangements to Enhance Domestic Coordination and Cross-Border Cooperation on Investment Facilitation (Section V).

Seeking to provide a comprehensive overview of investment facilitation measures, in addition to the highlighted case studies, we have compiled a list of many other investment facilitation measures from diverse countries (in Annex A). The Annex is an integral part of this report.

II. SCOPE OF “INVESTMENT FACILITATION FOR DEVELOPMENT” IN THE WTO STRUCTURED DISCUSSIONS

A. WHAT IS INVESTMENT FACILITATION?

5. At the WTO, investment facilitation means:

“the setting up of a more transparent, efficient, investment-friendly business climate – by making it easier for domestic and foreign investors to invest, to conduct their day-to-day business and to expand their existing investments.”

6. Specifically, the goal is to:

“improve the transparency and predictability of investment measures; streamline and speed up administrative procedures and requirements; and enhance international cooperation, information sharing, the exchange of best practices, and relations with relevant stakeholders, including dispute prevention.”

7. Issues relating to market access, investment promotion, and investor-state dispute settlement do not fall within the scope of investment facilitation. Further, it must be emphasized that investment facilitation does not seek to change the substantive requirements of investment regulations.

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5 WT/MIN (17)/59 (n 1) para 4.

6 Ibid, para 4.
8. Other international organizations have touched on and included investment facilitation in their agendas. For instance, the World Bank “supports client countries in attracting, facilitating, and retaining different types of foreign direct investment, as well maximizing the positive spillovers of FDI for the local economy.” According to UNCTAD, investment facilitation is similarly “about making it easier for investors to establish or expand their investments, as well as to conduct their day-to-day business in host countries.”

Hence, “[i]nvestment facilitation initiatives aim at tackling ground-level obstacles to investment.”

UNCTAD and the OECD go further in clarifying that while investment facilitation and investment promotion are complementary, they are nevertheless different in that investment promotion is “about promoting a location as an investment destination”.

B. INVESTMENT FACILITATION FOR DEVELOPMENT

9. Investment facilitation is critical for sustainable development and inclusive growth. It can increase both the quantity and quality of foreign direct investment (“FDI”). All economies stand to benefit from investment facilitation efforts, since virtually all economies both export and import FDI.

10. In particular, investment facilitation is targeted at increasing developing and least-developed members’ participation in global investment flows. It is estimated that developing members need an additional $2.5 trillion in investment annually in order to achieve the 2030 Sustainable Development Goals (“SDGs”). For least-developed members, a doubling of the growth rate of private investment is required. The critical role of FDI has been recognized in the 2030 Agenda

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8 Ibid, para 4.
10 UNCTAD global action menu (n 7) para 1.
12 Ibid.
13 WT/MIN (17)/59 (n 1) para 6.
15 Ibid.
for Sustainable Development. Goal 17.3 seeks to mobilize additional financial resources for
developing countries from multiple sources, and FDI has been identified as a critical resource
to tap into.

11. FDI flows are in many cases inhibited by problems such as “bottlenecks, inefficiencies, and
uncertainties” that arise from “unnecessary red tape, bureaucratic overlap, or out-of-date
procedures, which serve no clear policy purpose”. These are the types of problems that
investment facilitation measures seek to solve, acting as a “‘door opener’ to potential investors”
or a “key to winning projects”. Yet, investment facilitation has generally taken a backseat as compared to investment promotion. Therefore, investment facilitation is a “systematic gap” that needs to be filled in order to further increase FDI flows and promote development. Indeed, the importance of facilitating investment on top of promoting investment is highlighted by Principle VII of the G20 Guiding Principles for Global Investment Policymaking, which states that investment promotion policies should be “matched by facilitation efforts that promote transparency and are conducive for investors to establish, conduct and expand their businesses.”

C. FOCUS AREAS

12. In line with the broader goal of making it easier for investors to establish their investments,
conduct their day-to-day business, and expand their exports, the WTO structured discussions are focused on:

(a) Improving the transparency of investment measures;

(b) Streamlining and speeding up administrative procedures and requirements; and

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18 WTO Factsheet (n 4) 1.
20 UNCTAD global action menu (n 7) paras 5–6.
21 Ibid, para 6.
22 G20 Guiding Principles on Investment Facilitation for Sustainable Development (n 11).
(c) Setting up Contact/Focal Points/Ombudsperson Types of Mechanisms, Arrangements to Enhance Domestic Coordination and Cross-Border Cooperation on Investment Facilitation (i.e., enhancing institutional mechanisms).23

13. As alluded to in the introduction, these focus areas constitute the basis for Sections III to V respectively of this primer.

III. TRANSPARENCY OF INVESTMENT MEASURES

A. THE BENEFITS OF TRANSPARENCY

14. The merits of transparency for facilitating investment have long been highlighted. Transparency improves the ease of doing day-to-day business, the ease of expanding one’s existing investments,24 and ultimately supports the creation of a stable and predictable business environment.25 While there is no set and codified legal definition of transparency, it generally refers to a “state of affairs in which the participants in the investment process are able to obtain sufficient information from each other in order to make informed decisions and meet obligations and commitments”.26

15. Yet, in spite of the fact that the importance of transparency has been broadly acknowledged,27 it presently is rarely referred to in investment laws. For instance, as of the release of the UNCTAD Global Action Menu for Investment Facilitation in May 2017, only 13% of such laws globally stipulate that domestic governments will make laws and regulations pertaining to investment publicly available.28

23 WT/MIN (17)/59 (n 1) para 4.
24 Trade Dialogues (n 4).
28 UNCTAD global action menu (n 7) 11.
16. While some international investment agreements (IIAs) have left room to include transparency in principle, they generally lack explicit provisions that practically facilitate transparency.\textsuperscript{29} On the other hand, multilateral IIAs such as the ASEAN Comprehensive Investment Agreement have included such provisions.\textsuperscript{30}

**B. ROLE IN PROMOTING INVESTMENT FACILITATION**

17. For investors seeking to invest their funds into a foreign country, knowledge about the rules and regulations governing investment and business in the host country is particularly important. Foreign investors must cope with differences in regulatory systems, business cultures and administrative frameworks across jurisdictions. Access to information thus is critical to the decision of whether a foreign investor should invest in a particular host state and can alter an investor’s level of confidence about this decision.\textsuperscript{31} It also allows investors to include prospective changes in their planning.

18. Furthermore, this is important from a business point of view as well. One of the key ways FDI manifests in a host country is through the establishment of business ventures. As noted by the OECD’s Business and Industry Advisory Committee, amongst other benefits, transparency lowers risks and uncertainties, increases predictability, reduces opportunities for the loss of funds through corruption, helps bring to light hidden investment barriers, and on the whole will contribute to sustainable development.\textsuperscript{32}

19. Thus, the widespread availability of such information may make it easier and more likely that foreign investors will invest in a certain host country. These funds can, in turn, be used to further sustainable development goals.

**C. FOCUS AREAS**

20. This section of the report will focus on key suggestions with regards to the adoption of policies that would help improve transparency and predictability. In line with the Structured Discussions


\textsuperscript{30} ASEAN Comprehensive Investment Agreement (entered into force 29 March 2012) (hereafter ACIA).


on Investment Facilitation for Development, four key methods have been identified for discussions. These are respectively:\(^{33}\)

(a) Publication and Availability of Measures and Information

(b) Notification to the WTO

(c) Enquiry Points

(d) Specific Exceptions to Transparency Requirements

21. As noted by the Action Line suggestions in the UNCTAD Global Action Menu for Investment Facilitation in 2017, the implemented measures should ultimately achieve two aims. Firstly, in line with Action Line 1, these measures would promote accessibility and transparency in investment policies, regulations and procedures that are relevant to investors.\(^{34}\) Secondly, in line with Action Line 2, they would enhance predictability and consistency in the application of investment policies.\(^{35}\)

(a) **Publication and Availability of Measures and Information**

22. The publication of relevant measures and information should be seen as a tool to help investors make decisions on choosing a host state for investment and deciding how much investment they will make. Regardless of the time or type of publication, one thing should remain constant - the information put out should be easily accessible.

23. To this end, officials should consider publishing online gazettes, using user friendly electronic portals, official websites, or other electronic means to make information publicly available. To make it widely accessible, they should also consider having it available in several languages (such as in the World Trade Organization’s three working languages).


\(^{34}\) UNCTAD global action menu (n 7) 5.

\(^{35}\) Ibid.
24. The types of information made available should include but is not limited to: \(^{36}\)

(a) Domestic Legislation Concerning Investment;

(b) Substantive Regulations Concerning Investment;

(c) Procedural Regulations Concerning Investment;

(d) Administrative and Judicial Rulings;

(e) Concluded International Investment Related Agreements of the Host State; and

(f) Information relating to administrative requirements, procedures, processing times, fees, appeal procedures and institutional mechanisms.

25. This list is non-exhaustive, and countries should also consider what other types of information could be relevant to an investor’s decision to funnel investments into their economies. Corcoran and Gillanders find a strong correlation between foreign direct investment and the ranking of a country in the World Bank’s Doing Business report, which ranks countries in accordance with the ease of doing business. \(^{37}\) Thus, any information on regulations and legislation pertaining to the ease of doing business in the country – would be relevant, such as information regarding starting a business, employing workers, dealing with construction permits, getting electricity, registering property, getting credit, protecting minority investors, paying taxes, trading across borders, enforcing contracts, and resolving insolvency. \(^{38}\)

(i) **Timely Publication of Investment Relevant Policies or Measures**

26. Following a domestic decision made to adopt a particular piece of legislation, regulation or policy concerning investment, the host state should make it a point to make this information accessible within a reasonable time period. This should apply to all relevant forms of documents.


\(^{38}\) Ibid.
27. Transparency and the improvement of predictability also encompass processes prior to the adoption of an investment-related policy. In other words, before adopting a new measure, countries can inform the public of the proposed measures and explain, prior to their domestic adoption, the rationale behind them. Such notifications should be made online.

28. Following notification of the proposed measure, a state could allow the public, including foreign stakeholders, to comment on the proposed draft measures, or it could hold public consultations. This allows interested stakeholders, including foreign stakeholders, to comment on those measures. The host state may also consider, following the gathering of such feedback, publicly addressing these concerns by explaining the reasoning of its decisions and addressing which comments were considered or not, and why this was the case.

29. Advanced publication and commenting measures are ultimately meant to serve several functions. First, they are aimed at improving the accessibility of information for businesspeople, so as to empower and encourage them to do business in the host country. Second, by getting input from affected or interested stakeholders, they also improve the regulatory outcome. Third, these methods are also aimed at improving the accountability of the government as part of the country’s general regulatory climate (which, in turn, also improves the credibility and predictability of the investment environment).

(b) Notification to the WTO

30. Currently, in the WTO, the primary instrument for ensuring transparency in the multilateral trading system is the filing of notifications made by each Member, and the subsequent review by the relevant bodies of the WTO. Under certain circumstances, member states are obliged to file notifications to the WTO under a range of WTO agreements, such as the GATT and TRIPS agreements. There are three general types of notification obligations: (i) ad hoc notifications which are specifically required when certain actions are taken by a member; (ii)

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'one-time only' notifications, most of which are required to provide information on the situations existing at the entry into force of the WTO Agreement for a member; and (iii) periodic (annual, biennial etc.) notifications.\textsuperscript{42}

31. In the same vein, drafters may consider adding a notification obligation to the multilateral instrument being discussed. This would entail members of the WTO who have signed the multilateral instrument to comply with such obligations to notify the WTO on stipulated matters. Such notifications would then be made public on the WTO’s website.

32. There are several points to implementing this. Firstly, the submission and later consolidation of such information would make it easier for countries to understand what other countries are doing, and similarly adopt what they believe to be the best practices from their counterparts. Beyond this, consolidating such information would also make it easier for investors to remain up to date about the changes in policies as well. This would be useful, especially if they are considering investing in more than one country. Having a centralized database of such notifications would make it more easily accessible to the private sector. On the whole, this measure can potentially cut down the time needed to seek out, from disparate channels, the laws pertaining to investment in a country. The centralized information avenue can also ensure that the information received is standardized, and thus reduce potential avenues for misinformation.\textsuperscript{43}

(c) Enquiry Points

33. An enquiry point refers to an official or office in a member government designated to deal with enquiries from other WTO members and, in some instance, also private operators (for example on technical barriers to trade).\textsuperscript{44} In the context of investment facilitation, this office would be utilized in the context of enquiries related to investment.

34. The focus of enquiry points lies in their ability to address questions from potential investors and WTO members. In this particular case, the enquiry point is meant to respond to requests for information on investment laws and regulations, and any other information related to

\textsuperscript{42} World Trade Organization, Information on Compliance with the Notification Obligations Under the Agreements in Annex 1A of the WTO Agreement, WTO Doc. G/NOP/W/9 (8 March 1996).


investment.\textsuperscript{45} For example, such information could include information on legal requirements to establish a business.

35. Setting up a centralized enquiry point seeks to address the hurdles caused to potential investors in the absence of a unified source of information. When investment or business-related information is not located in a centralized place, investors need to piece together all of the information by themselves. Websites from different government agencies and ministries might also provide different, conflicting or incomplete information. Furthermore, a centralized enquiry point not only centralizes the formal information but also may provide practical advice as to the establishment of an investment, or how to fulfill procedural requirements.\textsuperscript{46}

\textbf{(d) Confidentiality Exceptions to Transparency}

36. As discussed above, increasing transparency yields numerous benefits for investment facilitation. However, from a practical perspective, this principle and its implementation cannot be entirely unfettered. Transparency thus needs to be balanced with the need to keep certain kinds of information confidential. Information which could or should be kept confidential includes information which would impede law enforcement or otherwise would be contrary to the public interest, or which could prejudice commercial interests.

37. Appropriate balancing between transparency and confidentiality of certain kinds of information supports investment facilitation efforts. Investors will arguably have more business confidence and willingness to invest in countries that will keep certain kinds of commercial information confidential.\textsuperscript{47}

\textbf{D. CASE STUDIES}

38. In what follows we set out examples of best practices from different regions. In identifying best practices, we relied on the Global Enterprise Registration (GER) Index’s Information Portal rankings.\textsuperscript{48} The GER is a portal launched as a partnership between the UNCTAD, the Kauffman Foundation’s Global Entrepreneurship Network, and the US Department of State. The GER

\begin{itemize}
\item \textsuperscript{45} UNCTAD global action menu (n 7) 5.
\item \textsuperscript{46} Felipe Hees, Pedro Mendonça Cavalcante, Pedro Paranhos, ‘Key Aspects for a Multilateral Outcome on Investment Facilitation: A Brazilian Perspective’ (8 May 2018) <https://www.ictsd.org/opinion/key-aspects-for-a-multilateral-outcome-on-investment-facilitation-a-brazilian> accessed 5 February 2020 (hereafter Hees, Cavalcante and Paranhos).
\item \textsuperscript{47} Summary of WTO Structured Discussions on Investment Facilitation for Development on Elements Aimed at Improving the Transparency and Predictability of Investment Measures (n 37).
\end{itemize}
ranks the business registration sites of the world’s various countries according to the extent of information the website provides, the ease of navigating it and the clarity of its instructions.  

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<th>Costa Rica</th>
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Costa Rica has consistently been identified as a nation with a good business climate. It has a relatively well-educated labor force, relatively low levels of corruption, a dynamic investment promotion board, and attractive free trade zone incentives. Its continued success as an investment destination is documented by its strong yearly inflows of FDI, reaching an estimated USD 2.54 billion in 2016, and 3 billion in 2017. It currently ranks 74 (out of 190) in the World Bank’s Doing Business Ranking.

In Costa Rica, investment facilitation is chiefly handled by the Costa Rican Investment Promotion Agency (CINDE), the country’s main investment promotion agency. Amongst its various activities, CINDE supports facilitating investment into Costa Rica in the following ways:

**Online Publication**

Costa Rica is a member of UNCTAD’s international network of transparent investment procedures, the Business Facilitation Program. As part of the Program, it has worked together with UNCTAD to create an online portal, the Costa Rica eRegulations portal, that publicly makes available detailed information on administrative procedures applicable to investment, the required documents to do so, as well as other legal requirements.

The eRegulations page allows visitors to view what kind of procedures are necessary to the creation of a company in Costa Rica. It also has a site-map of procedures that directs users of the site to the relevant regulations to consider when setting up their business.

Beyond this, Investor Guides, which highlight the relevant legislation to consider, are also available for viewing on the CINDE website.

Finally, investors can also access domestic legislation and regulations on Costa Rica’s online government registry, “La Gaceta.”

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51 Ibid.


Enquiry Points

Costa Rica has also established its enquiry point in the Ministry of Foreign Trade (COMEX). It is also known as a ‘National Contact Point’ on the website. COMEX is the government agency responsible for trade and foreign investment policy in Costa Rica. It serves to promote coordination and cooperation mechanisms between the public and private sector regarding such investment policies.

Beyond this, the CINDE also seems to serve a similar function. As an investment agency that specifically deals with foreign investors seeking to establish enterprises in Costa Rica, it provides answers and guidance to potential investors looking for such opportunities. CINDE also provides specific and customized information for each enquiry.

Kenya

As one of Africa’s most dynamic economies, Kenya is an attractive destination for investment. Since 2015, its FDI has steadily increased from 619.719 Million USD (2015) to 1625.922 Million USD (2018). This was following a period of decline in FDI from 2012 to 2015.

While this growth can be attributed to Kenya’s slew of investment reforms over the years, this case study will focus on its efforts to facilitate investment via administrative transparency.

Online Publication

A game changer in helping facilitate such efforts is the establishment of Kenya’s eRegulations platform. This was instituted in December 2015, by Kenya’s national investment promotion agency: the Kenya Investment Authority (KenInvest). The platform provides a comprehensive guide to the country’s investment related procedures and to the potential investors. These procedures include objectives such as starting a business, hiring labor in Kenya, building and construction licenses, obtaining potential investment incentives and so forth. As of 2017, the site describes a comprehensive list of 89 different procedures that relate to investment in different sectors and their establishment requirements, thereby providing easily accessible information to investors. Ultimately, it has created an improved information network to the benefit of the investment community in Kenya.

60 Ibid.
The portal also allows for the public to submit comments to its management team. This helps improve public-private dialogue on investment. Such feedback loops ultimately allow users’ voices to be heard and can also potentially ensure the implementation of constructive suggestions.

The portal’s success was palpable. On the Global Enterprise Registration Index, Kenya currently ranks amongst the top for this information portal. In 2016, the website recorded 76,000 visits, and has become the most visited eRegulations portal in Africa.63

Such transparency has not only worked to promote business and investor confidence, but has also aided in allowing Kenya’s investment agency to reallocate its resources more efficiently. For instance, officers previously burdened by investor queries can now simply direct potential investors to the site. In turn, this allows the officers to direct their attention to customers who have more complicated questions, and which require more individualized customer support.64

**Enquiry Points**

KenInvest, a national statutory body, is also responsible for serving as an enquiry point for potential investors. Alongside its diverse roles in promoting and facilitating investment, and investor aftercare services, it provides investors with an avenue to reach out with any concerns they might have.65

**Panama**

Panama is consistently ranked as one of the easiest places to do business in Latin America. This is in no small part due to the reforms that have taken place since 2011 in a bid to improve the country’s business climate. Panama’s FDI inflows make up 9.67% of the nation’s GDP, the highest among Latin American countries.66

These major reforms have included increasing the efficiency of public registries and offices, extending opening hours and cutting down on the amount of bureaucracy.67 These aforementioned reforms were instituted by the Ministry of Commerce and Industries (MICI), the government institution responsible for developing and executing policies relating to both domestic and foreign trade and investment in Panama.

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In 2010, the MICI also established a group under its auspices, the Panama Trade and Investment Agency (Proinvex), to help carry out the government’s strategic vision for trade and investment.

**Online Publication**

On this end, Panama has implemented two major policies. Firstly, ProInvex manages a One Stop Shop Integrated Information System that allows investors to easily identify all the instruments relating to foreign investment. The system contains information on where to find the relevant legislation needed for investors. The agency also offers investors a concierge service in processes of due diligence for investing in Panama.68

Secondly, Proinvex has also worked with the UNCTAD under its Business Facilitation Program to establish an eRegulations platform. In a similar vein to Kenya and Panama, foreign and national investors can find detailed information related to administrative procedures applicable to investment here. They will also be able to find the name, contact details, costs and other logistical information relating to investment procedures in Panama.69

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**International Investment and/or Trade Agreements**

Some IIAs include commitments to transparency, either as part of investment facilitation, or without making reference to the concept of investment facilitation. Such commitments include the publication and dissemination of relevant investment regulations, as well as dissemination of other relevant investment information (e.g. investment laws, administrative rulings, etc.). These agreements usually exclude confidential or proprietary information. Moreover, some agreements include more specific transparency provisions that call for more detailed commitments regarding exchange of information on ideas and topics such as statistical data, information on specific economic sectors and understandings on investment. However, most agreements lack provisions that (1) facilitate access to laws (e.g. through dedicated websites) and (2) provide for public comments.70

1. **China-Hong Kong CEPA Investment Agreement (2017)**

   Art 16 of the CEPA Agreement states that Parties will promote the understanding of their laws and policies that affect covered investments, and ensure that investors of the other side can become acquainted with its laws and policies pertaining to the conditions of admission of investments. Thus, Parties are encouraged to publish proposed measures in advance and provide investors with opportunities to comment on these proposed measures.


   Art 16 states that the Parties shall promote investment facilitation through greater transparency and will cooperate to increase transparency in their laws and regulations.

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68 Ibid, 3.


70 Rodrigo (n 29)

   Art 1 states that the objective of the BIMSTEC Agreement is, inter alia, to create a transparent and facilitative investment regime. Art 5 states that the Parties agree to improve the transparency of their investment rules and regulations to promote investments.


   Art 3 of the EPA states that each Party shall (1) make publicly available its laws, regulations, administrative procedures and administrative rulings, judicial decisions of general application as well as international agreements to which the Party is a party; (2) make easily available to the public, the names and addresses of the competent authorities responsible for laws, regulations, administrative procedures and administrative rulings; (3) upon the request by the other Government, within a reasonable period of time, respond to specific questions from, and provide information to, the other Government in the English language; and (4) provide for a reasonable interval between time in which proposed regulations and/or laws are published and the time when they enter into force.

5. **Indonesia-Japan EPA (2007)**

   Art 3 of the EPA states that each Party shall (1) make publicly available its laws, regulations as well as international agreements to which the Party is a party; (2) make easily available to the public, the names and addresses of the competent authorities responsible for laws, regulations, administrative procedures and administrative rulings; (3) upon the request by the other Government, within a reasonable period of time, respond to specific questions from, and provide information to, the other Government in the English language; and (4) when introducing or changing laws and regulations, endeavour to take appropriate measures to enable interested persons to become acquainted with such introduction or change.

6. **ECOWAS Supplementary Act on Investments (2008)**

   Art 19(4) states that Member States will strive to improve the transparency, efficiency, independence and accountability of their legislative, regulatory, administrative and judicial processes.


   Art 21 states that each Member State shall (1) inform the ASEAN Investment Area Council of any investment-related agreements it has entered into (where preferential treatment is granted); (2) inform the ASEAN Investment Area Council of the introduction of any new law or of any changes to existing laws, regulations or administrative guidelines, which significantly affect investments or commitments of a Member State under the Agreement; (3) make publicly available, all relevant laws, regulations and administrative guidelines of general application that pertain to, or affect investments; and (4) establish an enquiry point where information relating to (2) and (3) may be obtained.


   Art 19 states that each Party shall (1) inform the ASEAN Secretariat of any investment-related agreements it has entered into (where preferential treatment is granted); (2) inform the other Parties of the introduction of any new law or of any changes to existing laws, regulations or administrative guidelines, which significantly affect investments or commitments under the Agreement; (3) make publicly available, all relevant laws, regulations and administrative

Art 14.2 of the Agreement states that Parties shall ensure that their laws, regulations, procedures, and administrative rulings of general application with respect to any matter covered by the Agreement are promptly published or otherwise made available in such a manner as to enable interested persons of the other Party to become acquainted with them. Art 14.5 states that Parties shall (1) notify the other of any proposed or actual measures that affect the Agreement; and (2) respond to questions pertaining to any measures (proposed or actual).


Art 17.3 of the Agreement states that Parties shall ensure that their laws, regulations, procedures, and administrative rulings of general application with respect to any matter covered by the Agreement are promptly published or otherwise made available in such a manner as to enable interested persons of the other Party to become acquainted with them. Moreover, it states that each Party shall publish in advance any proposed measure it intends to adopt and provide interested persons and the other Party an opportunity to comment on proposed measures.


Art 4 states that each Party shall publish investment-related laws and regulations and provide additional information with respect to any changes to the laws and regulations that will affect investors of the other Party.


Art 3(5)(a) states that the Parties shall cooperate by exchanging investment information including information on investment laws, regulations and polices to increase awareness of investment opportunities.

13. ASEAN-India Investment Agreement (2014)

Art 14 states that each Party shall (1) inform the ASEAN Secretariat of any investment-related agreements it has entered into (where preferential treatment is granted); (2) make publicly available, all relevant laws, regulations and administrative guidelines of general application that pertain to, or affect investments; and (4) establish an enquiry point where information relating to (2) may be obtained.


Art 11(2) provides that each Party shall publish relevant laws and regulations with delay, and in electronic format when possible.


Art 10(2) provides that each Party shall ensure that relevant laws and publish in the shortest time possible and be accessible by electronic means (if possible). Art 10(4) also provides that the Parties agree to consult periodically on ways to improve transparency practices. Further, Article 10(5) requires the publication of documents (e.g. written submissions, awards) relating to any arbitration that takes place under the BIT.

Art 9(1) provides that each Party shall publish relevant laws without undue delay, in electronic format if possible.

17. Brazil - Suriname BIT (2018)

Art 9(1) provides that each Party shall ensure that relevant laws are published in the official gazette as well as electronically (if possible). Art 9(2) states that each Party shall publish any proposed investment-related measure so that stakeholders can comment on them.

Additional Examples

Annex A contains more examples of how over 100 countries have implemented measures to incorporate transparency into their investment facilitation policies. The most common efforts include the publication of domestic legislation relevant to investors online, and the setting up of single enquiry points. These resources are both easily accessible for potential investors online.

IV. STREAMLINING AND SPEEDING UP ADMINISTRATIVE REQUIREMENTS AND PROCEDURES

A. OVERVIEW OF ADMINISTRATIVE PROCEDURES AND REQUIREMENTS

39. Administrative procedures and requirements (“APRs”) refer to “a series of actions and formalities to be fulfilled by an investment applicant directed towards verifying the compliance with substantive requirements imposed by the host country, which usually lead to the issuance of administrative acts by the host country's competent authority (e.g. an authorization to establish).”\(^71\) In other words, APRs are the procedures that a prospective investor has to go through and complete in order to conduct business in the country, and include procedures pre- and post-establishment of the investor’s business.

40. Thus, APRs may include:

(a) “General licenses: general investment approvals, and other requirements for domestic and foreign firms including company registration, tax registration, social security registration, statistical registration, immigration procedures for foreign investors; antimonopoly clearance (if applicable);

(b) Sectoral/specialized approvals or licensing procedures: required for certain sectors or activities (e.g. transport, construction, mining);

(c) Locating or site development procedures (subsequent to start-up procedures or sometimes in parallel to them): land allocation and registration procedures, procedures to obtain building permits, utility connections (at affordable rates), site inspections, etc.; and

(d) Operating procedures (once operations have begun), which are necessary to perform certain functions such as foreign trade: import/export procedures (including registration as engaged in foreign trade), foreign exchange procedures, and procedures to obtain work permits for foreign senior staff and technicians. These procedures, especially for import-export, are fundamental for enterprises that interact with foreign markets.”

B. ROLE OF STREAMLINING AND SPEEDING UP ADMINISTRATIVE PROCEDURES AND REQUIREMENTS IN FACILITATING INVESTMENT

41. While it is understood that APRs are essential to achieving public policy or regulatory objectives, poorly designed or administered APRs create unnecessary costs which are burdensome to the prospective investor. This in turn can affect investment decisions, particularly when deciding between competing countries. The potential for streamlining and speeding up APRs in facilitating investment is promising. It has been estimated that for “for every 10 percentage points decrease in the administrative costs of setting up a foreign company, the ratio of FDI over GDP rises by about 1.2 percentage points.”

42. Costs arising from APRs include:

   (a) administrative costs (e.g., reporting costs);

   (b) financial costs (e.g., administrative fees); and

   (c) opportunity costs (e.g., business activities foregone).

43. These costs may be due to APRs that are unclear, unpredictable, complex, or onerous. Thus, streamlining regulations reduces costs for investors and improves the competitiveness of the host state. It also reduces the risks of corruption.

72 Ibid, 6.
73 Ibid, 8.
44. The fundamental purpose of investment facilitation is to encourage investments by providing investors with a stable and predictable regulatory and administrative framework for investment. Thus, APRs must be made clear to investors.\textsuperscript{74}

45. Reducing or simplifying ADRS makes the country more attractive to investment as it speeds up the investment process. It also avoids duplication at different levels of government. It also reduces the cost of doing business especially for small and medium-sized enterprises. Moreover, to achieve the sustainable development goals, investment is needed in social infrastructure (health, education etc.) and physical infrastructure (water, electricity etc.) and these fields tend to be heavily regulated. Thus, streamlining and simplifying sector specific regulations can remove entry costs and barriers into these fields.\textsuperscript{75}

46. Investors also increasingly expect for administrative requirements to be seamless and responsive to their requirements. A lack of coordination between governmental agencies can lead to overlapping demands on businesses.

47. Unclear, unpredictable, complex, or onerous APRs not only impose direct administrative and financial costs on investors; investors may also incur indirect costs, such as experiencing delays in their activities, or having to forego some of them.\textsuperscript{76}

48. The need to streamline and speed up APRs has been highlighted by UNCTAD in the Global Action Menu for Investment Facilitation, wherein Action Line 3 focuses on improving the efficiency of investment administrative procedures. However, despite nations recognizing the benefits of streamlining and speeding up APRs for investors, such measures are largely absent from the investment laws of nations. In a survey conducted by UNCTAD wherein it analyzed investment laws across various nations, it was found that only 20% of the surveyed laws included a reference to a one-stop shop mechanism, and efficiency of administrative procedures was rarely referred to.\textsuperscript{77}

49. By streamlining and speeding up APRs, the costs associated with poorly designed or administered APRs can be avoided, thereby facilitating investment. Moreover, by reforming domestic institutions and processes and strengthening transparency, good regulatory practices,

\textsuperscript{74} Novik & de Crombrugghe (n 25).
\textsuperscript{75} IPA Observer (n 63).
\textsuperscript{76} WTO Non-Paper on APRs (n 72) 7.
\textsuperscript{77} UNCTAD global action menu (n 7) 10.
electronic governance and domestic institutions, investment facilitation reforms will not only benefit investors but will generally improve good governance.\textsuperscript{78}

\textbf{C. Focus Areas}

50. This section will include an analysis of the elements that appear in the WTO Structured Discussions on Investment Facilitation for Development with regards to streamlining and speeding up APRs. These elements are:

(a) Consistent, reasonable, objective and impartial administration of measures;

(b) Reduction and simplification of administrative procedures and documentation requirements;

(c) Clear criteria and requirements for administrative procedures;

(d) Authorization/approval procedures;

(e) Treatment of incomplete and rejection of applications;

(f) Fees and charges;

(g) Periodic review of administrative procedures and requirements;

(h) E-government;

(i) One-stop shop/single window type mechanisms;

(j) Independence of competent authorities; and

(k) Appeal and review.

\textbf{(a) Consistent, reasonable, objective and impartial administration of measures}

51. One of the main and common aims of the myriad of investment facilitation measures is to enhance the predictability of the investment environment.\textsuperscript{79} Thus, it is important that investors


know how administrative proceedings are carried out. Here, the focus is on ensuring that all the various governmental institutions involved in an investor’s application are consistent in the way they apply investment regulations. Thus, procedures for processing applications must be applied consistently across various different sectors and categories of investors. Investors must also be assured that the APRs pre- and post-establishment will be administered without any bias. As such, some measures that could be useful in improving consistency in administration of APRs include:80

(a) simplifying relevant legislation to ensure that they are clear and internally consistent;
(b) ensuring that all investors are treated equally with regard to the application of domestic laws;
(c) reducing the scope of bureaucratic discretion in applying investment rules and regulations;
(d) establishing roles of various government agencies involved, and clearly demarcating their responsibilities, especially when more than one agency is involved in screening investment proposals involving a particular economic sector, or when agencies have both regulatory and commercial functions.

52. The administration of measures is considered reasonable if it is not more burdensome than necessary. In other words, measures should not be administered with the effect of creating unnecessary barriers to investment.81

53. Impartiality in the administration of measures has its roots in the most favored nation principle and the national treatment principle in WTO law. Put simply, impartiality requires non-discrimination.82


81 WTO Non-Paper on APRs (n 71) 13.

82 Ibid, 13.
(b) **Reduction and simplification of administrative procedures and documentation requirements**

54. Governments can ensure that their APRs are simple, reasonable, and clear.\(^8^3\) Simplification of APRs includes the reduction in the number of APRs, formalities and/or approval requirements as well as simplifying documentation and procedural requirements as much as possible. To achieve this, inter-organizational coordination is crucial as well so as to avoid duplication of procedures by multiple authorities.\(^8^4\) It is important that only documents that are strictly needed for compliance with the relevant laws are required, so as to reduce the administrative burden on investors.\(^8^5\) At the same time, while burdensome regulations slow down the process for making an investment, it is important to keep in mind that regulations are critical for protecting safety, health and the environment. Thus, any simplification should balance between the need to simplify and the need to protect the public interest.

(c) **Clear criteria and requirements for administrative procedures**

55. While it is open to governments to impose criteria for investment projects so as to achieve policy objectives, it is also important that governments publicize what the criteria for assessing investment proposals are.\(^8^6\) These criteria can be established and applied in a “transparent and objective” manner.\(^8^7\) Creating a checklist for potential investors to keep on hand to help them with putting together an application would also be useful for both governments and investors.\(^8^8\)

(d) **Authorization/approval procedures**

56. There are several steps that governments can take in respect of their authorization/approval procedures. They can:

   (a) make clear to investors the application process and timelines;

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\(^{8^5}\) WTO Non-Paper on APRs (n 71) 16.

\(^{8^6}\) Kinda (n 81).

\(^{8^7}\) INF/IFD/W/17 (n 84).

(b) ensure that competent authorities provide receipts of applications to the investors promptly;

(c) proactively provide investors information regarding their applications;

(d) promptly inform investors of the status of their application if requested; and/or

(e) accept copies of required documents, especially if the original document has already been provided to one government authority.

57. Additionally, one possible mechanism that could improve the efficiency of the approval process is the adoption of a “silent yes” mechanism, whereby an application will be treated as successful after a certain amount of time has passed.

(e) Treatment of incomplete and rejection of applications

58. When faced with an incomplete application, the relevant authority can notify the applicant investor about his incomplete application as soon as practicable and provide him with an explanation of what is missing from his application. If the errors are sufficiently minor, the investor can be given sufficient time to edit his application without having to create an entirely new application and repeat the whole process.

59. For the rejection of applications, wherever applicable and possible, it could be useful if the relevant authorities provide reasons for rejections of any investment applications, and to detail the procedures for resubmission of an application. However, it is important to also note that some investment proposals may not be feasible or in line with other goals of the government (e.g. to protect the safety and health of people, protecting the environment). Thus, while the treatment of rejected applications might be modified, it must be balanced with the need to safeguard the public interest.

89 Ibid.

90 WTO Non-Paper on APRs (n 71) 16.


92 Berger, Dadkhah & Olekseyuk (n 32).

93 INF/IFD/W/17 (n 84).
(f) **Fees and Charges**

60. It is important that investors are aware of the administrative fees and charges for their application from the start, allowing investors to properly account for administrative fees. Hidden costs should also be avoided so as to provide investors with a hassle-free experience. Improving cooperation between governmental agencies can also reduce and streamline costs. Allowing for electronic payment of these charges would also provide for a better and seamless experience. A periodic review of fees and charges will ensure that they are still appropriate and relevant and will provide opportunities to streamline the process if needed.

(g) **Periodic review of administrative procedures and requirements**

61. APRs should also be periodically reviewed to ensure that they are appropriate and the best way to serve the goals of the investment regulation regime of the country. Periodic reviews of regulatory regimes allow governments to consider what could be simplified or discarded. The outcomes of such reviews (i.e. whether the existing APRs are going to be maintained or updated) could also be publicized to allow for prospective investors to be informed.

62. These periodic reviews could focus on (a) assessing the impacts of major regulatory measures in place, as well as (b) the maintenance of existing mechanisms to promote an evaluation of measures in force. Obtaining feedback from businesses and other stakeholders is also integral in this process to ensure that the reform’s objectives are met.

(h) **E-government tools**

63. E-government tools allow potential investors to submit the applications and documents required by agencies through an online portal. Such measures include electronic portals that contain regulatory material and inform investors on required procedures. E-government tools may be

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94 WTO Non-Paper on APRs (n 71) 23.
95 Berger, Daddkhah & Olekseyuk (n 32).
98 INF/IFD/W/17 (n 84) para 2.7.
100 Novik & de Crombrugghe (n 25).
utilized in many ways and do not have to be all-encompassing like a single electronic window. Rather, e-government tools could be incorporated into a country’s administrative and regulatory environment to reduce the hassle that investors face.

64. Single windows (addressed below) allow for all submissions required by multiple agencies to be submitted through a single online portal (rather than separate portals for different government authorities). The entity managing the single window will then process the application as a whole and submit the necessary documents to the relevant authorities. To allow for this to be effective, it must be ensured that after an investor has submitted the required documents to the single window, they will not be asked for the same information again, other than in exceptional circumstances (which should be made publicly available). The investors will then be notified of the outcome of their application through the single window after examination of the documents by the relevant authorities.¹⁰¹

65. It is important for such e-government tools to be maintained, with routine checks and IT maintenance being done to ensure that they are functional. For single windows to truly be effective, internal coordination between the different governmental agencies that are involved in reviewing these documents is crucial. Such coordination is necessary in order to ensure that applications are reviewed in an effective and prompt manner.¹⁰²

66. Some jurisdictions still communicate with investors in offline writing. This somewhat outdated practice slows the process, while adding costs and uncertainty. Transitioning to using emails for official communication would serve to streamline the process.¹⁰³

(i) One-stop shop/single window types of mechanisms

67. Given that multiple authorities are often involved in administrative procedures, governments can consider implementing one-stop/single windows types of mechanisms that provide investors with a single-entry point for the submission of all documents required by the different authorities. This saves investors the hassle of visiting multiple authorities, which takes additional time and effort.

¹⁰¹ Berger, Dadkhah & Olekseyuk (n 32); WTO Non-Paper on APRs (n 71).
¹⁰² Omic & Stephenson (n 89).
¹⁰³ Ibid.
68. That said, the beneficial impact of a one-stop shop will vary depending on the internal organizational structure of governmental agencies and on the coordination between them. It has been argued that one-stop shop type mechanisms might not be as effective in nations where setting up a business will require multiple types of approvals from national, regional and local authorities that may not have established channels of communication and cooperation.  

(j) Independence of Competent Authorities

69. Members should ensure that their agencies and other relevant authorities administer their decisions in an independent manner and that they apply APRs in an impartial manner. APRs should be administered in a consistent, reasonable, objective, and impartial manner.

(k) Appeals and Reviews

70. Systems of appeals and review should be implemented as well. It would also be useful to provide investors with reasons for rejection of applications. Investors should able to appeal against any decisions made by the authorities, and appeals should be reviewed within a reasonable time frame. Alternatively, investors could also be permitted to resubmit applications within reasonable time limits. Publication of the procedural rules that apply to these reviews and appeals will also enhance the effectiveness and accountability of the system. It is desirable that the tribunals handling such reviews and appeals be impartial and independent of the agencies/authorities that were involved in the processing of the application.

D. Case Studies

71. To illustrate the ways in which the above-mentioned measures could be implemented, we will describe, in the next section, several cases of administrative simplification that appear to be promising.

Kazakhstan

Kazakhstan has made economic and social progress since the early 1990s and has become one of the fastest growing transition economies. Its strong performance has been bolstered by

106 Berger, Dadkhah & Olekseyuk (n 32).
107 OECD Kazakhstan (n 100).
policy reforms aiming to liberalise its investment regime to spur capital inflows. Kazakhstan has made progress in reducing the complexity of its APRs and the amount of red tape involved for investors. Kazakhstan’s focus for investment facilitation has been on administrative simplification and streamlining the system for obtaining licenses and permits. It has reduced the list of activities requiring special licenses, and the license application process itself has also been simplified. An e-license system allowing investors to obtain their licenses online has also been implemented.108

Below we highlight the main reforms.

The “Concept of Further Reforming of the Licensing System of the Republic of Kazakhstan for 2012-15” was introduced to simplify the process required to obtain licenses and to improve the licensing system as a whole.

On 16 May 2014, Kazakhstan adopted the Law on Permits and Notifications.109 It clarifies administrative requirements for obtaining permits. Some notable features of the new law include:

(a) Classification of permit documentation (for production, individual movable and immovable objects, including vehicles, buildings, facilities and professional activities of individuals);

(b) Categorization of permit documentation (license for performing highly dangerous activities, all other licensing procedures (documents) produced and used in accordance with the classification of licensing procedures (e.g. notification of commencement of the business or individual actions in respect of the activities or actions of a minor degree of danger); and

Regulated activities are divided into 3 categories:

(i) High-risk activities, which require a “first category permit”;

(ii) Medium-risk activities, which require a “second category permit”;

and

(iii) Low-risk activities, which require “notifications” to be made to the relevant authorities.

(c) Development of a comprehensive list of permit documents.

Applications for licenses may be made online through an e-government portal, and the required documents may also be uploaded onto this portal. The portal also contains an investors’ guide, and information on doing business in Kazakhstan, including investment opportunities currently available. Information on various fees and charges is also available.110

On 1 January 2015, the Law of RK No. 269-V “On Amendments to Certain Legislative Acts of the Republic of Kazakhstan on issues of Fundamental Improvement of the Conditions for Entrepreneurial Activity in the Republic of Kazakhstan” came into force. It amended 119 national laws (including the Tax Code, Civil Code, Labour Code, etc.) with an aim to clarifying and simplifying procedures for obtaining administrative permits and licenses, including those required for small and medium-sized enterprises (SMEs). The number of procedures required for licensing was reduced 119.

108 OECD Kazakhstan (n 100).


obtaining permits for construction, business registration, liquidation and bankruptcy have been reduced. Time period for issuing licenses has also been reduced from 30 to 15 days.

On 20 May 2015, President Nazarbayev announced a set of 100 administrative steps to be taken by the government to streamline administrative procedures and reduce the burden on investors. The program recognises economic diversification and growth as one of the major priorities and pre-requisites for sustainable development. These measures fall into 5 broad categories:  

(a) Ensuring the rule of law  
(b) Industrialisation and economic growth  
(c) Ensuring identity and unity for the future  
(d) Creating modern and professional government apparatus  
(e) Ensuring transparency and accountability of the state

On 29 October 2015, the Entrepreneurial Code (EC) of the Republic of Kazakhstan No. 375-V established the principle of a “single window” for investors, aiming to provide a “centralised form of assistance to investors by the authorised body for investment in the provision of public services; minimise investors’ involvement in the collection and preparation of documents; and limiting their direct contact with public authorities”. This single contact point is a physical facility called the Investor Services Centre (ISC). Currently, there are 20 physical facilities throughout Kazakhstan. Investors can obtain information on investment opportunities, receive assistance in the preparation and presentation of documents required of them and receive support in receiving the relevant permits and licenses. This centre also serves as a focal point (see below) by assisting investors when they require help.

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**Vietnam**

Once considered to be one of the poorest nations in the world, Vietnam is now a lower-middle income market economy and has achieved significant success in improving domestic socioeconomic conditions. Vietnam has also been responsive to changing external conditions, with its willingness to amend its laws as and when needed to improve the investment climate locally. In 2007, the Vietnamese government launched the Master Plan to Simplify Administrative Procedures in the fields of the State Governance (“**Project 30**”), aiming to reduce APRs by 30% as part of their overall regulatory reform to reduce the burden for investors. It also sought to reduce implementation gaps between the domestic system and WTO and international trade agreements.

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112 Entrepreneurial Code (EC) of the Republic of Kazakhstan No. 375-V, Article 282.

The Prime Minister’s Special Task Force was also established to serve as the main co-ordinating body for this initiative.114

Government measures have also focused on increasing transparency and simplifying business registration procedures. Decrees have been passed to simplify business registration.115 The Agency for Business Registration has also been established and provides various services to investors (e.g. information services, support for preparing applications). Most importantly, the portal allows for online business registration and allows investors to track their status after applying, thereby allowing investors to be up to date on their applications. More than 12,000 enterprises have been registered using this portal, which serves to show its usability. Moreover, the website contains user guides and FAQ sections to assist investors who may need additional clarification.116 The Administrative Procedure Control Agency was also established to manage and review APRs in place. Over 5700 procedures at various levels of government were compiled into this database and will be reviewed periodically using the principles of regulatory impact analysis to assess their legality, necessity and business friendliness.117

In 2014, the government adopted Resolution No. 19/NQ-CP to improve the business environment and enhance national competitiveness. The goals of the resolutions include increasing the emphasis on improving the business climate, reducing investment and business-related procedures and broadening the scope of ICT usage in public services.

In 2014, a new Law on Investment was passed to improve the environment for investment.118 It clarified the difference between a “foreign investor” and “foreign-invested economic organisation”. The new law also adopted a negative list approach (instead of its previous positive list approach), allowing foreign companies to invest in all sectors except for six prohibited industries. This approach expands the freedom of business and reduces the constraints placed on investors. The law also clarifies the definitions of other procedures, such as the types of business entities that an investor can choose from when registering. It also reduces the time limit for issuing Investment Registration Certificates from 45 days to 15 days.119

Vietnam has also focused on improving the investment climate at the provincial level. The Law on Investment authorises provincial authorities to issue investment certificates and business certificates among other things.120 Thus, provinces now have more autonomy in improving their business climate, without having to rely exclusively on the central government. This has generally led to better management of applications. Peer-learning and benchmarking amongst provinces has

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116 Administrative Simplification in Viet Nam (n 115).

117 Ibid.


120 OECD Vietnam (n 115) 261.
helped boost regulatory reform at the local level. Vietnam also publishes the **Provincial Competitiveness Index**, which assesses and ranks the economic and governance quality of provincial authorities. This contributes to healthy competition that can lead to the adoption of local best practices in all provinces, as well as giving investors a clear picture of the regulatory climate.

One-stop shops have also been established in all provinces to facilitate investment. In 2007, these one-stop shops were encouraged to be inter-linked, by incorporating and linking different administrative sectors and levels, which further simplifies procedures for investors. As of 2009, nearly 99% of departments at the district level and 96% of departments at the commune level had adopted this one-stop shop model.\(^\text{121}\)

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**Mauritius**

Mauritius is an island nation with a population of 1.3 million people. It has a relatively stable and competitive economy, with a GDP of US 13.27 billion, and per capita Gross National Income (GNI) of USD 10,130 in 2017. According to the World Bank 2019’s Ease of Doing Business Index, Mauritius ranks first in Africa, and 20th worldwide.\(^\text{122}\)

Since 2001, the Mauritius economy has experienced significant development and GDP growth. This is largely due to its commitment towards maintaining a stable economic environment, a predictable regulatory regime with good governance. FDI flows to Mauritius have grown from $38 million in the 2001-2006 period to $404 million in the 2007-2012 period. A turning point for FDI flows in Mauritius was the enactment of the Business Facilitation Act (BFA) in 2006, which amended 26 laws.\(^\text{123}\) The Act aimed to simplify business procedures by implementing a rules-based approach, minimising the amount of discretion involved. It has also been continuously improved upon, with the introduction of the 2017 **Business Facilitation (Miscellaneous Provisions) Act** and 2019 **Business Facilitation (Miscellaneous Provisions) Act**.

**Mauritius’s Economic Development Board**

An embodiment of the ‘one-stop shop’ policy can be seen in Mauritius’s Economic Development Board (EDB), otherwise formerly known as the Board of Investment.\(^\text{124}\) This EDB is the national investment promotion agency of the Government of Mauritius, with the mandate to promote and facilitate investment in the country. It is the first point of contact for investors hoping to explore business opportunities in Mauritius and the region. It serves as a single gateway for information that aids in the promotion of investment in the nation. It further provides centralized

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\(^\text{121}\) Ibid, 262.


guidance for investors through the country’s legal and regulatory requirements with regards to investment.

This may also be exemplified with the establishment of a national e-licensing platform, a single window for the application and processing of licenses and permits, under Section 12 of the 2017 Business Facilitation (Miscellaneous Provisions) Act. In addition to this, the Act also brought about reforms allowing for the expediting of the process to start a business, the streamlining of procedures for issuing construction permits, the facilitation of property registration, and the improvement of tax collection systems.

Additionally, under the Ministry of Finance and Economic Development, the Mauritius Network Service (MNS) has implemented the Companies and Business Registration Integrated system. This is a web-based portal that allows for the electronic submission of incorporation of companies and application for business registration numbers, amongst other business regulatory requirements in the nation.

Finally, in March 2019, the nation also launched the National Electronic Licensing System (NELS). This system was co-financed by the European Union. The NELS is a single point of entry for the processing of permits and licenses needed to start and operate a business.

Reducing and simplifying licensing and registration procedures

In 2008, a Central Business Registration Database was implemented, which links various governmental agencies directly to the Registrar of Businesses. These agencies include the Revenue Authority, the Board of Investment, the Ministry of Social Security, among others. This enables information sharing across authorities. Thus, companies do not need to register separately with the tax administration as the Commercial Registry will inform the tax and local authorities of their decision, thus reducing the number of agencies an investor has to approach.

To simplify business licensing, trade licenses have been abolished and replaced by a single trade fee. Development Permits and Building Permits have also been merged under a single “Building and Land Use Permit” (BLP). The processing time for a BLP is between 3 to 15 days. Mauritius has also adopted a “silent yes” mechanism explained above for the processing of its Occupation Permit applications. These permits are automatically deemed to be granted once the expected time period has elapsed. The processing time for an Occupation Permit is 5 days. After a business has obtained the required permits, local authorities communicate with the business to inform the investors of fees, any relevant guidelines and other applicable provisions to the business that intend to operate within their jurisdiction.

125 Ibid.
127 Mauritius EDB (n 125).
128 OECD Mauritius (n 124) 115.
130 OECD Mauritius (n 124) 116.
131 Mauritius EDB (n 125).
The 2014 Budget Speech also introduced a central E-monitoring system to address any delays in the delivery of BLPs. Work permit delivery is also to be streamlined to allow for online application and payment.\textsuperscript{132}

\begin{center}
\textbf{UNCTAD Business Facilitation Program}
\end{center}

\begin{quote}
Started in 2005, the UNCTAD Business Facilitation Program (\textit{“the BFP”}) seeks to capitalise on technology to streamline and speed up APRs.\textsuperscript{133} At the time of writing, 38 least-developed countries, developing countries and economies in transition have benefited from the BFP.\textsuperscript{134}

The BFP has two standardised template platforms that countries can implement in order to streamline and speed up their APRs: (1) eRegulations;\textsuperscript{135} and (2) eRegistrations.\textsuperscript{136}

1. \textbf{eRegulations}

eRegulations is an information portal on which APRs are published. Administrative procedures that an investor would be concerned with are detailed on eRegulations. These procedures generally include those required to register a business, obtain licenses, work permits, and pay taxes. Details of how eRegulations streamlines and speeds up APRs will be explained in relation to the focus areas identified above.

\textit{Reduction and simplification of administrative procedures and documentation requirements}

In each of the procedures listed on eRegulations, the administrative steps and requirements are clearly described in a simple and step-by-step manner.

\begin{footnotesize}
\begin{enumerate}
\item OECD Mauritius (n 124) 116.
\item These 38 countries are: Benin; Republic of Burkina Faso; Republic of Cameroon; Republic of Cabo Verde; Union of the Comoros; Republic of Congo; Ethiopia; Guinea-Bissau; Côte d’Ivoire; Kenya; Lesotho; Mali; Morocco; Republic of the Niger; Federal Republic of Nigeria; Rwanda; Republic of Senegal; Tanzania; Togolese Republic; Republic of Uganda; Republic of Iraq; People’s Republic of Bangladesh; Bhutan, Republic of Tajikistan; Vietnam; Armenia; North Macedonia; Montenegro; Russia; Argentine Republic; Republic of Colombia; Republic of Costa Rica; Brazil; Republic of El Salvador; Republic of Guatemala; Republic of Honduras; Nicaragua; and Panama. (UNCTAD Business Facilitation Program, ‘Business Facilitation Countries’ <https://businessfacilitation.org/countries/> accessed 22 March 2020.
\end{enumerate}
\end{footnotesize}
The image above shows what a typical description of a procedure looks like on eRegulations. On the left are the steps required in order to complete the procedure, listed in a step-by-step manner. The panels on the right provide further clarity by listing the government agencies the investor would need to visit, the documents required to complete the procedure, and the final documents the investor should obtain after completing the steps. The specific step number(s) that these government agencies, required documents and final documents relate to are also indicated.

**Authorisation/approval procedures**

For each procedure, the estimated duration required to complete it is given in a detailed manner, even including the time estimated to be spent queuing up.


**Fees and charges**

A clear breakdown of fees for each procedure is given so that investors know the administrative cost involved.

<table>
<thead>
<tr>
<th>Estimated cost</th>
<th>KES 25,950</th>
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</thead>
<tbody>
<tr>
<td>KES 100</td>
<td>For name reservation</td>
</tr>
<tr>
<td>KES 10,000</td>
<td>For company registration</td>
</tr>
<tr>
<td>KES 600</td>
<td>For CR 12 - List of shareholders certificate</td>
</tr>
<tr>
<td>KES 50</td>
<td>eCitizen convenience fee</td>
</tr>
<tr>
<td>KES 15,000</td>
<td>For business permit - Fee for a small workshop of up to 5 employees</td>
</tr>
<tr>
<td>KES 200</td>
<td>For business permit application fees</td>
</tr>
</tbody>
</table>


**Periodic review of administrative procedures and requirements**

eRegulations encourages continuous review and improvements to be made by allowing investors to submit comments or feedback online. These could be to report incorrect information, suggest improvements etc.

2. **eRegistrations**

eRegistrations is a platform that enables certain administrative procedures to be completed online. These commonly include registering a business, making payments and obtaining permits and certificates (see figure below).
Global Enterprise Registration

In 2014, UNCTAD, the Global Entrepreneurship Network and the U.S. Department of State launched the Global Enterprise Registration (“GER.co”) portal. GER.co’s purpose is to simplify administrative procedures around the world. Its first initiative concerns business registration, that is, getting governments around the world to set up online business registration (setting up online single windows that provide information and online application for registrations, digital payment and certificates confirming registrations) and clarify and simplify business registration.

The GER.co website lists 33 online single windows and 133 informational portals and assesses them. Benin, Kenya, Oman, Armenia and others are among the most highly

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ranked websites. In 2018, GER.co awards were granted to Armenia, Iraq, Lesotho and Montenegro for “for the quality of online information portals that provide detailed, up-to-date information on creating a business.” In 2016, the award was granted to Bhutan’s eRegulations portal.

### International Investment and/or Trade Agreements

#### Removal of Bureaucratic Impediments to Investment

Some international investment agreements (“IIAs”) provide for specific commitments on the removal of bureaucratic impediments to investment. These provisions are a form of policy advocacy, wherein bottlenecks in the investment climate are identified and recommendations are made to the government to remove them. Other IIAs contain provisions designed to streamline and simplify procedures for investment applications. These aim to establish clear and consistent criteria for investment applications and to ensure a reasonable time frame for processing applications while keeping costs low. Information regarding incomplete applications will also be provided.

1. **Caribbean Community (CARICOM) Treaty 2001**

   The treaty contains a hard commitment to the removal of bureaucratic impediments. Art 69.3(b) of the CARICOM Treaty states that the Council for Finance and Planning will endeavour to harmonise investment incentives and facilitate investment through the removal of bureaucratic impediments.

2. **ASEAN Comprehensive Investment Agreement (ACIA) 2009**

   The Modality For The Elimination/Improvement of Investment Restrictions and Impediments in ASEAN Member States provides that ASEAN member states are obliged to start the progressive elimination of investment restrictions to achieve free investment. Moreover, Art 21 of the ACIA states that Member States shall inform the ASEAN Investment Area Council of the existing administrative guidelines which will significantly affect investments of Member States under the ACIA.

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148 Novik & de Crombrugghe (n 25).

149 China Hong Kong 2017 CEPA Investment Agreement, Arts. 15.3 (iv), (v), (vii), and (viii).
3. ASEAN-China Investment Agreement (2009)

Art 21(b) of the ASEAN-China Investment Agreement states that the Parties shall cooperate to facilitate investments among China and ASEAN by simplifying procedures for investment applications and approvals.


Art 15.2 states that Parties agree to review and progressively simplify formalities and requirements on investors of the other contracting Party.


Art 5 of the Agreement provides that the Parties will gradually reduce the investment restrictions on investments from the other party. Art 6 states that the Parties agree to the simplification of documentation requirements for investment applications. In particular, Art 6(2) specifies that each Party will provide facilitation to the other Party in obtaining investment information, licenses, personnel entry and exit and business operations and management.

6. ASEAN-India Investment Agreement (2014)

Art 18(b) of the Agreement states that Parties shall cooperate to facilitate investments among India and ASEAN by simplifying procedures for investment applications and approvals.

**Facilitation of Investment Permits**

Some IIAs provide for contracting parties to grant the necessary permits required for an investor of the other contracting party to realise the investment in the former party. This provision can take either a mandatory form (“shall grant”) or become a best efforts provision (“shall endeavour to grant”).


Art 3 of the BIT states that Parties will assist investors of the other Party with obtaining all necessary permits for the realization of the investment.

2. ASEAN-China Investment Agreement (2009)

Art 21(d) of the Agreement states that Parties shall cooperate to facilitate investments between China and ASEAN by establishing one-stop investment centres in the host Parties to provide assistance and advisory services to businesses, as well as facilitation of operating licenses and permits.

3. ASEAN-India Investment Agreement (2014)

Art 18(d) of the Agreement states that Parties shall cooperate to facilitate investments between India and ASEAN by establishing one-stop investment centres in the host Parties to

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150 Armenia–Iran BIT (1995), Art. 3.

151 Chile–Croatia BIT (1994), Art. 3(2); Finland–Jordan BIT (2006), Art. 11.1; Finland–Macedonia BIT (2001), Art. 13.1; Egypt–Switzerland BIT (2010), Art. 3.2; Egypt–Spain BIT (1992), Art. 3.2; Poland–Spain BIT (1992), Art. 3.2; Belgium–Luxembourg Economic Union (BLEU)– Pakistan BIT (1998), Art. 3.2; Spain–Uruguay BIT (1992), Art. 3.2; India–Spain BIT (1995); Art. 2.2; Korea–Spain BIT (1994), Art. 2.3.
provide assistance and advisory services to businesses, as well as facilitation of operating licenses and permits.


Art 15.3(iv), (v), (vii) and (viii) of the CEPA Investment Agreement state that Parties will:

- stipulate a reasonable timeframe for relevant approving institutions to examine investment applications, make decisions, and inform applicants of the outcomes of their applications;
- make known the required information that is missing from an incomplete investment application and provide the chance for correction;
- endeavour to keep the application costs for the investors as low as possible; and
- endeavour to enable investors to gain access to and use public facilities under reasonable conditions.

5. Egypt-Mauritius BIT (2014)

Art 3(2) of the BIT states that the Parties shall provide all necessary permits or authorizations required for investments including permits for the carrying out of licensing agreements and contracts for technical, commercial or administrative assistance.

**Facilitation of Entry and Sojourn of Personnel Related to the Investment**

Some IIAs include provisions that facilitate permits for the activities of persons engaged by investors of contracting parties, either in general terms or specific entry, residence, work and travel permits.


Art 86 of the Agreement provides for the facilitation of the movement of investors. It states that each Party shall grant entry, temporary stay and authorisation to work to investors, and executives, managers and members of the board of directors of an enterprise of the other Party, for the purpose of establishing, developing, administering or advising on the operation of an investment. Parties also agreed to make requirements and procedures for applications to renew these permits.

2. Egypt-Switzerland BIT (2010)

Art 3(2) of the Agreement states that Parties shall provide facilitation for authorizations required for the activities of managerial and technical personnel of the investor's choice.


Art 8 of the Agreement states that each Party shall endeavour to facilitate the procedures for entry, sojourn and residence of persons of the other Party who wish to enter the territory of the former Party for the purpose of investment activities.
4. Egypt-Mauritius BIT (2014)

Art 3(4) states that each Party shall grant temporary entry and stay in its territory to the investor and key employees of the investor in connection with the investment.


Art 15.3(i) states that both Parties will facilitate, *inter alia*, entry and exit of investors of the other Party into their territories.

**Pre-Establishment Investor Servicing**

Certain IIAs include clauses that provide support to investors to facilitate the establishment of their investment. An example of this is setting up on-stop shops in the respective host countries to provide advice to businesses.\(^\text{152}\) Other clauses contain provisions regarding advisory services to the business community of member states.\(^\text{153}\)


Art 15.3(vi) of the CEPA encourages and promotes the cooperation and coordination among the regulatory institutions and establish a “one-stop” approving institution where possible. It states that Parties agree to stipulate the responsibilities and authorities of regulatory institutions with regards to approval.

2. ASEAN-China Investment Agreement (2009)

See Art 21(d) of the Agreement, referred to above.

3. ASEAN-India Investment Agreement (2014)

See Art 18(d) of the Agreement, referred to above.


Article 5 of the BIT states that the Parties shall exchange information concerning investments through a Joint Committee. Wherever possible, this information shall reveal in advance, useful data on procedures and special requirements for investment, business opportunities and expectations for major parties’ projects.

**Additional Examples**

Annex A includes more examples of how over 70 countries have adopted and implemented measures to streamline and speed up administrative procedures. Most of the examples which we have uncovered in our inquiry concern (a) reducing and simplifying administrative procedures and documentation requirements, as well as (b) establishing clear criteria and requirements for

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\(^{152}\) Novik & de Crombrugghe (n 25).

\(^{153}\) ACIA (n 31) Art. 25(g).
V. CONTACT/FOCAL POINT/OMBUDSPERSON TYPES OF MECHANISMS, ARRANGEMENTS TO ENHANCE DOMESTIC COORDINATION AND CROSS-BORDER COOPERATION ON INVESTMENT FACILITATION

72. Institutional mechanisms can support other investment facilitation tools and policies. Enhanced institutional cooperation and coordination can avoid duplication and double handling at different levels of the government. Hence, institutional cooperation and coordination mechanisms serve to improve the efficiency and effectiveness of investment procedures. The roles played by the respective measures for enhancing institutional mechanisms in promoting investment facilitation for development are delineated and explicated in the relevant sub-sections as follows.

A. FOCUS AREAS

73. This section will focus on three institutional mechanisms:

(a) Contact Point/Focal Point/Ombudsperson Types of Mechanisms;

(b) Domestic Regulatory Coherence;

(c) Cross-Border Cooperation on Investment Facilitation

B. CONTACT POINT/FOCAL POINT/OMBUDSPERSON TYPES OF MECHANISMS

(a) Description of Measure

74. The Structured Discussions on Investment Facilitation have identified contact points/focal points or ombudsperson types of mechanisms as capable of facilitating investment. Such mechanisms operate as a one-stop shop/single window (as addressed above in the section on streamlining and speeding up administrative requirements and procedures) and recommend measures to competent authorities to improve the investment environment. Notably, they facilitate foreign investment by assisting investors through responding to their enquiries, providing relevant information and advisory services, addressing their complaints, and facilitating the settling of their grievances. It is important to note that the contact point/national focal point/ombudsperson type of mechanism

154 Novik & de Crombrugghe (n 25).
155 APEC IFAP (n 97) 3.
for investment facilitation serves to address grievances or prevent disputes that may arise, which extend beyond the role of the “enquiry points” established under the Trade Facilitation Agreement (TFA).  

75. A focal point can serve as a facilitator in the technical relationship between investors, functioning as an additional channel of dialogue and governmental support in order to improve the environment for the attraction and maintenance of investment. Using a sustainable development lens, the national focal point can engage in a broader range of services beyond facilitating new investment flows, such as providing support services over the life cycle of an investment, assisting the diversification of established investments, policy advocacy and dispute mediation.

76. An ombudsperson mechanism is a grievance-redress mechanism that aims to prevent disputes from arising or help to resolve investment-related difficulties and settle investor complaints. The ombudsman mechanism serves as an institutional interlocutor for investors, an official channel to address issues at an early stage, and an amicable system to resolve issues related to investments. In particular, by playing the role of a facilitator between foreign investors and the relevant public agencies, the ombudsman provides timely and useful information to parties; prevents or mitigates disputes; and facilitates the resolution of disputes in coordination with government authorities and in cooperation with private entities.

77. For such investment ombudsperson mechanisms to be effective, there must be sufficient government empowerment and support to enable the procurement of detailed information deemed relevant and crucial to the resolution of foreign investor grievances from administrative agencies.

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156 The “enquiry points” established pursuant to the TFA have a similar role as the national focal points envisioned here, namely, responding to questions from “governments, traders and other interested parties” in relation to the publication of various types of information required under Article 1.1 of the TFA. See Balino, Brauch & Jose (n 27).

157 Julien Chaisse (ed), Sixty Years of European Integration and Global Power Shifts (Hart Publishing 2020) (hereafter Chaisse).

158 Ibid.


160 L. Amaral Junior, Alberto do, de Oliveira, Luciana Maria, Lucena Carneiro, Cristiane (Eds.), The WTO Dispute Settlement Mechanism: A Developing Country Perspective, (Springer International Publishing 2019) 260 (hereafter The WTO Dispute Settlement Mechanism: A Developing Country Perspective)
and public entities.\textsuperscript{161} Since investments are made at the subnational level, ombudspersons would have to coordinate closely with the relevant agencies and entities of subnational governments in order to obtain relevant information and render assistance to investors.\textsuperscript{162} Hence, WTO members should ensure that investment ombudspersons are able to coordinate with policymakers at the national and subnational levels in order for them to best respond to investors’ needs.\textsuperscript{163}

78. Impartiality and legitimacy also need to be ensured in the implementation of an ombudsperson mechanism.\textsuperscript{164} The confidentiality of requests, inquiries and information received from investors must be guaranteed.\textsuperscript{165} It is also important that the solutions presented by an ombudsperson on regulatory or administrative improvements can be discussed and possibly adopted by policy-making lead agencies and/or appropriate bodies with the designated competencies.\textsuperscript{166}

79. Further, since investment ombudspersons may over time identify systemic grievances relating to legislation or administrative procedures from the problems reported by foreign investors, specific lead agencies should be empowered to address the policy recommendations made by the ombudspersons.\textsuperscript{167}

80. The focal point or ombudsperson mechanism can be linked to Action Line 5 of UNCTAD’s Global Action Menu for Investment Facilitation, which encourages the designation of a lead agency, focal point or investment facilitator with a mandate to, \textit{inter alia}, address suggestions or complaints by investors and their home states; track and take timely action to prevent, manage and resolve disputes; provide information on relevant legislative and regulatory issues; promote greater awareness of and transparency in investment legislation and procedures; and inform relevant government institutions about recurrent problems faced by investors that may require changes in investment legislation or procedures.

81. The importance of a focal point and/or complaints review mechanism for investment facilitation has also been highlighted in the Investment Facilitation Index of the German Development


\textsuperscript{162} Ibid.

\textsuperscript{163} Ibid.

\textsuperscript{164} Ibid.

\textsuperscript{165} Ibid.

\textsuperscript{166} Ibid.

\textsuperscript{167} Ibid.
Institute ("GDI"). Roles and responsibilities of such a mechanism described by the GDI include receiving complaints from investors and helping them solve difficulties as well as encouraging the development of effective mechanisms, including private arbitration services, at reasonable cost for resolving disputes. Such a mechanism would thereby improve relations between host governments and relevant stakeholders, and facilitate communication and information sharing between potential foreign investors and government agencies, subnational authorities or competent entities with delegated authorities related to investment.

82. The focal point’s function can be distinguished from the function of an enquiry point (mentioned above in Section on Transparency). While the main purpose of an enquiry point is to provide information to investors, the focal point’s main role is to prevent and manage disputes. That being said, while in some countries the enquiry point and focal point are different institutions, in other countries these different functions might be merged within one institution. In fact, the implementation of an ombudsperson mechanism may serve as an impetus to establishing a single government body to address investors’ issues regarding laws and administrative procedures as well as handle post-investment difficulties that involve different government agencies in specific areas ranging from labour, taxation to finance, environment and infrastructure.169

(b) Why Contact Point/Focal Point/Ombudsperson Types of Mechanism Facilitates Investment

83. As mentioned above, focal points or ombudspersons facilitate the provision of information and communication amongst diverse governmental agencies and private investors. They also aim to prevent and/or resolve any potential dispute relating to investment.

84. Moreover, as highlighted in the sections on transparency and streamlining administrative procedures, focal points can also play a role in providing information as well as simplifying and streamlining administrative processes. Hence, focal points can support the pre-establishment and establishment stages of investment. Moreover, the establishment of a focal point or ombudsperson within the government to promote investment institutional governance can also play an important role in post-establishment investor aftercare.170 Aftercare services for investors are vital, especially in retaining investors, just as aftersales functions within a private company aim to

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169 Oliveira (n 162).

170 Rodrigo (n 29).
sustain customer loyalty.\textsuperscript{171} Keeping existing investors satisfied and facilitating the expansion of existing investors by helping them out with the challenges they face in the operation of their business is at least as important as facilitating new investments.\textsuperscript{172} Investments from existing companies, whether in the form of reinvested earnings or new investments, often account for a significant share of a given country’s total foreign direct investment inflows.\textsuperscript{173}

85. Ombudspersons facilitate communication between parties by assisting in the negotiation between them and making suggestions to resolve problems.\textsuperscript{174} Crucially, by managing inquiries and complaints of the other party or investors of the other party under an agreement with the competent government authorities and making suggestions in order to find solutions to the issues raised, and later informing stakeholders of the results of their suggestions, an ombudsperson can help to improve the conduct of investments in the territory of the host state.\textsuperscript{175} Further, not only does the ombudsperson mechanism provide parties with greater autonomy to choose the focal points from each side, it is also a less expensive and faster process.\textsuperscript{176}

86. The creation of grievance mechanisms, including ombudspersons, to address investment-related challenges, avoid potential grievances from escalating into investment disputes and encourage reinvestment has also been identified in an expert workshop at the World Trade Organisation on “Opportunities and challenges of establishing an international framework on investment facilitation for development in the WTO”\textsuperscript{177} and relayed to the WTO Structured Discussions in summary form on 12 December 2019.\textsuperscript{178} Dedicated mechanisms to help address investment-related challenges help investors resolve issues without having to resort to legal channels, which add cost and often result in irrevocably strained relationships between investors and host country governments. Ombudspersons can be part of such mechanisms, quietly acting as neutral third-


\textsuperscript{172} Novik & de Crombrugghe (n 25).

\textsuperscript{173} Ibid.

\textsuperscript{174} C M B Cozendey, & P M Cavalcante, ‘New perspectives on international investment agreements –The Agreement on Cooperation and Facilitation of Investments’ (2015) 2 Cadernos de Politica Exterior

\textsuperscript{175} The WTO Dispute Settlement Mechanism: A Developing Country Perspective (n 161) 260.


\textsuperscript{177} Sauvant & Stephenson (n 92).

\textsuperscript{178} Ibid.
party mediators to help settle differences. This type of grievance mechanism will facilitate not only new investment but also re-investment.\textsuperscript{179}

\textbf{87.} In fact, the mechanism can be more than an ombudsperson as it can proactively track and identify recurrent types and sources of challenges to help address issues at the root. Hence, investment ombudspersons can provide insights for policymakers to make regulatory adjustments and undertake reforms to facilitate investment by foreign investors.\textsuperscript{180}

\textbf{(c) Case Studies}

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\textbf{Korean Office of the Foreign Investment Ombudsman} \\
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The ombudsman mechanism, including the Brazilian Focal Point as described below, was inspired mainly by the South Korean Office of the Foreign Investment Ombudsman (OFIO).\textsuperscript{181} The Republic of Korea’s model is a worldwide reference point for grievance redress mechanisms.\textsuperscript{182} The Office of the Foreign Investment Ombudsman was established under the South Korea Trade-Investment Promotion Agency (KOTRA) in 1998/1999 as a grievance-settlement body or grievance-resolution centre and advocacy body for foreign investors.\textsuperscript{183} It provides assistance in resolving difficulties that foreign companies might face when investing in South Korea, whether in business activities and day-to-day management. It has thereby played a crucial role in helping to improve the country's investment and business environment for foreign investors.\textsuperscript{184}

The South Korean OFIO is an independent office created by law and directed by a high-level civil servant appointed by the President of the Republic and seconded experts in the different areas related to investments. The South Korean ombudsman mechanism operates on the basis of a “Home Doctor” system, under which specialists from various fields such as labour, taxation, finance and law provide one-on-one services to foreign-invested companies by investigating and resolving a wide range of grievances.

In South Korea, the ombudsman who is appointed by the President has extensive knowledge of and experience in investment and international trade. He is also advised by a range of experts in various related fields. Following different iterations since its establishment, the OFIO now works in a complementary way through its unique connection with the aftercare services that the KOTRA offers to investors.\textsuperscript{185} The ombudsman’s job is to collect and analyse concerns that foreign

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\textsuperscript{179} Ibid.

\textsuperscript{180} Oliveira (n 162).

\textsuperscript{181} Invest Korea <http://m.investkorea.org/m/ik/ombusman.do> accessed 3 April 2020.

\textsuperscript{182} Oliveira (n 162).

\textsuperscript{183} Ibid.

\textsuperscript{184} Ibid.

companies face. The ombudsman also communicates with other important organs and administrative agencies and makes recommendations, proposing policies to improve the investment promotion system and solve problems raised by foreign investors.\textsuperscript{186} In the Republic of Korea, the investment ombudsperson is also chairperson of the Regulatory Reform Committee, which is responsible for improving regulations.\textsuperscript{187} Hence, the OFIO is more than a facilitator for dispute settlement since it cooperates with the South Korean trade agency and has the power to make recommendations. The OFIO is accessible to all trade partners and is free of charge.

Similar to the Brazilian model, should the ombudsman mechanism be unsuccessful in resolving the dispute, the investor may then begin arbitration procedures. According to data from 1999 to 2015, the OFIO has resolved 4957 grievance cases with an annual average of 311 cases.

**Brazilian Direct Investment Ombudsman**

The Brazilian Cooperation and Facilitation Investment Agreements (CFIAs) enshrine and internalise the commitments to the prevention and settlement of investment disputes as well as improvement of a national investment governance framework.\textsuperscript{188} Unlike investment treaties of other States, the Brazilian CFIAs do not offer the possibility of investor-state arbitration but instead prioritise investment facilitation and dispute prevention. The CFIAs make an express reference to institutional governance as a vehicle to achieve the treaties’ primary objective of investment cooperation and facilitation. The institutional governance is to be effectuated through, \textit{inter alia}, the establishment of an agenda on investment cooperation and facilitation as well as the development of mechanisms for risk mitigation and prevention of disputes.

One of the key innovative elements of Brazil’s CFIAs, in terms of institutional governance and dispute settlement mechanisms, is the establishment of focal points or ombudsmen in each of the States Parties,\textsuperscript{189} in addition to the creation of a Joint Committee.\textsuperscript{190} The investment ombudsperson concept, is intended to be a mechanism for improving institutional governance, strengthening the investment climate and preventing disputes.\textsuperscript{191} Examples include the Brazil–Mozambique BIT (2015); Angola–Brazil BIT (2015), Article 17.1; and Brazil–Malawi CFIA (2015), Article 14.1.

The focal point ombudsmen mechanism may be considered as the institutional core of the Agreements as it helps to strengthen dialogue between parties on the investments.\textsuperscript{192} In all Brazilian CFIAs, the focal points shall directly act to prevent disputes and facilitate their resolution in coordination with relevant government authorities and in cooperation with relevant private

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\textsuperscript{186} The WTO Dispute Settlement Mechanism: A Developing Country Perspective (n 161).

\textsuperscript{187} Oliveira (n 162).


\textsuperscript{189} E.g. Brazil–Malawi ICFA (2015), Article 4.

\textsuperscript{190} Chaisse (n 158).

\textsuperscript{191} Oliveira (n 162).

\textsuperscript{192} Chaisse (n 158).
entities. The principal role of the focal points is to serve as communication channels between foreign investors and the host state in order to, *inter alia*, propose improvements to the business environment as well as prevent disputes and facilitate their amicable resolution. These focal points or ombudsmen are intended to prevent disputes through peaceful methods by monitoring, consulting with the private sector, and providing information when necessary to restrict frivolous disputes and avoid future disputes.

In Brazil, the ombudsman is represented by the **Council of the Foreign Trade Chamber**, otherwise known as **Câmara de Comércio Exterior** (CAMEX), which is an inter-ministerial body linked to the Presidency of the Republic and is thus not an independent office (c.f. the South Korean Office of the Foreign Investment Ombudsman). This is a necessary adaptation for Brazil as it had to develop the mechanism’s structure to meet the inherent needs of a federative country. The Brazilian Direct Investment Ombudsman (DIO) coordinates a Focal Point Network, which comprises major agencies and entities of the public administration at the national and subnational levels, including investment promotion agencies, to work together in addressing the investors’ concerns. Through such a mechanism, the DIO will have the mandate to handle complaints related to the federal government as well as the different states in Brazil, respecting their regulatory competencies.

Its focus is the prevention and amicable settlement of disputes involving bilateral investments. The other ombudsman authority varies according to the contracting parties. The Brazilian approach emphasises the prevention of disputes based on dialogue and bilateral consultation prior to the initiation of arbitration procedures. It is only in the event that this system does not culminate in a solution that arbitration between states is reverted to *ultima ratio*, which would be the only option available as a juridical mechanism in CFIAs.

Under such a preventive mechanism, the dispute is analysed by the ombudsman or focal point. As a starting point, the investor directly consults the ombudsman to seek an amicable solution for both to manage the controversy. The focal points serve as communication channels between foreign investors and the host state to, *inter alia*, propose improvements to the business environment, prevent disputes and facilitate their resolution. Should this mechanism be unsuccessful, it will then be up to the investor’s state of origin to assess the situation and then forward the demand for a Joint Committee analysis, in which representatives discuss and review the implementation of the CFIAs.

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193 Brazil–Mozambique CFIA (2015), Arts 5.4(iii) and 15.1; Angola–Brazil CFIA (2015), Arts 5.4(iii) and 15.1; Brazil–Mexico CFIA (2015), Arts 15.4.c and 18; Brazil–Malawi CFIA (2015), Art. 13; Brazil–Colombia CFIA (2015), Arts 15.4.c and 22; Brazil–Chile CFIA (2015), Arts 18.4.c and 22; Brazil–Peru ETEA (2016), Art. 2.20; Intra-MERCOSUR Investment Facilitation Protocol (2017), Art. 18.3.c; Brazil–Ethiopia BIT (2018), Art. 18.4.d; and Brazil–Suriname BIT (2018), Art. 19.4.d.

194 The WTO Dispute Settlement Mechanism: A Developing Country Perspective (n 161) 260.

195 Oliveira (n 162).

196 Ibid.

197 Ibid.

198 The WTO Dispute Settlement Mechanism: A Developing Country Perspective (n 161) 260.

199 The WTO Dispute Settlement Mechanism: A Developing Country Perspective (n 161) 260; Chaisse (n 158).

200 Chaisse (n 158).
Moreover, the DIO institution is represented in the National Investment Committee, which is the policy-making lead agency within CAMEX. Hence, the Brazilian DIO can also suggest investment regulatory reforms to facilitate investment and improve the investment climate in the country.

In sum, the Brazilian model recognises the essential role of governments in fostering an enabling environment for investment that meets both the concerns of the private sector and the development needs of countries that are signatories to the Agreements. It pursues a balanced outcome combining the promotion of an attractive environment for investors while preserving space for public policies.

Kazakhstan

In 2014, Kazakhstan established the office of an Investment Ombudsman by adopting the Law on Investment. The investment ombudsman is the official appointed by the Government of the Republic of Kazakhstan. Functions assigned to the investment ombudsman include, *inter alia*, assisting and ensuring the protection of the rights and legitimate interests of investors. Pursuant to Article 12 of the Kazakhstan Law on Investments, the investment ombudsman will, *inter alia*, address investors’ issues that arise during the implementation of investment activity in Kazakhstan and give recommendations for solutions.

Foreign investors will be able to appeal to the investment ombudsman on specific issues and problems as well as file requests both through the Secretariat, which is located at the Investment Committee of the Ministry of Industry and New Technologies, and the Investors’ Support Center at the National Agency for Export and Investments, KAZNEX INVEST, which is a part of the structure of the Ministry of Industry and New Technologies of Kazakhstan.

Interviews in Kazakhstan point to the growing popularity of investment ombudsmen specifically tasked with providing “a tailor-made, door-to-door” protection to foreign investors.

Bilateral Investment Treaties and Regional Trade Agreements

The following international investment agreements (including Brazil’s agreements) contain explicit provisions on *post-establishment investor facilitation*:

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201 Oliveira (n 162).
202 Chaisse (n 158).
203 Law No. 373-II.
205 Sattorova (n 189).
1. **China-Hong Kong CEPA (2003)**

Pursuant to Annex 6, Article 3.2.2, parties shall exchange views and conduct consultations to solve problems relating to investment from both sides.

2. **Brazil-Mozambique BIT (2015)**

Pursuant to Articles 5(4)(iii) and 15(1), the focal point shall directly act to prevent disputes and facilitate their resolution in coordination with relevant government authorities and in cooperation with relevant private entities.

3. **Angola-Brazil BIT (2015)**

Pursuant to Article 17(1), a focal point or ombudsperson is established within the government to promote investment institutional governance by establishing a specific forum and technical channels acting as facilitators between governments and the private sector.

Pursuant to Articles 5(4)(iii) and 15(1), the focal point shall directly act to prevent disputes and facilitate their resolution in coordination with relevant government authorities and in cooperation with relevant private entities.

4. **Brazil-Mexico BIT (2015)**

Pursuant to Articles 15(4)(c) and 18, the focal point shall directly act to prevent disputes and facilitate their resolution in coordination with relevant government authorities and in cooperation with relevant private entities.

5. **Brazil-Malawi BIT (2015)**

Pursuant to Articles 13, the focal point shall directly act to prevent disputes and facilitate their resolution in coordination with relevant government authorities and in cooperation with relevant private entities.

Pursuant to Article 14.1, a focal point or ombudsperson is established within the government to promote investment institutional governance by establishing a specific forum and technical channels acting as facilitators between governments and the private sector.

6. **Brazil-Colombia BIT (2015)**

Pursuant to Articles 15(4)(c) and 22, the focal point shall directly act to prevent disputes and facilitate their resolution in coordination with relevant government authorities and in cooperation with relevant private entities.

7. **Brazil-Chile BIT (2015)**

Pursuant to Articles 18(4)(c) and 22, the focal point shall directly act to prevent disputes and facilitate their resolution in coordination with relevant government authorities and in cooperation with relevant private entities.

8. **Brazil-Peru ETEA (2016)**
Pursuant to Article 2(20), the focal point shall directly act to prevent disputes and facilitate their resolution in coordination with relevant government authorities and in cooperation with relevant private entities.


Pursuant to Article 26, before initiating an eventual arbitration procedure, any dispute between the parties shall be assessed through consultations and negotiations by the Joint Committee.


Pursuant to Article 18(3)(c), the focal point shall directly act to prevent disputes and facilitate their resolution in coordination with relevant government authorities and in cooperation with relevant private entities.

11. **Brazil-Ethiopia BIT (2018)**

Pursuant to Article 18(4)(d), the focal point shall directly act to prevent disputes and facilitate their resolution in coordination with relevant government authorities and in cooperation with relevant private entities.

12. **Brazil-Suriname BIT (2018)**

Pursuant to Article 19, each party shall designate a single agency or authority as a National Focal Point or Ombudsperson, which shall have as its main responsibility the support for investors from the other party in its territory. Per Article 19(4)(d), the focal point shall directly act to prevent disputes and facilitate their resolution in coordination with relevant government authorities and in cooperation with relevant private entities.

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C. **DOMESTIC REGULATORY COHERENCE**

(a) **Description of Measure**

88. Article 25.2 (General Provisions) of Chapter 25 (Regulatory Coherence) of the Comprehensive and Progressive Agreement on Trans-Pacific Partnership (CPTPP), defines regulatory coherence and affirms the importance of expected benefits of regulatory coherence in the area of investment facilitation.\(^{206}\) Regulatory coherence is defined as the use of good regulatory practices in the process of planning, designing, issuing, implementing and reviewing regulatory measures in order to facilitate achievement of policy objectives, and to enhance regulatory cooperation in order to further those objectives and promote international trade and investment, economic growth and development.

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\(^{206}\) Balino, Brauch & Jose (n 27).
89. Regulatory coherence is thus essentially good regulatory practices. Good regulatory practices are internationally recognised procedures, systems, tools and methods for improving the quality of the regulatory environment. Good regulatory practices are composed of diverse procedures and mechanisms. The main categories identified above – transparency and access to information as well as streamlining and speeding up of administrative procedures – are core characteristics of good regulatory practice. Good regulatory practices also systematically implement public consultation and stakeholder engagement as well as impact analysis of government proposals before implementation to ensure that they are fit-for-purpose and will deliver their intended outcomes. Below we lay out these additional aspects of good regulatory practices.

90. **Regulatory impact assessments** are encouraged to be conducted when developing regulatory measures with potentially significant economic, social or environmental impact. The goal of such impact assessments is to carry out a cost benefit analysis of the proposed measures and to assess the potential impacts of a policy on other policy fields. This is an important element of an evidence-based approach to policy making.

91. **Establishing monitoring and review mechanisms** for investment policies is an investment facilitation principle that is also recommended by APEC. The government’s role is to maintain mechanisms for regular evaluation of the investment regime as well as to benchmark and measure performance of institutions involved in facilitating investment. Tools for regulatory review may include periodic reviews and deregulation programmes, “sunsetting” or legislative periodic reviews as well as codification and use of plain language reforms.

92. **Building constructive stakeholder relationships** is also a means to improve regulatory coherence. The government’s role includes maintaining mechanisms for regular consultation and dialogue with interested parties including investors in the development of regulatory measures, providing a framework to identify and address problems encountered by investors, promoting improved standards of corporate governance, and promoting responsible business conduct.

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208 Ibid.


foreign and domestic investors may be involved to ensure various perspectives and interests are addressed.

93. **Developing regulatory cooperation** and **capacity building** are encouraged too. Strong and effective institutions require expert staff and resources in order to provide all core functions. Hence, in line with principles of high-quality regulation, both expertise and resources must be available and thus reflected in the capacities of the relevant agencies for the development of regulatory processes.\(^\text{211}\)

(b) **Why Regulatory Coherence Facilitates Investment**

94. The regulatory environment governing investments is composed of complex layers of regulation stemming from subnational, national and international levels of government.\(^\text{212}\) Such variations and divergences contribute to a lack of coherence and consistency among central, regional and local regulations, thereby reducing the quality of the economy’s regulatory environment.\(^\text{213}\) This would in turn compromise competitiveness of the economy, adversely affecting foreign direct investment flows.\(^\text{214}\) Hence, where regulatory powers are shared amongst different levels of government, coordination may be an essential element of successful regulatory reform.\(^\text{215}\) Formal policies or mechanisms for coordination within and between levels of governments on regulatory reform can be established to reduce internal regulatory barriers to investment.\(^\text{216}\) Regulatory coherence is composed of diverse procedures and mechanisms. Here we look at some of the main ones.

95. Domestic arrangements to enhance **domestic coordination** play an important role in the successful implementation of an investment facilitation framework.\(^\text{217}\) Unlike trade facilitation where few agencies dealing with cross-border trade and customs compliance are involved, investment facilitation requires the cooperation of many agencies at all levels of government.\(^\text{218}\)

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\(^\text{211}\) Ibid, 10.
\(^\text{212}\) Ibid, 7.
\(^\text{213}\) Ibid.
\(^\text{214}\) Ibid.
\(^\text{215}\) Ibid.
\(^\text{216}\) Ibid.
\(^\text{217}\) World Trade Organisation, Structured Discussions on Investment Facilitation for Development, Meeting of 17 October 2019, WTO Doc. INF/IFD/R/7 (17 October 2019).
\(^\text{218}\) Singh (n 105).
96. Long and burdensome procedures are often explained by an uncoordinated institutional framework where different government agencies or different levels of government are involved in the approval and granting of business licenses but work in silos and hence provide conflicting messages and treatments.\textsuperscript{219} Investors have reported that a lack of coordination among government agencies leads to mixed signals, lost time, or at worst, conflicting decisions. Challenges can arise because of different interpretations of investment policy and measures between national and subnational institutions. The problem is exacerbated by the rapidly growing number of subnational investment institutions.\textsuperscript{220} Having a mechanism for alignment of policies and measures among different domestic agencies as well as between national and subnational institutions in the implementation of investment policy and measures would increase investor confidence that domestic policies will be adopted and implemented rationally and effectively, thereby facilitating firm investment decision-making.\textsuperscript{221}

97. **Domestic coordination is also crucial to overcome critical challenges to ensure the successful implementation of one-stop shops, single electronic windows and single window systems**, as discussed above in the sections on increasing transparency and predictability as well as streamlining and speeding up administrative requirements and procedures. For example, for one-stop shops or single electronic windows to be effective in countries that require multiple business or investment approvals from national, regional and local authorities and/or diverse tax and fee payments from multiple authorities at national and sub-national levels, a high level of coordination among many ministries, government agencies and other authorities must be in place besides an advanced information and communication technology infrastructure.

98. **Regulatory impact assessments** are essential as narrowly-defined and discriminatory regulation can explicitly or indirectly impede the flow of investment to the detriment of domestic economic efficiency and consumer welfare.\textsuperscript{222}

99. **Regular monitoring and evaluation** is also necessary to ensure that investment facilitation tools and policies are useful, up-to-date and respond to investors’ needs.\textsuperscript{223} While regulation is necessary, the constant accumulation of regulations and administrative formalities over years or

\textsuperscript{219} Novik & de Crombrugghe (n 25).
\textsuperscript{220} Sauvant & Stephenson (n 92).
\textsuperscript{221} Ibid.
\textsuperscript{222} APEC-OECD Checklist (n 211) 27.
\textsuperscript{223} Novik & de Crombrugghe (n 25).
decades without adequate review and revision would not be conducive for investments especially in the backdrop of rapid and drastic social, economic and technological change.\(^{224}\) Inefficient regulations would only create duplication and contradiction in the legal framework, creating unnecessary costs for investors.\(^{225}\) Poor institutional governance stemming from an inefficient regulatory framework would only lead to a loss of credibility, in turn deterring investors from investing and/or re-investing.\(^{226}\) Establishing monitoring and review mechanisms for investment policies would maximize effectiveness of the investment regime in line with current international best practice, and even encourage businesses to be innovative and forthcoming with new ideas.\(^{227}\)

100. **Constructive stakeholder relationships** would enable foreign investors to help shape a productive investment environment, ensure problems can be dealt with expeditiously, strengthen private-public sector partnerships, and enable investors to operate in a more socially responsible manner.\(^{228}\) Consultation of affected and interested stakeholders ultimately improves policy outcomes.\(^{229}\) It improves the quality of regulations while increasing compliance and reducing enforcement costs for both governments and investors who are subject to the rules.\(^{230}\) Such regulatory review policies that incorporate a mechanism for input by affected stakeholders would improve the responsiveness and effectiveness of the system as well as accountability towards those affected by the policies.

101. A **systematic public-private dialogue** is an example of a key process for host governments to receive feedback from foreign investors on existing legal and administrative bottlenecks faced by investors when investing or reinvesting. It can help the authorities provide the most appropriate mechanisms and policies in response to the concerns raised by investors.\(^{231}\) Such a mechanism to facilitate public-private coordination can ensure that the implementation of policies and measures are designed to achieve their intended goals since they are developed in consultation with these

\(^{224}\) APEC-OECD Checklist (n 211) 16.

\(^{225}\) Ibid.

\(^{226}\) APEC-OECD Checklist (n 211) 16.

\(^{227}\) APEC IFAP (n 97) 4.

\(^{228}\) Ibid.


\(^{230}\) APEC-OECD Checklist (n 211) 17.

\(^{231}\) Novik & de Crombrugghe (n 25).
affected by the policies.232 Such a mechanism can provide assurances to investors that, when issues arise, there will be ways to raise and address them with policy-makers.233 Efficient public-private dialogue can also allow the government to explain reforms to investors, which can ultimately also facilitate new investments.234

(c) Case Studies

<table>
<thead>
<tr>
<th>APEC-OECD Integrated Checklist on Regulatory Reform</th>
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<tr>
<td>The APEC-OECD Integrated Checklist on Regulatory Reform was launched in 2005 as part of the APEC-OECD Cooperative Initiative on Regulatory Reform. The Checklist was developed as a voluntary tool that APEC member economies may use to evaluate their respective regulatory reform efforts.</td>
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APEC and OECD economies have long acknowledged the importance of implementing good regulatory practices. As reiterated in the 2011 APEC Honolulu Leaders’ Declaration, building high quality regulatory environments, promoting the use of good regulatory practices and reducing the negative impact of regulatory divergences on investment in APEC economies is a key component of APEC’s work to promote free and open investment in the region.235 Cooperation between APEC and OECD on regulatory policy and governance began in 1999. This Checklist integrates the APEC and OECD principles on regulatory reform, assessment of competition, rule-making and market openness as well as governance perspectives.

We list below specific questions found in the Checklist that concern domestic regulatory coherence:236

- To what extent has regulatory reform, including policies dealing with regulatory quality, competition and market openness, been encouraged and coordinated at all levels of government e.g. federal, state, local, supranational?
- Are the policies, laws, regulations, practices, procedures and decision making transparent, consistent, comprehensible and accessible to users both inside and outside government, and to domestic as well as foreign parties? And is effectiveness regularly assessed?
- Do the authorities responsible for the quality of regulation and the openness of markets to foreign firms and the competition authorities have adequate human and technical resources to fulfil their responsibilities in a timely manner?

232 Sauvant & Stephenson (n 92).
233 Ibid.
234 Novik & de Crombrugghe (n 25).
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<th>Question</th>
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<td>Are there training and capacity building programmes for rule-makers and</td>
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<td>regulators to ensure that they are aware of high quality regulatory,</td>
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<td>competition and market openness consideration?</td>
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<td>To what extent are there mechanisms in regulatory decision making to</td>
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<td>foster awareness of trade and investment implications?</td>
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<td>Do regulatory requirements discriminate against or otherwise impede</td>
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<td>foreign investment and foreign ownership or foreign supply of services?</td>
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<td>If elements of discrimination exist, what is their rationale? What</td>
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<td>consideration has been given to eliminating or minimising them to</td>
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<td>ensure equivalent treatment with domestic investors?</td>
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<tr>
<td>Are the legal basis and the economic and social impacts of existing</td>
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<td>regulations reviewed, and if so, what use is made of performance</td>
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<td>measurements?</td>
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<tr>
<td>Are there effective public consultation mechanisms and procedures</td>
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<td>including prior notification open to regulated parties and other</td>
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<tr>
<td>stakeholders, non-governmental organisations, the private sector,</td>
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<tr>
<td>advisory bodies, accreditation bodies, standards development organisations and other governments?</td>
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**Hong Kong**

Hong Kong is one of the six countries that have published their self-assessment reports using the APEC-OECD Integrated Checklist on Regulatory Reform.

Believing in market forces and adopting a minimum intervention approach to economic arrangement, Hong Kong strictly adheres to its policy of maintaining liberal investment regimes for a free and open market for investment.\(^{237}\)

In general, there are no special legislation, regulations or administrative guidelines governing the admission and establishment of foreign investment in Hong Kong.\(^{238}\) There are also no restrictions on foreign exchange transactions, capital movement or repatriation of capital and returns related to foreign investments.\(^{239}\) Nonetheless, rules and regulations are still needed with regulatory regimes and bodies established to, *inter alia*, provide prudential supervision and encourage investment.\(^{240}\)

In relation to domestic coordination, notwithstanding the inapplicability of multi-level government coordination,\(^{241}\) policies, rules and regulations as well as outcomes of regulatory

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\(^{238}\) Ibid, 7.

\(^{239}\) Ibid.

\(^{240}\) Ibid, 4.

\(^{241}\) Ibid, 8.
reforms have been applied consistently within Hong Kong.\(^{242}\) To ensure that regulatory policies and standards continue to serve their purposes and are consistent with changes in circumstances and needs, specific entities such as the Business Facilitation Advisory Committee (BFAC) were set up to review existing regulatory standards and remove over-burdensome and outdated rules and regulations.\(^{243}\) In particular, the BFAC was established to systematically review government regulations and procedures impacting businesses with a view to eliminating outdated, excessive, repetitive or unnecessary regulations.\(^{244}\)

Further, all regulatory reform initiatives in Hong Kong involve an inter-ministerial consultation process.\(^{245}\) The impact of new regulations are carefully considered during the regulation formulation process.\(^{246}\) While regulatory impact assessment is not a compulsory requirement for new regulatory proposals in Hong Kong, departments/bureaux concerned will typically consider conducting regulatory impact assessments for major policy proposals with a significant regulatory impact.\(^{247}\) The Economic Analysis and Business Facilitation Unit (EABFU) works closely with government bureaux and departments in conducting regulatory impact assessment studies on proposed regulations.\(^{248}\) Regulatory impact assessments include the assessments of the cost of enforcement to the government and the cost of compliance to the business sector and consumers as well as analyses of the risk of not regulating and the measures necessary to control risk.\(^{249}\)

Public consultations are carried out as thoroughly as possible to help arouse the policymakers’ and regulators’ awareness to the implications of the regulations for investments.\(^{250}\) Under the steer of the BFAC, the EABFU maintains close contact with the business community to gauge their views concerning the impact of regulations.\(^{251}\) Taskforces formed for sector-specific reviews comprise trade representatives and professionals to provide industry and professional input.\(^{252}\)

### The Philippines

In 2017, the Philippines National Competitiveness Council (NCC) and the Economic Development Cluster launched “Project Repeal: The Philippine Red Tape Challenge”. The purpose of this project – which was modelled on similar initiatives in Australia, the UK, and

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\(^{242}\) Ibid.

\(^{243}\) Ibid, 10.

\(^{244}\) Ibid, 17.

\(^{245}\) Ibid, 11.

\(^{246}\) Ibid, 34.

\(^{247}\) Ibid, 15.

\(^{248}\) Ibid, 11.

\(^{249}\) Ibid.

\(^{250}\) Ibid, 34.

\(^{251}\) Ibid, 17.

\(^{252}\) Ibid.
ASEAN – is to improve the ease of doing business in the Philippines by overhauling its regulatory governance and introducing good regulatory practices. The project thus seeks to improve diverse aspects of regulatory governance. It reduces red tape that slows down government processes. It revokes or amends outdated government laws and rules that are no longer necessary or may be detrimental to the economy. It improves domestic coordination by fixing inefficiencies in the communication and information exchange within the public administration and between government organizations. It also improves communication and consultation with external stakeholders and seeks to improve public-private collaboration. It seeks to ensure the use of good regulatory practices in the process of planning, designing, issuing, implementing and reviewing regulatory measures.²⁵³ This government-wide regulatory reform initiative is expected to directly benefit the business sector as reducing the costs of doing business will facilitating the entry and growth of investments in the country.²⁵⁴

The amendments to the **Anti-Red-Tape Act** contained in the Senate Bill 1311/House Bill 6579 passed in 2017 also require government agencies and local governments to undertake regulatory impact assessment to ensure that regulations do not add undue regulatory burden and costs.²⁵⁵ Since 2007 when Good Regulatory Practices were first introduced in the Philippines following the certification of the **ASEAN Good Regulatory Practices** (ASEAN GRP) by the ASEAN Consultative Committee for Standards and Quality (ACCSQ), the Philippines’ government has endeavoured to adopt various frameworks and tools to improve the development of regulations, such as the introduction of the quality regulatory management system (QRMS), which includes the use of regulatory impact assessments.²⁵⁶ The Philippines’ government developed a set of regulatory impact assessment guidelines to support implementation by line agencies.²⁵⁷ These regulatory impact assessment guidelines include key steps, assessment issues as well as stakeholder consultations.²⁵⁸ In 2015, the **Modernising Government Regulations (MGR) Programme** was initiated by the Development Academy of the Philippines (DAP) and the National Economic and Development Authority (NEDA). Several workshops and training sessions on regulatory impact assessments were rolled out to expand the use of regulatory impact assessments across government agencies.²⁵⁹

The NCC also reached out to business groups to solicit their position on certain laws that are deemed unnecessary and cumbersome particularly to businesses and the economy as a whole.²⁶⁰ This collaboration reflected the government’s commitment to building constructive stakeholder relationships through regular consultation and dialogue with interested parties such as investors and business groups. Such collaboration strengthens public-private partnerships, enabling businesses to help shape a productive investment environment with enhanced regulatory coherence.

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²⁵⁴ Good Regulatory Practices to Support Small and Medium Enterprises in Southeast Asia (n 208) 157.

²⁵⁵ Ibid, 148.

²⁵⁶ Ibid, 150.

²⁵⁷ Ibid, 162.

²⁵⁸ Ibid.


Bilateral Investment Treaties and Regional Trade Agreements

The following international investment agreements contain explicit provisions on *relations with investors and the private sector*:

1. **ECOWAS Supplementary Act on Investments (2008)**

   Pursuant to Article 27, assistance and facilitation for cross border investment by home states may include, *inter alia*, support for joint business councils between home and host states to promote sustainable investments.


   Pursuant to Article 25(f), cooperation in the facilitation of investments into and within ASEAN may include, *inter alia*, consultations with the business community on investment matters.

3. **Australia-Malaysia FTA (2012)**

   Pursuant to Article 12.13, cooperative arrangements in the promoting and facilitation of investment may include, *inter alia*, supporting joint investment promotion activities and fostering technical cooperation in mutually agreed sectors.


   Pursuant to Article 25, assistance and facilitation for cross border investment by home states may include, *inter alia*, support for joint business councils between home and host states to promote sustainable investments.

5. **Brazil-Ethiopia BIT (2018)**

   Pursuant to Article 21, the key role played by the private sector is explicitly recognised. Concerning interaction with the private sector, contracting parties shall publicise among the relevant business sectors general information on investment, regulatory frameworks and business opportunities in the territory of the other party.

6. **Brazil-Suriname BIT (2018)**

   Pursuant to Article 22, the key role played by the private sector is explicitly recognised. Concerning interaction with the private sector, parties shall disseminate among the relevant business sectors general information on investment, regulatory frameworks and business opportunities in the territory of the other party.

The following international investment agreements contain explicit provisions on *capacity building on investment issues*:


   Capacity building is focused on one specific topic, that is, the development of a model investment treaty. Pursuant to Article 75(g) and Annex II, Article 15(2), the Agreement provides...
an overview of the content of such a model agreement, including fair and equitable treatment, most
favoured nation clause, protection against expropriation, transfer of capitals and profits as well as
investor-state arbitration.


Article 92(1)(a) is focused on measures aimed at capacity building on investment in general
terms.


Pursuant to Articles 98 and 104(3)(a), parties shall cooperate in promoting and facilitating
investments in the energy and mineral resources sector through, *inter alia*, discussing effective
ways on investment promotion activities, capacity building and technology transfer.

4. ECOWAS Supplementary Act on Investments (2008)

Pursuant to Article 21(c), measures aimed at capacity building include assistance to facilitate
technology transfer on cross-border investment.


Pursuant to Article 25, the home state should assist the host state in the promotion and
facilitation of foreign investment in particular by their own investors. Such assistance, which shall
be consistent with the development goals and priorities of the host state, may include, *inter alia*,
capacity building with respect to host state agencies and programmes on investment promotion and
facilitation as well as technology transfer.

Albania

FDI inflows into Albania have been rising steadily since the early 2000s, averaging close to
USD 1 billion per year for the period 2008-2017. FDI represents close to 52% of the country’s
GDP.

In 2016, Albania adopted the Law on Strategic Investments (and secondary legislation),261
which seeks to promote and facilitate strategic foreign investment. The law, *inter alia*, establishes
the Strategic Investment Committee to ensure the most efficient implementation of the Law. The
Committee is established as a collegial administrative body at the Council of Ministers and is
chaired by the Prime Minister. The Strategic Investment Committee shall also invite to its meetings
heads of local government units who may attend without any voting rights, and give their opinions
and views on the strategic investments that are proposed to be implemented in their administrative
jurisdictions.

The Committee will have the right to make decisions on the status to be given to investments –
whether as associated or specific strategic investments. Pursuant to Article 9(3) of the Law on

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261 Investment Policy Hub, ‘Entry into force of new Law on Strategic Investments’ (1 Jan 2016)
Strategic Investments, the Strategic Investment Committee shall have the following responsibilities:

(a) monitor the functioning of the “Single Window” for services provided to strategic investors;
(b) monitor the performance of strategic investments’ impact and their progress, and approve specific support programmes and incentives for strategic investments; and
(c) approve action plans for measures, procedures and deadlines relating to services, and facilitate the procedures for the design and implementation of a strategic investment project, which specifies commitments, tasks and concrete deadlines for central institutions and local government units for all stages of project implementation and enforcement.

As stressed by Minister Ahmetaj during the session of the Economy Parliamentary Commission, the new law that establishes the Strategic Investments Committee aims to attract and boost public and private investments, offer more easing procedures for investors, and is expected to increase investments in the mining sector, transport, tourism and agriculture.

D. CROSS-BORDER COOPERATION ON INVESTMENT FACILITATION

(a) Description of Measure

102. Continued international cooperation between members is critical for supporting investment facilitation. Indeed, Action Line 7 of UCTAD’s Global Action Menu for Investment Facilitation recommends international cooperation to enhance investment facilitation. There are different possible mechanisms to this end. For example, each member could designate competent authorities such as a contact point/national focal point to facilitate communication and cooperate on matters relating to investment facilitation. Upon request, the focal point would provide specific information to other members on matters related to investment facilitation or other relevant information such as regarding investment opportunities, data and statistics relating to investment and information on domestic investors.

103. Other possible mechanisms include the establishment of regular consultations between relevant authorities or investment facilitation partnerships to monitor the implementation of investment facilitation measures, address investor concerns, prevent the disruption of disputes as well as regulatory and institutional exchanges of expertise.

104. The importance of establishing an Investment Facilitation Committee in the WTO, which would be open for participation to all members, has also been highlighted. The recently established Trade Facilitation Agreement Committee could potentially provide a model to seek inspiration from. Such an Investment Facilitation Committee could be in charge of overseeing the future operation of the framework and meet on a regular basis to monitor its implementation.
105. Such a committee could also facilitate dialogue and cooperation and could be a forum for exchange of experiences and best practices on investment facilitation. It could also undertake periodic reviews to evaluate regulatory measures.\textsuperscript{262} Other functions of such a forum could include the facilitation of ad hoc discussions among members on specific issues with a view to reaching mutually agreed solutions and the promotion of further cooperation or joint initiatives on investment facilitation-related issues. Dialogues could also be fostered between the government members of the Committee and external stakeholders, especially IPAs and international investors.\textsuperscript{263}

106. Hence, such a Committee could be a multilateral forum for sharing best practices on facilitating FDI with the aim of identifying global benchmarks that could help members with the design and implementation of their investment facilitation measures.

(b) Why Cross-border Cooperation Facilitates Investment

107. Cross-border cooperation among members regarding investment facilitation is needed for the dissemination of information and sharing of experiences and exchange of best practices, including regarding the implementation of an agreement or framework on investment facilitation. It could also provide technical assistance and support capacity building.\textsuperscript{264}

108. Further, since facilitating developing and least-developed members’ increased participation in global investment flows constitutes a core objective of the framework,\textsuperscript{265} international cooperation would support capacity building in developing and least-developed members with a view to strengthening their domestic frameworks and promoting development.

(c) Case Studies

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<thead>
<tr>
<th>Joint Cooperation on Investment Facilitation</th>
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<tbody>
<tr>
<td>Mechanisms to enhance international cooperation on investment facilitation have already been referred to in a relatively large number of recent international investment agreements. Provisions on investment facilitation in certain international investment agreements have</td>
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</table>

\textsuperscript{262} INF/IFD/R/8 (n 106).

\textsuperscript{263} Sauvant & Stephenson (n 92).


\textsuperscript{265} WT/MIN(17)/59 (n 1) 2.
highlighted the need to carry out investment facilitation activities through direct consultation or cooperation between the contracting parties.266

The following international investment agreements contain explicit provisions on joint cooperation on investment facilitation:

1. **China-Hong Kong Closer Economic Partnership Arrangement (CEPA) (2003)**

   Article 17 and Annex 6 of the CEPA enshrine the commitment of Mainland China and the Hong Kong Special Administrative Region on cooperation in trade and investment facilitation. Both contracting parties have agreed to cooperate in trade and investment in 7 areas, namely, trade and investment promotion; customs clearance facilitation; commodity inspection and quarantine, food safety, quality and standardisation; electronic business; transparency in laws and regulations; cooperation of small and medium enterprises; and cooperation in Chinese medicine industry.

   Cooperation in these 7 areas will follow the guidance and coordination of the Joint Steering Committee to be set up pursuant to Article 19 of the CEPA. The Steering Committee will comprise senior representatives or officials designated by the two sides. Functions of the Steering Committee include, *inter alia*, supervising the implementation of the CEPA and resolving disputes that may arise during the implementation of the CEPA.


   The Mainland China and Macao Closer Economic Partnership Agreement is intended to promote trade and investment facilitation through greater transparency, standards conformity and enhanced information exchange (Article 16). Pursuant to Article 7 and Annex 6, the areas of cooperation comprise trade and investment promotion; customs clearance facilitation; commodities inspection, inspection and quarantine of animals and plants, food safety, sanitary quarantine, certification, accreditation and standardisation management; electronic business; transparency in laws and regulations; cooperation of small and medium sized enterprises; and industries cooperation.

   Pursuant to Article 19, a Joint Steering Committee comprising senior representatives or officials designated by both sides shall be set up. Similar to Article 19 of the China-Hong Kong Closer Economic Partnership Arrangement, functions of the Steering Committee under Article 19 of the Mainland China and Macao Closer Economic Partnership Agreement likewise include, *inter alia*, supervising the implementation of the CEPA and resolving disputes that may arise during the implementation of the CEPA.


   Pursuant to Article 5, to promote investments and to create the facilitative, transparent and competitive investment regime, the contracting parties agreed to, *inter alia*, strengthen cooperation in investment, facilitate investment and improve transparency of investment rules and regulations.

   Institutional arrangements under Article 10 include the establishment of the BIMST-EC Trade Negotiations Committee to carry out the programme of negotiations as well as coordinate and implement any economic cooperation activities undertaken pursuant to the Agreement.


266 China–Hong Kong CEPA (2003), Art. 17 and Annex 6, Art. 3.2.3; India–Japan EPA Art. 128.2(a).
Pursuant to Article 39, the contracting parties recognise the importance of cooperation to develop the ESA region’s private sector as the main engine of wealth creation in view to set up an appropriate enabling environment that is conducive to investment and growth. Investment is covered within the scope of cooperation of private sector development under the Agreement. Pursuant to Article 40, areas of cooperation pertaining to investment include, *inter alia*, facilitating institutional support such as capacity building for investment facilitation.

5. **India-Japan EPA (2011)**

Pursuant to Chapter 13, Article 128, main objections of cooperation include liberalisation and facilitation of investment and trade between the parties. Cooperation may be implemented by the relevant national entities of each party through separate work plans, arrangements or any other means deemed appropriate. In addition, per Article 131(3), for the purposes of coordinating cooperation activities, a Sub-Committee on Cooperation may be established pursuant to Article 14(3)(b). The Sub-Committee may hold meetings at such frequency as mutually agreed upon by the parties. Pursuant to Article 14, a Joint Committee shall be established under the Agreement to, *inter alia*, review and monitor the implementation and operation of the Agreement. The Joint Committee shall be composed of representatives of the governments of the parties and may establish and delegate its responsibilities to Sub-Committees.

6. **Canada-China BIT (2012)**

Pursuant to Article 18, representatives of the contracting parties may hold meetings for the purpose of, *inter alia*, reviewing the implementation of the Agreement, addressing disputes arising out of the investments, and studying other issues in connection with the facilitation or encouragement of investment.


Pursuant to Article 17, contracting parties shall cooperate in promoting investment activities through, *inter alia*, organising and supporting the organisation of various briefings and seminars on investment opportunities and on investment laws, regulations and policies; and conducting information exchanges on other issues of mutual concern relating to investment promotion and facilitation.

**Treaty Body with Investment Facilitation Tasks**

Increasingly, international investment agreements establish treaty bodies especially created for the purpose of investment facilitation tasks.267

The following international investment agreements contain explicit provisions on *treaty body with investment facilitation tasks*:

1. **Japan-Malaysia EPA (2005)**

Pursuant to Article 92, both countries shall cooperate in promoting and facilitating investments between the countries through ways such as facilitating the provision and exchange of

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267 Rodrigo (n 29).
investment information including information on their laws, regulations and policies to increase awareness on investment opportunities.

The Sub-Committee on Investment established in accordance with Article 14 shall be tasked with, *inter alia*, discussion of issues related to cooperation in the promotion and facilitation of investments.\(^{268}\) Pursuant to Article 93(3), the Sub-Committee on Investment shall be composed of representatives of the governments and co-chaired by officials of the governments.

2. **ECOWAS Supplementary Act on Investments (2008)**

Pursuant to Article 25, the European Community of West African States (ECOWAS) called for the creation of regional structures for the implementation of the Community Investment Rules in the area of promotion and facilitation of investments.\(^{269}\) Member States shall also establish or maintain appropriate national structures for the same purpose of investment facilitation.

3. **Canada-Peru FTA (2008)**

Pursuant to Article 817, parties shall establish a Committee on Investment, comprising representatives of each party. The Committee shall meet at such times as agreed by the parties, and work to promote cooperation and facilitate joint initiatives to consult on and address issues such as investment facilitation.


Pursuant to Article 42, the ASEAN Investment Area (AIA) Council established by the 39\(^{th}\) ASEAN Economic Ministers (AEM) Meeting under the Framework Agreement on the ASEAN Investment Area (AIA Agreement) shall be responsible for the implementation of this Agreement. The ASEAN Coordinating Committee on Investment (CCI) established by the AIA Council shall assist the AIA Council in the performance of its functions, and report to the AIA Council through the Senior Economic Officials Meeting (SEOM). The CCI shall comprise senior officials responsible for investment and other senior officials from relevant government agencies. The ASEAN Secretariat shall be the secretariat for the AIA Council and the CCI. Functions of the AIA Council comprise, *inter alia*, provision of policy guidance on global and regional investment matters concerning promotion, facilitation, protection and liberalisation.

5. **Nigeria-Morocco BIT (2016)**

Pursuant to Article 4, parties shall establish a Joint Committee for the administration of this Agreement. The Joint Committee shall be composed of representatives designated by both parties, and meet at such times, in such places and through such means as agreed by both parties with alternating Chair between both parties. Responsibilities of the Joint Committee include, *inter alia*, monitoring the implementation and execution of the Agreement as well as debating and sharing opportunities for the expansion of mutual investment.


\(^{268}\) Japan–Malaysia FTA (2005), Art. 93.1(d).

\(^{269}\) ECOWAS Supplementary Act on Investments (2008), Art. 25.
Pursuant to Article 17, functions of the Joint Committee on Investment include, *inter alia*, the carrying out of consultations, exchange of investment information and promotion of investment facilitation.\(^{270}\)

**Joint Committees under the Brazilian CFIAs**

The Brazilian Cooperation and Facilitation Investment Agreements (CFIAs) model provides for the establishment of a new institutional mechanism: The Joint Committee.

The Joint Committees established under the CFIAs are composed of government representatives of both contracting States Parties. The purpose of the Joint Committee is to implement “the mutually agreed cooperation and facilitation agendas”.\(^{271}\) It is also intended to act as a facilitator between the governments and the private sector.\(^{272}\) The Joint Committee is also responsible for sharing opportunities for the expansion of mutual investment, preventing disputes and solving possible disagreements in an amicable manner.\(^{273}\) The Joint Committee is also responsible for the preliminary examination of specific issues demanded by the signatories of the Agreement.\(^{274}\)

CFIAs containing explicit provisions on *joint committees* include the Brazil-Mozambique BIT (2015), Angola-Brazil BIT (2015), Brazil-Mexico BIT (2015), Brazil-Malawi BIT (2015), Brazil-Colombia BIT (2015), Brazil-Chile BIT (2015), Brazil-Peru ETEA (2016), Brazil-Suriname BIT (2018), the Intra-MERCOSUR Investment Facilitation Protocol and others.

For example:

**Brazil-Ethiopia BIT (2018)**

Pursuant to Article 17, the contracting parties shall establish a Joint Committee for the administration of the Agreement, which shall be composed of government representatives of both parties designated by their respective governments. Functions and responsibilities of the Joint Committee shall include, *inter alia*, discussion and divulgence of opportunities for the expansion of mutual investment; consultation with the private sector and civil society, when applicable, on their views on specific issues related to the work of the Joint Committee; and the resolution of any issues or differences concerning investments of investors in an amicable manner.

The provisions regarding the Joint Committee under the Brazilian CFIAs include specific commitments.\(^{275}\) For example, in Brazil’s agreements with Angola, Malawi, Mexico, and Mozambique, certain topics have already been defined for the agendas of cooperation and

\(^{270}\) China–Hong Kong CEPA (2017), Art. 17.

\(^{271}\) E.g. Brazil-Malawi ICFA (2015), Art. 3.

\(^{272}\) Brazil–Mozambique CFIA (2015), Arts. 2, 4.4(iii), and 17.1; Angola–Brazil CFIA (2015), Arts. 2, 4.4(iii), and 17.1; Brazil–Mexico CFIA (2015), Art. 14.4.c; Brazil–Malawi CFIA (2015), Art. 3.4(iii)(c).

\(^{273}\) Chaisse (n 158).

\(^{274}\) Ibid.

\(^{275}\) Rodrigo (n 29)
facilitation. These include payments and transfers (i.e. facilitation of remittances and foreign capital exchange between the parties); visas (i.e. facilitation of the temporary entry and stay of managers, executives and skilled employees of economic operators, entities, firms and investors of the other party); environmental legislation and technical regulations (i.e. facilitation of the issuance of documents and certificates, licenses relating to the investment of the other party); and cooperation in sectoral legislation and institutional exchanges.\textsuperscript{276}

### Additional Examples

Annex A includes further examples of institutional mechanisms that have been adopted by countries. It is observed that with the universal recognition of the importance of good regulatory practices in facilitating investment, measures pertaining to domestic regulatory coherence have been gaining traction across countries. Other institutional measures, namely, contact point/focal point/ombudsperson types of mechanisms and cross-border collaboration, have not yet been as widely adopted. Given their usefulness and effectiveness in facilitating investment, it is hopeful that a multilateral framework on investment facilitation that highlights these particular institutional measures would allow for their greater uptake, thereby more effectively facilitating investment for development.

### VI. CONCLUSION

109. To facilitate members’ participation in the WTO Structured Discussions on Investment Facilitation for Development, this document has highlighted three of the main focus areas of investment facilitation for development in the WTO discussions – improving the transparency of investment measures, streamlining and speeding up administrative procedures and requirements, and enhancing institutional mechanism. It has also sought to give real-life examples of investment facilitation measures. In addition to the case studies above, Annex A provides a list of other investment measures from diverse countries to which members may refer. We hope that this document will be a useful resource for members to further develop elements of such a multilateral framework.

110. Investment facilitation is a “systematic gap”,\textsuperscript{277} and a source of untapped potential to further increase FDI flows and promote development. This report has sought to provide an overview of investment facilitation measures which have already been adopted by States. Overall, measures


\textsuperscript{277} UNCTAD global action menu (n 7) para 6.
to streamline and speed up administrative processes have been adopted by many countries, while very few have adopted institutional mechanisms, and only some have adopted transparency measures. A multilateral framework on investment facilitation would likely advance investment facilitation to be more consistent and coherent across different areas.\textsuperscript{278} Establishing a benchmark of best practices regarding investment facilitation would also streamline the regulatory climate. Further, the value of technical assistance to developing states and cross-border cooperation cannot be understated.\textsuperscript{279} Yet at the same time, the investment environment of every state is unique, and rests on a web of central, regional and national governmental institutions and policies. States will, thus, have to adapt measures to their unique needs, capacities and national interests. Indeed, the particular needs of smaller countries and developing countries need to be taken into consideration in discussions over a framework for investment facilitation.\textsuperscript{280}

\begin{footnotesize}
\begin{enumerate}
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\end{enumerate}
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VIII. ANNEX A