Korea

Ombudsman Office Leads Way on Resolving Investor-State Disputes

The Korean Ombudsman System designed for international investment conflict settlement has played a major role in transforming the Korean economy into a successful global player. In the late 1990s, South Korea faced near depletion of foreign exchange reserve during the Asian financial crisis and switched to induce foreign direct investment (FDI) proactively. As a result, Korea established the Office of the Foreign Investment Ombudsman (OFIO) to reassure foreign investors of the soundness of investments in Korea. The OFIO addresses and resolves foreign investor issues with domestic rules and regulations, helping to preempt costly legal action. Over the past 25 years, Korea's Ombudsman system has boosted investor confidence, with 70% of its inbound FDI today coming from reinvestment by existing foreign investors. With the recent rise in investor-state disputes worldwide, the Ombudsman model could assume global importance as a means of reassuring investors and reducing the risk of costly legal disputes for host governments. Former Foreign Investment Ombudsman of Korea, Dr. Choong-Yong Ahn, discussed his experience with Korea's ombudsman system with Washington CORE and outlined how it could address global investment challenges.

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Ombudsman System as Korea's Pro-FDI Policy

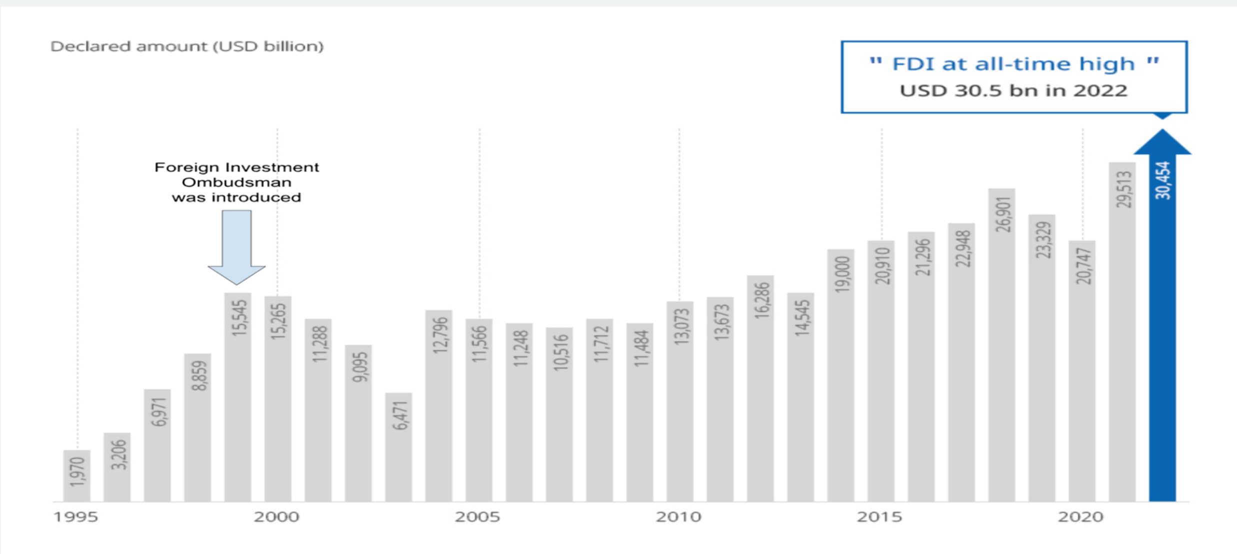
Dr. Choong-Yong Ahn, currently Distinguished Professor at the Graduate School of International Studies, Chung-Ang University, served as South Korea's second presidentially appointed Foreign Investment Ombudsman (2006-2014). The Office of the foreign Investment Ombudsman (OFIO), established in 1999 under the Korea Trade-Investment Promotion Agency (KOTRA), a government-funded trade and investment promotion agency, has been responsible for handling complaints from foreign direct -invested companies operating in Korea.

For years, Korea used to avoid FDI for the fear of foreign domination experienced during the colonial period (1910-1945) by adopting a positive list system for incoming FDI. As a result, until the 1990s, Korea largely relied on foreign borrowing — either from commercial creditors or international development financing — but not M&A type or direct investments. However, after the 1997 Asian financial crisis, when Korea needed a bailout financial support from the International Monetary Fund to avoid a potential moratorium on its external debt repayments, the country recognized the need to shift to a pro-FDI policy. This change was aimed at attracting foreign investors who could bring in capital and technology, helping Korea create new job opportunities and learn advanced managerial practices and new technology.

Since then, the Korean government has turned to policies for attracting FDI, offering incentives including tax benefits, tariff reductions, and industrial estates for greenfield investment. Specifically, Invest Korea, a government agency promoting foreign investment, was established in 1998 as part of KOTRA. Invest Korea provides comprehensive services for all investment stages, including investment feasibility studies; investment execution, which includes establishing foreign invested companies; and legal consultations.

After its pro-FDI policy shift, the government recognized the need not only to attract new FDI but also to provide good "aftercare" services for existing FDI, addressing difficulties foreign investors might face after investing in Korea. Foreign investors often encountered unexpected taxation or difficulties in getting a business permit, and stringent regulations, resulting in penalties or business suspensions. So, the government created the OFIO in 1999 as a parallel of Invest Korea. Appointed by the president, the Foreign Investment Ombudsman is a specialist dedicated to resolving foreign investor grievances and difficulties related to doing business in Korea.

South Korea's inbound FDI, 1995-2022



Source: Invest Korea[1]

South Korea's inbound FDI by investment type, 2020-2023 (USD million, %)

	2020	2021	2022	2023
New investment	2,984 (26.1%)	4,201 (23.3%)	3,989 (22.0%)	6,757 (36.0%)
Reinvestment	6,845 (59.8%)	13,084 (72.6%)	13,336 (73.4%)	10,456 (55.6%)
Long-term loan	1,616 (14.1%)	744 (4.1%)	842 (4.6%)	1,575 (8.4%)
Total	11,446 (100.0%)	18,029 (100.0%)	18,167 (100.0%)	18,789 (100.0%)

Source: KOTRA [2, 3]

For the past 25 years, the ombudsman system has been highly effective in Korea. Providing strong aftercare services has increased foreign investor confidence in Korea's business environment, which, in turn, has encouraged reinvestment from already existing foreign investors in Korea rather than divestment or relocation. The World Bank estimates that attracting FDI from existing multinational companies requires 30% of efforts of bringing in new foreign investors. Today, approximately 70% of Korea's inbound FDI comes from reinvestment. In 2007, the OFIO received an award for excellence in aftercare service at the World Association of Investment Promotion Agencies' Annual World Investment Conference.

Honest Broker: Navigating Different Perspectives to Facilitate FDI

In South Korea, challenges faced by foreign investors often stem from differing perspectives among government ministries on the role of FDI. Ministries responsible for economic planning or trade and investment promotion have generally been pro-FDI. In contrast, ministries overseeing public safety, labor, and environmental issues tend to approach FDI with caution, fearing it might undermine Korea's economic sovereignty. As a result, a key role of the ombudsman has been to challenge bureaucratic hurdles posed by those anti or lukewarm ministries against foreign investors.

The political orientation of each administration—pro-business or pro-labor—has also shaped FDI policy. Governments that prioritized the concerns of labor unions or environmental organizations may have created a less favorable business environment for foreign investment. For example, Korea has a strict law on industrial accidents, which holds businesses criminally liable for workplace casualties, with executives facing possible imprisonment. The law was enacted under an administration focused on workplace safety, but its severity led the U.S. Department of State to caution American executives about the legal risks of going to jail while doing business in Korea.

For this reason, Dr. Ahn says that an ombudsman must act independently, as it does in Korea. This independent ombudsman system has gained credibility with foreign companies as a trustworthy broker. The ombudsman works to maintain objectivity and a global perspective. Studying international best practices and learning how other countries address similar issues, the ombudsman bridges the gap between the government and foreign investors.

Ultimately, the ombudsman system has created a better environment for business in Korea. Institutional and legal reforms have been essential to prevent similar challenges from arising for foreign investors and has resulted in canceling or revising outdated regulations. However, that type of deregulation typically requires collaboration with ministries concerned. During his tenure as Korea's ombudsman, Dr. Ahn also served as chairman of the Presidential Regulatory Reform Committee. This provided an opportunity for the OFIO to expedite Korean government efforts for regulatory reform for better business environment.

Preventing ISDS Cases: The Critical Role of the Ombudsman

The cumulative number of treaty-based investor-state dispute settlement (ISDS) cases globally has more than doubled in the past decade, from about 600 cases by the end of 2013 to 1,300 by the end of 2023, but only a few have involved Korea due to its proactive efforts. Still the increase in cases creates uncertainty in the international business environment.

The rising number of ISDS cases is especially concerning because FDI typically flows from developed countries to developing countries. If powerful multinational corporate investors from developed economies sue governments in developing economies and win ISDS cases, host governments may feel exploited. This could make host countries more cautious about granting business permits to foreign companies.

The current ISDS framework is based on outdated international investment agreements (IIAs), some up to 20 - 30 years old. These agreements lack clear guidelines, which might encourage opportunistic behavior by foreign investors, particularly hedge funds that exploit treaty breaches for profit. ISDS tribunals often rely on interpretations of international commercial law, which could lead to unpredictable outcomes. Therefore, some host countries might prefer handling disputes in domestic courts rather than relying on international arbitration

In this context, the ombudsman system offers an alternative to ISDS, helping governments resolve disputes with foreign investors preemptively. During his tenure as Korea's ombudsman, Dr. Ahn helped resolve around 40 cases—which otherwise could have easily escalated into ISDS disputes. In one case, a foreign investor that had acquired a Korean cement company faced allegations by regional environmentalists after a landslide occurred significantly away its limestone extraction site, raising the risk that their business permit would not to be renewed. Called in to assist, Dr. Ahn found that the landslide was caused by heavy rainfall and not the company's activities. He convinced the permit renewal committee to allow the company to continue its operations.

In another case, the government announced a large-scale urban redevelopment project in a city near Seoul, forcing all foreign firms in the area to relocate. Some of them had been operating there for over 20 years, and others had recently expanded their facilities. Again, Dr. Ahn found that these were primarily R&D-focused firms with minimal environmental impact and could coexist within residential areas. After negotiations with the government, a compromise was reached allowing the companies to stay in the area with minor adjustments to the city plan. While land values rose significantly due to the area's zoning change, the firms were charged only a nominal 10% capital gains tax, reducing their tax burden by 90%.

By resolving investor issues without escalation, OFIO successfully avoided escalating them to the ISDS, sending a strong signal to foreign investors that the Korean government is deeply committed to maintaining a stable, predictable, and business-friendly environment.

that future trade agreements may impose stricter limits by developing host economies.

In such a scenario, the ombudsman system may become even more critical globally, serving as a means of reassuring investors while reducing the risk of costly legal disputes for host governments. Dr. Ahn expressed his hope for a future where aftercare services such as the ombudsman system become a standard feature in FDI-seeking countries across the Global South, fostering greater cross-border investment from the Global North in a mutually beneficial way. Representatives from countries including Brazil, Kazakhstan, and Russia have already visited the OFIO to study Korea's model and have implemented similar institutions in their countries. He hopes this trend will continue, contributing to a more balanced and sustainable investment landscape, especially in an era of increasing economic nationalism in an increasingly fragmented World.

Advocating for Aftercare Services in Global Investment Agreements

Dr. Ahn recommends that bilateral or multilateral trade agreements explicitly include aftercare services in the investment chapter, such as an ombudsman system, as part of investment agreements, making it mandatory for each party to provide grievance resolution mechanisms. However, this is not yet standard practice. For example, the Regional Comprehensive Economic Partnership (RCEP) - which launched in 2022 with members including ASEAN countries, China, Japan, Korea, Australia, and New Zealand - does not specifically address grievance resolution mechanisms for foreign investors. By incorporating aftercare services in international trade agreements like RCEP could improve the overall investment climate across member countries.

Ultimately, reforming the ISDS system is essential to create a level playing field that fairly considers both the interests of host countries and foreign investors. International forums such as the UN Conference on Trade and Development (UNCTAD) are actively working to revise the IIA framework to achieve this balanced approach. However, growing resistance to ISDS mechanisms, fueled by concerns over state sovereignty subject to influential multinational corporations, suggests

Endnote

[1] https://www.investkorea.org/ik-en/cntnts/i-3016/web.do?clickArea=enmain00009
[2] https://ombudsman.kotra.or.kr/ob-en/bbs/i-2654/detail.do?ntt_sn=3
[3] https://www.investkorea.org/ob-en/bbs/i-2654/detail.do?ntt_sn=10
[4] https://keia.org/contributor/choong-yong-ahn/

About Choong-Yong Ahn

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Dr. Choong-Yong Ahn is Professor Emeritus of Economics at the College of Business and Economics and Distinguished Professor at the Graduate School of International Studies, both at Chung-Ang University in Seoul, South Korea.

Previously, he was the presidentially appointed Foreign Investment Ombudsman (2006-2014), where he pioneered implementing an aftercare system to support foreign direct investors in South Korea and investigate their complaints. He showcased a culmination of several decades of expertise in FDI in his recently published books, titled "*South Korea and Foreign Direct Investment: Policy Dynamics and the Aftercare Ombudsman*" (Routledge, 2023) and "*India-Korea Connections in the Indo-Pacific: Minilateralism to Multilateralism*," co-edited with Jagannath Panda (Routledge, 2025).

Since receiving his Ph.D. from Ohio State University, Dr. Ahn has published many articles in international journals including *Review of Economics and Statistics, European Economic Review*, *Japanese Economic Review*, *Journal of Asian Economics*, *Global Asia*.

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Hojun Song is a senior research analyst at Washington CORE, where he provides comprehensive research and analytical support across a wide array of sectors and explains how technology, policy and business intersect. With extensive experience in conducting in-depth research and offering strategic consulting, he is adept at analyzing complex data, evaluating policy impacts, and generating actionable insights for a diverse clientele. Mr. Song holds a Master of Arts in Law and Diplomacy (MALD) from the Fletcher School of law and diplomacy, Tufts University and a BA in International Area Studies and Economics from Handong Global University (South Korea).