South Korea and Foreign Direct Investment: Policy Dynamics and Aftercare Ombudsman

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Policy dynamics and the Aftercare Ombudsman,
Routledge (Just published)

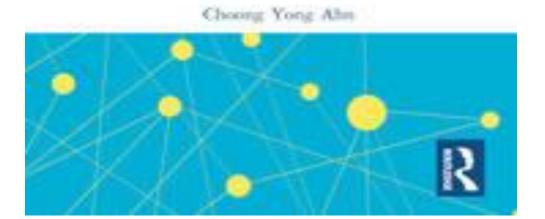
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South Korea and Foreign Direct Investment has been just published by Routledge. Hereof is drawn presentation material.



SOUTH KOREA AND FOREIGN DIRECT INVESTMENT

POLICY DYNAMICS AND THE AFTERCARE OMBUDSMAN



Reviewers' comments

Calra A. Hills, former US Trade Representative

~~ S. Korea's foreign investment aftercare system needs to be widely shared~~"

SaKong Il, Chairman emeritus, Institute for Global Economics

"~~lucidly documents South Korea's entire FDI policy~~"

Danny Leipziger, Professor of International Business, George Washington University

"~~ to cover often neglected aspects of FDI~~fascinating birds-eye perspective~~"

Richard Baldwin, Professor of International Economics at the Graduate Institute, Geneva

"~~ Nothing has been written on how countries can provide 'aftercare' for FDI~~"

Jang Hee Yoo, Professor Emeritus of Economics of Ewha Woman's University

"~~ provided six empirical axioms why grievances continue to arise~~"

Jeffrey Jones, Board Chairman of American Chamber of Commerce

"~constantly battling for liberalization of a very tight regulatory system~~"

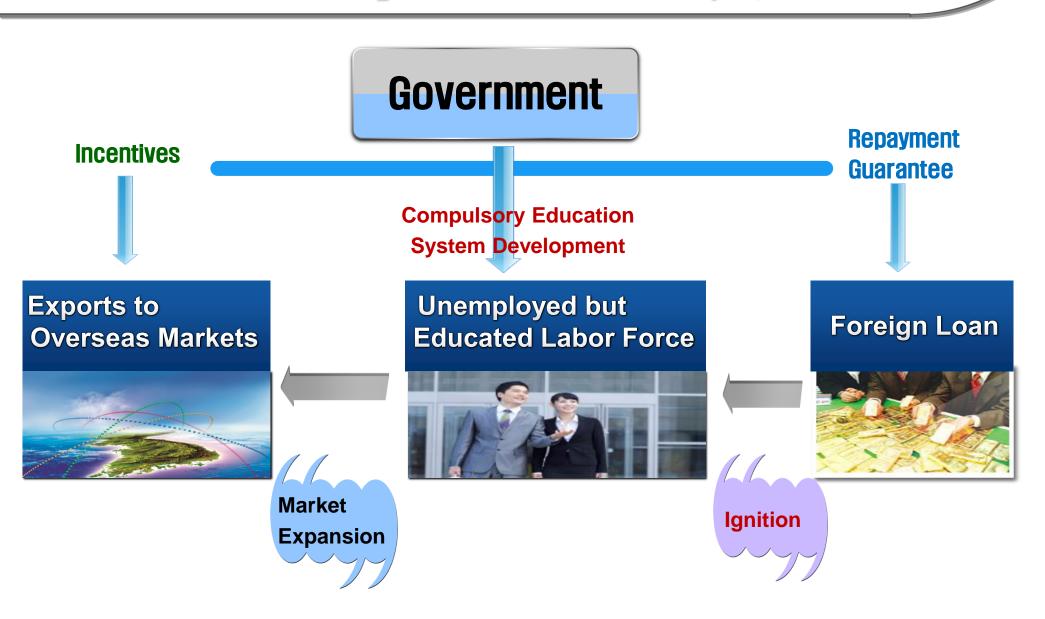
James X. Zhan, Director, Investment and Enterprise, and Lead, World Investment Report at UNCTAD

"~~ UNCTAD recognized the South Korea's Ombudsman system as the best practice~~"

South Korea's FDI Economics (Ahn 2023)

- I. Colonial legacies have planted xenophobia to inward FDI.
- II. Initial outward looking development model pursued full liberalization in exports while emphasizing indigenous firms capacity building under positive list system for inbound FDI.
- III. The caveats hidden in miracle economic performance under highly leveraged business expansion during Asian financial crisis forced South Korea to switch to pro-FDI regime.
- IV. Good Quality FDI inducement post-Covid is critical to ensure supply chain resilience, high tech development, and global trade and investment network.
- V. Active inducement and Aftercare Services for foreign investors once in place is critical to South Korea's sustainable high tech development => Unique and innovative system for global benchmarking.

South Korea's Initial foreign Loan-based Export Oriented Development Model in early 1960s



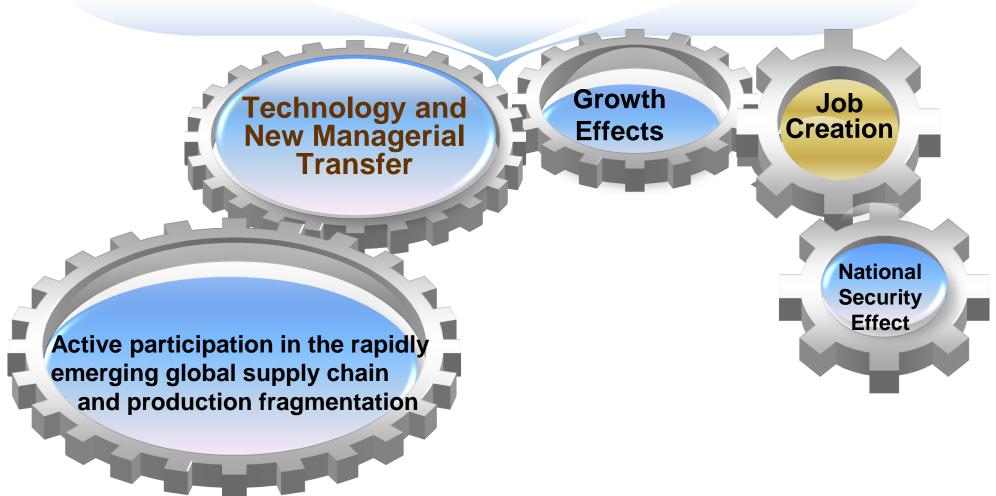
Asian financial Crisis (1998) has made Korea shift to Pro-FDI Policy (Ahn 2001b, Ahn 2008)

- 1. South Korea's highly leveraged business expansion during high growth regime caused South Korea to plunge into financial crisis.
- 2. South Korea had relied heavily on short term borrowings for long term projects to result in mismatch problems to service debt.
- 3. South Korea had sought for the largest IMF bailout financial package under stringent conditions of structural reforms in banking, corporate, labor market, and public enterprises.
- 4. South Korea foresaw the necessity of introducing an "Invest Korea" and Aftercare Ombudsman system for foreign investors against wide spread anti-FDI bureaucracy.

Multiple Effects of Inbound FDI to Host Economy (Javoreik 2004)

Catching five birds with one stone

Inbound Foreign Direct Investment's Spillover Effects



Why FDI and Aftercare so important now: Supply Chain Resilience and Strategic Development of Frontier Technologies

- TILF has been catch words as rules of game by WTO, UNCTAD, and APEC
- Cross-border supply chain resilience among likeminded countries more important than ever in the fragmented trade and investment landscape
- Most dynamic economies to take advantage of cross-border FDI for strategic high tech development and strategic resource acquisition
- About 8,000 bilateral investment treaties need aftercare clause.
- UNCTAD is addressing how to minimize ISDs, occurring 50 cases a year

Prototype Models of FDI Promotion Policies

Korean Model

- ✓ Emphasis on indigenous capacity building via large conglomerates
- ✓ Relied on reverse engineering and licensing for technologies learning
- ✓ Asian financial crisis switched to FDI preference from foreign loan reliance

Chinese Model

- ✓ Open door policy to depart from socialist market economy
- ✓ To start with special economic zones at Guangdong province near Hong Kong
- ✓ Utilization of cheap labor cost and large domestic market

Singapore and Hong Kong Model

- ✓ Neither primary sector nor mineral resources exist
- **✓ Laissez Faire, tariff Free, low Tax Regime**
- ✓ Serve as a regional financial hub

Malaysia Model

- **✓** FDI-led industrialization to transform Agro-Plantation economy
- ✓ Pioneer status and Special Economic Zones to overcome lack of domestic capacity
- ✓ Linkage with local firms critical

Prototype Models of FDI Promotion Policies

Jordan Model

- ✓ Most globalized in Middle East and recognized "Advanced status" with EU
- ✓ Regional FTA hub economy with advanced banking system
- ✓ Pro-active FDI inducement with high caliber manpower

Advanced Economy Model

- ✓ Global business operation as a supra-national entity to utilize supply chain and production fragmentation
- ✓ Financial innovation and cross-border liberalization
- ✓ M&A became major means of global business expansion
- ✓ Post-Covid supply chain resilience and the US-China hegemonic rivalry: Reshoring, near shoring, and friendly shoring are taking place.

There is no "one size fits all" formula for FDI promotion policies



Limitation of Indigenous Firms Development under South Korea's lukewarm FDI Policy

- Korea used to rely on reverse engineering of imported capital goods and foreign tech licensing when needed.
- But to overcome the Asian Financial Crisis in 1997/8, Korea switched suddenly to active FDI inducement with aftercare regime.
- Sharp contrast to FDI-led industrialization models such as Malaysia , Singapore, and other developing nations.
- Korea used to register one of the lowest FDI to GDP ratios in the world

Korea's Low Level of FDI: Traditional Reliance on Foreign Borrowing

International Comparison of Inbound FDI Stock

	"	Inflow of FDI/Total fixed capital formation (%)			Inward Stock of FDI as a percent of GDP(%)		
	1990	2005	2011	1990	2005	2010	
World	4.2	9.8	9.2	9.6	25.2	30.8	
Developed economies	4.2	9.0	9.4	8.7	25.3	30.8	
Europe	5.8	17.5	12.0	10.1	34.4	44.3	
EU	5. 7	18.1	12. 7	10.0	34.3	42.4	
Netherlands	15.7	32.3	11.0	23.3	75.1	75.5	
UK	14.7	46.2	15.6	20.1	36.9	48.4	
US	4.8	4.3	9.6	9.3	22.2	23.5	
Developing economies	4.0	11.7	8.5	13.4	25.0	29.1	
Africa	3.0	18.0	10.3	12.3	26.5	33.4	
Asia	4.0	10.3	7.4	15.4	22.9	26.5	
China	3.5	7.7	3. 7	5.1	11.8	9.9	
Hong Kong, China	16.3	90.4	156.2	262.3	294.3	485.5	
Korea, Republic of	0.8	2.9	1.5	1.9	12.4	12.6	
Malaysia	17.5	14.4	21.4	22.6	32.2	42.9	
Singapore	46.8	70.2	105.2	82.6	160.5	218.4	
Thailand	7.5	15.8	10.6	9.7	34.3	39.9	

Korea needs to reverse downward trend of its potential growth rate: FDI tends to promote TFP.

- Potential Growth Rate has sharply declined.
- Rapid Decline in Labor and Capital Stock, as well as Total Factor Productivity
- A key to reverse the downward trend
- FDI promotion to realize job creation, economic growth, technology, transfer, and advanced management practices

Korea's Potential Growth Rate

	2011~2015	2016~2018	2019~2020	2021~2022
Potential Growth Rate around	3.2%	2.6%	2.2%	2.0%
Labor Stock	0.9%	1.0%	1.0%	0.9%
Capital Stock	1.6%	1.6%	1.5%	1.4%
Total Factor Productivity	0.7%	ο%	-0.3%	-0.3%

(Bank of Korea)

Potential Growth Rate = growth rates of (Labor Stock + Capital Stock + Total Factor Productivity)

How to raise economic growth rate: Role of FDI?

- Economic Growth Rate = Capital Stock Growth Rate +
 Labor Stock Growth Rate + Total Factor Productivity G.R.
- Stagnation in labor stock :
 - > Low birth rate
 - > Aging population
- Challenges to increase capital stock:
 - > Lack of investment in technology-based capital goods and facilities
 - > Increase in overseas investment (domestic deindustrialization)
 - > Inward FDI is effective way of increasing high quality capital stock Investment
- Total factor productivity: FDI as a critical catalyst to synergize factors other than labor and capital

Searching for a New Growth Engine in the 21st century

- New growth engine based on Semiconductor, AI, and Quantum computing
- Existing Industrial comparative advantage + IT, BT, NT
 - => creation of fusion effects
 - > electric vehicles, LNG shipbuilding, high end steels, electric batteries, green energy, batteries
- Promotion of knowledge-based service economy in order to overcome the shortcomings of jobless growth in manufacturing
- Still, digitalized manufacturing important

Main Industries	semi-conductors, display, automobiles, shipbuilding, textiles, production systems, chemical process materials, metals
Prospective Industries	bio, robots, digital convergence, medical devices
Base Technologies	nano technology, production base, eco-friendly technology, knowledge-based services

Searching for a New Growth Engine in 4th industrial Revolution era: FDI is a great trigger

- Commercialization of New Ideas and IT based Fusion with other Industries
- Renewed Focus on Knowledge-Based Services
 - > finance, education, logistics, law, accounting, management, business services, design, knowledge S/W, medical services, tourism
- Energy and Environmental Sectors: Priority for carbon neutrality
 - > fuel cell, environment recovery system, CDM, hydrogen energy, eco-material parts
 - > development of alternative energy
- Bio-Pharmaceutical products needs "Collabonomics" between global leaders and Korean counterparts for clinical research

Strategies

- Promote tripartite cooperation between industry, government and academia
- Limit government's role to providing **R&D** infra and promote private sectorled investment
- Promote mutual prosperity between conglomerates and small, mid-size companies (parts and components providers)
- Induce Foreign Direct Investment



Why Korea needs aggressive Inbound FDI?

- To reduce structured imbalance between outbound and inward FDI
- To utilize the strategic geographical location between rising "Continental economy" and "Ocean-bound pacific economy"
- To maximize the benefits of multi-track FTAs
- To be competitive with Japan, Hong Kong, Singapore, and China
- To shift towards a knowledge based service economy
- To ensure security effects

Korea's Inbound FDI & Outbound FDI

(Unit: US\$ million)

	2017	2018	2019	2020	2021	2022
In bound FDI	13,818	17,514	13,448	11,473	18,600	18,033
(Actual : A)						
Out bound FDI	45,110	51,750	65,447	57,323	76,771	62,183
(Actual: B)						
A-B	- 31,292	- 34,236	- 51,999	- 45,850	- 58,171	- 44,150
A/B (%)	31	34	21	20	24	29

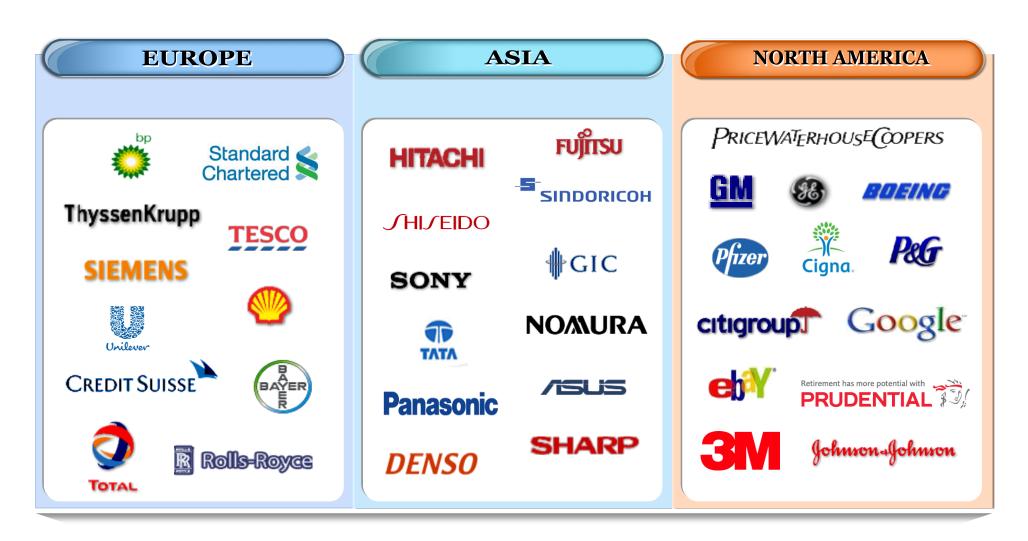
Korea's Green Field and M&A type Inbound FDI

					Unit: US\$ million	
	2017	2018	2019	2020	2021	2022
Green Field	15,770	20,010	15,911	14,514	18,092	22,318
(%)	67.9	74.1	68.2	69.9	61.3	73.2
M&A	7,243	6,991	7,417	6,232	11,421	8,135
(%)	32.1	25.9	31.8	30.1	38.7	26.8
Total	23,193	27,001	23,328	20,746	29,513	30,453

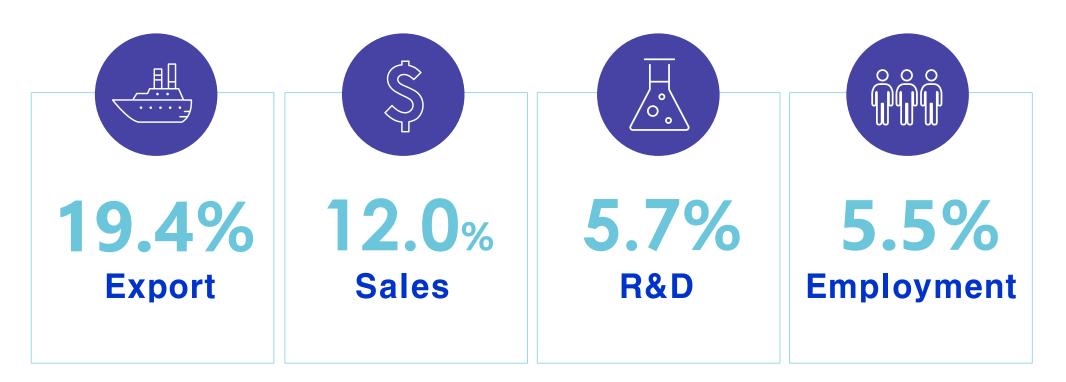
(source : Ministry of Trade, Industry and Energy, Exim Bank)

Foreign-invested Companies in Korea

Total 15,280 (as on the end of 2022)



Contribution of Inbound FDI to Korean Economy

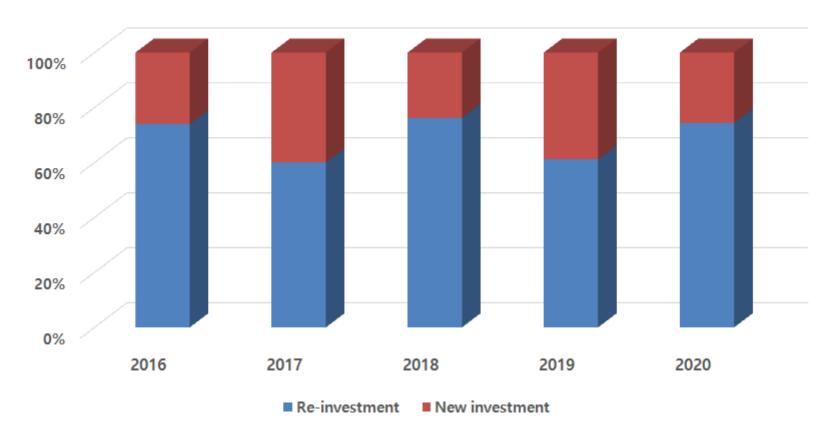


Source : Management Annual Survey of Foreign Invested Companies(February 2021), KOTRA *Numbers in parentheses indicate percentage over national total



It should be noted that the contribution of foreign investors to the Korean economy is substantial to export and job creation

Re-investment Trends by Existing FDI Firms (arrival basis)



Source: Ministry of Trade, Industry and Energy, FDI Trends, various years



Re-investment roughly occupies over 70% of the total inbound FDI

Given the larger share of reinvestment, effective aftercare services are critical for inducing inbound FDI.

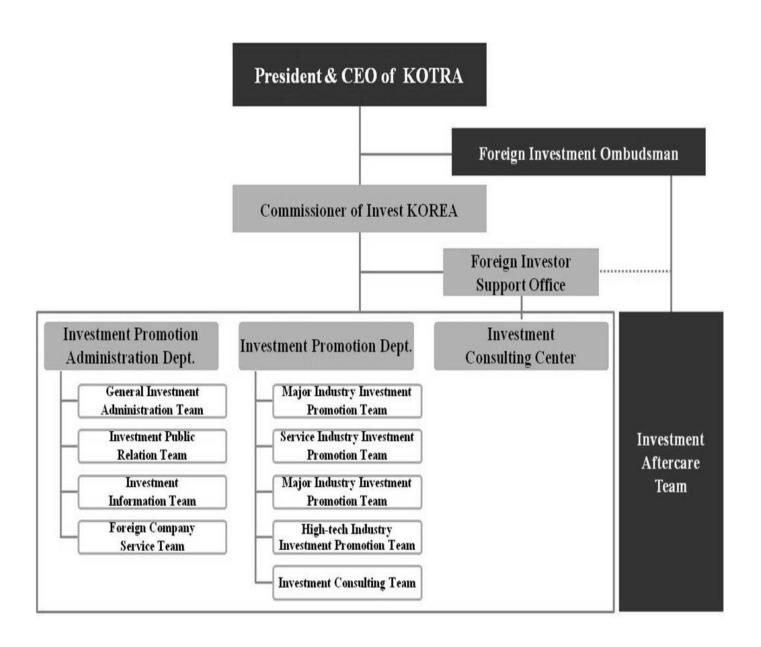
Invest KOREA

Attracting FDI

- Promoting FDI in Korea via discovering potential overseas investors
- Providing administrative support for FDI attraction
- Facilitating foreign business entry and establishment
- Conducting surveys on investment conditions in Korea and PR activities



Organization of IK & Ombudsman: Synergistic Partnership



Aftercare Services by Foreign Investment Ombudsman

Foreign Investment Ombudsman: The Aftercare Service Provider

Help resolve grievances raised by MNEs doing their business in Korea in the areas of taxation, customs, construction, business permit, labor, IPR and government rule and laws. Recommend to rationalize existing laws by bringing international best practices. Korean nationality but working for MNEs



Support for FDI Attraction



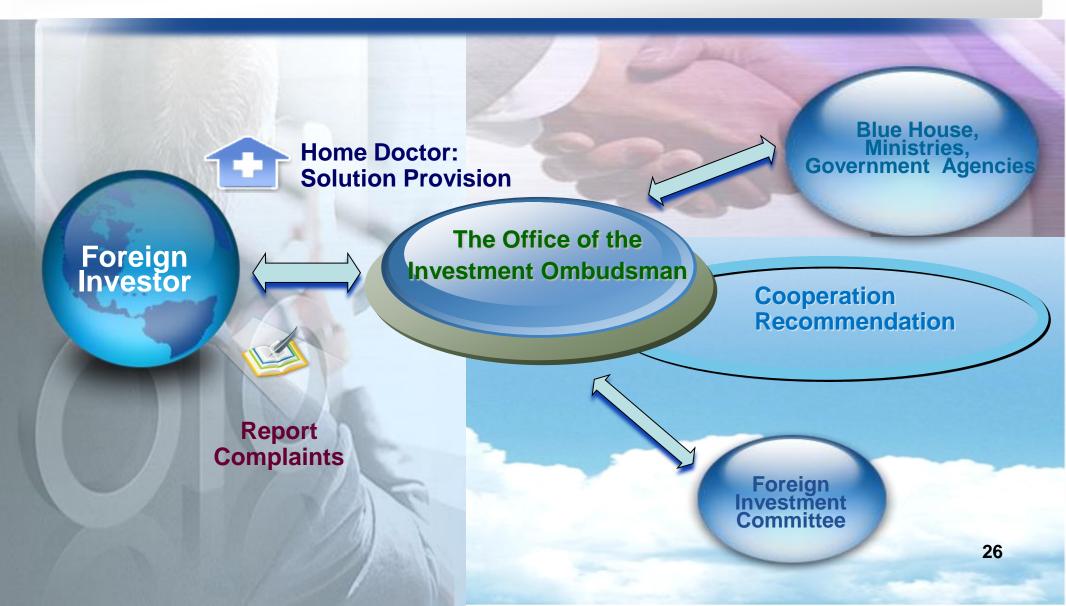
Aftercare Services
Ombudsman

Contribution to the Sustainable Growth of the Korean Economy



Aftercare Services of Ombudsman's Office

The Ombudsman Office's "Home Doctor" system delivers one-stop services to resolve a variety of grievances



Korea's Incentive System for Inbound FDI

Tax Exemption

(H/T, Stand-Alone Type FIZ)

- Corporate tax: 100% for 5 yrs, 50% for 2 yrs (suspended 2019 onward)
- Acquisition tax, registration tax, property tax: 5-15 yrs
- Tariff for capital goods: 5 yrs

Location Support

- Reduction or exemption of rent
- Support for building of infrastructure
- **Complex & Stand-Alone Type Foreign Investment Zone**

Cash Grant

 To support the construction of facilities or the purchase of equipment related to the H/T, H/Q, R&D related FDI

Others

- Subsidies for employment and education
- Support for the improvement of living and management environment

Eligibility Criteria for Stand-Alone Type FIZ

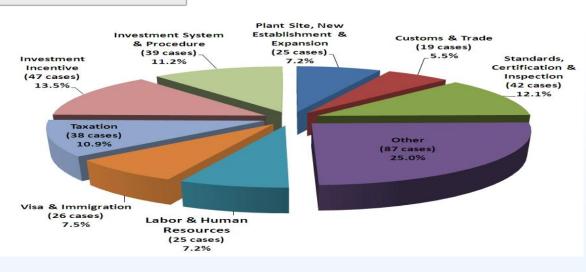
Manufacturing – More than US\$30 million FDI Tourism Industry – More than US\$20 million FDI

Logistics & SOC – More than US\$10 million FDI R&D Sector – More than US\$2 million FDI

Grievance Resolution (2022)

(Unit: % of Case, 2022)





Recently, taxation and tariffs and investment incentives replaced labor issues as the most frequently filed grievance area, although labor issues still have the biggest impact on Korea's FDI environment

Grievance Resolution Performance

(Unit: Number of Case, 2022)

Classification	System Improvement	Administrative Intervention	In-house Resolution	Total
No. of Cases Filed	17	258	112	387

Source: Office of the Foreign Investment Ombudsman

Strengths of the Korean Ombudsman System

• Credibility and Facility:

- > Civilian status of Foreign Investment Ombudsman and Home Doctors
- > Implementation of a friendly, objective approach as an honest broker
- > Strict confidentiality of sensitive information concerning grievances
- Objectivity and Flexibility:
 - > Bridging the gap between government bodies responsible of granting permissions and licenses and foreign investors who often have a tendency to avoid direct contact with government
- Operation of Expertise Home Doctor System:
 - > One-on-one, one-stop services provided by Home Doctors
 - > Home Doctors with expertise in various fields
 - > Know-how and expertise accumulated over past 10 years
 - **☞** Development of network with foreign investors through continuous contacts and communication

Grievance Resolution Case (1)

Most High-tech Firms forced to relocate due to a New City planning

Investors' Complaints in Dongtan New City near Seoul

Many of the foreign-invested companies in Dongtan City were unexpectedly forced to relocate their plants due to its new city development plan with enlarged residential area. To prevent speculation, sudden announcement.

Ombudsman's Actions

Ombudsman underwent a series of joint meetings with the Prime Minister,
Minister of Land & Transport, head of Korea Land
Corporation to argue that MNEs are high tech and pollution free and need to reduce heavy non-tax payment due to land price increase (capital gain) of factory site



Grievance Resolution Cases (2)

Fingerprinting Required in Accusation Cases Filed by Labor Unions

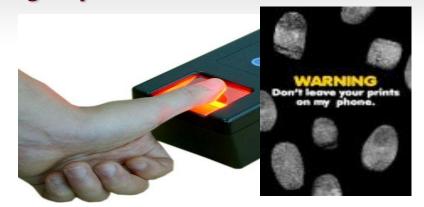
Company M's Complaint

When labor law violation cases are filed by labor unions, non-Korean CEOs are required to have all their fingerprints taken every time they're called in for investigation while Koreans are not.

If a labor union files several cases against its non-Korean employer, abusing this law, the employer would be subject to fingerprinting numerous times, leading to a violation of human rights as well as a negative influence on FDI attraction.

Ombudsman's Actions

The Ombudsman proposed revision of the practice to relevant agencies including the Korean National Policy Agency.



Result

With the Ombudsman's proposition accepted, now fingerprinting has been replaced by singnature.

Grievance Resolution case (3)

Company D's Complaint

The authorities imposed an enormous amount of VAT & penalties on high-tech gold products for industrial use by invoking the Restriction of Special Taxations Act, not having a separate transaction account as applied to gold imported for jewelry making.





Ombudsman's Action

The Ombudsman consulted with authorities and provided a new authoritative interpretation of relevant regulations on gold usage.

- The gold referred to in the regulations was gold bars traded in financial institutions or jewelry.
- ⇒ So, high-tech gold products were not subject to VAT.



Result



The Ministry of Strategy and Finance announced Sept. 22, 2011 that gold products used for semiconductors do not fall under the category of the gold referred to in the regulations for jewelry making. ⇒ The authorities reversed the imposition of VAT and returned KRW 5 billion already paid.

Grievance Resolution Case (4)

After heavy rains brought a huge landslide that killed two workers at a remote limestone mining site, company A faced difficulties in renewing mining rights.

► Environmental NGO groups criticized the company for the accident and insufficient rehabilitation measures through distorted media coverage

The Ombudsman received the complaints two days before a final decision was made. He hurriedly provided the renewal committee of Korea Forest Service with accurate data and implications to allow business to resume without interruption.



Grievance Resolution Cases (5)

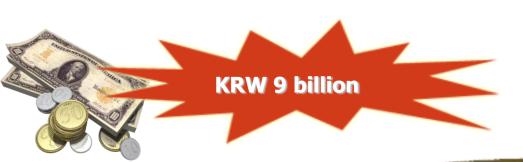
Verdict of the first trial overturned to get refund

Company O' Complaint

Following the bankruptcy of an importer that rented liquid cargo storage tanks, foreign companies in the storage tank industry were sued for compensation in the amount of 9 billion KRW



- Ombudsman collected extensive evidence on international cargo transportation customs and practices through a series of interviews with companies in the relevant industries, research of overseas cases, and visits to Japan, HK, Netherlands and Singapore.
- Published a policy report on international best practices



Result

9 billion KRW was refunded

The High Court has taken the publication as admissible evidence and overturned the judgment of the first trial based on international customs and practices.

Why do Grievances Continue to Arise Despite Proactive Aftercare Services in Korea?



Like many other countries, Korea's legal system is not able to embrace "Real World Problems" due to rapid change in business environment and technological change



■ Both institution-building and legal enactment for better business Environment require a time consuming consensus building process



In-depth research on international best practice requires a comprehensive and comparative analytic studies, not readily available to resove grievaces

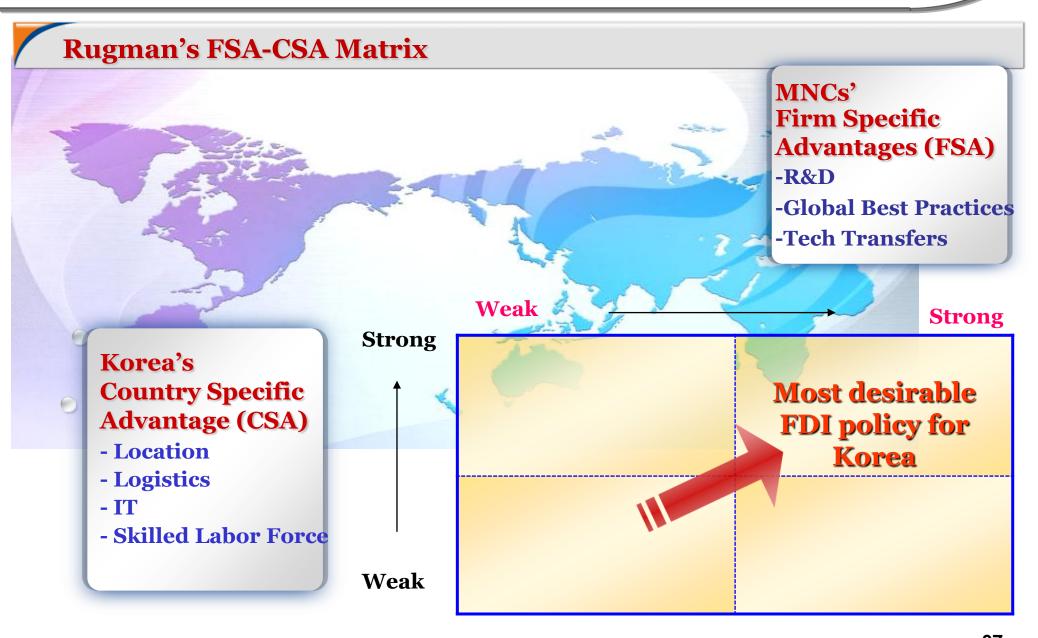


There exist Acts, Enforcements, Rules and Ordinances, which are inconsistent with each other, and inconsistencies between ministries, creating a "gray area" subject to arbitrary interpretation by public officials

Five Axioms on unabated Grievances and Aftercare services between MNEs and host Economies

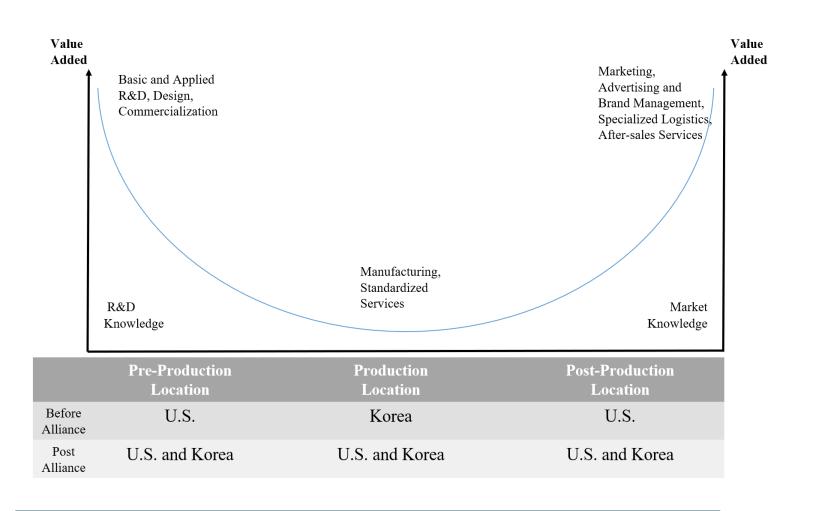
- 1. Tendency of perpetual occurrence of grievances against MNEs in host economies
 - Time lag of supportive legal environment to accommodate technological progress
- 2. Existence of information asymmetry
 - information and perception gap between foreign investors and host government on new FDI polices and related legal enactment
- 3. Lack of mutual trust and confidence building
 - mistrust in fact findings between MNEs and foreign investorss
- 4. Opaque and inconsistent regulatory regime
 - -on taxation, accounting, construction, laws and regulations etc
- 5. Neutrality requirement
 - -Foreign Investment Ombudsman must maintain a neutral and independent stance
- **☞ Dictate the need for and universal applicability of post- investment** aftercare services

Korea's Future FDI Policy



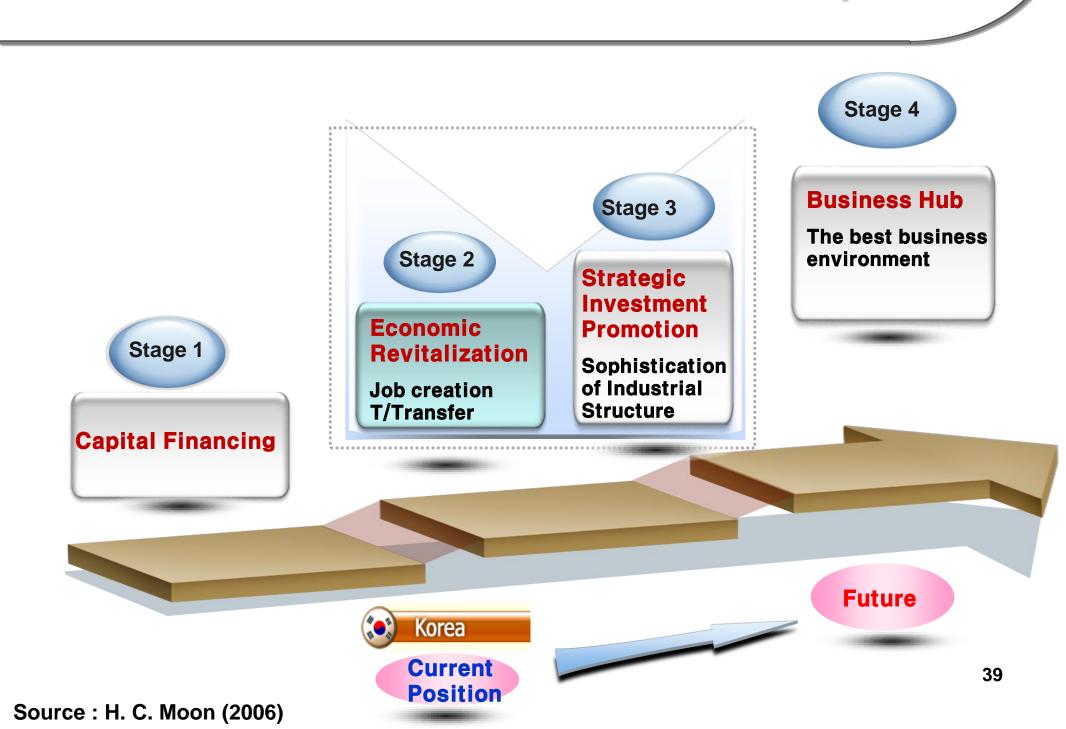
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High Tech FDI Inducement for Semiconductor: Completion of Smile Curve (Ahn 2023)



Source: Mudanbi (2008) and Ahn (2003)

Direction toward KOREA's Business Hub Policy



Ombudsman System is Effective Mechanism for Minimizing ISDs

One of the best mechanisms for preventing investor-state disputes(ISD) is quality aftercare services

- A suggestion was made at UNCTAD World Investment Forum, Xiamen, China in 2010 that all UNCTAD members should consider adopting systems similar to the Ombudsman system in Korea to prevent possible cross-border ISDs.
- \Rightarrow Given cross-border investment liberalization as included in the Korea-EU and KORUS FTAs, capacity building of the OIO is strongly urged.



Recommendations to Korean Government

- Global best practice and rule of law need to be researched with globalized economic mindset by the foreign investment ombudsman to reflect in regulatory impact studies on new regulation and laws.
- Expand the function of aftercare system by making the Ombudsman as a standing member of Regulatory Reform Committee.
- Regulatory Reforms
 - > Application of negative list system to all areas
 - > Updating Regulatory Reforms Promotion Act, activate Sunset Clause, registration of administrative rules, notice, instruction
 - > Regulations need to be transparent to minimize arbitrary interpretation and existence of "gray areas" of rules and laws

Recommendations to International FDI Advocacy Agencies

- To include an aftercare clause under investment chapter in bilateral and pluri-lateral International Investment Agreements.
 - Korea-China FTA included only contact point to register grievances.
- **UNCTAD** to encourage an aftercare service functions in FDI promotion institutions as Brazil, Kazakhstan, and Russia have done.
- **☞ ICSID (International Center for the Settlement of Investment Disputes) is also urged to disseminate a la Korean type of aftercare functions.**
 - Preemptive aftercare services can reduce time consuming and costly litigation process.

Global Benchmarking of Korea's Ombudsman System

Study Tour on FDI Aftercare Service by UNCTAD/WAIPA

- An UNCTAD/WAIPA study tour group visited the Ombudsman's Office from March 30-April 3, 2009, to benchmark Korea's successful ombudsman system.
- The study tour group, composed of 12 relevant personnel from the investment promotion agencies of 11 countries, came to Korea to gain insight into the country's FDI aftercare service in depth through presentations on actual grievance cases







Global Benchmarking of Korea's Ombudsman System

Ombudsman System has been emulated by a number of foreign countries.

- Ombudsman has made presentations on the Ombudsman System at various global conferences and meetings.
 - UNCTAD Meeting, Geneva, Switzerland (November 23~24, 2006)
 - OECD Conference, Paris, France (March 27, 2008)
 - APEC Seminar, Lima, Peru (May 19, 2008)
 - Turkey Investment Forum (February 11, 2009)
 - St. Petersburg International Economic Forum, Russia (June 22, 2013)

- Brazil adopted a Korean aftercare model and some other Latin American countries likely to follow.
- Kazakhstan and Russia have benchmarked Korean Ombudsman model.
- ICSID cited the Korean Ombudsman system as a success story



Global Benchmarking of Korea's Ombudsman System

UNCTAD World Investment Forum, Xiamen, China (6~9 Sep. 2010)

Preemptive measures are crucial and effective in minimizing possible investor-state disputes (ISDs) through grievance resolution and aftercare services for foreign investors.

⇒ A suggestion was made at the Ministerial Round Table that all UNCTAD members should consider adopting Korea type Ombudsman system to prevent possible investor-state disputes.





Importance of Aftercare Services

One of the best policies for inward FDI is to offer quality aftercare services

 The creation of friendly attitude and reputation from the foreign investors in Korea through word of mouth, hence having significant influence over the decision-making of the new foreign investors

WAIPA Award 2007 Presented to KOTRA for Excellence in Aftercare Service at the Annual World Investment Conference









"The Ombudsman represents the most effective incentives for Korea to support foreign investors."

Mr. Juergen Woehler, President of Korea-German Chamber of Commerce Industry 46

Epilogue

- Korean model is a practical reference for FDI seeking economies.
- International investment agreements and FTAs need to include aftercare services in the investment chapter.
- Should overcome "xenophobic mentality"- Korea specific:
 - > M&A: leakage of national wealth
 - > Why incentives for foreign firms at the expense of domestic SMEs:
 - > But corporate tax: Korea 24.4%, Singapore 17%, Hong Kong 16.5%, Taiwan 17%
- Transparent and coherent legal system in host economies:
 - > Crucial to provide predictable business environment
 - > Incentives need to be upgraded
- Promotion of FDI for supply chain resilience with synergistic partnership with domestic firms:
 - > Lower tier sub-contracts with domestic SMEs and joint overseas' activities
- Capacity building of local free economic zones and local governments
 - > Manpower supply at local business sites is crucial
- Need to recognize security impacts due to inbound FDI:
 - Northeast Asian FDI hub can create an institutional setting, in which North Korea cannot destabilize and even can turn to FDI induccement in the long run.

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