

# SYSTEMIC INVESTMENT RESPONSE MECHANISM

## KEY ELEMENTS AND DIAGNOSTICS FOR VIETNAM

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Roberto Echandi  
Priyanka Kher  
Nguyen Hung Quang



*In partnership with*



# OUTLINE

1. Initial diagnostics on grievances for investors in Vietnam

2. Existing Mechanisms to Address Investor Issues

3. Neccessity of SIRM

4. Recommendations

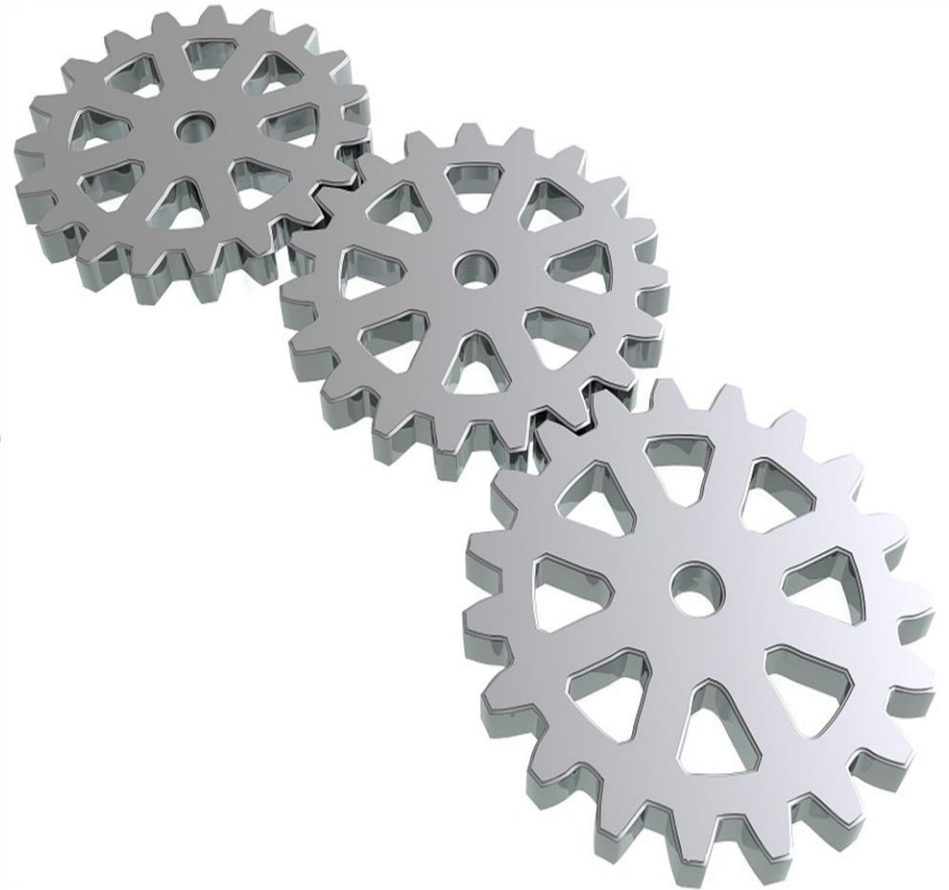
# 1. INITIAL DIAGNOSTICS ON GRIEVANCES FOR INVESTORS IN VIETNAM



# Initial diagnostics on grievances for investors in Vietnam

- The biggest causes of grievances of investors against State were cumbersome administrative procedures, inconsistencies between laws and regulations, transparency in law and policy implementation and discrimination between domestic and foreign investors.
- Many of the grievances reported related to tax or land matters.
- Enforcement of arbitration awards is a major challenge both arbitral awards of foreign arbitrators and domestic arbitrators. General lack of transparency in the domestic court system where the judges are considered to set aside certain arbitration awards in favor of the SOEs/domestic parties.
- Local/provincial authorities are reluctant in dealing with investor grievances.

## **2. EXISTING MECHANISMS TO ADDRESS INVESTOR ISSUES**



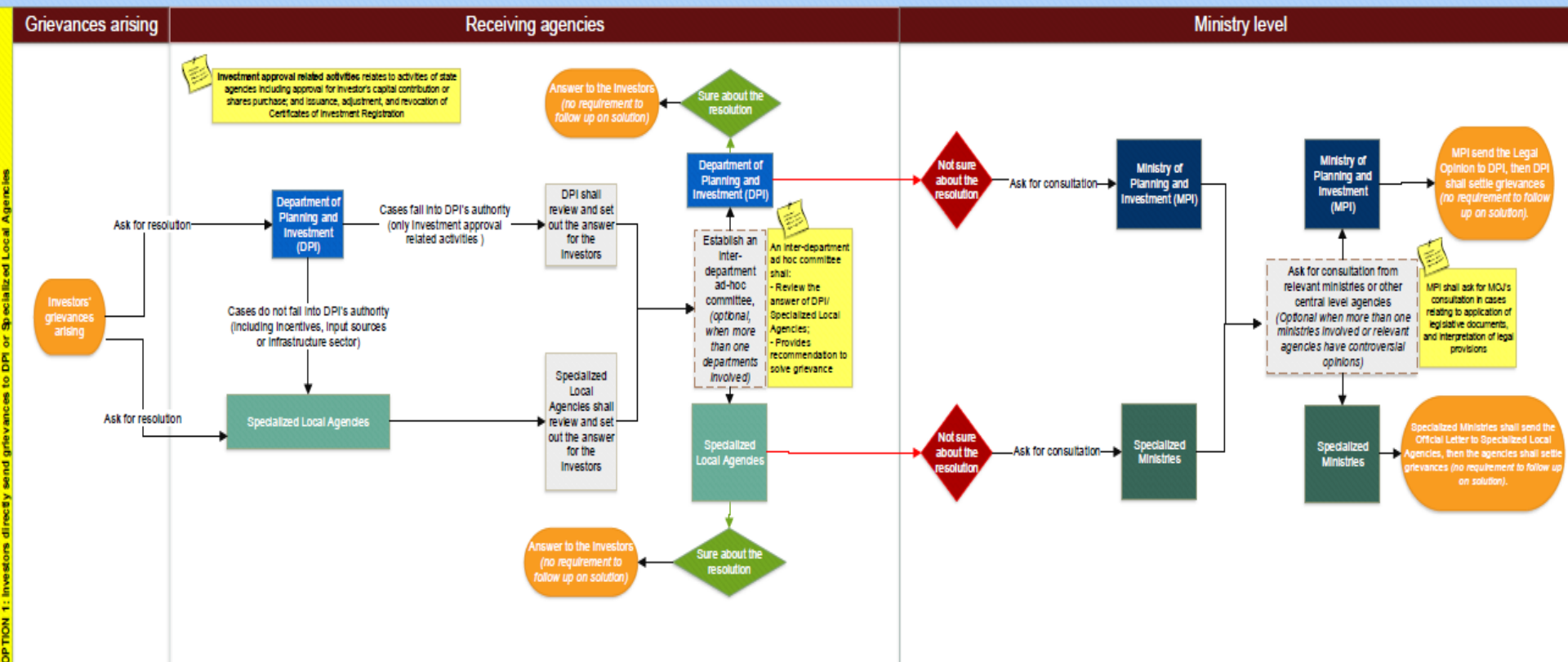
# Existing Mechanisms to Address Investor Issues (cont)

- **Option 1:** Investors directly send grievances to DPI or Specialized Local Agencies
- **Option 2:** Investors directly send grievances to MPI
- **Option 3:** Investors use following methods to get the notice from state agencies:
  - Send the Notice of Intent;
  - Bring a lawsuit against state agencies (to the Administrative Court);
  - Diplomatic methods – ask for support from Embassy/Consulate/Diplomatic Delegation;
  - Make complaints under Law on Complaints – send to the authority causing grievances.

# Existing Mechanisms to Address Investor Issues (cont)

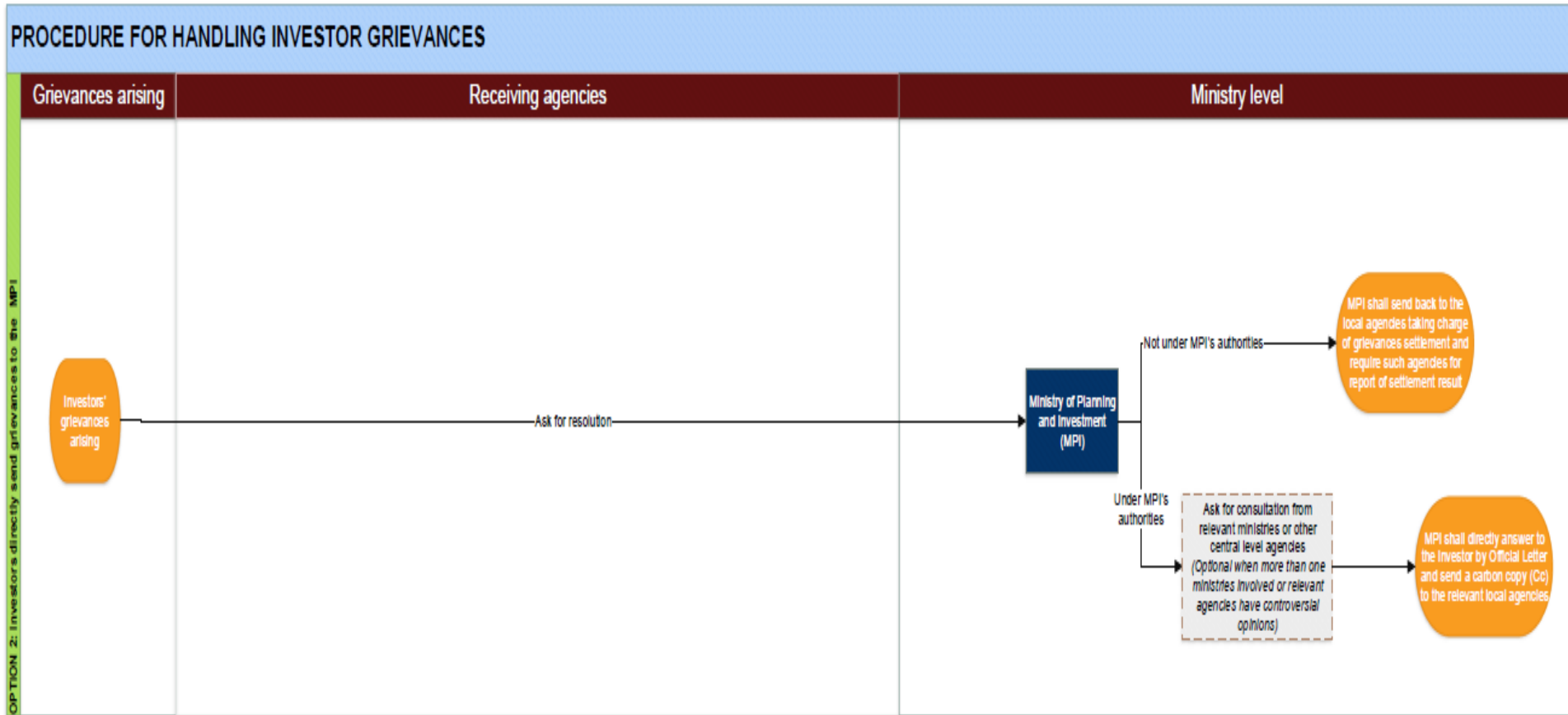
## OPTION 1: Investors directly send grievances to DPI or Specialized Local Agencies

### PROCEDURE FOR HANDLING INVESTOR GRIEVANCES



# Existing Mechanisms to Address Investor Issues (cont)

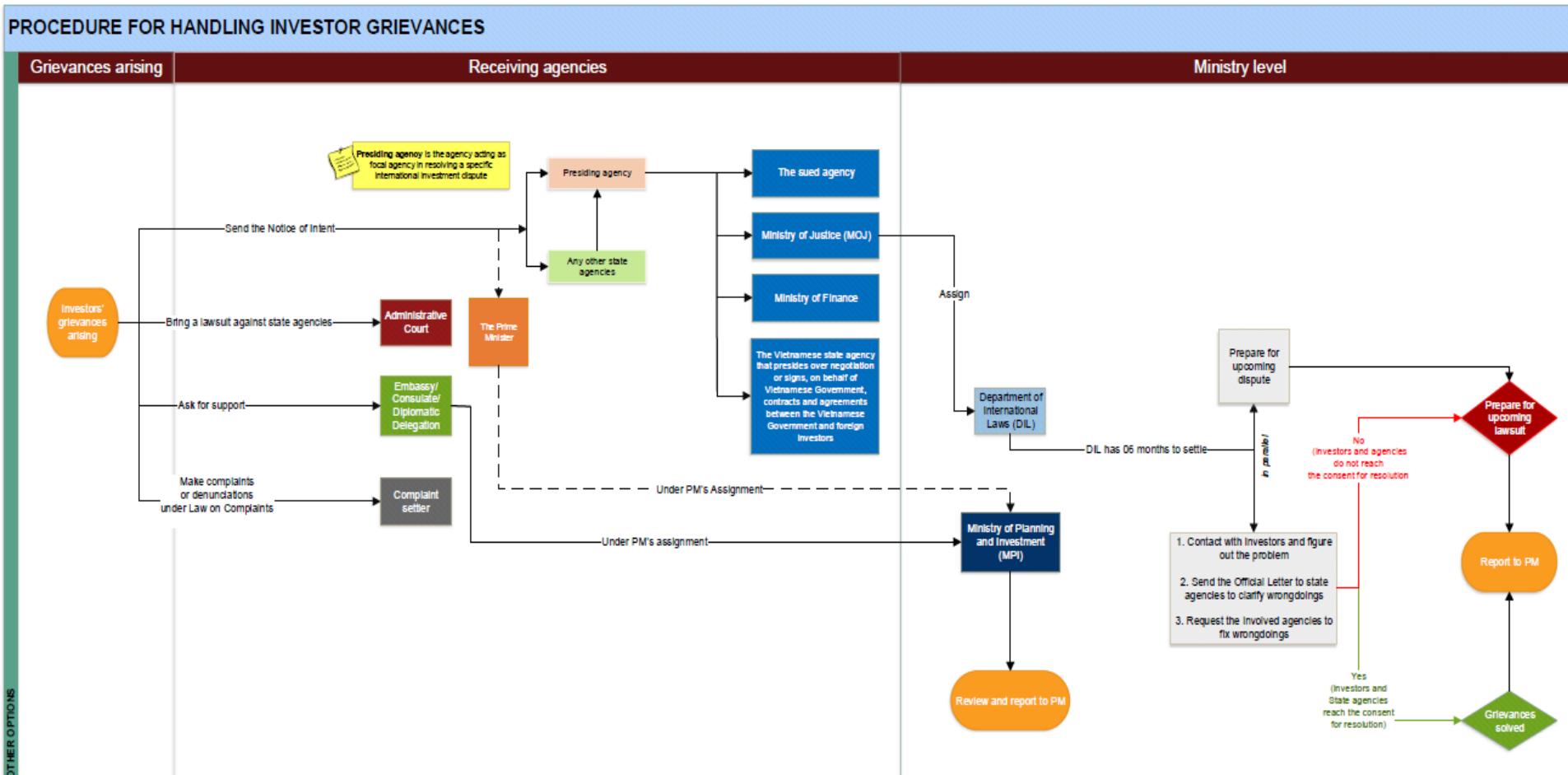
## OPTION 2: Investors directly send grievances to MPI





# Existing Mechanisms to Address Investor Issues (cont)

## OPTION 3: Investors make noise to get notice



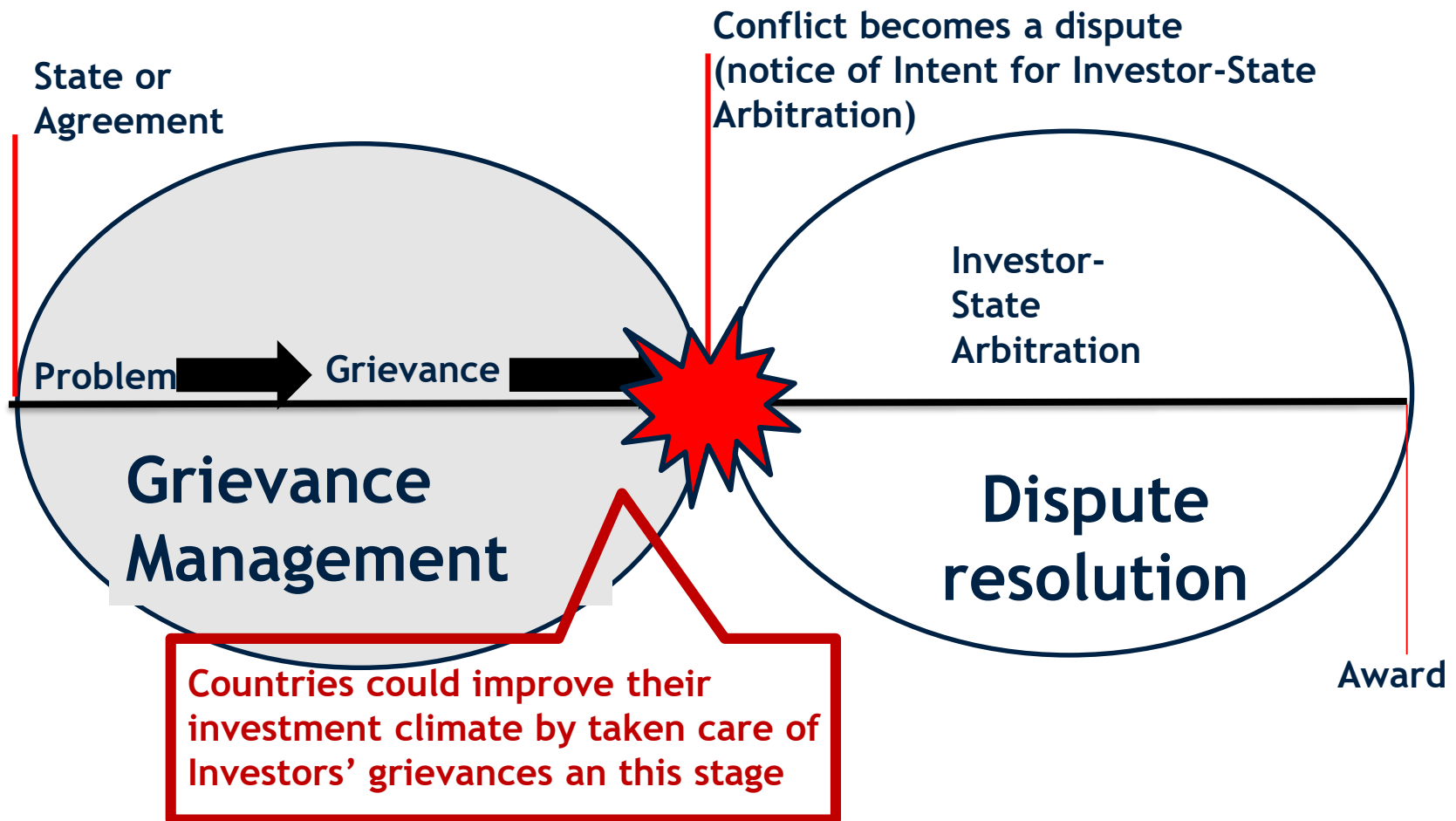
### 3. NECESSITY OF SIRM



# Necessity of SIRM

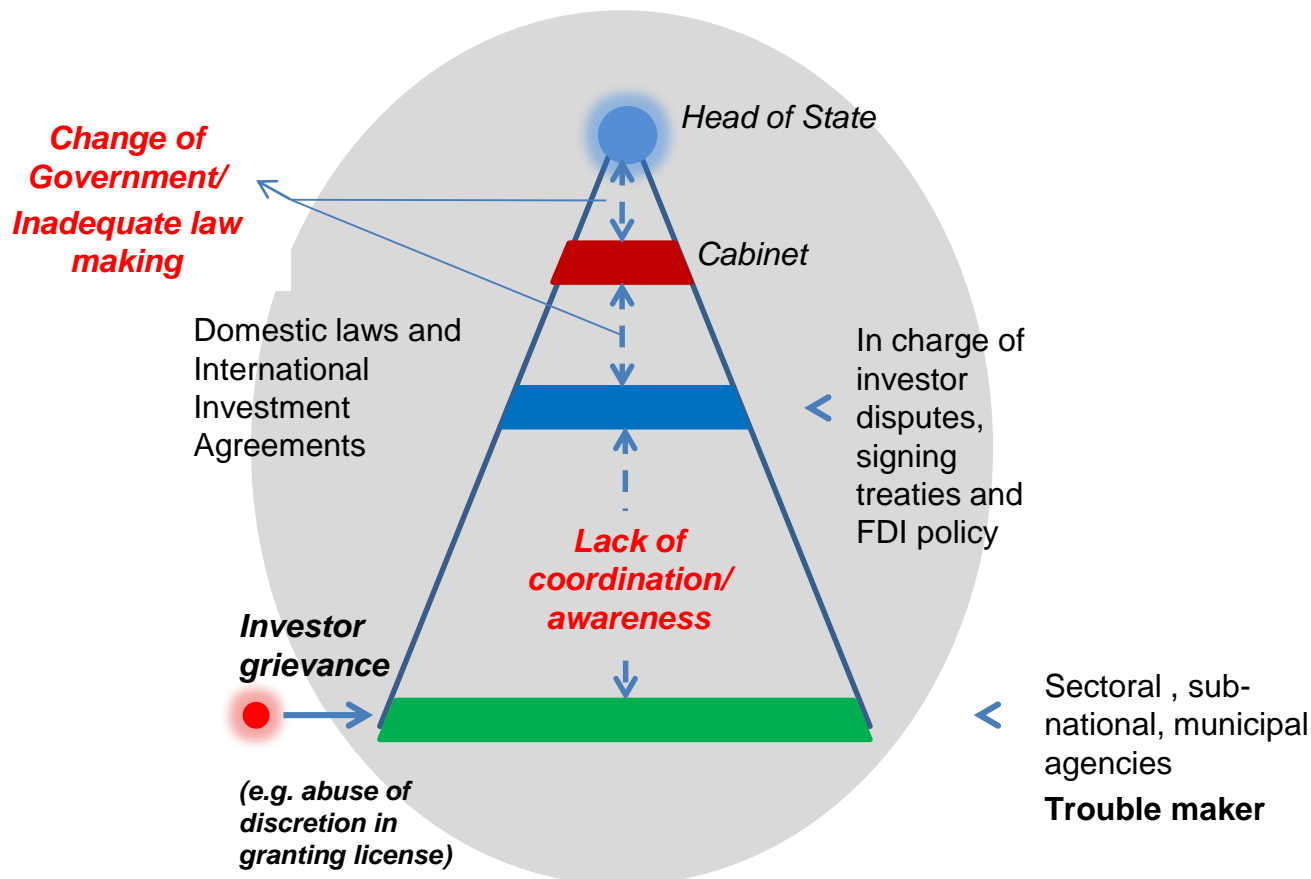
- Vietnam is preparing a new strategy to attract more FDI. It needs to address:
  - Strong investor protection will ultimately contribute towards increasing investor confidence in Vietnam as an investment destination. If investors do not feel confident that their investment, their assets, their facilities, workers, and staff, are adequately protected, they will simply not invest or re-invest in a country. Therefore, in light of the importance of re-investments and expansion investment to achieve next generation FDI Strategy objectives, it is critical to ensure that investment protection is provided at a very high standard.
  - Given the increasing number of cases linked to expropriation measures, Vietnam should establish an economy-wide Systemic Investors Response Mechanism (SIRM) thus enabling Vietnam to implement its International Investment Agreements as well as Law on Investment (Art. 4.3) while, importantly, boosting investor confidence.

# Timely and Effective Management of Investor Grievances



# SIRM aims at filling in the implementation gap

Address lack of coordination and awareness amongst different levels of the government



# Key elements of SIRM



# Key elements of SIRM (cont)

## 1. Lead Agency

- Administrative body responsible for coordinating information and leading responses to investor grievances

## 2. Information Sharing

- Information sharing should enable the Lead Agency to coordinate the diffusion of relevant information to those agencies more likely to generate or become involved in political risk related conflicts (i.e. grievance). This may be substantive information on the contents and breadth of the obligations included in the different International Investment Agreements (IIAs), or informing the highest possible number of governmental departments about the existence and purpose of the Lead Agency so the latter know who to call in case they have a doubt regarding the consistency of their measures/actions with IIAs or if a conflict with a foreign investor arises

## 3. Early Alert Mechanism

- Early alert mechanisms enable the Lead Agency to learn about the existence of a grievance as early as possible (e.g. through the private sector).

# Key elements of SIRM (cont)

## 4. Problem Solving Methods

- Problem-solving methods should allow the parties to seek an interest-based solution to the conflict (e.g. fact finding, obtaining third party expert opinion).

## 5. Political Decision Making

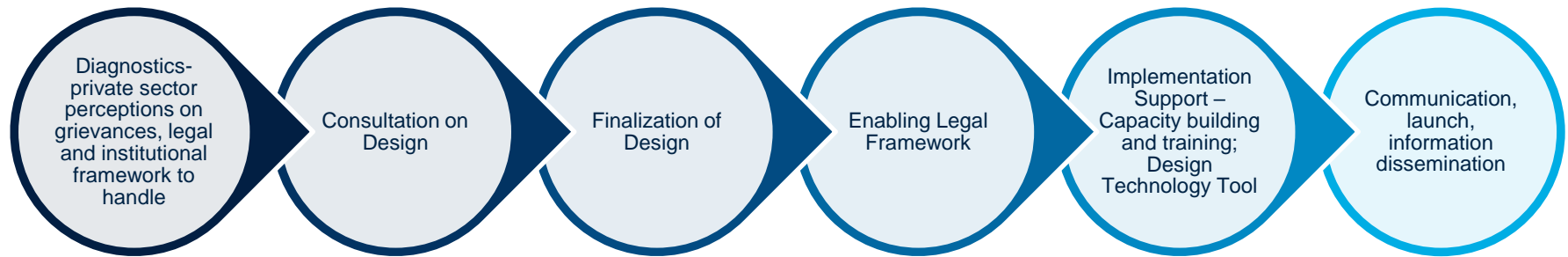
- A solution should receive approval from the adequate political authority of host State and the investor. E.g. through establishment of political bodies such as the Government to monitor the effective implementation of solutions agreed by the Lead Agency. High-level political endorsement would guarantee that the measure providing a solution to the problem would be effectively implemented

## 6. Enforcement of a decision

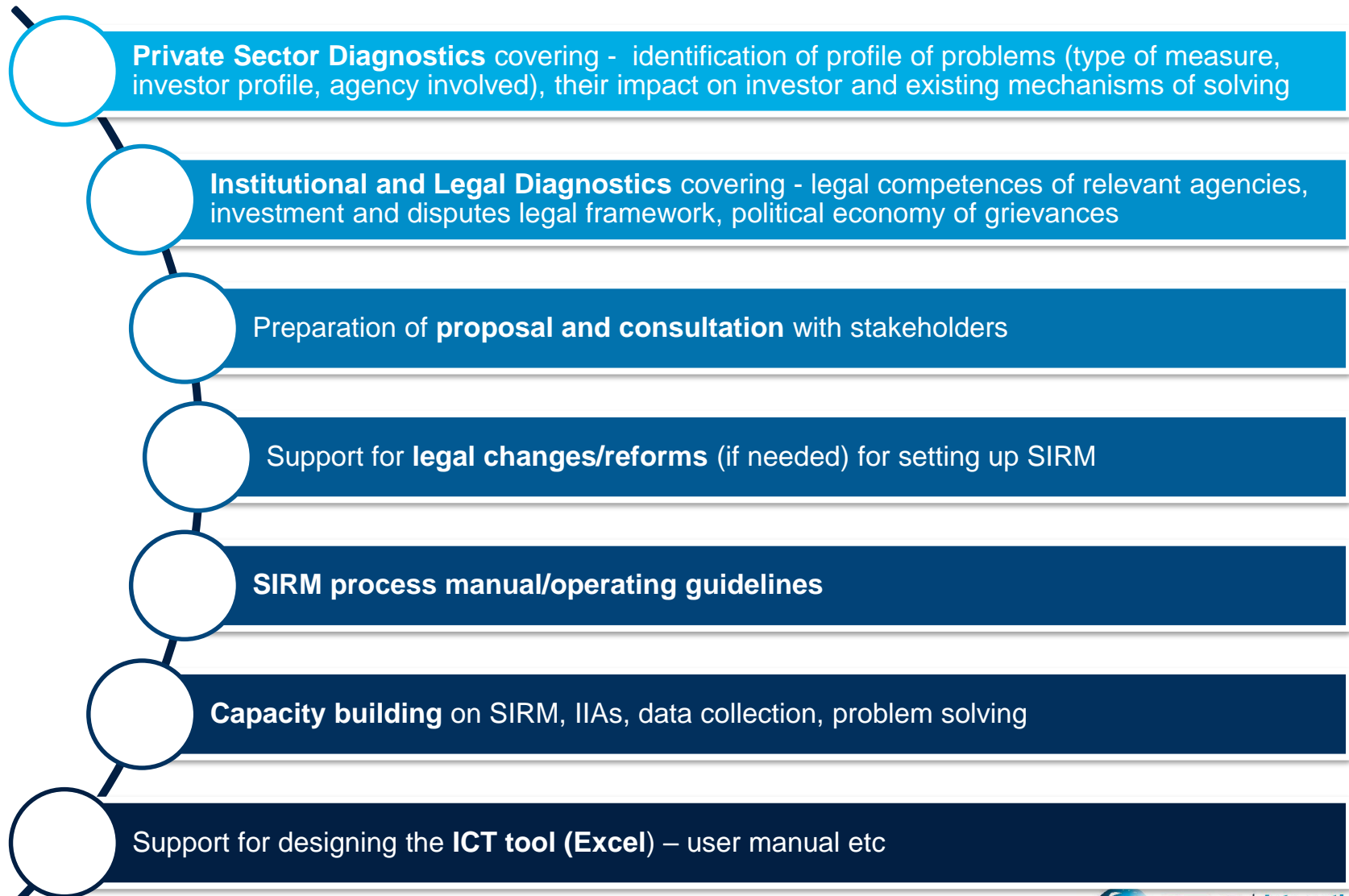
- Closely related to political decision making is the need to ensure that the consensual solution to the conflict agreed by representatives of governments and investors is not ignored or disrespected by one of the many other agencies (e.g. Ministerial Councils enforce).



# Implementation Roadmap



# Activities for SIRM Implementation



# SIRM Tracking System in Bosnia and Herzegovina (Excel)

AKCIJE KOJE JE KOMPANIJA VEĆ RANIJE PREDUZELA NA RJEŠAVANJU OTVORENIH PITANJA/ ACTIONS TAKEN IN THE PAST		POSLEDICE KOJE IMA KOMPANIJA ZBOG NERIJEŠENOG OTVORENOG PITANJA/ IMPACT			
Ranije preduzeta akcija kompanije/ Past Investor Actions	Troškovi koje je do sada imala kompanija na rješavanju otvorenog pitanja/ Previous Costs Incured	Navesti konkretne probleme koje ima investitor zbog neriješenog otvorenog pitanja/ Impact on Investor	Procjena za koliko je smanjen prihod investitora zbog neriješenog otvorenog pitanja/ Amount of Impact on Revenue	Broj radnih mjesta koja su ugrožena/ Number of Jobs Endangered	Kakve opcije razmatra investitor/ Investment Actions Considered by Investor
▼	▼	▼	▼	▼	▼
Pravni postupak	Unesite troškove				Izmještanje kompanije
N/A	N/A				Kompanija odustaje od reinvesticije
Drugo/ostalo	Unesite troškove				Reinvesticija na čekanju
Pravni postupak	Unesite troškove				N/A
Drugo/ostalo	Unesite troškove				Izmještanje kompanije
Konsultacije	Unesite troškove				Reinvesticija na čekanju
Pravni postupak	Unesite troškove				Reinvesticija na čekanju

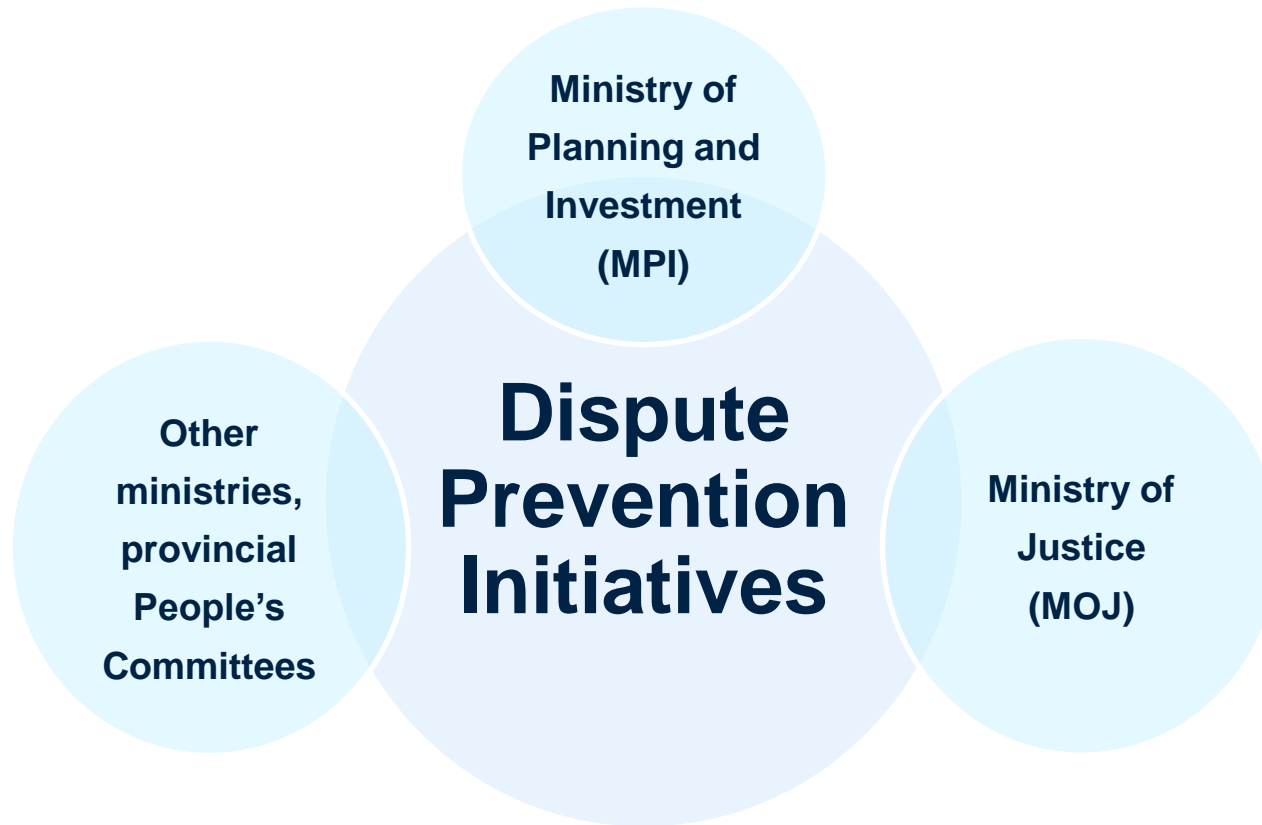
## 4. RECOMMENDATIONS



# Identified Challenges in Vietnam

- Several initiatives on dispute prevention are already ongoing:
  - **There is lack of clarity on specific contact point** - the role of MPI, DPI in handling grievances – in particular at regional level still needs to be clarified.
  - **No systematic process** has been put in place within the government to address issues.
  - **No coordination** between the various involved agencies
- **Insufficient number of suitably trained staff** for proper grievance handling – in particular at provincial level.
- **No systematic way of registering and tracking grievances** as well as measuring impact

# Key stakeholders currently engaged in dispute prevention activities



# Recommendations: Immediate next steps



# Thank you

*Presenter:*

*Nguyen Hung Quang*

*quang@nhquang.com*

*NHQuang&Associates*