# Economic Policy Paper on Foreign Investment Protection Policies and Anti-Expropriation Measures

## Introduction: Significance of Foreign Private Investment

In a developing country like Bangladesh, which has a narrow resource base, foreign private investment carries enormous significance. Over the years the realisation has gained ground that a vibrant and dynamic private sector is the key to economic progress. Even though the domestic private sector is still a fledgling and struggling to gain a foothold, the door inevitably has to be thrown open to foreign private investment to provide the stimulus that is badly needed for the economy.

Foreign direct investment is an imperative to overcome deficiencies in capital formation and a low technology base and to gain market access in the present context of liberalisation of the world economy. The need for a massive dose of foreign private investment is viewed as important especially in the context of the steadily deteriorating aid climate for Bangladesh which is still largely dependent on foreign aid to bolster its balance of payments and to meet its multidimensional need to develop adequate infrastructure and other sectors of the economy. These factors provide enough reason for Bangladesh to embark on a massive quest for foreign private investment. The current policy initiatives of the government are justifiably targeted at this goal.

## *Historical Background: Evolution of FDI Policies and Measures*

The present perception of the government in respect of foreign private investment is the culmination of a series of experimentations and attitudinal changes from time to time. Consistent with the heavy emphasis on public sector investment in the post-independence era, the private sector was assigned a relatively minor role, and as a by-product of this policy stance foreign private investment was viewed as desirable only in collaboration with the public sector and with minority equity participation. The most restrictive facet of the policy was that no foreign investment was allowed to collaborate with domestic private capital. Such a view presumably was taken to prevent the multinational companies from gaining the upper hand in our domestic economy.

### IIP 1973:

The first Industrial Policy, called the Industrial Investment Policy 1973, was tentatively announced in 1972. It contained certain incentives – full freedom of transfer of annual profit after payment of taxes, repatriation of capital spread over a number of years and a minimum dividend of 15%, subject to availability of profits. It was guaranteed that no nationalisation would take place within 10 years and a fair and equitable compensation would be provided in case of nationalisation.

Such a grudgingly extended welcome to foreign investors failed to materialise any investment; the foreign investors were obviously apprehensive of participating in an unequal relationship with the government which was practically a dominating force in the whole economy. Moreover, given the circumstances, nationalisation was always an ominous prospect. During 1973-74 and 1974-75 foreign private investment as a percentage of the total investment was 0.04% and 0.02% respectively.

**RIIP 1974:**

Against the background of such a dismal scenario, the Revised Investment and Industrial Policy ‘74, marked a major change in attitude towards foreign private investment. The revised policy permitted foreign private investment to collaborate with both GOB and local entrepreneurs.

In the private sector, foreign equity participation was limited to those industries where technical know-how was not locally available, the technology involved was very complicated and volume of investment was high. Such coverage also included industries based on local raw materials and those that were wholly export-oriented. Technical collaboration without equity participation was allowed in all types of industries. The period of moratorium on nationalisation was extended from 10 to 15 years, the tax holiday for less developed areas was extended from 5 to 7 years and repatriation facilities were further relaxed.

**RIP 1975:**

Needless to say, policy changes in respect of foreign investment that were hitherto witnessed were no better than small adjustments which failed to come to grips with the fundamentals that really mattered for investment from abroad. In this context one can confidently say that the change in government in 1975 paved the way for bringing about a major shift in policy towards foreign direct investment. A considerable liberalisation of attitude towards foreign investment became visible. While the ceiling of investment was raised to Tk. 100 million, this was thrown open for 10 other sectors previously reserved for the public sector enterprises where joint ventures were accorded preferential treatment. The provision of a moratorium on nationalisation was done away with due to the belief that mention of nationalisation would discourage the investors.

In 1978 several major changes took place to mark another shift in policy towards foreign private investment. This, of course, accompanied a series of measures directed towards betterment of the environment for privatisation as a whole. A noticeable change occurred in terms of abolition of the ceiling on private investment. These policy changes were initiated parallel to the government’s efforts to denationalise a number of abandoned industries through public tenders and return of some taken-over industries involving Bangladeshi ownership.

During the Second Five Year Plan period (1980-85) two significant mileposts were set up for attracting foreign investment. One was the enactment of the Foreign Private Investment (Promotion and Protection) Act, 1980, and the Bangladesh Export Processing Zones Authority Act, 1980, both of which provided a hitherto unavailable legal framework to the government’s commitment to foreign investment and contained details of the modus operandi to set up enterprises in Bangladesh for foreign as well as domestic investors. Another significant step that was taken to make foreign investment more attractive was to announce a new Industrial Policy in 1982 with a good deal of emphasis on foreign investment.

The preferred areas of foreign investment as indicated in NIP ‘82 included the following:

i. New enterprises, particularly those involving technology available to foreign investors.
ii Undertakings in which more intensive use of natural resources was called for.
iii. Export-oriented industries.

iv. Capital intensive technologies, the products of which were import-substitutes or export-oriented in nature.
v. Existing public- or private-sector enterprises where infusion of foreign capital or technology would result in increase in productivity and improvement in product quality.

**Box –1: Thrust Areas for Foreign Investment**

- Export-oriented industries (textile, leather, chemicals, gems-cutting and polishing, jewellery, etc.)
- Industries of high technology (engineering, electronics, computer software and data entry, etc.)
- Industries based on natural resources (chemicals, power generation and distribution, exploration of oil and gas, etc.)
- Industries based on local raw materials and agro-based food processing industries, etc.)
- Infrastructural facilities.

While NIP '82 may be characterised as a turning point in the industrialisation process with emphasis on foreign investment, the late '80s as well as the whole of '90s may be termed a period of (i) financial sector reforms and (ii) trade policy reforms, the combined effect of which has been to increase efficiency of the banking sector so as to serve the private sector better and, through this, mainstream foreign investment into the domestic economy by bringing about international standard, such as, convertibility of current account as well as to liberalise the trade regime by reducing direct controls and tariffs. No doubt, these reforms have had a beneficial impact in terms of attracting foreign investment.

The Industrial Policy 1999 is by far the most comprehensive document embodying policy, strategies and modus operandi for furthering investment, including foreign direct investment, in Bangladesh. It is for the first time that the government has announced a vision for industrial development as a part of the industrial policy that addresses key concerns related to the industrialisation of the country. In 16 chapters it brings out the intentions, incentives and mechanisms that are targeted at accelerating the pace of industrialisation in the country. Foreign investment constitutes an area which the policy addresses with a good deal of comprehensiveness and includes a sizeable portfolio of incentives (See Box- 2).

## Response of the Foreign Investors: Current Investment Situation

Given a well articulated policy, an extensive package of incentives and facilities comparable to those available in most other countries and, above all, a country with geographical compactness and no ethnic disharmony, one could reasonably expect that foreign private investment would be largely forthcoming, but our experience until now is sadly discouraging. The situation appears all the more discouraging when it is compared to the investment situation in countries like India and China. In 1982, which is considered a peak year of foreign direct investment in Bangladesh, the inflow of foreign direct investment into Bangladesh was to the extent of $ 4.7 million, compared to $ 65 million into Pakistan, $ 64 million into Sri Lanka, $ 185 million into Thailand and $2093 million into Singapore.

We have no dependable mechanism to monitor and record year-wise data of foreign direct investment; this is presumably why the annual budget speech of 1999 quotes World Bank figures to show the trend of foreign direct investment in Bangladesh since the present government came to power. According to this World Bank Report, while foreign direct investment stood at $ 83 million in 1994-95, it increased to $ 241 million in 1995-96, $ 296 in 1996-97, $ 387 million in 1997-98 and $ 807 million in 1998-99. According to World Bank projections, investment inflows will average $ 620 million annually during 1992 - 2000 and about $ 900 million annually till 2010 (Table–1). The principal sectors to receive the inflows will be energy, telecom, manufacturing and services.

## Box 2 : Incentives for Foreign Direct Investment

- Protection of foreign investment from nationalisation and expropriation.
- Abolition of ceiling on investment and equity share-holding by foreigners.
- Tax holiday of 5-10 years depending on location of industries and 15 years' tax holiday for private power-generation companies.
- Accelerated depreciation in lieu of tax holiday is allowed at the rate of 80% per plant for the year in which production starts and 20% for the following years. Rate of depreciation is 100% for areas specified by NBR.
- Concessionary duty at the rate of 5% ad valorem on imported capital machinery and spares for initial installation and for BMR/BMRE of existing industries. Value Added Tax (VAT) is not payable for imported capital machinery and spares.
- Rationalisation of import duties and taxes and higher tax and duties for import of goods that are produced locally.
- Six months' multiple-entry visa for prospective new investors.
- Citizenship by investing a minimum US $ 500,000 or by transferring US $ 1,000,000 to any recognized financial institution (non-repatriable).
- Permanent resident ship by investing US $ 75,000 (non-repatriable).
- Tax exemption on capital gains from the transfer of shares of public limited companies listed with the stock exchange.
- Bonded warehouses and back-to-back letters of credit for export-oriented industries.
- Non-resident Bangladeshis will enjoy facilities similar to those of foreign investors and a quota of 10% will be fixed for them in primary public shares.
- Avoidance of double taxation with different countries on the basis of bilateral agreements.
- Tax exemption and duty-free importation of capital equipment and spares for 100 per cent export-oriented industries.
- Facilities for easy repatriation of invested capital, profit, dividend, royalty, technical fee, etc. by foreign investors.
- Tax exemption on royalty, technical know-how and technical assistance fees and salaries of foreign personnel working in Bangladesh.
- Exemption of income tax up to 3 years for the foreign technicians employed in industries specified in the relevant schedule of the income tax ordinance.
- Provision of banking facilities and other utility services on equal footing with local investors.
- Protection of intellectual property rights, such as patents, designs and trade-marks and copyright on the basis of bilateral agreements.
- Keeping the taka freely convertible for international payments in the current account.
- Treatment of re-investment of repatriable dividends as new investment entitled to all these incentives.

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A review of the above statistics points towards an investment level which apparently may be termed as satisfactory at least against the background of the past but, on closer scrutiny, it will be clear that foreign investment as materialised and projected is dominated by investment in the power, oil and gas sectors. And this kind of investment is linked with the public sector in so far as the investors will dispose of the product according to the terms and conditions agreed upon with the government. Thus, the investment that has taken place from 1996-97 to 1998-99 constitutes 65% to 78% of the total private investment. Another feature that is noticeable in the context of this kind of investment is that it is highly capital import-oriented and does not occasion a sizeable inflow of foreign currency, which is more desirable. One can, however, argue that investment in this context helps create infrastructural facilities that are needed to stimulate foreign investment in the country.

That the current foreign investment situation leaves much to be desired is borne out by the statistics presented by BOI. For example, data released for 1996-97 and 1997-98 show that out of the registered 278 units surveyed by them only 63 units (23%) were in production and 19 units (7%) were due to go into production very soon, reflecting the position as of 17 June, 1999 (Table - 2). According to a more up-to-date statement (Table - 3) released by BOI (position as of 15-11-'99), out of 365 units surveyed by them, 81 units (22%) have gone into production. The comparison between the two tables shows that although in absolute terms the number of registered units as well as number of units which have gone into production have increased, the percentage increase of units that have gone into production is only to the extent of one per cent. Moreover, the comparison shows that over a period of 6 months (July '98 – Dec '98) only 10 units have gone into production.

All this reveals the fact that, compared to the number of units registered with the BOI, the number of units actually going into production is small. That is to say, investment that materialises falls far short of investment that is recorded in terms of intention. The gap will be found to be still wider when the number of units not registered is taken into account.

When the Bangladesh situation of foreign investment is compared to that of other countries, the regrettable fact that emerges is that our country enjoys a lamentably low level of foreign investment. Table-4 shows an inter-country comparison of foreign direct investment in South Asia from 1992 through 1997.

**Table-4: Foreign Direct Investment in South Asia ($ Million)**

| Country | 1992 | 1993 | 1994 | 1995 | 1996 | 1997 |
|---|---|---|---|---|---|---|
| Bangladesh | 18 | 10 | 8 | 2 | 14 | 145 |
| Bhutan | - | - | - | - | - | - |
| India | 233 | 574 | 973 | 1,964 | 2,382 | 3264 |
| Maldives | 7 | 7 | 9 | 7 | 8 | 10 |
| Nepal | 1 | 4 | 6 | 5 | 19 | 20 |
| Pakistan | 335 | 347 | 419 | 719 | 770 | 800 |
| Sri Lanka | 123 | 195 | 166 | 56 | 120 | 140 |
| **South Asia** | **717** | **1,137** | **1,581** | **2,753** | **3,313** | **4,379** |

This signifies a situation where private foreign investment is slow in coming into sectors other than energy and, having accepted the fact that this is not desirable, a good ground exists for reviewing critical issues that relate to the foreign investment regime to give it a better prospect.

## *Priority Areas of Concern: Where to Set Things Right*

### A. National Consensus

The Industrial Policy 1999 states "it is fortunate that Bangladesh enjoys political consensus across (sic) all political parties that a competitive and market-oriented economic policy is pursued in order to accelerate the economic growth process." The recent political trend, characterised by abstention from parliamentary sessions, incidents of street violence and frequent imposition of hartals, raise doubts that such a political consensus is being taken seriously by the politicians in order to ensure a congenial climate for foreign investment. A recent newspaper report, (The Independent: Feb 17, 2000) quotes the Vice President of BGMEA who was lamenting in the following words, "We are losing markets to third party sources. It is the main problem, which has its roots in political troubles."

### B. Policy vs. Perception

Bangladesh is favoured with a plethora of policies that permeate almost every aspect of our socio-economic life, but it has to be realised that it is not so much the existence of a well-documented policy but how much this works out at the practical level in terms of implementation that generates confidence amongst the stakeholders. In the context of the Industrial Policy of our country, the more pertinent question is, do the foreign investors perceive it to be a credible document? (Credibility here is judged in terms of all the pre-conditions that contribute towards creation of a suitable environment for foreign investment). A strong perception should grow amongst the foreign investors that incentives and facilities that are promised to them within the framework of the Policy are easily accessible and realistically available with a minimum of hassle, bureaucratic or otherwise.

### C. Good Governance: Corruption as an Eroding Factor

The issue of good governance cuts across all areas of socio-economic development and has also a direct bearing on the prospect of foreign investment in the country. The fact hat has emerged as critical is the ever-growing menace of corruption that is tightening the noose around the administrative apparatus.

A World Bank report on the problem of corruption in Bangladesh was discussed at the meeting of the Bangladesh Development Forum held on 13-14 April 2000 in Paris. It said that if corruption were curbed, the country's economic growth could be boosted by as much as 2.9 per cent.

It noted that Transparency International in 1998 judged Bangladesh to be one of the world's five most corrupt countries and said that a concerted national effort to curb corruption could lead to a substantial reduction in poverty in one of the world's poorest nations where 60 million people live below the poverty line.

### D. Investment: A Hostage to Mastans?

Given the present law and order situation one will not be far from truth if he says, as Mr. A. M. A. Muhith said in one of his recent articles, "Investment is a hostage to the Mastan culture. Investment is expensive and rent-seeking interests in a centralised system infested with political patronage make it impossible to earn a good return".

### E. Domestic Investment vis-à-vis Foreign Investment

The issue of domestic investment vis-à-vis foreign investment has sometimes been misconceived, resulting in adoption of the wrong policy measures. Although foreign investment is necessary to fill up the domestic resource gap, there should be no two opinions about the fact that domestic investment should be promoted and a vibrant domestic economy should exist as a pre-condition for attraction of foreign investment. After all, if the local environment is not good enough for stimulating domestic investment, how can foreign investors regard it as congenial for investment of their capital and technology? But over-emphasis on foreign investment to the relative neglect of domestic investment sometimes causes imbalances in the economy and also frustration amongst the domestic investors. This may even create an attitude antagonistic to foreign investment. In a recent meeting of the Export Promotion Council, Mr. Salman F. Rahman, President of the Bangladesh Textile Mills Association (BTMA), decried inadequate access to capital for local entrepreneurs and said that the government was allowing everything to pass to foreign investors, compelling the local industrial houses to become traders and agents of foreign businesses.

### F. Mechanism for Enforcement of Policy

The implementation of policies and measures is largely dependent on: i) how the legal instruments are framed and functioning; ii) how the functionaries are vested with decision-making authority and, above all, iii) how well the institutional mechanisms are co-ordinated.

### G. Legal Instruments

It is strange that the investment policy has been changing from time to time whereas the relevant Acts, which are supposedly the means for enforcement of this policy, have remained static, as if immutable, over a period of years. Thus, while the Industrial Policy is being updated from time to time to respond to changing needs, the Acts, by staying put, have failed to address the requirements of enforcement. Mention may be made here of the Foreign Private Investment (Promotion and Protection) Act, 1980 (Annex III) and the Investment Board Act, 1989 (Annex IV) which are intended to provide legal coverage for enforcement of the Industrial Policy through mainly the Board of Investment (BOI). The functions of the BOI, laid down in the Investment Board Act, 1989, have totally lost their relevance and the definition of foreign investment enshrined in the Investment Act is outdated. Besides, a host of details needs to be re-adjusted to meet the present needs. Likewise, the Bangladesh Export Processing Zones Authority Act, 1980 needs to be looked into to put it in total accord with the Industrial Policy as well as the demands of the present situation.

One shortcoming in operationalising the measures embodied in the Act is that though two decades have elapsed since the Investment Act was passed, no rules have been framed under the Act although rules serve as instruments for enforcement of the Act.

**Box–3 Major Functions of Board of Investment (BOI)**

- Undertaking investment promotion activities at home and abroad.
- Providing all types of facilities for promotion of capital investment and rapid industrialisation.
- Registration of industrial projects including infrastructure, manufacturing and service-oriented ones, industrial as well as foreign loan, royalty, technical know-how and technical assistance agreement whenever required.
- Approval of payments of royalty, technical know-how, technical assistance fees to foreign nationals/organisations beyond the prescribed limits.
- Issuing work permits to expatriate personnel working in private-sector industrial enterprises.
- Providing import facilities to industrial units in the private sector.
- Approval of the terms and conditions of foreign private loan and suppliers' credit beyond the prescribed limit.
- Allotment of land in the industrial areas/estates for industrial purpose.
- Conciliation of disputes relating to foreign investors.
- Providing assistance to avail infrastructure facilities for industries.

## H. Decision-making Authority

The BOI is the agency responsible under the Act for implementation of the government policy relating to investment, both domestic and foreign, and for providing all kinds of facilities in the matter of such investment. In effect, the power of decision-making is spread out amongst a number of ministries, departments and other agencies and, consequently, the incentives and facilities are implemented not as a result of the decision of the BOI but of several participating organisations. As a matter of fact, the BOI is vested with a lot of authority, thanks to the Act, but at the practical level it has to function with heavy reliance on other agencies. Thus the BOI has turned into a facilitator at best, not a provider of promised services and facilities. A shared authority under conditions where management does not act in unison at all levels does not bring the desired results.

The BOI's One Stop Service Centre was devised and installed to serve as a focused unit for providing all required facilities to the investors as per policy pronouncements. To this end the functionaries of all concerned government agencies, with adequate decision-making authority, are attached to the One Stop Service Centre. But as a recent evaluation shows, "The One Stop Service Centre has virtually turned into a 'post- box', only forwarding investors' proposals with some endorsement called OSS recommendations to the respective agencies". According to the same evaluation, the investors' perception about the OSS is as follows: i) it is not much different from a traditional government department and ii) it does not have the necessary authority to execute its decision. Investors rate the OSS 'average' in respect of obtaining services (Ferdousi, 99). In this background, there are many investors who prefer to approach the service providing departments directly and this most often brings quicker results. Even in instances where proposals are sent by OSS with recommendations, investors have to visit the concerned agencies to pursue their cases for early disposal. Against the background of the relatively poor performance of OSS, the question whether it is not just another layer of the bureaucracy is a reasonable one.

**BOX - 4: "One Stop Service" Identified Areas**

- Electricity and gas connection.
- Water and sewerage connection.
- Telecommunication facilities.
- Custom clearance of imported machinery, spare-parts and raw materials.
- Clearance from the environmental agencies.
- All other facilities and services that may be required for speedy setting up and operation of an industry.

## I. Institutional Mechanisms: Monitoring and Co-ordination Aspects

As has been indicated in the previous section, the policy in general and measures targeted at investment promotion are implemented by a number of ministries and agencies and naturally this calls for a set of monitoring and co-ordination mechanisms that can deliver the goods. Two features are noticeable in this context:

a) The co-ordination framework is not well founded -- the BOI is not constituted on a fully representative basis. For example, representation of EPZs is not included in the Board. The BOI is also not available for ensuring day-to-day coordination and, therefore, cannot be treated as a continuously available co-ordination platform. The One Stop Service Centre, as discussed earlier, does not function at a decision-making level.

b) The monitoring task, although an essential part of BOI activity, is not adequately addressed. The World Bank report referred to earlier states, "Unfortunately, the BOI is not a major source of FDI information. It compiles information on the basis of registrations but evidence suggests that nearly two thirds of registered/ proposed investments do not materialise. As such, the BOI registrations turn out to be a poor source of FDI information."

It is for this reason that (i) investment data, particularly data related to foreign investment, are not available on an up-to-date basis and (ii) the materialisation of investment as against registration with BOI is not recorded on a continuous basis and the BOI has to embark on periodic surveys to generate the required data.

Moreover, it is hard to access data of foreign investment in a consolidated form, reflecting investments registered with BEPZA and BOI, in the absence of a well co-ordinated monitoring system.

## J. Dissemination of Information

A prospective investor needs a huge amount of information ranging from the laws of the land to details about tax and custom regulations or even cultural aspects of the country. Apart from what is stated in "A Guide to Opportunities " published by the BOI, there is very little up-to-date information that an investor can lay his hands on. Consequently, an information hunt can take an investor several days or more unless he has a local associate. The most difficult part of the whole thing is that there is no single source from which the required information can be gleaned. This sad aspect emerged through the personal experience of the author of this paper, who naturally wanted to access information about foreign direct investments to accomplish his task.

**BOX – 5 Facilities Provided to Units Located in the Export Processing Zones (EPZ)**

- Income tax exemption for ten years and 50 per cent income tax rebate on export earnings after that period.
- Duty-free import of raw materials, machinery, construction materials and other materials used in the manufacturing process.
- Income tax exemption, subject to existing conditions, on salaries of foreign technicians for three years.
- Tax exemption on interest on foreign loans.
- Tax exemption on royalties, technical know-how and technical assistance fees.
- Relocation of running manufacturing units from abroad to EPZs.
- Units in the EPZs will be permitted to supply linkage materials for manufacture of exportables to industries operating in the domestic tariff area through bonded warehouses and/or back-to-back L/Cs.
- Off-shore banking facilities.
- Establishment of backward linkage industries will be encouraged for supplying inputs to Export Processing Zones.

What is conspicuous by its absence is a compiled state-of-the-art manual on foreign investment, which, as one would expect, could be made available by the BOI. Half the time of a foreign investor can be saved if such information is easily available with our embassies abroad, but it is not unknown that many tend to travel to the country just to collect information at first hand. In the world of the super information highway, investment information from a website on Bangladesh is still not a reality. The International Chamber still does not have technological access to information on one single platform.

## K. Issue of Expropriation and Nationalisation

The issue of expropriation and nationalisation is seized upon from time to time, thus generating considerable misgivings among the foreign investors and, although Bangladesh history shows that for the last 20 years no industry has been expropriated, the fear of nationalisation has not altogether disappeared.

One of the reasons may be the wording of clause 7 of the Investment Act, 1980, dealing with expropriation and nationalisation, which says, "Foreign Private investment shall not be expropriated or nationalised, or be subject to any measures having effect of expropriation or nationalisation, except for a public purpose against adequate compensation which shall be paid expeditiously and be freely transferable."

The proviso in the clause, "except for a public purpose", is fraught with many possibilities and it is feared that this may turn out to be the Achilles' heel for foreign investment in so far as it makes nationalisation a reality under any pretext. The interpretation of these words is flexible enough to expropriate a project funded by foreign investment.

There is a strong lobby which advocates that the nationalisation clause in the Investment Act should be altogether deleted to erase the unpleasant memories of nationalisation in the past and at the same time to refrain from any insinuation that nationalisation is not, after all, beyond the realm of possibility.

There is another group of sceptics who also have expressed the fear that, even if expropriation or nationalisation of foreign investment does not happen as a direct step, expropriation may take place in many indirect ways and, (mind you), these steps are no less inimical to foreign investment than one heavy-handed sweep of nationalisation. Some of these ways are**:**

1. Absence of a stable taxation policy: It is normally seen that taxation measures undergo fluctuations from time to time as part of the budgetary mechanism and this makes investment returns uncertain.

2. Abrupt and frequent changes in tariff policies: This phenomenon is also not uncommon in Bangladesh. High tide and low tide of duties in the budgets is as common in Bangladesh as the rise and fall of rivers and this keeps the foreign investors worriedly guessing as to what will come next.

3. Foreign exchange restrictions: Although not a reality at the moment, yet, as pointed out elsewhere in the report, there is a possibility in not too a distant future that a negative transfer may take place, resulting in a squeeze on foreign exchange. This may have an impact in terms of rationing foreign exchange, especially in the matter of repatriation of dividends. In this context, there is no guarantee that foreign exchange transfer will not be subjected to strict regulations if there is no big boost in foreign exchange earnings by Bangladesh.

4. Opening doors to trade unionism in restricted areas: A change in government policy towards labour unions in areas hitherto out-of-bounds for such unions will upset the calculations of foreign investors and no doubt the advantages that were reaped or are expected to be reaped in a situation where no union unrest exists will be wiped out to the detriment of the interests of the investors. This aspect has been more elaborately dealt with elsewhere in the report.

   The foregoing shows some of the key factors that may contribute towards a de facto expropriation of foreign investment and there is no doubt that the government should take the appropriate steps to ensure that the situations described above do not come to pass.

**L. Nexus between Trade and Foreign Investment**

In the context of the global economy, trade aspects assume special significance as essential ingredients for attracting foreign investment. The nexus between trade and foreign investment is sometimes not adequately recognised, so there is a need to harmonise the two aspects through the joint efforts of the ministries of commerce and industry.

An area on which particular attention should be focused in this context is protection of Intellectual Property Rights (IPR) which comes within the purview of our commitment to the Agreement on Trade Related Aspects of Intellectual Property Rights(TRIPS). The abuse of Intellectual Property Rights is rampant throughout the world, especially the least developed countries, and the foreign investors are wary about investing capital and technology involving copyrights and patents in countries where strict measures for protecting IPR are conspicuous by their absence. Bangladesh has a lot of potential to attract foreign investment in this field by fulfilling its commitment to the Agreement. Similar gains may be achieved by re-structuring the trade and tariff regimes in the best interests of foreign private investment.

## *Sustainability of Inflow of Foreign Capital*

As has been shown earlier in the paper, foreign private investment has tended to concentrate on the energy sector with import content in terms of equipment and machinery and much less in terms of cash inflows. There is a downside risk that gradually foreign investment of this nature will present the prospect of negative transfers, i.e. cash outflows will outstrip cash inflows, putting a severe strain on the country's foreign exchange reserve. This points to the need for searching for avenues of earning cash foreign exchange and inevitably this calls for intensifying measures for promoting export-oriented industries. In this respect there are good grounds for considering the possibility of exporting gas or electricity through utilisation of gas. Here is an area where political consensus needs to be achieved. Considerable opposition to the idea of exporting gas is already visible and no settlement of the issue has yet been reached. Supreme consideration should be given to the fact that the foreign investment regime has to be sustained with attention to the need for maintaining a balance between capital inflows and outflows.

## *Paving the Way for a Better Environment: How This May Come About*

**1. Advocacy and Commitment**

Advocacy at the highest level is needed to bring about an environment conducive for foreign direct investment. This pre-supposes a political consensus and political stability through meaningful dialogue amongst the political leaders to keep the interests of the nation uppermost in their respective agenda. A way must be found to settle political differences through means other than hartal and similarly negative activism that breed violence and turmoil, which are inimical to the interests of foreign investors. There are instances of prospective investors coming to the country for exploring business prospects and remaining confined to hotel rooms due to hartal, achieving nothing at the end. A situation of this kind is by no means desirable from the point of view of foreign investment. Even the domestic investors have expressed dismay over the continuously volatile political situation in the country. A political problem of this kind should no doubt be resolved politically. A satisfactory law and order situation is equally critical to attract foreign investment. The two most important factors for attracting and retaining foreign investment are:

- National political consensus.
- Law and order situation.

## 2. Good Governance: A Crusade Against Extortion and Corruption

A satisfactory law and order situation and a corruption-free administrative machinery are essential to attract foreign investment. In the words of Mr. A.M. A. Muhith, who was quoted earlier also, "If political parties could shed their goons who romp around industrial centres, labour colonies, educational institutions, transport junctions, sea ports and IWTA landing stations, airports, border check-posts, godowns of factories, bonded warehouses and such other strategic points for extortion and rowdyism, the scene would undoubtedly be very different". The scene would be very different too if the concept and practice of "speed money" was banished from the country and corruption was stamped out of the political and administrative scenario for all time to come.

- Extortion must be eliminated.
- Corruption must be ended.

## 3. Domestic Investment in Tandem with Foreign Investment

Foreign investment should be perceived and pursued not as a substitute of, but as complementary to, domestic investment and measures should be geared accordingly. More thrust should be given to creating conditions for setting up joint ventures in an atmosphere where not only the local entrepreneurs are built up but opportunities are also created for local expertise and technology to develop in tandem with foreign expertise and technology. The bridge between the two has to be built cautiously and diligently by the stakeholders who are operating on the scene. The attention of the BOI in particular should be focussed on these points in the years to come:

- Domestic investment must be supported to create appropriate economic and infrastructural preconditions.
- Efforts to eliminate mistrust between domestic and foreign investors.
- Exchange of views between domestic and foreign investors.

## 4. Enforcement of Policy and Strategies: Acts and Rules

A situation in which the Industrial Policy is not accompanied by Acts that are truly equipped to ensure conditions for enforcement should be put to an end. A policy without an updated Act is only a document of pronouncements. Both the Investment Act and EPZ Authority Act should be revised to remove the clauses that have become redundant over time and to incorporate provisions that are needed to meet the demands of present time. Rules should be framed right away to provide legal backing for the Acts. Care should be taken to revise the Acts and to frame the Rules through a consultative process involving both public-sector and private-sector stakeholders, taking the good examples from outside the country to serve as a guide. A broad-based forum under the chairmanship of the Industries Minister and co-chairmanship of the Law Minister may be set up to address the tasks. The process should be transparent and given wide publicity both at home and abroad. Suggestions may be sought on internet from our embassies and through them from non-resident Bangladeshis to enrich the process. Meanwhile, the Industrial Policy '99 should be translated into important languages and circulated to the embassies for circulation in industrialised countries. All other laws of the land, e.g. labour laws, having a bearing on the investment situation, should be brought into conformity with Investment Act.

- Measures to ensure policies.
- Strategies to implement policies.

## 5. Institutional Framework: Streamlining Measures

5.1 Apex Forum for Co-ordination and Policy Adjustments

Since policy enforcement involves a number of stakeholders, public and private, a co-ordination platform of the highest level is the need of the hour. Therefore a forum such as the National Council for Industrial Development has been proposed in the Industrial Policy. But such a forum will lack a focus on foreign investment, which should attract the attention of the highest level. Therefore the setting up of a Council with the Prime Minister in the chair for the exclusive purpose of dealing with foreign investment should be under consideration. Standing committees should be formed to separately deal with matters having to do with foreign investment, such as matters related to financial resources, especially banking, governance, etc. These committees should be used for consultations with all the stakeholders at short notice.

5.2 Monitoring Cell

A strong and well-equipped monitoring cell should be put in place in the Board of Investment to:

- Monitor the investment situation on a continuous basis.
- Monitor the progress of implementation of projects that have been undertaken.
- Review capacity utilisation, etc.
- Maintain close liaison with trade and investment promotion organisations.

A proposal should be considered in this context to enforce registration as compulsory and intimation of the periodic status of implementation of an investment project as mandatory so that BOI can compile and bring out statements reflecting the progress of investment by foreign investors.

5.3 One Stop Service Centre: Upgrading its Capability

As has been indicated earlier the One Stop Service Centre, as it has been constituted, is not vested with decision-making authority and, therefore, fails to deliver the goods properly and effectively. It needs, therefore, to be upgraded by giving it decision-making powers. Recommendations in this respect, as contained in the Report of Shawkat Ali Ferdousi, are worth considering.

## 5.4 Information and Data Bank

An information and data bank needs to be set up within the Board of Investment to serve as a central pool of information and data to address all types of requirements of investors who ask for wide-ranging information relating to investments. The data bank should have access to information pertaining to the investment situation of foreign countries as well and should also gather information on technology. An important task may be performed by the unit in compiling a list, with periodic upgrading, of the prospective investors willing to put up equity with foreign investors. This unit should maintain a steady interaction with our embassies to collect and disseminate information on foreign investment through Internet facilities. The unit should be equipped with facilities for computer networking with all the chambers of Bangladesh as well as internet linkage with selected foreign chambers of the developed and developing countries together with our embassies abroad.

## 5.5 Legal Support Unit

Legal counselling is a critical need for a foreign investor. This unit should be equipped with facilities for giving legal counsel to the foreign investors that will relate to documentation needed for procurement of land, formulation of partnership deeds, drafting treaties, etc. It should be the custodian of all acts, rules and regulations which the investors would be interested to access to familiarise themselves with the laws of the land.

## 5.6 Training and Orientation Unit

Foreign investment is a field where the functionaries involved should have a high level of professionalism which cannot be acquired without quality orientation and training. There should be continuous training and orientation addressing all aspects to which the private and public sector functionaries are likely to be exposed. Even those who deal with peripheral facilities for prospective investors, such as airport, hotel and tourism officials and employees, should be given adequate training. It is recommended that the Bangladesh Institute of Management (BIM) should be re-structured to encompass training activities pertaining to foreign investment. Setting up of an Institute of Training for Industrial Development is also possible through joint government-private initiative. Such an institution may serve as the forum for holding seminars, workshops, round-table conferences, etc. apart from holding training and orientation courses. Assistance from development partners may also be obtained to implement the proposal.

## 5.7 Commitment Towards TRIPS to be Strengthened

All the national policies should recognize that Intellectual Property Rights (IPR) is an important ingredient in economic development and plays a vital role in world trade as well as in attracting foreign investment. The amendment and formulation of IP laws should be given priority consideration to convey a distinct message to the potential foreign investors that Bangladesh is serious about protection of IPR and fulfilment of its due obligations towards TRIPS.

A separate study should be undertaken to examine all the aspects of trade enjoined by the WTO and their relationship with the potential for foreign investment. A collaborative effort between the commerce and industry ministries is highly important in this regard.

## 5.8 Protection Against Expropriation and Nationalisation

- The words "except for a public purpose" should be omitted from the expropriation and nationalisation clause of the Investment Act 1980 to make the guarantee against nationalisation appear more convincing and credible. The Act should be further updated.
- The elimination of the above clause from the Act altogether should be given serious consideration by the policy-making authorities.
- Treaties should be signed with individual countries guaranteeing protection from expropriation and nationalisation of investment.
- All the factors that amount to de facto expropriation should be considered seriously and adequate safeguards taken to:

  - ➢ Prevent fluctuations of taxation and tariff policies.
  - ➢ Ensure a favourable foreign exchange reserve (which itself warrants a list of measures).
  - ➢ Strengthen and stabilise the capital market to protect portfolio investment.
  - ➢ Resolve the issue of labour unions in export processing zones to maintain a favourable and guaranteed climate for investment. (Please see the appropriate section in the report).

## 5.9 Bangladesh Embassies Abroad: Galvanising them into Action

The contribution of Bangladesh embassies in image building or projecting the right image of the country abroad is still not satisfactory. Bangladesh is very often projected abroad as a perpetual victim of natural disasters, political strife and tension, while its best characteristics are not highlighted by the international media. This kind of impression does not attract foreign investment. Here is an area where efforts may be intensified by our embassies for giving wide publicity to the favourable aspects of the Bangladesh's socio-economic and cultural status. They should also serve as information centres for prospective investors. With this end in view our embassies in the industrialised countries should open a Bangladesh Window for Foreign Investment to disseminate up-to-date information to intending investors, foreign as well as non-resident Bangladeshis. Their job should not be necessarily confined to arranging workshops, seminars or organising investors' forum from time to time. They should also use the local media to publicise the favourable climate existing in Bangladesh for foreign investment.

In short, the required institutional measures could be as follows:

- Establishing a National Council to review the Industrial Development Policy.
- Establishing a Cell to review the development of foreign and domestic investment.
- Establishing a legal support Unit.
- Providing information about TRIPS.
- Providing information about the national Anti-Expropriation Law.
- Establishing an Orientation and Training Centre.
- Restructuring and empowering the BOI.
- Re-activating the embassies abroad to improve the political and economic image of the country to attract foreign investments.

## 6. Measures to gain Support and Assistance of the Donor Agencies to encourage Foreign Investments

Traditional development partners can contribute indirectly, if not directly, towards the encouragement of foreign investment in Bangladesh. Every year in April the meeting of the Bangladesh Development Forum is held under the auspices of the World Bank to review utilisation of past foreign assistance and prospects of assistance in the coming year. Various important issues are brought up and discussed in this forum where Bangladesh presents detailed responses. The meeting of this forum may be followed up every year by organising an Investors' Forum through obtaining the good offices of the donor countries. Donors' representatives may be present in this forum as observers. After all, foreign assistance and foreign investment are getting linked up in many ways, one having implications for the other. The possibility of having such a forum may be discussed with the World Bank through the initiative of the Economic Relations Division.

## 7. Labour Unions: Pragmatic Approach Needed

International pressure is mounting on the question of allowing trade/ labour unions in places where no union has been allowed in Bangladesh in the interest of ensuring trouble-free investment. The issue has to be seriously considered by the public as well as private stakeholders so that the pro-trade union lobbies are convinced that in the present situation of Bangladesh trade unions are not desirable mechanisms to be adopted in some designated areas at present. A counter-lobby with the involvement of Bangladesh embassies may be mobilised. The point that may be emphasised is that a gradual approach towards opening the door to trade unions may be a more advisable course of action to take in the Bangladeshi context. A position paper on this issue may be prepared and acted upon in the quickest possible time.

Simultaneously, a political decision may be taken to overcome labour opposition to foreign investment projects, such as the container port project which, if stalled, may convey wrong signals to the outside world.

## *Conclusion : Vision and Mission*

Foreign direct investment should not be regarded from the viewpoint of incentives alone; it has to do with the host country's total vision as to how to attract and sustain the stream of capital inflows and to what extent it is consistent with the nation's aspirations and commitment. Foreign investment can feel secure and protected only when all the conditions for its sustainability in the host country are ensured and that calls for networking of all laws with the enforcement machinery working in an atmosphere of harmony amongst political leaders and public and private stakeholders. Needless to say, a glittering package of incentives may easily go sour if the powers that be, whether political leaders or bureaucrats, do not show enough inclination and do not put in enough effort to enforce the termination of corrupt practices.

A nation-wide mission should be undertaken to liberalise our attitude towards foreign investment; this should be ensured through participation of all stakeholders. All tools and mechanisms should be used in harmony within the framework of the policy and no mindset should work as an impediment to the amendment of Acts and framing of rules and amendment of the Policy itself, if needed. The benefits of foreign direct investment should be harnessed to ensure a healthier economy and a better future for the people, most of whom are still languishing in poverty.

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