Government of the People's Republic of Bangladesh
WTO Cell, Ministry of Commerce
Bangladesh Regional Connectivity Project-1
Probashi Kollayan Bhaban
Eskaton Garden, Dhaka-1000

Policy Review/Policy Study/Policy Paper Preparation on Foreign Private Investment (Promotion and Protection) Act 1980

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on

Foreign Private Investment Promotion and Protection Act 1980

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Submitted to

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Preface

The final report intends to respond to the requirement according to the provision of the contract agreement signed between Bangladesh Regional Connectivity Project-1 (BRCP 1) and South Asian Network on Economic Modeling (SANEM) for conducting **"Policy Review/Policy Study/Policy Paper Preparation under the Bangladesh Regional Connectivity Project 1)''** in collaboration with International Development Association (IDA), The World Bank. The objective of this technical assistance project is to review the existing government policies related to trade to strengthen cooperation in trade, transport, and transit facilities and facilitate the economic empowerment of women traders. The ongoing context and challenges are compared with the existing policies. It has also analyzed the best practices of regional comparators to promote and improve trade-related activities as well as the relevance of SHE trade with the existing policies. Finally, based on the findings, the recommendation for future policy has been identified.

Consultancy services for conducting the **"Policy Review/Policy Study/Policy Paper Preparation under the Bangladesh Regional Connectivity Project 1)''** was provided by the South Asian Network on Economic Modeling (SANEM), Bangladesh. The study team consists of four senior-level experts. The major objective of the study is to depict a clear picture of the current state of the implementation of the policies, challenges and to provide the suggestion for future policies. Furthermore, Reviewing and identifying the gaps in the existing policies were also aimed to be found out for this study.

The review of the **Foreign Private Investment Promotion and Protection Act 1980** has identified some specific areas including the definition of foreign investment, sanction of foreign investment, repatriation of earnings, dispute settlement, responsibilities of foreign investors, incentives for foreign investor, LDC graduation and the participation of women entrepreneur in the joint venture with foreign investors.

We are hopeful about the policy recommendations which would be beneficial for policy makers and other stakeholders for the development of the leather sector including the participation of women in this sector.

Md. Mijanur Rahman
Project Director (Joint Secretary)
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Acknowledgment

It is indeed a great pleasure that Bangladesh Regional Connectivity Project 1 (BRCP-1), Ministry of Commerce has entrusted International Development Association (IDA), the World Bank to carry out "**Policy Review/Policy Study/Policy Paper Preparation".** The final report of the study has been prepared based on a validation workshop held on 21 November 2021. The studies are 1) Export Policy 2018-21 2) Import Policy Order 2015-18, 3) Industrial Policy 2016, and 4) Leather and Leather Goods Development Policy 2019.

The four policy papers contain objective, scope, and methodology for the studies, current context, and challenges, deviation from the international practices, the relevance of the policies with the SHE trade. The consultants also described the best practices of regional countries adapted to facilitate trade-related activities. In the end, the findings from the analysis and recommendations for the upcoming policy papers are portrayed.
The authors wish to thank Md Mijanur Rahman, Project Director, Bangladesh Regional Connectivity Project 1, and Md Munir Chowdhury, National trade expert, BRCP-1 for their valuable comments and continuous support in undertaking the study.

We cordially express our indebtedness to Mr Tapan Kanti Ghosh, Senior Secretary, Ministry of Commerce for his aspiration and guidance to conduct this study. We are also thankful to all the officials and participants who took part in the consultation meetings and workshops for helping us with their constructive criticism and valuable suggestions during the study period.

This work would not have been possible without the participation of the relevant stakeholders in the Key Informant Interviews (KIIs) as well as in the Focus Group Discussion (FGD).
Thanks are also due to all respondents of interviews, FGDS, KIIs who helped us by providing their information during the data collection period.

The contribution and support provided by everyone for the study are greatly appreciated.

Selim Raihan

Dr. Selim Raihan
Executive Director, SANEM

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List of Acronyms

BEPZA	*Bangladesh Export Processing Zone Authority*
BIDA	*Bangladesh Investment Development Authority*
BIT	*Bilateral Investment Treaty*
BRCP1	*Bangladesh Regional Connectivity Project 1*
BSCIC	*Bangladesh Small, Cottage Industries Corporation*
BWCCI	*Bangladesh Women Chamber of Commerce and Industry*
CCI	*Competition Commission of India*
EOUs	*Export Oriented Units*
FDI	*Foreign Direct Investment*
FEMA	*Foreign Exchange Management Act*
FGD	*Focus Group Discussion*
FPIPPA	*Foreign Private Investment Promotion and Protection Act*
GoB	*Government of Bangladesh*
HS	*Harmonized Commodity Description and Coding System*
ICSID	*International Centre for Settlement of Investment Disputes*
ICT	*Information and Communication Technology*
IDA	*International Development Association*
IMF	*International Monetary Fund*
IP	*Individual Protection*
IPFSD	*Investment Policy Framework for Sustainable Development*
ITS	*Information Technology Services*
KII	*Key Informant Interview*
LDC	*Least Developed Country*
MNC	*Multinational Corporation*
NIMZ	*National Investment & Manufacturing Zones*
NRB	*Non-Resident Bangladeshi*
SEZ	*Special Economic Zones*
SME	*Small and Medium-sized Enterprises*
TIN	*Taxpayer Identification Number*
UK	*United Kingdom*
UNCTAD	*United Nations Conference on Trade and Development*
USD	*United States Dollar*
VAT	*Value Added Tax*
WTO	*World Trade Organization*

Executive summary

Foreign Direct Investment or foreign private investment plays an important role for the development of the industrial sectors of many developing countries benefiting the economy in terms of providing capital, transferring technology, and creating jobs. The framework of foreign direct investment in Bangladesh is based on the Foreign Private Investment Protection and Promotion Act 1980. The act was introduced in 1980 ensuring the legal protection for foreign investment in Bangladesh. This is the core act regulating the entry of foreign private investment in Bangladesh. It ensures fair and equitable treatment to foreign investors. The Act is quite backdated as there has not been any significant change in the Act since 1980. Moreover, the Act needs to be updated to incorporate provisions for the current challenges of Bangladesh including SDG goals, Challenges after LDC graduation, gender inclusion. In this context, this study conducts a thorough review of the Foreign Private Investment Promotion and Protection Act 1980 by applying a mixed methodology. The in-depth desk research as well as the data collected from the Key Informant Interviews have helped to identify some key aspects of the Act such as relevance of the different provisions of the Act in the present context, as well as the existing regulatory framework of investment in Bangladesh. One important aspect of this review is to identify the key challenges faced by the women entrepreneurs to undertake a joint venture with foreign investors as well as recommending necessary provisions for promoting the joint venture of women entrepreneurs with the foreign investors.

The section two of this review gives an overview of the current scenario of investment in Bangladesh. The performances of Bangladesh in attracting FDI is not satisfactory. Moreover, Covid 19 pandemic has caused the private investment in Bangladesh to dry up. The top sectors of foreign investment in Bangladesh includes manufacturing, power, gas and petroleum, and trade and commerce. The major source countries of FDI in Bangladesh are Netherlands, the UK, and Singapore.

The section three of this review paper presents the framework of foreign investment in Bangladesh including an overview of the foreign private investment promotion and protection act. The framework for the foreign investment in Bangladesh shows that although the Foreign Private Investment Promotion and Protection Act (FPIPPA) 1980 is the key regulatory framework of foreign investment in Bangladesh, the entry, protection, and promotion of foreign investment in Bangladesh is controlled by a number of other laws. From the critical overview of the FPIPPA, the study finds that the foreign private investment promotion and protection Act has limited scope and coverage, compared to many FDI-related acts in the competing countries in the region and beyond. The findings of the review show that the FPIPPA 1980 remains unclear in terms of different conditions that the government may impose for the entry of foreign investors which might be made clearer. Moreover, it is not clear whether the Act covers the portfolio investment as a foreign direct investment. Given the growing importance of portfolio investment, it is important to clearly define the foreign direct investment which should include the portfolio investment.

Currently, there is a growing importance of joint ventures of domestic entrepreneurs with foreign investors. Moreover, for the technological development of the manufacturing sector, a joint venture is needed with foreign enterprises. However, the joint venture is not clearly defined in the FPIPPA 1980. Another major issue of the FPIPPA 1980 is that several sections of this Act are vague which work in favour of the foreign investors. For example, the Act defines industrial undertakings as an establishment engaged in producing or processing goods. The provision is not clear whether it incorporates the service industries which include Information Technology Services (ITS), construction, tourism and entertainment, hospital and clinic, human resources development, transportation, telecommunication, etc as enumerated in the National Industrial Policy 2016. Given the present context of the increasing importance of the service industries, the regulatory authorities may bring the potential service industries under the jurisdiction of the Foreign Private Investment Act.

The FPIPPA does not have any provision for the investor-state dispute which is a common feature of all bilateral agreements. There might have a section for the investor-state dispute in the revised version of the act. This should be mentioned in the Act, and it should be as wide as possible. It gives liberty to foreign investors. Moreover, although the Act talks about fair and equitable treatment to foreign investors, the sections related to fair and equitable treatment for foreign investors are brief and vague. The Act should clearly specify whether the fair and equitable treatment stands autonomously or whether that is a part of Customary International Law and what it means. The linguistic ambiguities need to be made clear.

Finally, the review finds that the entry, protection, and promotion of foreign investment in Bangladesh are controlled by several laws and policies. The existence of entry as well as licensing conditions in different Acts and Rules make the entry procedures difficult for foreign investors. Therefore, a consolidated Act may be formulated with the possible common relevant provisions of different Acts regulating foreign direct investment in Bangladesh. However, the sector-specific Act might exist with special provisions for the entry of foreign investment in those sectors.

Section four identifies the key challenges to attract foreign direct investment in Bangladesh which include regulatory uncertainty, absence of adequate policies, restriction in profit repatriation, ease of doing business, etc.

One major objective of this review was to find necessary measures for promoting the participation of women entrepreneurs in joint ventures with foreign investors. In this regard, section five of this review paper discusses the challenges faced by the women entrepreneurs in undertaking a joint venture with foreign investors. There is hardly any joint venture of foreign partners with the women entrepreneurs of Bangladesh. But according to the female entrepreneurs, the key problem associated with promoting 'She' trade or joint venture of female entrepreneurs with foreign investors in the overall industrial sector of Bangladesh is that they lack the financial knowledge or skills necessary to reap the benefits of different trade incentives. In most cases, they don't have enough training to establish communication with foreign investors. Currently, the FPIPPA does not have any provision for promoting the participation of women entrepreneurs in joint ventures with foreign investors. The Act may include the provisions for the sectors having more women participation by providing some additional incentives to foreign investors undertaking joint ventures with local female entrepreneurs.

Section six provides the global best practices in terms of the foreign investment act. As the global best practices, this study summarises the key features of the foreign investment act of Vietnam, India, and South Africa. The study of the investment acts of these comparator countries reveals that they include relevant provisions for both investment promotion and protection while the FPIPPA of Bangladesh mostly covers the protection of foreign investment. Moreover, the investment acts of these countries identify the responsibilities of the foreign investors along with the incentives which are missing in the FPIPPA of Bangladesh. In addition, the investment acts of these countries emphasize the joint venture clearly stating the necessary provisions for entry of foreign investors as well as repatriation of the invested capital and dispute settlement which might be exemplary for the FPIPPA of Bangladesh.

Finally, section seven of this paper suggests some revisions and modifications of the act as a summary of the key issues identified throughout the paper. This section clearly and categorically chalks out provisions of the FPIPPA as well as suggests the necessary changes such as clarifying the linguistic ambiguities in the act, including the necessary provisions for promoting the foreign investment as well as adding necessary provisions for state investor dispute.

1. Introduction

1.1 Background

Foreign Direct Investment or foreign private investment plays an important role in the development of the industrial sectors of many developing countries benefiting the economy in terms of providing capital, transferring technology, and creating jobs (Dhar, 2014). The current industrial development of Vietnam along with some other developing countries reveals the importance of FDI. Many developing countries now rely on Foreign Direct Investment as an important source of sustained growth due to the shortage of domestic investment and capital. These countries are therefore competing for attracting more foreign investment facilitating economic integration.

The economy of Bangladesh experienced a significant structural change in the mid-1980s moving from a state-controlled economy to a market-based economy (UNCTAD, 2013). The structural transformation in turn led to significant progress in different socio-economic indicators such as robust economic growth, reduction in poverty rate accompanied by a significant increase in literacy rate, life expectancy, and food intake (PwC, 2019). However, despite a stronger growth performance, the economy of Bangladesh suffers from some economic challenges. For example, so far Bangladesh has attracted a minimal amount of FDI with an insignificant role of foreign investors for the development of the economy.

The government of Bangladesh has set the target of transforming the economy to an upper-middle-income country by 2031 and a higher-income country by 2041. To attain this target enshrined in the 2nd perspective plan of Bangladesh, the economy will need to grow at a much higher rate. No denying that an increased volume of foreign investment will be required to attain such a higher growth rate. Given the meagre size of foreign direct investment in Bangladesh, the government of Bangladesh has adopted several policies for attracting foreign direct investment by protecting the interests of foreign investors. The BIDA act was passed forming the Bangladesh Investment Development Authority previously known as the Board of Investment. BIDA has offered several incentives for the promotion of foreign investment in Bangladesh. Moreover, the government has offered several facilities for foreign investors such as Special Economic Zones, Export Processing Zones, etc.

All the successive governments of Bangladesh since the country's independence have continued to support foreign investment with some preferential treatment to foreign investors (PwC, 2019). However, the framework of foreign direct investment in Bangladesh is based on the Foreign Private Investment Protection and Promotion Act 1980. The act was introduced in 1980 ensuring the legal protection for foreign investment in Bangladesh. This is the core act regulating the entry of foreign private investment in Bangladesh. It ensures fair and equitable treatment to foreign investors. Moreover, the Act provides full protection to foreign investors against expropriation and nationalization of industrial undertakings with foreign-owned capital. However, the act is relatively old, and the scope of the act is also limited.

Against this backdrop, the current study which is a part of a series of policy reviews focuses on reviewing the Foreign Private Investment Promotion and Protection Act 1980. The main objective of reviewing the act is to inspect whether it ensures similar treatment and protection for local investors and whether it is in line with the WTO framework. Moreover, the review will also focus on the potential provisions in the act for the promotion of joint venture investments by women entrepreneurs.

1.2. Objectives and research questions

For attracting foreign direct investment, a single updated law is essential in consolidating the policies for entry and promotion of foreign private investment. However, loopholes and time-inconsistent provisions in the act can make the act inefficient. The Foreign Private Investment Promotion and Protection Act 1980 is a relatively old and key framework facilitating the entry of FDI in Bangladesh. However, a lot has changed since then and, in the meantime, the economy has experienced a structural transformation adopting a more liberalized policy. Moreover, Bangladesh has recently been qualified for graduation from the group of LDCs. Therefore, it is deemed imperative to revisit the provisions of the current core framework (i.e., the FPIPPA, 1980) for the entry of FDI.

Despite the much progress of women in different sectors of Bangladesh, they are lagging in entrepreneurship particularly in the joint venture with foreign investors. Therefore, it is imperative to dig deeper to understand the gender biases embedded in society that limit women's mobility, interactions, active economic participation, and access to business development services. Studies such as Rahman (2019), Afroze, et al., (2014), Ahammad and Moudud-Ul-Huq (2013) identify the general barriers to female entrepreneurship as lack of funds, funding, knowledge, market information, training, access to finance, ICT, and regulatory barriers such as tax, VAT, and company registration.

In this regard, the broad objective of this study is to review the Foreign Private Investment Promotion and Protection Act 1980 and provide feedback to the relevant stakeholders to strengthen the foreign direct investment in Bangladesh. The policy reviews will also provide advocacy for mainstreaming female traders particularly their participation in the joint venture with foreign investors.

The broad research questions of this review are.

- What were the primary objectives of the Foreign Private Investment Promotion and Protection Act 1980?
- Are the provisions of the Act in line with the WTO rules?
- What policy constraints and barriers does the economy face in attracting FDI?
- What are the possible implementation/institutional challenges achieving the objectives?
- What are the provisions that can be included in the act to make the participation of female entrepreneurs in the joint venture with foreign investors?
- Any country example that Bangladesh can follow in formulating its future foreign investment promotion and protection act?
- What are the necessary alterations, exclusions, and inclusions of the existing provisions FPIPPA, 1980 to make it more coherent and forward-looking?

1.3. Scope of the study

The scope of this review of the Foreign Private Investment Promotion and Protection Act 1980 is to analyse whether the existing framework of foreign investment in Bangladesh as stated in the FPIPPA, 1980 is sufficient to ensure the sustainable flow of foreign investment in Bangladesh. The review will also investigate the relevant act of regional comparators and suggest what provisions from those countries, Bangladesh might adopt. The study will also identify the key limitations of the act in the present context and shed light on the provisions to effectively mainstream women in the joint venture with foreign investors. In addition to that, this study will provide some appropriate recommendations about inclusion, exclusion, revisions, alteration, and extension of the existing provisions of the act to make it more relevant and coherent to the present context of global trade.

1.4. Methodology of the study

Given the objectives and the key research questions of this study, a mixed methodological approach has been followed consisting of

(i) Rigorous desk research of all relevant policy documents, literature, and secondary data, and

(ii) Primary data collection and analysis by conducting Key Informant Interview (KIIs) with stakeholders relevant for the study.

Therefore, the research methodology can be categorised as follows:

Desk Research

A thorough, in-depth desk research will be conducted by the research team, which will include review of relevant documents and existing literature on the issues pertaining to foreign investment in Bangladesh and examination and analysis of the available secondary data. The research team will also, upon comparison with international standards, diagnose policy shortcomings in the areas of foreign investment, legal frameworks for local investment and women entrepreneurs. The research team will focus on the following documents for desk review,

- ✓ Foreign private investment promotion and protection act, 1980.
- ✓ Relevant policies of Bangladesh Bank.
- ✓ Relevant policies of WTO.
- ✓ UNCTAD database, WTO data, and data from World Bank, IMF.

Primary data collection

In collecting primary data, a qualitative approach has been followed. Social aspects that are mostly unrepresented in the quantitative data can be addressed through qualitative data, which are expected to provide in-depth information on social dimensions and characteristics. As part of the qualitative data, the team has conducted the Key Informant Interviews (KIIs) with the relevant stakeholders.

Key Informant Interview (KII)

The KIIs will be helpful for an in-depth understanding of the policies, assessment of projects, and identifying gaps. For this particular study, the research team will carry out a total of 5 KIIs. The informants will be comprised of

- Experts and development partners (2)
- Representatives from ministry of finance (1)
- Representatives from ministry of commerce (1)
- Representatives from the Office of the Chief Controller of Imports and Exports (1).

1.5. Organisation of the paper

This report is organized as follows: After this introduction in Section I, Section II provides a brief overview of the current investment scenario in Bangladesh, Section III gives an overview of the regulatory framework of investment in Bangladesh identifying the key issues of foreign private investment promotion and protection act, Section IV discusses the key challenges to attract foreign direct investment in Bangladesh, Section V discusses the challenges faced by the women entrepreneurs in undertaking a joint venture with the foreign investors, Sections VI provides the global best practices in terms of foreign investment acts, and section VII provides some recommendation for the revisions in the act and finally section VIII concludes.

2. Current scenario of investment in Bangladesh

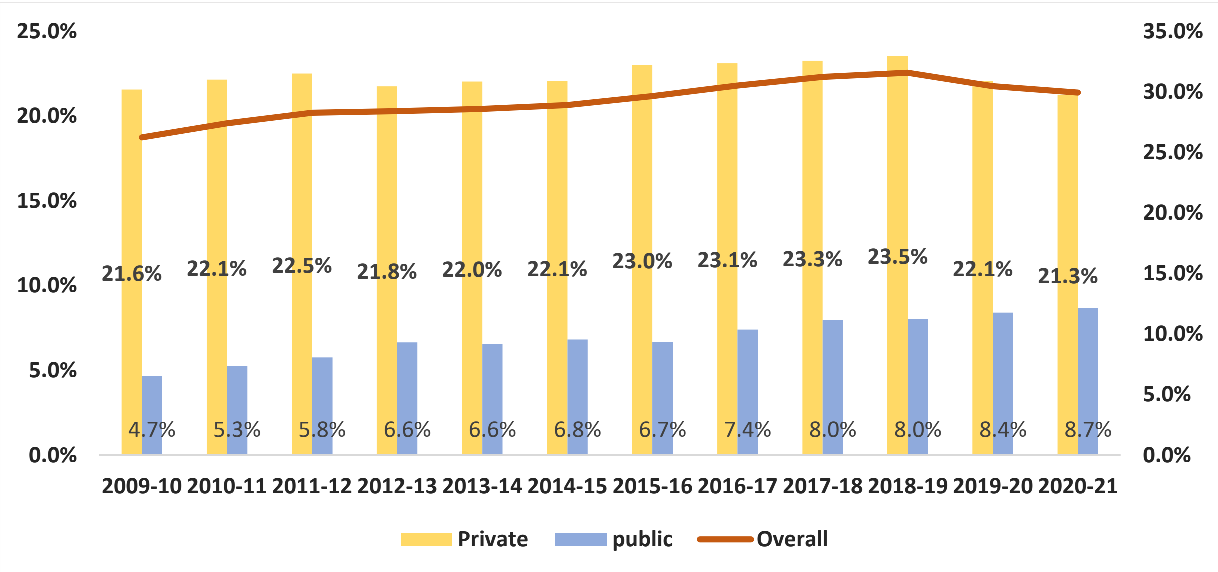
Although the economy of Bangladesh is suffering from some widespread development challenges, the government is intended to transform the country into a high-income country by 2041. Considering the importance of the private sector to obtain the broader economic goals, the government has entrusted the private sector to play the key role since the adoption of structural adjustment policy in the 1990s.

To achieve the goal of an upper-middle-income country by 2031 and a high-income country by 2041, the economy of Bangladesh will need to grow at much a higher rate. However, such high growth target will remain untouched in the absence of sustained growth in the investment. Therefore, it is important to investigate the current scenario of investment in Bangladesh.

2.1. Stagnation of private investment in Bangladesh

Although the public investment to GDP ratio in Bangladesh has consistently increased over time, the private investment to GDP ratio has been stagnant over the last decade. The Covid 19 induced uncertainty caused the private investment of Bangladesh to fall to the lowest in the last 14 years.
In the Fiscal Year 2020-21, the private investment to GDP ratio declined to 21.25 percent.[1] This rate is lower than the one stipulated in the Eighth Five-Year Plan (24.41). The ratio increased to 23.5 percent in FY 2018-19 but declined to 22.1 percent in FY 2019-20 due to the onset of the Covid 19 pandemic.

Figure 1: trend in investment to GDP ratio in Bangladesh



Source: Bangladesh Economic Review 2020

[1]https://www.thedailystar.net/business/economy/industries/investments/news/private-investment-hits-trough-2147471

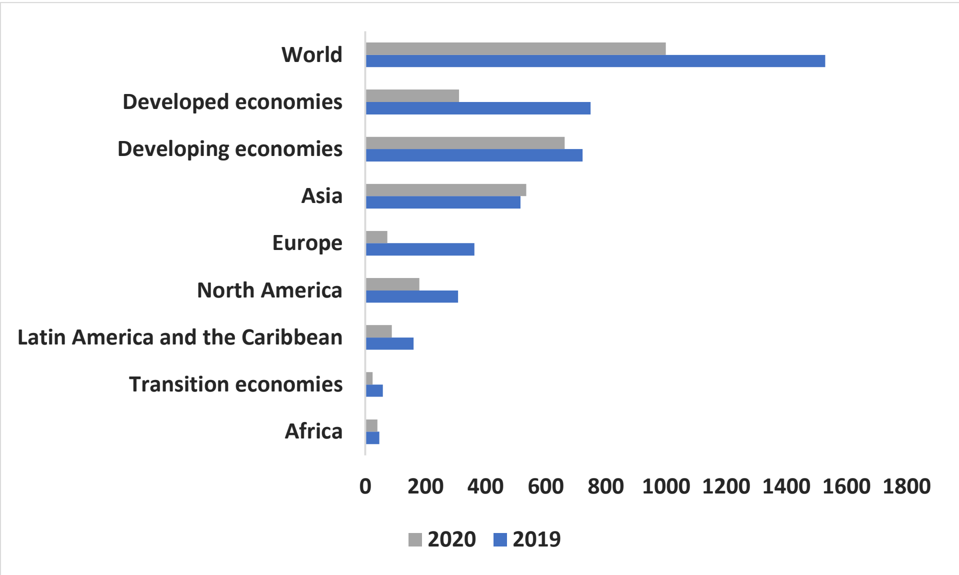
2.2. Global investment trends in the context of COVID-19

The Covid 19 pandemic has caused significant economic as well as social costs to the world. In addition to directly affecting the demand and supply of goods and services, the pandemic also caused reduced cash to business owing to the economic slowdown. This in turn affects the income or payments for workers, interest, repayment of loans, and taxes.

The COVID-19 crisis caused immediate effects on Foreign Direct Investment and is expected to have potential long-term consequences. According to the global investment report of UNCTAD (2021), the global foreign direct investment (FDI) flows experienced a 35 percent fall in 2020, reaching $1 trillion, from $1.5 trillion in 2019 due to the Covid 19 induced economic shock. The pandemic even caused the FDI inflow in 2020 to be lowest since 2005 and 20 percent lower than the 2009 level immediately after the global financial crisis. While comparing the FDI inflow in different groups of countries between 2019 and 2020, it is found that for all groups of countries the FDI inflow experienced a decline in 2020 compared to 2019 except for Asia.

FDI inflows to developed and transitional economies plummeted more sharply than any other groups of countries falling by 58 percent in both. In Europe the FDI fell by 80 percent, reaching only $73 billion in 2020 from 363 billion in 2019. In developing countries, the fall was rather moderate only 8 percent whereas the resilient performances of Asia contributed to this performance. Even during this pandemic period FDI inflow in Asia grew by 4 percent showing the resilience of the Asian economies.

Figure 2:FDI inflows for different groups of countries ((Billions of dollars)



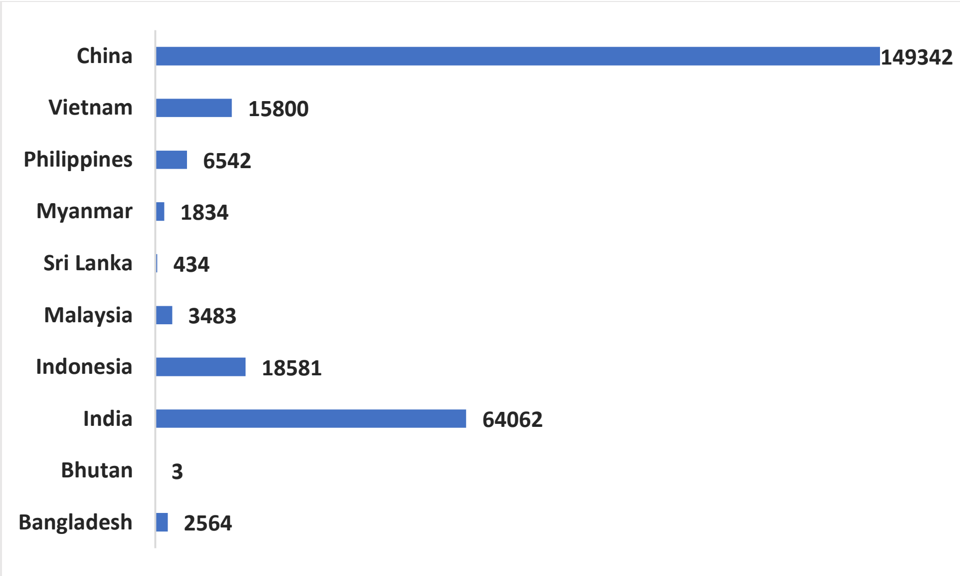
Source: World Investment Report 2021

2.3. Assessment of FDI inflow in Asian countries

FDI is a commanding mechanism for economic growth, especially for developing economies like Bangladesh, which aids countries to gain capital, generating employment, increase production capacity, and develop managerial and technological skills. A comparative assessment of FDI inflows in selected Asian countries in 2020 shows a stark difference in the developing and underdeveloped economies, as shown in Figure 3. Among these countries, the highest FDI inflow in 2020 was in China followed by India and Vietnam. However, except China FDI in 2020 fell in all the countries presented in Figure 3 compared to 2019. In Vietnam, FDI inflow fell from USD 16120 million in 2019 to 15800 million in 2020. FDI inflows to the nine Asian LDCs fell for the first time in eight years, to USD 9 billion, a decline of 27%.

During the pandemic, repositioning of MNCs operations from China, which initially started due to the US-China trade war, was augmented. This presents Bangladesh with an excellent opportunity, which the country needs to capitalize on with a policy-backed, well-regulated, and lucrative investment climate. Job losses and unemployment can be balanced out with renewed investment flows.

Figure 3: Comparative Assessment of FDI Inflows in 2020 in Asian Countries (in USD million)

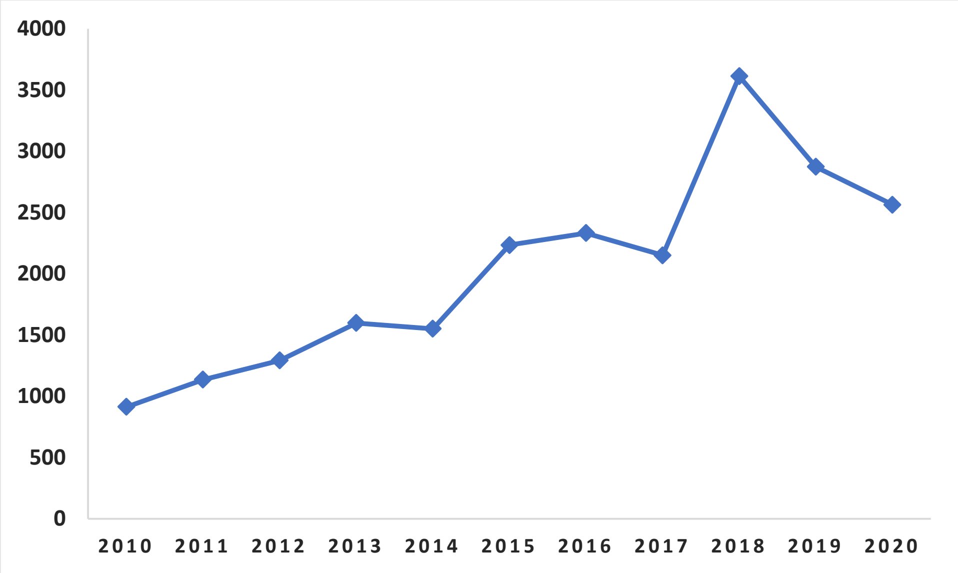


Source: World Investment Report 2021

2.4. FDI stagnation and slowdown in Bangladesh

The performance of Bangladesh in attracting FDI is not satisfactory. Moreover, Covid 19 pandemic has caused the private investment in Bangladesh to dry up. The overall net FDI inflow in Bangladesh plummeted by 10.8% in 2020 falling from USD 310.37 million in 2019 to USD 2563.58 million in the year 2020 (Figure 4) Even while looking into the situation prior to the pandemic, it is found that although the FDI inflow increased to a record USD 3.61 billion in 2018, it declined to USD 2.87 billion in 2019. The net FDI inflow in Bangladesh remained stagnant between 2010 and 2018. The high cost of doing business in the country, lack of technological development, and inadequate reform initiatives can be attributed to this sluggish trend in FDI.

Figure 4: FDI Inflow Trend of Bangladesh (In million USD)



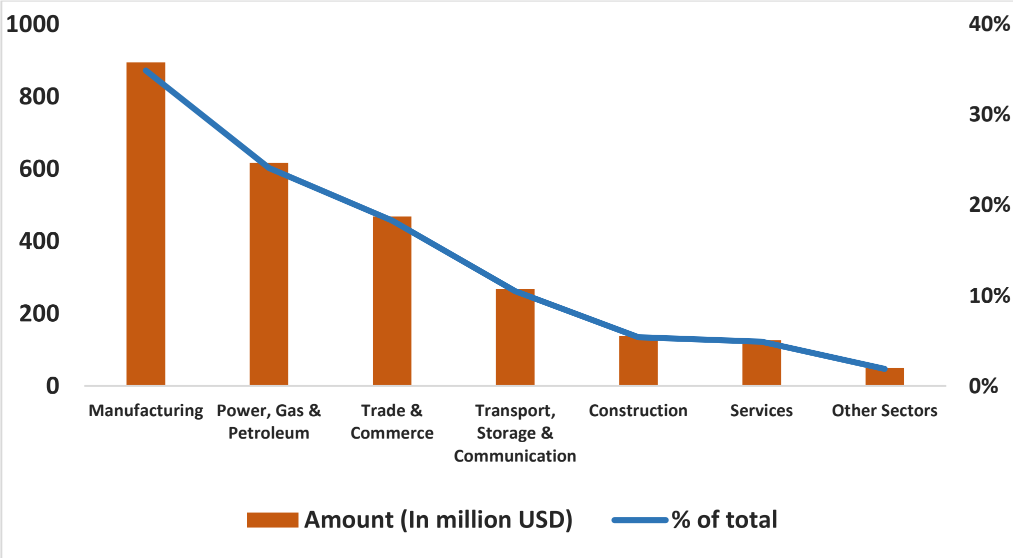
Source: Bangladesh Bank[2]

2.5. Composition of FDI in Bangladesh

The top sectors of foreign investment in Bangladesh include manufacturing, power, gas and petroleum, and trade and commerce. In the Calendar Year (CY) 2020, the manufacturing sector received a net FDI inflow of 895 million US dollars which is 35 percent of the total FDI inflow in the country. The FDI inflow in this sector experienced around 5 percent growth even during this pandemic period while the global economy went through a historical trough. Experts are confident enough that this growth for the manufacturing sector will continue and increase in the future years. The power, gas, and petroleum sector ranked second with 24 percent of the FDI. FDI in this sector has been continuously high over the years due to the different incentives offered by the government. The trade and commerce sector attracted 18 percent of the FDI during this period. The lower FDI was witnessed in sectors like agriculture (1.2) and fishing and service (4.9). this indicates the focus of FDI in manufacturing sectors rather than the primary sector.

[2]https://www.bb.org.bd//pub/halfyearly/fdisurvey/fdisurveyjuldec2020.pdf

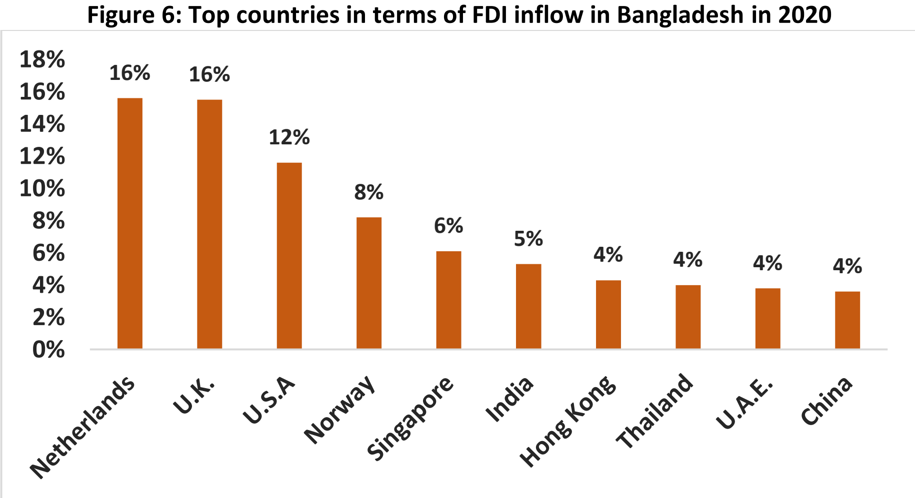
Figure 5: top sectors in terms of attracting FDI in 2020



Source: Bangladesh Bank, 2020

Figure 6 shows the major country-wise Net FDI Inflows in Bangladesh in the year 2020. During this period Netherlands made the highest investment in Bangladesh worth USD 400 million which accounts for 16 percent of the total net FDI inflow in Bangladesh. The UK made the second-largest amount of investment in Bangladesh followed by the USA (12%) and Norway (8%). Amongst others, Singapore and India are the major investors in Bangladesh. Although the total investment in Bangladesh from Japan and China accounts for 5 percent of the total net FDI inflow in Bangladesh, these countries are likely to increase their investment in Bangladesh.

Figure 6: Top countries in terms of FDI inflow in Bangladesh in 2020

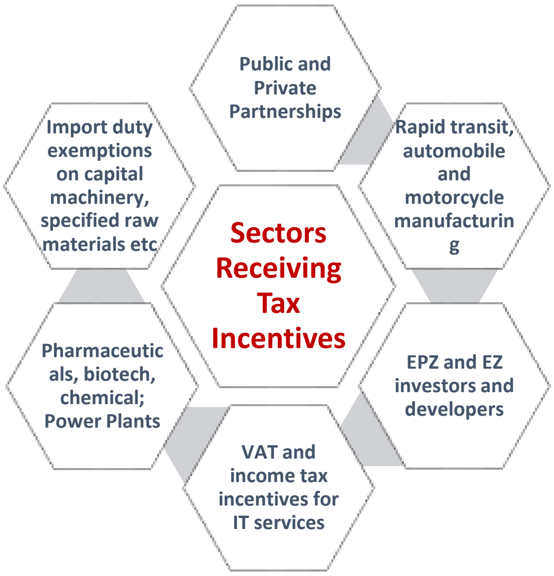


Source: Bangladesh Bank, 2020

2.6. Tax Incentives for Investors in Bangladesh

Bangladesh is a promising economy for foreign investment with a long-term tax holiday, repatriation facility, and easy access to the largest regional market like India and China. The economy has been extensively using tax incentives as a tool for industrial policy. Several tax incentives are issued for industrial enterprises, physical infrastructures, thrust sector industries, and specialized sectors.

Figure 7: Incentive for promoting investment



Source: KPMG Investment Guide Bangladesh

Table 1: Tax incentives for investors in Bangladesh

Tax exemption on royalties, technical know-how, and technical assistance fees and facilities for their repatriation	Tax exemption on interests on foreign loans	Reduced Corporate Tax for 5 to 7 years instead of tax holding and agricultural deprecation.
Corporate tax holiday of 5 to 7 years for selected sectors	**Various Tax incentives for a Foreign Investor**	Tax exemption on capital gains from the transfer of shares of public limited companies listed with a stock exchange

Source: (Mujeri et al., 2021)

The tax system is divided into two broad categories: Direct Tax and Indirect Tax. Income Tax is considered as the direct tax whereas Indirect Tax includes VAT and Supplementary Duty, Customs Duty and Stamp Duty. Bangladesh has some exemption in customs or import duty in specific sectors. The income tax rate also varies for domestic and foreign investors.

Table 2: Incentives for local and foreign investors in Bangladesh

Category	For Domestic Investors	For Foreign Investors
Personal Income Tax	Taxed on total income during the income year. Have various rates ranging from 0% to 25%.	Taxed only Bangladesh portion income during the income year. Taxed at a flat rate of 30% on total income during the income year
Capital Gain Tax	The capital Gain Tax rate is 10% for the resident firm and companies,	The capital Gain Tax rate is 15% for non-resident shareholders. Non-resident shareholders are

Category	For Domestic Investors	For Foreign Investors
	5% for sponsor shareholders and shareholder directors of financial Institutions and shareholders with at least 10% shareholding excluding sponsor shareholders and shareholder directors	exempted from capital gain tax on their transfer of listed securities of Bangladesh companies if they enjoy similar tax exemption in their resident countries
Customs Duty	Customs duty rate is 0% to 25%	Exemption of customs duties on capital machinery.[23]
Import Duty	Import duty includes customs duty (0-25%), supplementary duty (0-500%), regulatory duty (0-3%), advance tax or advance income tax (0 to 5%) etc.	Exemption of import duties on the raw material used for producing export goods.[24]

Source: Investment Guide, KPMG Bangladesh

3. Policy framework for investment in Bangladesh

The economy of Bangladesh is fully open to foreign investment. Moreover, the country offers specific high-standard incentives and protection for foreign investors. This approach of foreign investment promotion and protection has been stated in different policies of Bangladesh which are typically used for presenting Bangladesh as a lucrative investment destination to foreign investors. Moreover, different publications also exhibit a welcoming stance for FDI in Bangladesh. All these make Bangladesh one of the most open economies in the region according to international standards.

Although the Foreign Private Investment Promotion and Protection Act (FPIPPA) 1980 is the key regulatory framework of foreign investment in Bangladesh, the entry, protection, and promotion of foreign investment in Bangladesh is controlled by a number of other laws as well such as (i) Bangladesh Investment Development Authority Act 2016; (ii) the Bangladesh Export Processing Zones Authority Act 1980; (iii) Bangladesh Small and Cottage Industries Corporation Act 1957; (iv) the Companies Act 1994.

The broader policy and regulatory framework for catering investment include:

Table 3: Regulatory framework for investment in Bangladesh

Business Stage	Policy and Regulation
General	- Bangladesh Industrial Policy (as undertaken from time to time)
Business start-up	- The Companies Act, 1994 - Securities and Exchange Commission, Act, 1993 and others - Copyright Act, 2000 - Patent and Design Act, 1911 - Trademark Act, 2009
Protection	- The Foreign Private Investment (Promotion and Protection) Act, 1980
Export Zones	- Bangladesh Export Processing Zones Authority Act, 1980 - Bangladesh Private Export Processing Zones Authority Act, 1996 - Bangladesh Economic Zones Authority Act, 2010
Facilitation	- The Bangladesh Investment Development Authority Act 2016
Corporate/Personal Taxation and incentives	- Income Tax Ordinance 1984 and related rules and SROs - National Budget - The Finance Act/Bill
International Trade (Export and Import)	- Bangladesh Export Policy (as undertaken from time to time) - Bangladesh Import Order (as undertaken from time to time)
Sectoral	- Bangladesh Energy Regulatory Commission Act, 2003 (BERC) - Bangladesh Telecommunication Regulatory Commission Act, 2001 (BTRC) - The National Drug Policy, 2005 and others
Foreign Exchange	- Bangladesh Foreign Exchange Regulation Act and Guidelines (issued from time to time)

Source: BIDA 2019[3]

[3]https://bdcgtoronto.ca/wp-content/uploads/2019/07/BIDA.pdf

3.1. A critical overview of the Foreign Private Investment Act of Bangladesh

The Foreign Private Investment Promotion and Protection Act (FPIPPA) 1980 is the regulatory framework to ensure the protection of foreign investment in Bangladesh. The Foreign Private Investment Promotion and Protection Act was passed in 1980 when the first bilateral treaty of Bangladesh with the UK was signed. There has not been any significant change in the Act since 1980. If we look at the Act, it is quite backdated. The law from the 1980s cannot meet the challenges related to foreign investment in 2021. Due to lack of revision, it has become inadequate and has many gaps. The Act needs to be updated to incorporate provisions for the current challenges of Bangladesh including SDG goals, Challenges after LDC graduation, gender inclusion.

The Act has limited scope and coverage, compared to many FDI-related Acts in the competing countries in the region and beyond. The Act contains seven short (9 but the first two is introductory) substantive articles, covering mostly equal treatment for foreign capital, protection against expropriation, and repatriation of earnings and capital. Concerning entry conditions and establishment procedures, the Act remains rather vague and noncommittal (UNCTAD, 2013).

Section 1 of the Act defines the title of the Act, and it talks about Promotion and Protection. Although there are several sections in the Act related to the protection of foreign investment, the promotion of foreign investment remains untouched. Moreover, along with promotion and protection, the Act is also expected to have a section on regulation for foreign investors. A foreign investor should have a responsibility and that should be stated in the Act. In this regard, the BIDA Investors' Handbook Guideline addresses the issues of foreign investors' responsibility. However, considering the significance of the issues, the FPIPPA should contain specific provisions concerning the responsibilities of foreign investors.

Section 2 of the FPIPPA 1980 defines foreign private investment, foreign capital, and industrial undertakings. The joint venture is a dominant feature of FDI in Bangladesh. The FPIPPA does not have any provision for joint ventures which can be regarded as a major limitation of this Act. Most of the joint ventures or bilateral treaties talk about the rights of foreign investors. But now it is high time to clearly spell out several other issues in the Act such as Corporate Social Responsibilities and Business and Human Rights, Green investment, and gender inclusion. Moreover, the Act should also define joint investment, bilateral investment, tangible property (if IT investment or Portfolio investment is incorporated), etc. It is noted that if Portfolio investment comes under foreign investment, foreign investors will be attracted more as it is a protected investment. A detailed and cleared-out definition is mandatory for the Act.

The Act is ambiguous and vague in defining industrial undertakings. Therefore, it is not clear whether the FPIPPA 1980 applies only to the industrial undertakings for the production and processing of goods or service industry as well. Section 2(c) defines industrial undertakings as an industry, establishment, or other undertakings, engaged in the production and processing of any goods. Therefore, it is not clear whether the Act has the mandate for the flourishing service industry of Bangladesh. However, when the Act was drafted back in the 80s, our service market was not much booming. This might be a reason behind this ambiguity in the

Act. The National Industrial Policy (IP) 2016 enumerates the service industries which include Information Technology Services (ITS), construction, tourism and entertainment, hospital and clinic, human resources development, transportation, telecommunication, etc (Ministry of Industry, 2016). Moreover, the banking, insurance, power generation, etc industries have been enumerated as the regulated industries in the IP 2016. Given the present context of the increasing importance of the service industries, the regulatory authorities may bring the potential service industries under the jurisdiction of the Foreign Private Investment Act or more clearly define the industrial undertakings.

Section 3 of the Act stipulates that "Government may sanction establishment with foreign capital of any industrial undertaking" (i) when the undertaking does not exist in Bangladesh but desirable (ii) is not carried out in Bangladesh on an adequate scale given economic and social needs or (iii) is likely to contribute to capital development, strengthen the balance of payments, lead to the discovery or exploitation of natural resources, increase employment opportunities or contribute to economic development.

In addition, "Sanction of the establishment of the industrial undertaking with foreign capital may be subject to such condition as the Government may deem fit to impose". These conditions and the procedures to obtain the Government sanction are not defined in the Act which can be regarded as a limitation of the Act.

The FPIPPA 1980 holds the commitment of Bangladesh to provide fair and equitable treatment to foreign investors. For example, Section 4 of FPIPPA stipulates that "fair and equitable treatment to foreign private investment which shall enjoy full protection and security". Section 5 elaborates the meaning of this concept of equitable treatment stating that foreign private investment shall not be accorded a "less favourable treatment" than what is accorded to similar private investments by nationals, in the application of relevant laws and regulations. It should be noted that the National Industrial Policy 2016 also ensures fair and equitable treatment to foreign investors mentioning that the foreign investors will also be eligible for tax exemption, royalty, and technical fees, and others as the national investors (chapter 12).

The sections of the Act related to fair and equitable treatment for foreign investors are brief and vague. If we talk about Fair and Equitable Treatment Standard, it must be mentioned whether that stands autonomously or whether that is a part of Customary International Law and what it means. The linguistic ambiguities need to be made clear.

Unstable policies or frequent changes of terms of licensing, tariff, and VAT policies depend on the contract or bilateral investment treaty. Up to the 1980s, there used to exist stabilization clauses, especially in the extraction industries. After the second world war, the oil companies used to have a stabilization clause which used to offer unchanged VAT or tax rate for 30 years. After the 1990s, the stabilization clause is not specifically mentioned as the state has sovereign right to change the tax or VAT law. Modern bilateral treaties have adapted policy or provision for negotiation after every 2-3 years. If the right of the foreign investors is hampered due to change in any provision of law even after the provision of negotiation, the investors can claim about that. they can claim fair and equitable treatment and that is diminishing the economic value of the investment. Moreover, a prudent businessman should be aware of the fact that terms of licensing or VAT and Tax law in a country will keep changing after every few years. Changing VAT or tax laws or terms of licensing is a sovereign right of the state, but that right should be exercised with due care and attention. In the last 10 years, India terminated bilateral investment treaties with many countries and has resorted protectionist regime. India changed their Tax law in 2012 which had a retrospective effect. India faced severe criticism and claims from foreign investors due to this law. This also gave a very bad signal for foreign investors. The country had to abolish this law and the damage has already occurred.

In this regard, Section 5 of FPIPPA assures that the rules or conditions shall not be abruptly changed that adversely affect the business of foreign investors stipulating that "the terms of sanction, permission or license granted by Government to an industrial undertaking having foreign investment shall not be unilaterally changed so as to adversely alter the conditions under which the establishment of such undertaking was sanctioned".

Section 6 ensures treatment of foreign investment losses due to civil commotion, insurrection, or riots similar to Bangladeshi citizens' investments in terms of indemnification, compensation, restitution, or other settlement.

The FPIPPA 1980 also provides protection to foreign investment against expropriation or nationalization (article 7). Section 7 of the Act also stipulates that foreign investment may be taken over or nationalized only for a public purpose against adequate compensation. It also ensures that the compensation will be paid promptly and be freely transferable. The Act defines adequate compensation as an amount equivalent to the market value of the investment expropriated or nationalized immediately before the expropriation or nationalization. However, the Act does not provide any procedural guidelines for the expropriation of foreign investment. Moreover, the potential loss between the date of notification and actual expropriation or nationalization resulting from a fall in profits is not considered in this Act while accounting for the compensation. The Acquisition and Requisition of Immovable Property Ordinance (1982) can be an example in this regard which considers the fall in profits along with the market value of the investment in accounting for the compensation. Moreover, in the case of the compulsory form of expropriation, it provides a 15 percent premium on the market value.

Section 8 shows that capital transfer, returns from investment, and liquidation of industrial undertaking of the foreign private investments and returns from it are guaranteed. The section also states that the guarantee is subject to the Government's right to exercise in the event of exceptional financial and economic difficulties in accordance with the applicable laws and regulations in such circumstances. The transfer rights defined in this article are nevertheless stated in vague terms. Moreover, it is subject to the specific provision of the Foreign Exchange Regulation Act 1947 and Bangladesh Banks's Guidelines for Foreign Exchange Transaction 2018. The guidelines have made the repatriation of earnings, capital, and capital gains subject to several constraining rules. The strict reporting requirement or authorization by Bangladesh Bank as well as the documentation requirement might make the repatriation process more difficult. Therefore, the FPIPPA may more clearly state the right to transfer the returns from investment, capital, or capital gains to make the repatriation process easier.

Section 9 allows Government to make orders in line with the provision of this Act if difficulty arises while giving effect to any provision. This is only allowed when it deems necessary to remove the difficulty.

Bangladesh has been very liberalized and has taken initiatives in line with the WTO laws. However, the several benefits provided for the foreign investors such as cash incentives on exports, duty drawbacks as well as bonded warehouse facilities might be inconsistent with the WTO rules. This gap in policy will also be very costly if not addressed as Bangladesh graduates from the LDC status and comes under the full scrutiny of relevant World Trade Organisation (WTO) provisions. The incentives depend on bilateral agreements. Bangladesh has provided specialised economic zones to Chinese and Indian investors, and it might be provided to Turkish investors too. Estimating the FDIs from prospective development partners, analysing if this is enough or what kind of incentives can draw more investors – need to be assessed. A detailed study on these will help us prepare a whole package on what Bangladesh can offer as well as receive from the investors.

The FPIPPA does not have any provision for promoting the participation of women entrepreneurs in joint ventures with foreign investors. Most of the women entrepreneurs have enterprises that are small and medium in size such as e-commerce. However, foreign investors are less likely to have a joint venture with small-scale enterprises. Therefore, the Act may follow the global best practices in promoting women entrepreneurs' participation in a joint venture with foreign investors.

"Investment objectives should be achieved without relaxing health, safety and environmental measures of general application". Therefore, the Act may insert a possible provision for the protection of the environment.

There have been several policy documents and initiatives undertaken after 2010 to bring a remarkable change in the FDI-related policies of Bangladesh as well as to attract FDI in Bangladesh. The Bangladesh Investment Development Authority (BIDA), being established under the BIDA act 2016, administers directly under the Prime Minister's office which shows an inclination of the PM towards FDI. In the last 4-5 years, various incentives have been offered by the government to make Bangladesh a lucrative hub for foreign investment. Foreign investors get many preferential treatments like tax holiday, tax exemption, and waiver of import duties, capital repatriation, ease of profit, investment opportunities in the stock market. As FPIPPA is the main act regulating foreign investments, those incentives should be mentioned for attracting more foreigners. Regulations dealing with these areas can be linked to the act for complementing the 1980 acts and creating accountability and transparency in the procedure of maximizing developmental benefits.

Despite the emphasis of the relevant government authorities to attract more foreign investment, if we investigate the core Act which regulates foreign investment in Bangladesh has some significant limitations. Moreover, if we look at the Act, it does not provide equal treatment for domestic and foreign investors. The provisions are very vaguely drafted and so in most cases it goes in favour of the foreign investors going beyond the interest of host states. A foreign investor looks for the Bilateral Investment Treaty or FTA or Joint Venture Agreement with their country for the protection of their rights. Foreign investors usually take their complaints to the international forum, but the Act lacks any rule in this regard.

The FPIPPA does not have any provision for the investor-state dispute. It is a common feature of all the bilateral agreements that there is an arbitration clause for state vs state dispute (mainly for treaty interpretation- if the language of the treaty is ambiguous and how the state solves it) and investor-state dispute (dispute of the host state with foreign investors). The investor-state dispute might have different forums like ICC, Ad hoc, Bangladesh Arbitration Act, etc. A specific section concerning the investor-state dispute should be inserted in the revised version of the Act. The section should be drafted in a way that protects the interest of the host state as well as foreign investors.

Bangladesh has approved the International Centre for Settlement of Investment Disputes (ICSID) convention in 1980. Moreover, Bangladesh has Bilateral Investment Treaties (BIT) with 31 countries. The protection of any foreign investor primarily comes from the bilateral investment treaty and joint investment. Most of the BITs of Bangladesh do not have any provision for public policy concern or the state's right to regulate. Therefore, in framing future BITs, the government can consider the policy options suggested in the Investment Policy Framework for Sustainable Development (IPFSD). This policy framework suggested simultaneous moves to promote foreign investment with further liberalization, on the one hand, and to regulate investment in pursuit of public policy objectives on the other. The BITs in Bangladesh also contain provisions for protection and fair and equitable treatment. Under most treaties, the parties offer their consent to settle investor-State disputes under an international arbitration mechanism (typically ICSID). Whenever an investor puts so much money on a project, they bring enough legal support to ensure their protection. They do not depend on the FPIPPA for ambiguity and rather resort to other documents like bilateral investment treaties or joint investment documents. Bangladesh has faced a total of 7 claims from foreign investors so far. So far four cases have been solved while the other three are still under arbitration. All these claims were done under the bilateral treaty (1) and joint venture agreement (6). No foreign investors invoke protection under the FPIPPA. Currently there is no evidence of ongoing procedure in national courts. Although the foreign investors of the countries having bilateral investment treaties get protection under the treaty, the investors of other countries must rely on the FPIPPA. Therefore, it is important to avoid the ambiguities in the FPIPPA. Moreover, there is the scope to make the BITs integrate with the FPIPPA. Finally, the act can assure that neither the FPIPPA nor any other domestic laws will be constraining Bangladesh to consent to a foreign investor's petition to have recourse to international arbitration under ICSID.

Moreover, some specific methods of dispute settlement for the foreign Private Investment can be summarized as follow

Introduce a fixed primary international method of dispute resolution

The FDI inflow in Bangladesh is expected to experience vibrant growth in the next few years. But with more foreign investment, more disputes will emerge. Therefore, the Act needs to put more emphasis on the possible methods of dispute settlement. An analysis of the different Bilateral Investment Treaties such as Bangladesh-Turkey BIT, Bangladesh-Iran BIT, Bangladesh-Denmark BIT, etc. shows multi-method for dispute resolution. A fixed or specifically mentioned method can be adopted primarily, like in Bangladesh-Uzbekistan BIT where ICSID was considered as the primary international method for dispute resolution. Bangladesh model agreement 2009 article 13 suggests ICSID as an option to settle investment-related disputes.

Mutual consent-based dispute settlement

Bangladesh-Italy BIT 1990, Article 9(2) gave a free hand to Saipem to submit its dispute at its 'discretion' to 'an ad hoc Arbitration Tribunal' explicitly mentioning ICSID. If the forum for settlement is fixed, submission of the dispute for settlement should be on mutual consent to reduce arbitrariness.

Domestic court/internal arbitration system must be incorporated as a recourse for dispute resolution

Sometimes the provision for recourse to domestic courts is curtailed by a contract-based arbitration clause. As seen in SAIPEM and CHEVRON case, foreigner shows reluctance in local settlement of the dispute. In the SAIPEM case, despite having previous precedents on recourse to local courts, trial by the local court was declared an indirect expropriation. For the protection of domestic investors, recourse to competent domestic courts backed by the legal framework is a crying need. Further for the domestic arbitral system rules need to be enacted. Already existing Arbitration Act,2001 lacks coverage of the necessary arbitral techniques. It also has no provision for an appeal on the merits if any party is not satisfied with the outcome of a resolution of the ADR.

Special commercial court

If we are to make this Act, “domestic” investment-friendly, a special commercial court can be established which will deal only with investment-related issues. We can refer to China as an example. Also, India’s finance ministry has proposed to its new plan of law to appoint a mediator and set up fast-track courts to settle disputes between investors and the government.

Enabling BIT’s obligation in the national legislation

Bangladesh is a dualist nation when it comes to international law i.e., treaties are not binding domestically (on courts, governments, etc.) till the treaty is incorporated into domestic law usually through enabling legislation. If the existing law can be amended with the aim to incorporate Bangladesh’s BIT obligations under domestic law, it would be a welcome development.

However, if the act tries to replace protection to foreign investors under BITs and ISDS, it would be a regressive step. Under Domestic law, foreign investors can’t go to international arbitration. The best-articulated provision would be ensuring the exhaust of local remedies first then going for a mutually decided international dispute settlement forum.

For more balanced in terms of providing the host state's regulatory freedom as well as investor protection above provisions can be followed by adequate and effective compensation as prescribed by the national law or if necessary, under international law.

3.2. Other laws and policies for foreign investment in Bangladesh

The Bangladesh industrial policy as undertaken from time to time is the general policy framework for catering investment in Bangladesh. The latest version of the industrial policy was undertaken in 2016. Hossain and Shah (2016) mention that at the beginning of the 1980s the industrial policies of Bangladesh have addressed the need of including the private sector.[4]. Along with the general private sector issues, the Industrial Policy 2016 (chapter 12) also addresses the issues related to the promotion FDIs. The specific provision of IP 2016 related to attracting FDI is as the following.

- IP 2016 also has detailed provisions on attracting investments from foreigners and Non-Residential Bangladeshis.
- Perspective foreign investors will get 5 years multiple visas and an investment amount of 10 million USD and above will provide no visa requirement and in cases might get local citizenship
- Foreign investors and NRBs will get a one-stop service for investment purposes
- Special monetary incentives should be given to the foreign investors and NRBs investing in eco-friendly industries, export-oriented industries, high-tech industries, and cottage industries
- Foreign workers working on such industries financed through FDIs have easier visa requirements and in cases will be exempted from dual taxation
- For attracting FDIs special economic zones will be established
- The invested working capital by the foreign investors can be transferred back to the country of origin without any hindrances and the dividend can be transferred upon appropriate taxation
- There will not be any impediment to employing skilled foreign workers if there is a recommendation from foreign investors or joint venture institutions.

The Bangladesh Investment Development Authority (BIDA) Act 2016 provides specific provisions on the entry as well as promotion of foreign investment in Bangladesh. The act establishes the Bangladesh Investment Development Authority merging the Board of Investment and Privatization Authority. Moreover, it provides the guidelines for the entry of foreign investors in Bangladesh. The Act contains the regulatory framework of licensing or approval of industrial undertakings with domestic or foreign investment or a joint venture (Section 15). Although the foreign investors do not require any approval under the FPIPPA 1980, the BIDA act stipulates that all the individuals willing to establish an industrial undertaking in the private sector must apply for approval to the relevant authority with the specified procedures except the industries operating under an institution established by law. Another important issue is that the mandate of BIDA is limited to industrial undertakings and

[4]Hossain, Muhammad & Shah, A. (2016). INDUSTRIAL POLICY 2016: A CRITICAL REVIEW. 10.13140/RG.2.2.29151.36009.

therefore the service subsectors that are not enumerated as the industry in the Industrial Policy do not fall under the jurisdiction of BIDA. As a result, they do not get the support of BIDA.

The BIDA Act includes relevant provisions for the promotion of investment such as the one-stop service to ensure quick delivery of infrastructural services to industrial undertakings according to their demand.

Table 4: Activities of BIDA

Promotional Activities	**Facilitation Services**
Guidance on doing business in Bangladesh	Registration of new industries
Responding to investment-related queries	Facilitation for getting work permission
Investment guidance and advice in specific sectors	Support for importing machinery and raw materials
Supporting potential foreign investors to match with local investors	Support for obtaining external financing
Organize visits, meetings with various govt. and private offices	Facilitation of setting up commercial offices
Support in forming statutes policies and regulations	Addressees Issues relating to individual companies on their smooth operation

Moreover, the Bangladesh Small, Cottage Industries Corporation (BSCIC) regulates the Small and Cottage industries in Bangladesh. Although registration with BSCIC opens the avenues of some incentives, it is less relevant to foreign investors as they are less likely to invest in this sector given the definition of small and cottage industries. Similarly, the Bangladesh Export Processing Zone Authority established under the BEPZA act 1980 regulates the projects in the Export Processing Zones.

Most of these incentives or privileges for foreign investors mentioned in the Industrial Policy 2016 or BIDA act 2016 are not present in the FPIPPA. The new act may include these provisions along with bringing the service industries under the jurisdiction of the Foreign Investment Act. Or a consolidated act may be formulated for the promotion and protection of foreign investment in Bangladesh combining all the components of FPIPPA 1980 and IP 2016 or BIDA act 2016 relevant to the promotion and protection of foreign investment. However, it should also be noted that a comprehensive act including all the diverse sectors might not be possible. Every foreign investor must be subjected to the particular rules and regulations that deal with the particular sector. Along with promotion and protection, clearly chalked out provisions for regulation are mandatory.

Like many developing nations, Bangladesh lacks coordination among the stakeholders or government enterprises. There should be a designated body that maintains a uniform rule for all the acts relating to trade. Coordination is very crucial so that there is no gap between the rules and regulations.

4. Key issues to attract foreign private investment in Bangladesh

4.1. Regulatory uncertainty

Business surveys regularly emphasizes on the cumbersome regulatory environment, complicated procedures, and poor government administration as barriers to investing in Bangladesh (UNCTAD, 2013). Regulatory uncertainty works as a major impediment towards inflow of foreign investment in Bangladesh. Moreover, uncertainty in exchange rates is another problem for lower foreign investment in Bangladesh as most foreign investors opted to realize profits and reduce risk. Enabling investment for sustainable development through an improved regulatory framework is crucial for attracting foreign investment in Bangladesh. To reduce regulatory uncertainty, a multi-pronged strategy is required, involving high-level efforts on systemic reforms supported by other, more specialized reforms. A technical regulatory oversight body at the centre of government to oversee, lead, and report on regulatory reforms is required in Bangladesh's regulatory system (World Bank, 2019).

4.2. Absence of adequate policies

The lack of comprehensive adequate policies has always acted as a major bottleneck for the low foreign investment in Bangladesh. The government should formulate and implement appropriate policies to ensure macroeconomic stability in a sustained manner, foster growth-promoting and growth accommodating policies, and take further steps to reduce poverty at a quick rate (UNCTAD, 2013). Bangladesh should have adequate policies that affect human capital formation. Having a policy might enable us to focus on the effects of FDI on the distribution of wages. Since the distribution of human capital is a major determinant of the distribution of wages, a comprehensive policy can bring a change to the business scenario in Bangladesh (OECD, 2001).

4.3. Restriction in profit repatriation

Ensuring repatriation of investment/dividend is one of the preconditions of foreign direct investment in any country. Foreign capital invested in Bangladesh for industrial projects is allowed to be repatriated from Bangladesh with the approval of the government. The approval is first to be obtained from Bangladesh Bank before profits from the foreign subsidiaries can be remitted to the parent company. The Bangladesh Bank frequently causes hurdles in profit repatriation, one of the FDI preconditions, hindering FDI inflow. Thus, international investors have to face a tough time getting their money or dividends back. Having simplified rules for profit repatriation like the regional contemporaries like Vietnam or India can lure more foreign investment in Bangladesh.

4.4. High taxation and VAT policies

The corporate tax rate and VAT policies of Bangladesh need to be revised in order to be in competition with neighbouring countries and attract more foreign investments. Despite progressively revising the corporate tax rates, it remains among the highest levels in the region. A restructured tax policy is needed for luring more foreign investments in Bangladesh. Bangladesh has a very high corporate tax rate for foreigners. India has reduced the corporate tax rate to 22%, and new enterprises in the industrial sector enjoy a 17% tax rate.[5] Moreover, Bangladesh has 15% vat requirements to set up an industry in the economic zones whereas in India, Vietnam, Thailand, there are no VAT requirements for setting up industries in the economic zone (Light Castle bd, 2020). Extending tax holiday, reducing the corporate tax rate is necessary for attracting more foreign investment in Bangladesh.

4.5. Ease of doing business

The investors' level of convenience of doing business in a host country plays an important role in making decisions. Bangladesh ranked 168th out of 190 in 2020 in Ease of Doing Business rankings by the World Bank (World Bank, 2020). Bangladesh is unable to improve its score in the ease of doing business rating due to corruption, lack of transparency, and the snail pace of acceptance of files. Complicated and time-consuming processes, political instability, the uncertainty of exchange rates, lack of policies, etc play a role in attracting foreign policies for Bangladesh. Reforms in regulations such as taxation, land registration, and institutional reforms, etc should be done as soon as possible to lure foreign investors in the private sector. Moreover, there is a strong need for soft infrastructural development in the country.[6]

4.6. Underdeveloped capital market

The capital market of Bangladesh is still in a nascent state. Evidence suggests, a developed and fully functioning capital market can play an important role for an emerging economy like Bangladesh through channelling the domestic saving into investment and attracting more foreign investment (Nguyen et al., 2011). However, the capital market of Bangladesh fails to play its due role in the development of the economy. The market is relatively underdeveloped, meagre in size and non-transparent, and inefficient. The main problems faced by the capital market of Bangladesh are poor management, unethical practices, and undercapitalization. Bangladesh's weak capital market negatively influences investors' confidence. The lack of a properly functioning bond market serves as a major concern for the investors to put their money on a bet (Light Castle bd, 2020).

4.7. Unstable policies

Maintaining consistency in policies and actions is important so that no 'wrong signal' is conveyed to the investors (Hossain, 2008). Hospitable investment climate in the country and other facilities available should be portrayed effectively to foreign potential investors. It is critical for Bangladesh to modernize and reform all business and investment regulations in light of worldwide best practices and globalization standards.[7] Bringing necessary changes in the policies and sticking to it is necessary to gain the confidence of the foreign investors.

[5] https://www.tbsnews.net/economy/massive-tax-rebates-mulled-fdi-shifting-china-97720

[6] https://www.dhakatribune.com/business/2020/10/26/ease-of-doing-business-inefficiency-bureaucracy-making-progress-slow

[7] https://www.bb.org.bd/pub/research/policynote/pn0805.pdf

4.8. Political instability

Bangladesh ranks 161st among 194 countries in political stability in the world (Hossain, 2008). In the last few decades, Bangladesh has seen degree of political instability, which has hampered progress on structural reforms, policy implementation, and large-scale project management. Political instability has caused lower foreign investments as most foreign investors opted to realize profits and reduce risk.

4.9. LDC graduation

As a recognition of the impressive economic performances, Bangladesh is scheduled to graduate from the group of LDCs in 2026 as decided in the latest review of the committee for development policy (CDP). As a least developed country, Bangladesh is qualified for the GSP facilities under which the developed countries provide duty-free market access to many products of the relatively poor countries. As an LDC Bangladesh enjoys duty-free market access not only in the EU market but also in many other markets. After graduating from the group of LDCs, these trade preferences will either be lost or significantly diminished (Razzaque et al., 2018). Moreover, the export incentive that the government offers to the export-oriented sectors is not likely to be possible in the post-LDC graduation period given the rules of WTO.

While the suspension of duty-free market access might reduce the exports volume as well as work as a disincentive for foreign investors, there are also the possibilities of the potential benefits on graduating countries of being perceived as destinations conducive to doing business and attractive to foreign investment inflows. Valenzuela and Gunasekera (2020) estimated the welfare impact of graduation by analysing the loss of the LDC specific preference as well as the gains associated with graduation-induced positive investment environment by assuming that total investment would rise by 3% in graduating countries. While they found that all the graduating countries would benefit from a net rise in their economic welfare in relation to the assumed level of investment increase except for Bangladesh. For Bangladesh the gains from a three percent increase in investment are not enough to compensate for the loss of LDC-specific preferences. Therefore, to compensate for the loss of LDC specific preference, the post-graduation investment increase in Bangladesh needs to be much larger. However, the positive impact of the graduation on the investment might depend on the investment environment of Bangladesh where the poor infrastructural facilities or high cost of doing business is a major barrier for Bangladesh.

In this context, it is important to improve the overall investment environment by developing the necessary infrastructure as well as reducing the cost of doing business in Bangladesh to promote foreign investment in the post LDC graduation period. Moreover, the government needs to pro-actively explore the free trade agreements with major trading countries. Finally, Bangladesh needs to focus on negotiation with its with its major regional-trading partners to chase investments through Regional Trade Agreements (RTA) or Free-trade-agreements (FTA) such as that of Closer Economic Partnership Arrangement (CEPA).

5. Women participation in the foreign joint venture

Women entrepreneurs do not operate in isolation. They work under the same macro, regulatory and institutional framework as their male counterparts (Ahammad & Moudud-Ul-Huq, 2013). However, it is necessary to dig deeper to understand the gender biases embedded in society that limit women's mobility, interactions, active economic participation, and access to business development services. The core barriers to female entrepreneurship identified by anecdotal studies are a paucity of funding along with a lack of knowledge, sufficient information, marketing, capacity building and training, access to finance, design and product development, regulatory barriers regarding tax, VAT, and company registration, promotional activities, ICT etc. (Rahman, 2010; Afroze et al., 2014; Ahammad & Moudud-Ul-Huq, 2013). However, in maximum cases, women are deprived due to the negative attitude of our society & community which is the major barrier to female entrepreneurship in Bangladesh (Rahman, 2010).

There is hardly any joint venture of foreign partners with the women entrepreneurs of Bangladesh. The FPIPPA 1980 does not include any provision facilitating the joint venture of foreign investors with the women entrepreneurs of Bangladesh. But according to the female entrepreneurs, the key problem associated with promoting 'She' trade or joint venture of female entrepreneurs with foreign investors in the overall industrial sector of Bangladesh is that they lack the financial knowledge or skills necessary to reap the benefits of different trade incentives. In most cases, they don't have enough training to establish communication with foreign investors. Most of the female entrepreneurs are not aware of the information about SME loans, mortgages, required documents and also do not know how to get official assistance and incentives. In addition, they do not know about the legal and appropriate business process and procedure, HS code for a particular product as well as how the export and import process works, and for any business-related help which agency can help them. While most of the potential women entrepreneurs are discouraged due to the lack of knowledge about these legal and financial strategies or skills, many women entrepreneurs who participate in the business suffer in the long run. The government has launched the facilities of special training programs for women, but the implementation and the effectiveness of the program are very poor and therefore of little help to the potential entrepreneurs.

Table 5: Key issues to the development of joint venture of women entrepreneurs with foreign investors in Bangladesh

Issues	Remarks
Information gap	✓ Women entrepreneurs often cannot access the special incentives provided to them due to a lack of proper information mediums. ✓ Lack of information on how to avail SME loans, mortgage requirements, documents requirements, and appropriate authorities to seek assistance often makes it difficult for women entrepreneurs to start a business.
Social stigma	✓ Women entrepreneurs often cannot operate their business after evening due to social outlooks.

Issues	Remarks
	✓ Harassments in the banks and various registration processes are constantly faced by women entrepreneurs. ✓ For women traders engaged in export and import the condition of the land ports is not gender friendly.
Lack of financial and business knowledge	✓ Women entrepreneurs mostly lack business knowledge regarding how to plan projects, legal procedures to start a business, how to avail special incentives, customs procedures, and knowledge of HS code, etc. ✓ Due to these knowledge gaps often, women entrepreneurs perceive these procedures as complex business registration processes and refrains from formal trading. ✓ Many women entrepreneurs have insignificant or no knowledge about maintaining proper accounting books which is crucial for receiving finances.
Absence of assistance	✓ Women entrepreneurs mostly face difficulties in business processes due to the absence of appropriate support staff and the lack of a women-friendly business and banking environment. ✓ Often women entrepreneurs have to take assistance from their male counterparts in the financing and business starting process ✓ Dedicated help desks in the banks for women entrepreneurs are seldom seen.
Bank loans/ SME loans and cumbersome process	✓ Women entrepreneurs fail to avail even the 15% total allocated credit amount allocated towards them due to cumbersome procedures, and lack of appropriate documents. ✓ As commercial banks disburse these loans, there are often high mortgage requirements which many women entrepreneurs don't have. Also, they fail to manage bank guarantees. ✓ Often small businesses run by women have full or most transactions in cash, therefore there is no proper accounting and financial traceability. This makes difficult for banks to provide loans to the small business run by women. ✓ Women entrepreneurs often fail to provide mandatory documents such as VAT and TIN certificates, and trade licenses.
Reluctancy of bankers to provide loans to women	✓ As the commercial banks are directed by the Bangladesh Bank and SME Foundation to provide concessional loans to women entrepreneurs, therefore banks are often reluctant to disburse loans to a woman compared to a male entrepreneur. ✓ The interest rate at which women entrepreneurs are getting low is lower than the interest rate borne by their male counterparts. Therefore, the banks perceive a loss in disbursing the loans to the female entrepreneurs.

Issues	Remarks
	✓ Though a minimum of 15% of the total SME loans is to be disbursed to the women entrepreneurs it is often unfulfilled. The commercial banks report to the Bangladesh Bank and SME foundation, that no eligible women entrepreneurs were applying for loans.
Inefficient training facilities	✓ Though the intent to train the women entrepreneurs with appropriate pre-investment business knowledge is an excellent initiative, however, the straining is mostly a waste of resources and done to tick boxes. ✓ Women entrepreneurs have an interest in the non-conventional sectors; however, a lack of specific training creates hurdles in doing so. ✓ Vocational training is less prevalent in Bangladesh and the percentage of women receiving vocational training is even lower. ✓ The training programs are not efficiently designed. Often doesn't cover significant topics and it's hard for the training organisation to extend its outreach to the grassroots levels.
Coordination failure	✓ Coordination failure among authorities in charge of the promotion of women's entrepreneurship is another significant bottleneck to mainstreaming women in entrepreneur activities. ✓ The officials in charge of implementing the provisions of the policies often lack capacity which makes the provisions inefficient.

6. Global best practices

6.1. Foreign Investment Act of India

India is the largest host economy in the sub-region and ranks fifth among the top 20 FDI host economies. It has historically accounted for 70-80 percent of inflows in the region. Even in the midst of Corona, India has managed to obtain robust foreign investments in ICT (software and hardware) and construction supported FDI.FDI inflows reached an all-time high of USD 64 billion in 2020, according to UNCTAD's 2021 World Investment Report, a 27 percent increase over 2019. It was USD 51 billion in 2019. In 2020, the total amount of FDI will be USD 480 billion.[8]

Table 6: Key features of India's foreign investment policy

Institutional Framework/Political economy	Enabling factors	Future focus	Take away
1. Foreign investment in India can be classified into investments in debt instruments and investments in non-debt instruments. 2. It is principally governed by the Foreign Exchange Management Act 1999 (FEMA) 3. Currently regulated as per the Foreign Exchange Management Regulations 2017 4. Market liberalization has continued, for example, the central government, in September 2021, increased the FDI cap to 100 percent through the automatic route.[9] 5. Foreign investment is prohibited in industries like Real Estate Business, Lottery Business, Manufacturing of Cigars, tobacco or tobacco substitutes etc. 6. As per the Securities and Exchange Board of India (Foreign Portfolio Investors) Regulations 2019 (FPI Regulations), if the investment by an FPI exceeds the individual limit of 10 percent, this investment will qualify as FDI 7. According to the Department for Promotion of Industry and Internal Trade (DPIIT) issued in April 2020, investors from	1. Consistent Liberalization of foreign investments 2. Simplified foreign investment process 3. Efficient, well-developed Administration 4. Independent judicial system 5. Tax concessions 6. A highly effective democratic regime	1. Reducing fiscal deficit and public debt 2. Reforms to clean up the banking system 3. Position India as a global hub for Electronics System Design and Manufacturing (ESDM) 4. Privatising the large, mostly non-profitable public sector which includes telecommunications, public infrastructure, airways, ports, etc.	1. Creation of an effective democratic regime which ensures stable political environment 2. Liberalizing foreign investments to attract investors 3. Increasing FDI cap. 4. Developing an effective and efficient regulatory body 5. Easing norms of the foreign investment process

8https://santandertrade.com/en/portal/establish-overseas/india/foreign-investment

9https://www.ibef.org/economy/foreign-direct-investment.aspx

Institutional Framework/Political economy	Enabling factors	Future focus	Take away
neighbouring countries can invest only under the Government route 8. For foreign investment in an automatic route sector, there is no need for prior approval and only certain post facto filings are required. 9. In order to clear confusion over which competent authority to approach for approval, DPIIT has established a Foreign Investment Facilitation Portal (FIFP) 10. The competent and regulatory authorities have the discretion to approve, reject or defer a proposal for foreign investment 11. In some sensitive sectors where foreign investments are permitted with the prior approval of the sector-specific competent authority, the government reserves the right to oversee, control, permit or prohibit investments 12. In terms of competition law, all forms of (domestic and international) acquisitions, mergers, or amalgamations that exceed the jurisdictional thresholds and do not benefit from any exemption must be notified to, and obtain the approval of, the Competition Commission of India (CCI) before the transaction can be consummated. 13. The government has created incentives for manufacturing companies to set up in Special Economic Zones (SEZ), National Investment & Manufacturing Zones (NIMZ), and Export Oriented Units (EOUs).	7. Stable political environment 8. Vast geography and ever-growing consumer base 9. The smooth functioning of SEZs and NIMZs 10. Educated, hardworking and skilled workforce 11. Govt sponsored FDI incentives 12. Bilateral investment treaties with industrialized countries	5. Expanding and strengthening bilateral investment treaties 6. Drawing FDIs in low performing sectors	6. Building an educated and skilled workforce 7. Strengthening communication and collaboration between different government regulatory bodies and industries 8. Effective implementation of EPZs, and SEZs 9. Focusing on bilateral investment treaties 10. Incentivizing foreign direct investments

Source: Foreign Exchange Management Act 1999; Consolidated FDI Policy Circular of 2017

6.2. Investment law of Vietnam

Vietnam's economy has changed dramatically in the twenty years since Doi Moi. Vietnam has changed itself from an isolated and collectivized agriculture-based economy to a growing nation on the verge of becoming a new Asian Tiger, with a vibrant private sector coexisting with a large state sector. The industrial sector has emerged as the primary driver of growth which is rapidly diversifying. Vietnam has also joined the global trade system as an active participant. Vietnam has been able to reduce poverty at some of the quickest rates in history thanks to its incredible rate of change and wealth creation. (Hanh, Van Hùng, Hoat and Trang, 2017)

Table 7: Key Features of Vietnam's Investment Law that promoted the development of Foreign Investment

Institutional Framework/Political economy	Enabling factors	Take away
• Foreign investors may establish an enterprise in Vietnam with 100 percent foreign owned capital and have the right to assign its capital. • Foreign investors may invest in industrial zones and export processing zones in any of the investment forms. • Foreign investors investing in the construction of infrastructure facilities may enter into Build-Operate-Transfer contracts, Build-Transfer-Operate contracts, or Build Transfer contracts with an authorized State body of Vietnam. • Under the Build-Transfer Capital, the Government of Vietnam creates conditions for the foreign investor to implement other investment projects upon the completion of one infrastructure facility in order to recover the invested capital and gain reasonable profits. • Enterprises with foreign-owned capital and parties to business co-operation contracts may convert the form of investment, split, demerge, merge, and consolidate enterprises in the course of their operation as per the Government's conditions. • The state will guarantee that foreign investors investing in Vietnam are treated fairly and equitably. • During the course of investment in Vietnam, capital and other lawful assets of foreign investors shall not be requisitioned or expropriated by administrative measures or the foreign capital not nationalized. • The foreign party will continue receiving preferential treatment if any change of law hampers their interest • Foreign investors investing in Vietnam shall have the right to transfer abroad 1. Their profits derived from business operations; 2. Payments received from the provision of technology and services; 3. The principal of and interest on any foreign loan obtained during the course of operation; 4. The invested capital; 5. Other sums of money and assets lawfully owned. • Enterprises with foreign-owned capital and foreign parties to business co-operation contracts shall be subject to corporate income tax at a rate of 25% on the profits earned; where investment is encouraged, the rate of corporate income tax shall be 20% on the profits earned. • Foreign investors may be exempted from corporate income tax for a maximum period of 2 years from the first profit-making year and may be entitled to a 50% reduction of corporate income tax for a maximum period of two successive years.	• Exemption from export duty on goods exported from an export processing zone to a foreign country • Exemption from import duty on goods imported into an export processing zone from a foreign country • Exemption from corporate income tax • Fair and equitable treatment • Capital and other lawful assets of foreign investors not requisitioned or expropriated by administrative measures • Business cooperation contract • Access to the conversion of the form investment, split, demerge in the course of operation • State creating conditions for the foreign investor to implement other projects to recover the invested capital • Right of a foreign investor to complain or to take legal action	• Having a comprehensive policy agenda towards FDI promotion • Import duty exemption for investment in the region with difficult socio-economic conditions. . • Build transfer contract, Build-transfer operate contract for investment in infrastructure facilities • Continuation of preferential treatment even after the change of law • Conversion of the form of investment during the course of operation • Proper policies for foreign investment promotion • Government support and fair treatment for the foreign investors • Greater focus on establishing a liberal neutral environment (Tri VO and NGUYEN, 2021)

Institutional Framework/Political economy	Enabling factors	Take away
• An export processing enterprise shall be entitled to exemption from export duty on goods exported from an export processing zone to a foreign country or import duty on goods imported into an export processing zone from a foreign country. • The bankruptcy of an enterprise with foreign owned capital shall be dealt with as provided for in the law on business bankruptcy. • Any foreign investor has the right to lodge a complaint or to take legal action against any unlawful decision or conduct of State officers, public officers or State bodies which causes difficulties or inconvenience. • The foreign party to a joint venture enterprise may make its contribution to the legal capital in: (a) Foreign currency or Vietnamese currency originating from investments in Vietnam; (b) Equipment, machinery, plant and other construction works; (c) The value of industrial property rights, technical know-how, technological processes and technical services • State encourages foreign investment in regions with specially difficult socio-economic conditions and shall be exempted from import duty for a duration of five (5) years from the commencement of production.	against any unlawful decision or conduct of State officers	• Closer consultation with existing and potential investors (Tri VO and NGUYEN, 2021)

Source: Law on Foreign Investment in Vietnam, 2000

6.3. Investment Act of South Africa

With a well-developed infrastructure, South Africa is the economic hub of Africa. The country is rich in natural resources like ores of chrome, manganese, iron, gold, coal, vanadium, vermiculite, and platinum. Various economic references in South Africa have led the country to macro-economic stability, such as good fiscal management and a sound monetary policy. The reduction of tax rates and customs has also played a role in attracting investment. The nation is also a perfect platform for the development of the new generation of green technologies and industries.

Table 8: Overview of foreign private investment act of South Africa

Institutional Framework	Enabling factors	Take away
The government ensures non-arbitrary administrative, legislative and judicial processes investors must have access to government-held information in a timely fashion in respect of their investment. Investors have the right to have any dispute that can be resolved in a fair public hearing before a court or other independent or impartial trial.	Balance of rights and obligations Equal and fair treatment Open and transparent environment for investments.	Government providing the sound legislative framework for promotion and protection of all investments Enabling a proper environment for investment

Institutional Framework	Enabling factors	Take away
Foreign investment and investors must not be treated less favourably than South African investors. The state must accord a level of physical security to the foreign investors and their investments as same as domestic investors following minimum standards of customary international law and subject to available resources and capacity. A foreign investor may repatriate funds subject to taxation and other applicable legislation An investor having dispute for an action harming their investment may approach the Department to help resolve the dispute by hiring a mediator within six months of becoming aware of the dispute. In the case of investments protected by this Act, the government may agree to international arbitration after exhausting domestic methods.	Recognizing the importance of investment Sound legislative framework Recognizing the obligation to protect or advance the disadvantaged person **Aware of the government's commitment to ensure human rights, fundamental freedom, and protection of resources according to international law**	Balance of rights and obligations of investors which lacks in Bangladesh Act Steps to protect or advance disadvantaged people Protection of properties and ensuring human rights following international law. Non-arbitrary legislative or administrative process. **Physical security for the investors following minimum standards of customary international law**

6.4 Foreign Investment Law of the People's Republic of China[10]

On March 15 2019, at the second session of the 13th National People's Congress, the Foreign Investment Law of the People's Republic of China, was published and it was set forth for implementation as of January 1, 2020. It was established according to the constitution of the country in order to promote and standardised the overall foreign investment, protecting the interests and rights of the foreign investors as well as to develop the socialist market economy.

[10] https://en.ndrc.gov.cn/policies/202105/t20210527_1281403.html

Table 9 Overview of the Foreign Investment Law of the People's Republic of China

Institutional Framework	Enabling factors	Take away
The State shall implement policies on high-level investment liberalization and convenience, establish and improve the mechanism to promote foreign investment, and create a stable, transparent, foreseeable and level-playing market environment. The competent departments for commerce and investment under the State Council shall, pursuant to the division of duties, promote, protect and manage foreign investment; other relevant departments under the State Council shall take charge of the relevant work in the promotion, protection and management of foreign investment within the scope of their respective duties. The relevant department under the local people's government at or above the county level shall carry out the work relating to promotion, protection and management of foreign investment in accordance with laws and regulations and in line with the division of duties determined by the people's government at the same level. Employees of a foreign-funded enterprise shall, pursuant to the law, establish trade union, carry out trade union activities, and safeguard their legitimate rights and interests. A foreign-funded enterprise shall provide necessary conditions for its trade union to carry out relevant activities. Relevant competent departments shall prepare and publish guidelines for foreign investment and provide foreign investors and foreign-funded enterprises with services and convenience. A foreign investor may, in accordance with the law, freely transfer inward and outward its contributions, profits, capital gains, income from asset disposal, royalties of intellectual property rights, lawfully obtained compensation or indemnity, income from liquidation and so on within the territory of China in CNY or a foreign currency The State shall establish a complaint mechanism for foreign-funded enterprises, timely solve the problems reported by foreign-funded enterprises or their investors, and coordinate and improve relevant policy measures. Where a foreign-funded enterprise or its investor deems that any administrative act of an administrative department or its staff member infringes its legitimate rights and interests, it may seek coordination and resolution thereof through the complaint mechanism for foreign-funded enterprises. Where any foreign investor or foreign-funded enterprise violates the provisions herein and fails to report their investment information as required by the foreign investment information reporting system, competent department for commerce shall order it to make corrections within a prescribed time limit; if such corrections are not made in time, a penalty of not less than CNY100,000 yet not more than CNY500,000 shall be imposed	Mechanisms that create a stable, transparent and level playing market environment Implementation of high-level investment liberalisation Carrying out the work both in local government in the relevant departments Fair and equitable treatment Investment management Penalty provision for the violation of laws Complaint mechanism for foreign investors	Enabling fair and level playing market environment Strengthening the attached departments of local government for the promotion and development of foreign investment Establishment of guidelines for foreign investment and provide foreign investors and foreign-funded enterprises with services and convenience in the relevant departments Formulation of a complaint mechanism for the transparency and equity Creation of penalty provision for violation of the laws.

7. Recommendation

The Foreign Private Investment Promotion and Protection Act (FPIPPA) 1980 is the regulatory framework to ensure the protection of foreign investment in Bangladesh. There has not been any significant change in the act since 1980. The act is quite backdated. The act from 1980s cannot meet the challenges related to foreign investment in 2021. Due to lack of revision, it has become inadequate and contains many gaps. The act needs to be updated to incorporate provisions for the current challenges of Bangladesh including SDG goals, Challenges after LDC graduation, gender inclusion.

In case of revising the act, the provisions for the foreign investors should be clearly and categorically chalked out. The act is very brief and vague. The linguistic ambiguities in the act need to be made clear. Therefore, the following recommendation matrix presents some revisions and modification of the act.

Table 10: Recommendation matrix for the FPIPPA 1980

Key issues	Description in FPIPPA 1980	Unchanged	Extension/modification	New addition
Title of the Act (Section 1)	The Act has been named the Foreign Private Investment Promotion and Protection Act 1980.	N/A	The title of the Act may be changed following the date of introducing the revised Act.	N/A
Definition (Section)	The Act defined foreign private investment, foreign capital, and industrial undertakings.	N/A	The existing ambiguity in defining the industrial undertakings should be removed. Therefore, the act should clearly specify that it is applicable for both the industrial undertakings for the production and processing of goods as well the service industry.	The Act may also clearly define a joint venture contract as a written document signed by the parties (the Bangladeshi party and foreign investor) or a joint venture enterprise as an enterprise established based on a joint venture contract between a foreign investor and a Bangladeshi enterprise or between a joint venture enterprise and a foreign investor. The act should also define joint investment, bilateral investment, tangible property (if IT investment or Portfolio investment is incorporated), etc.
Conditions for the Sanction of Foreign Private Investment in	The Act stipulates that foreign capital of any industrial undertaking may	Unchanged	N/A	N/A

Key issues	Description in FPIPPA 1980	Unchanged	Extension/modification	New addition
Bangladesh (Section3, section 1)	be sanctioned if it does not exist in Bangladesh but is desirable or is not carried out in Bangladesh or is likely to contribute to the economy of Bangladesh.			
Unclear condition for the sanction of Foreign Private Investment in Bangladesh (Section 3, section 2)	The Article stipulates that foreign capital of any industrial undertaking may be sanctioned by the government whereas the sanction may be subject to such conditions as the Government may deem fit to impose.	N/A	The Act may specify the conditions and the procedures to obtain the government sanction that is not defined in the current Act.	N/A
Protection and equitable treatment for foreign private investment (Section 4)	The section stipulates the commitment of Bangladesh to providing non-discriminatory treatment to foreign investors as well as full protection of foreign investment.	Unchanged	The Act may more clearly specify the section for fair and equitable treatment to avoid any ambiguity. It must be mentioned whether the equitable treatment stands autonomously or whether that is a part of Customary International Law and in short what it means. The linguistic ambiguities need to be made clear.	N/A
Terms of sanction (Section 5)	Section 5 assures that the terms of sanction, permission, or license for the industrial undertaking with foreign investment shall not be abruptly changed that adversely affect the business of foreign investors	N/A	The Act may include necessary measures if the interests of an enterprise with foreign capital or foreign parties to a joint venture are damaged by a change in the provisions of the law of Bangladesh. For example, the act may also assure that in case of such an event the enterprise or joint venture shall continue to enjoy the preferential treatment as provided for in the investment license and this Law, or the State shall take fair measures as follows.	N/A

Key issues	Description in FPIPPA 1980	Unchanged	Extension/modification	New addition
Indemnification in the event of civil commotion, insurrection, or riot (Section 6)	The SECTION assures the same compensation, or indemnification for foreign investors and domestic investors in the event of the loss of foreign investment due to commotion, insurrection, or riot	N/A	The Act may assure the full compensation of the lost foreign investment in the event of civil commotion, insurrection, or riot.	N/A
Expropriation and nationalization of industrial undertaking with foreign capital (Section7, Sub-section 1)	Article 7 ensures the protection of enterprises with foreign investment against expropriation or nationalization except for public purposes against adequate compensation.	N/A	The act may also add a necessary provision for the protection of industrial property rights. In addition, the act may necessary provision guaranteeing the protection of foreign investors or foreign parties to a joint venture in the event of technology transfer.	N/A
Compensation for nationalization of industrial undertaking with foreign capital (Section 7, Sub-section 2)	Section 7(2) stipulates that the amount of compensation would be equivalent to the market value of capital expropriated immediately before expropriation.	Unchanged	N/A	N/A
Repatriation of foreign investment (Section 8)	This section states that concerning foreign investment, the transfer of capital and returns from it, and in the event of liquidation of industrial undertakings with such investment, the proceeds from such liquidation are guaranteed	N/A	The transfer rights defined in this article are stated in vague terms which may be made clearer. The strict reporting requirement or authorization by Bangladesh Bank for the repatriation of earnings or capital gains specified in the Bangladesh Banks's Guidelines for Foreign Exchange Transaction 2018 may be made easier.	The Act may more clearly specify what the foreign investors investing in Bangladesh are allowed to transfer abroad such as 1. Their profits derived from business operations 2. Payments received from the provision of technology and services 3. The principal of and interest on any foreign loan obtained during operation. 4. The invested capital

Key issues	Description in FPIPPA 1980	Unchanged	Extension/modification	New addition
Removal of difficulty (Section 9)	This section allows Government to make orders in line with the provision of this act if difficulty arises while giving effect to any provision	Unchanged	N/A	N/A
Provision for the transfer of income of foreign workers working in enterprise with foreign investment or joint venture with foreign investment	No mention in the FPIPPA 1980	N/A	N/A	The Act may specify that the foreign workers will be allowed to transfer their lawful income after the payment of income tax according to law
Provision for resolving any dispute between foreign parties and domestic parties to a joint venture or any dispute between the industrial undertakings with foreign owned capital and state agencies	No mention in the FPIPPA 1980	N/A	N/A	The Act may include the possible provision for resolving the dispute such that it must first be resolved by negotiation and conciliation. If the parties fail to settle the dispute by way of conciliation, the dispute shall be referred to a proposed Bangladeshi arbitration body or a court following the existing laws of Bangladesh.
Regulation for foreign investors	No mention in the FPIPPA 1980	N/A	N/A	The Act may contain a section on regulation for foreign investors. A foreign investor should have a responsibility and that should be stated in the act such as Corporate Social Responsibilities and Business and Human Rights, Green investment, gender inclusion, and other duties
Provision for recruiting labour in the industrial undertakings with foreign capital	No mention in the FPIPPA 1980	N/A	N/A	The Act may include possible provisions for recruiting domestic and foreign labours. It may specify that industrial undertakings with foreign capital or joint venture with foreign

Key issues	Description in FPIPPA 1980	Unchanged	Extension/modification	New addition
				direct investment must give priority to Bangladeshi citizens in recruiting workers. However, they might be allowed to employ foreign workers for jobs that demand technical expertise which a local worker cannot satisfy.
One-stop service	No mention in the FPIPPA 1980	N/A	N/A	For promoting foreign investment as well as for ensuring the quick delivery of different services of the government to the entrepreneurs, the Act may include the possible provision of one-stop service with the coordination of different line ministries. The provisions of the One Stop Service Act 2018 along with its Rules may be integrated into the FRIPPA.
Incentives for foreign investors	No mention in the FPIPPA 1980	N/A	N/A	The Act may specify the different incentives offered by Bangladesh Investment Development Authority for promoting foreign investment such as duty drawback, income tax rebate, export credit, subsidy for utility service, and project loan at a reduced interest rate.
Forms of foreign investment	No mention in the FPIPPA 1980	N/A	N/A	The act may specify the forms of foreign investment such as Joint venture enterprise between the foreign investor and Bangladeshi enterprise or industrial undertaking with one hundred (100) percent foreign capital.
Specifying the sectors where foreign investors may invest	No mention in the FPIPPA 1980	N/A	N/A	For the convenience of the foreign investors, the act may specify some of the potential sectors in which foreign investors are encouraged to invest such as energy and infrastructure, ICT, and electronics, pharma

Key issues	Description in FPIPPA 1980	Unchanged	Extension/modification	New addition
				and chemicals, agribusiness and food processing, health care, and others.[11]
Specifying the regions/locations where foreign investors may invest	No mention in the FPIPPA 1980	N/A	N/A	The act may specify some potential regions/locations where foreign investors may invest such as the northern region or the EPZs or SEZs. Moreover, the act may also specify the existing incentives for the investors in those regions/locations.
Consolidating the regulatory framework for foreign investment	No mention in the FPIPPA 1980	N/A	N/A	A single modern law may be introduced to consolidate the policies for entry and promotion of foreign private investment. Or the BIDA, BEZA, BEPZA and Hi-Tech Park Act may be linked to the FPIPPA.
Bilateral investment treaty	No mention in the FPIPPA 1980	N/A	N/A	Most of the BITs of Bangladesh do not have any provision for public policy concern or the state's right to regulate. In framing future BITs, simultaneous moves to promote foreign investment with further liberalization, on the one hand, and to regulate investment in pursuit of public policy objectives on the other are necessary. Moreover, there is the scope to make the BITs integrate with the FPIPPA in case of dispute settlement or fair and equitable treatment.
LDC graduation	No mention in the FPIPPA 1980	N/A	N/A	To capitalize the positive impact of LDC graduation on the foreign investment, it is important to improve the overall investment environment by developing the necessary infrastructure as well as reducing the cost of doing business. Moreover, to attract foreign direct investment in the post LDC graduation period, it is important to proactively explore

[11]https://bdcgtoronto.ca/wp-content/uploads/2019/07/BIDA.pdf

Key issues	Description in FPIPPA 1980	Unchanged	Extension/modification	New addition
				the free trade agreements with the major exporting countries.
Promoting women entrepreneurs	No mention in the FPIPPA 1980	N/A	N/A	The Act may include the provisions for the sectors having more women participation by providing some additional incentives to foreign investors undertaking a joint venture with local female entrepreneurs. Moreover, it is also important to arrange Well-planned training for women entrepreneurs particularly training on business-related documentation requirements, financing scopes, along with venture-specific training.

8. Conclusion

This study conducts a thorough review of the Foreign Private Investment Promotion and Protection Act 1980 by applying a mixed methodology. The in-depth desk research, as well as the data collected from the Key Informant Interviews, have helped to identify some key aspects of the act such as the relevance of the different provisions of the act in the present context, as well as the existing regulatory framework of investment in Bangladesh. One important aspect of this review is to identify the key challenges faced by the women entrepreneurs to undertake a joint venture with foreign investors as well as recommend necessary provisions for promoting the joint venture of women entrepreneurs with foreign investors. The study also focuses on the current scenario and challenges of foreign direct investment in Bangladesh and presents the international best practices in terms of the regulatory framework to retain and promote foreign direct investment. As the global best practices, the study points out the key provisions of the foreign investment law of Vietnam and India that contribute to the expansion of foreign investment in those countries.

The review identifies the Foreign Private Investment Promotion and Protection Act (FPIPPA) 1980 as the key regulatory framework of foreign investment in Bangladesh. The act has limited scope and coverage, compared to many FDI-related acts in the competing countries in the region and beyond. Moreover, the entry, protection, and promotion of foreign investment in Bangladesh are controlled by a number of other laws as well. The existence of entry as well as licensing conditions in different acts makes the entry procedures difficult for foreign investors. Therefore, a consolidated act may be formulated with the possible common relevant provisions of different acts regulating foreign direct investment in Bangladesh. However, the sector-specific act might exist with special provisions for the entry of foreign investment in those sectors.

The study finds that the FPIPPA 1980 remains unclear in terms of different conditions that the government may impose for the entry of foreign investors which might be made clearer. Moreover, it is not clear whether the act covers the portfolio investment as a foreign direct investment. Given the growing importance of portfolio investment, it is important to clearly define the foreign direct investment which should include the portfolio investment.

The key findings of this study point out that the FPIPPA 1980 is a relatively old act where most of the provisions are not consistent with the present context and changing pattern of the global economy. Currently, there is a growing importance of joint ventures of domestic entrepreneurs with foreign investors. Moreover, for the technological development of the manufacturing sector, joint ventures are needed with foreign enterprises. However, the joint venture is not clearly defined in the FPIPPA 1980. Another major issue of the FPIPPA 1980 is that several articles of this act are vague which work in favour of the foreign investors. For example, the act defines industrial undertakings as an establishment engaged in producing or processing goods. The provision is not clear whether it incorporates the service industries which include Information Technology Services (ITS), construction, tourism and entertainment, hospital and clinic, human resources development, transportation, telecommunication, etc as enumerated in the National Industrial Policy 2016. Given the present context of the increasing importance of the service industries, the regulatory authorities may bring the potential service industries under the jurisdiction of the Foreign Private Investment Act.

One major objective of this review was to find necessary measures for promoting the participation of women entrepreneurs in joint ventures with foreign investors. The FPIPPA does not have any provision for promoting the participation of women entrepreneurs in joint ventures with foreign investors. The act may include the provisions for the sectors having more women participation by providing some additional incentives to foreign investors undertaking joint ventures with local female entrepreneurs.

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Annex

KIIs conducted for the review of the Foreign Private Investment Promotion and Protection act

Organisation/Association	Key informants
Experts/Professionals/legal expert	• Dr. Rumana Islam, Professor, Department of Law, University of Dhaka
Representatives from private organisations	• Mr. Rathendra Nath Paul, Managing Director, RFL Group • Mr. Hafizur Rahman Khan, Chairman, Runner Automobiles Ltd
Private sector associations	• Mr. Md Abdur Razzaque, President, Bangladesh Engineering Industry Owners Association (BEIOA)
Representatives from the ministry of commerce	• Mr. Md.Khalilur Rahman, Director-3 (Deputy Secretary), WTO Cell

Team composition

Name of staff	Area of expertise relevant to the assignment	Designation for this assignment	Assigned tasks or deliverables
Dr.Bazlul Haque Khondker	Economist, Institutional analysis expert, Survey expert, FGD and KII expert	Team Leader	Finalize questionnaire, FGD, and KII checklists, Evaluation, and analysis, Draft synthesizing summary, Draft short summaries Finalizing reports.
Dr. Selim Raihan	Economist, Political economy and institutional analysis expert, Survey expert, FGD and KII expert	Co-Team Leader, Trade Expert	Coordinating and monitoring the team, monitoring all the activities performed by the team members, finalizing questionnaire, FGD, and KII checklists, Evaluation, and analysis Draft synthesizing summary Finalizing reports.
Mahtab Uddin	Policy analysis and evaluation, Survey expert, FGD and KII expert	Policy Analyst	Monitoring all the activities performed by the team members, finalizing questionnaire, Coordinating FGDs and KIIs, Evaluation and analysis, Draft synthesizing summary.

Name of staff	Area of expertise relevant to the assignment	Designation for this assignment	Assigned tasks or deliverables
Mohammad Golam Sarwar	Legislative consultant, development law practitioner	Legal Expert	Analysing the legal terms and provisions of the study, identifying the possible grounds of alterations, extensions, and exclusion of current legal provisions, providing legal recommendations.
Recardo Saurav Antor Halder	Data analyst, Survey Experts	Senior Research Associate	Desk review, analysing secondary data, designing questionnaires for KIIs, supervising and conducting FGDs, analysing primary data, and drafting the reports.
Sakil Ahmed	Data analyst, Survey Experts	Research Associate	Research and analysis of relevant literature, primary and secondary data, supervising and conducting KIIs and FGDs.
Zareen Tasnim	Data analyst, Survey Experts	Research Associate	Research and analysis of relevant literature, primary and secondary data, supervising and conducting KIIs and FGDs.
Afia Mubasshira Tiasha	Data collection and Supervision	Research Assistant	Desk Review, developing KII questionnaire, assisting in conducting the KIIs, conducting FGDs.

RESEARCH I KNOWLEDGE I DEVELOPMENT

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