

LAW INTERVIEW

FOR A SMART BANGLADESH

We must formulate sophisticated legal regime and encourage innovations in FDIs

Rumana Islam is a Professor of Law at University of Dhaka currently on deputation. She joined Bangladesh Securities and Exchange Commission (BSEC) in May 2022 as the first female Commissioner of the BSEC for a term of four years. She was nominated as a Panel Arbitrator designated by the Government of Bangladesh to the World Bank's International Centre for Settlement of Investment Disputes (ICSID) in April 2021 for a term of six years. She completed her LLB (Hons) and LLM from the University of Dhaka with first class in both. She earned another LLM (specialisation in commercial law) from the University of Cambridge, UK with a Cambridge Commonwealth Trust Scholarship in 2006 and obtained her doctoral degree from the University of Warwick in 2015 with Commonwealth Scholarship. During her PhD she also obtained Charles Wallace Bangladesh Trust Doctoral Bursary. Her seminal work has been published as a book titled as "Fair and Equitable Treatment in International Investment Arbitration: Developing Countries in Context" (Springer, 2018). She is also an alumna of Scholars Workshop (2011) of Institute of Global Law and Policy (IGLP) at Harvard Law School. She has acted as the Assistant Director of Research (Law) (part-time) in Bangladesh Institute for Law and International Affairs (BILIA), from September 2015 to September 2019. She has served as a consultant in different research projects led by the Faculty of Law, University of Dhaka; University Grants Commission (UGC), Ministry of Law, Ministry of Foreign Affairs, Friedrich Ebert Stiftung (FES) and UNDP. She is an affiliated expert of Asia Pacific FDI network and a founding committee member of South Asian Economic Law Network (SAELN). **Law Desk, The Daily Star** speaks to her on some pertinent issues regarding the country's recent economic progress and the relevant legal concerns.

Law Desk (LD): How do you view the impact of the Russia-Ukraine war and the Covid-19 pandemic on foreign investments in Bangladesh? What are the proposed ways forward?

Rumana Islam (RI): The economic journey of Bangladesh over the last decade has been a remarkable one. The country once termed snappishly as a "bottomless basket" has now become the hub-spot for FDIs with phenomenal GDP growth. In 2018, the country had an increase of 67.94% in FDI inflow, becoming the second largest recipient of FDI in South Asia. But all the progress faced a setback when the world was hit by the Covid-19 pandemic. The UNCTAD's World Investment Report of 2020 predicted



that FDI flow will go down by 40% at the global scale. Therefore, it was foreseeable that Bangladesh would face a drastic decline of FDI inflow as a consequence of the predictable economic crisis due to the pandemic.

To worsen matters for the struggling global economy, came the Russia-Ukraine war without giving the time and space for many countries to recover from the economic devastation from the pandemic. Bangladesh is no exception to that. The country's economy has rebounded quite well after the pandemic through efforts to increase the inflow of FDI through bilateral initiatives with different governments and multinational corporations and conducting roadshows in different destinations. Nevertheless, the initiatives got seriously interrupted by the war. Though the war is happening some 5800 kilometers away, the domino effect from multiple factors can be felt in everyday economic life of the country resulting in higher inflation. The maelstrom laid bare upheaval in many countries' economic and financial sectors. The

war and the sanction on purchasing Russian fuel has sent energy prices soaring, pushing up the cost for consumer and companies. This has increased the cost of doing business across borders for foreign investors. As a consequence, the foreign investors have reduced their share of earning in cross border reinvestment and are reluctant to go for new investment or mergers and acquisitions.

In short, both the pandemic and the war have created short, medium and long-term negative effects on the foreign investment in Bangladesh. If we want to overcome these challenges, we need long-term planning from the policymakers as well as an increase in sustainable and diversified investments. I must emphasise that, for formulating such long-term policies in attracting FDIs, Bangladesh should consider the importance of delicate power balancing as part of its foreign policy in an interdependent and multilateral world.

LD: Recent reports have highlighted a depletion in foreign reserve.

What challenges will businesses in Bangladesh face due to the depletion?

RI: Again, this is not only a concern for Bangladesh but for many other countries including some developed economies. This has impacted the economy at both micro and macro levels. Being a highly import-dependent country for fuel and industrial raw materials, many companies operating in Bangladesh are now facing trouble in opening LCs as banks are now more restrictive due to the depletion of forex reserve. The reason for the current depletion is high import payments, imbalance in export-import, high dependency on imported oil and gas and decreasing trend in remittance flow due to the looming global recession. The expenditure to import LNG from international spot market to keep the industries afloat has become to be a double-edge sword for the forex reserve of the country. The US dollar is being expended at a rate higher than what exports and remittance are bringing in.

To address these, Bangladesh Bank

needs to significantly diversify its forex reserves, prioritise diversification of our exports basket and take extremely restrictive measures to stop the illegal hundi business. Our policymakers need to address the supply side constraints and consider how to reduce the cost of doing business. Though Bangladesh is not in a precarious situation as the inflow of remittances is ascending, nevertheless immediately policies and strategies need to be taken to boost the forex reserve to meet the import demands for next one year.

LD: How has Bangladesh performed in upholding international standards on human rights and environmental protection as far as it relates to the requirements of foreign investors? What improvements would you recommend to balance between human rights compliance and development goals?

RI: The short answer would be that it has not been "up to the mark". These issues are of recent phenomenon in Bangladesh so far it relates to FDIs. If we look into our Constitution, we will find several references to human rights and environmental protection which can be directly related to the foreign investors and FDIs. These include fundamental rights i.e., art 31 (protection of law), art 32 (protection of right and personal liberty), art 33 (safeguards to arrest and detention) and art 35 (protection in respect of trial and punishment) and the Fundamental Principles of State Policies (FPSP). Among these FPSPs,

them belongs to the first generation of "investor-oriented" BITs.

Along with a new genre of more balanced BITs, the constitutional mandates can also be useful in understanding a more balanced interpretation of investment treaties to address the issues like protection of human rights, environment, intellectual property rights, indigenous rights and sustainable development. These basic constitutional law principles encourage the regulatory space for Bangladesh as the host country to take measures for greater public policy, ensure transparent procedures of investor dispute settlement and protect the foregoing issues mentioned. Bare protection in the legal text is not good enough, stringent compliance of these requirements also needs to be ensured to fulfil the target of SDGs.

LD: What role can the relevant stakeholders play to improve Bangladesh's position as an investor-friendly country?

RI: There are many factors which need to be improved for making Bangladesh an investor-friendly country. Firstly, Bangladesh requires a sophisticated legal regime. Revising the Foreign Private Investment (Promotion and Protection) Act, 1980 is now long overdue. Some recent initiatives have significantly improved the overall environment for FDI. These include the establishing Bangladesh Investment Development Authority (BIDA), publishing "Bangladesh Investment Guide" and handbook on regular basis, conducting roadshows in different countries, introducing the One Stop Service Center (OSSC) for the foreign investors. All these aim to expedite, support and encourage foreign investors and provide guidance on the local legal system and investment environment of Bangladesh.

Along with the national laws, Bangladesh is also signatory to different international treaties and conventions which provide protection, promotion, and regulation of FDIs in the host country. Being signatory to international treaties and conventions also encourages and builds the trust of the foreign investors. Foreign exchange regulations and paperwork requirements, entry requirements must also be simplified if we want to improve our index in the ease of doing business. Improving and upgrading legal regime and encouraging innovation in FDIs need to be a continuous process in this era of digital world if we truly want to become "Smart Bangladesh".

LD: Many thanks for your time.

RI: Thank you.

For formulating long-term policies in attracting FDIs, Bangladesh should consider the importance of delicate power balancing as part of its foreign policy in an interdependent and multilateral world.

art 18A is particularly important which requires for protection and improvement of environment and biodiversity. However, the Bilateral Investment Treaties (BITs) which regulate many of the FDIs in Bangladesh are quite silent on the investors' role in protecting the human rights and environmental concerns. Therefore, for a long time I and many other scholars have urged for a revision of all BITs signed by Bangladesh to keep pace with the demand of the time as majority of

RIGHTS WATCH

Data breach and information theft

There are several steps to prevent data breaches and information theft. It is to be ensured that organisations are compliant with relevant regulations in Bangladesh. Another step is to develop and implement a comprehensive data protection policy that outlines procedures for collecting, storing, and protecting personal information.

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Data breach takes place when confidential or sensitive information is stolen, leaked or accessed by unauthorised individuals or entities. This can include personal information such as names, addresses, phone numbers, social security numbers and financial information such as credit card numbers, bank account details and more. Information theft refers to the act of stealing or taking someone's confidential data without their knowledge or consent.

Unfortunately, the threat of data breaches and information theft is a growing concern in Bangladesh and around the world. In Bangladesh, some of the most common forms of data breaches and information theft include phishing attacks, social engineering tactics, malware attacks and insider threats. To be protected from these threats, it is important to practice good cyber hygiene by using strong passwords, avoiding suspicious emails or messages, and implementing multi-factor authentication on all accounts. Additionally, one should be cautious while using public Wi-Fi networks and never share sensitive information with anyone.

One of the relevant laws in this regard is the Digital Security Act which was enacted in 2018 and contains certain provisions on data breach and unauthorised use of personal data.

Additionally, Bangladesh Bank has issued guidelines for protection of customer data in the financial sector. These guidelines require banks



and other financial institutions to implement appropriate cyber security measures to protect customer data and prevent unauthorised access or disclosure.

However, despite these laws and regulations, data breaches and information theft continue to occur in Bangladesh. Therefore, it is important for individuals and organisations to take proactive measures to protect their sensitive data and prevent such incidents from happening.

Preventing the growing threat of data breaches and information theft in Bangladesh presents several legal challenges. One of the main challenges is the lack of adequate legal framework to address the rapidly evolving nature of cybercrime and data breaches.

As the threat landscape continues to evolve, existing laws and regulations may not be able to keep pace with the latest threats and vulnerabilities. This can create gaps in the legal framework

and make it difficult to investigate and prosecute cybercriminals. Another legal challenge is the lack of awareness and skills to investigate and prosecute cybercrime cases. This is due to the fact that cybercrime investigations require specialised skills and knowledge, which may not be available in all law enforcement agencies.

Moreover, the use of encryption and other advanced technologies by cybercriminals can make it difficult to track and trace their activities.

Additionally, the lack of international cooperation and coordination in cybercrime investigations can also make it difficult to prevent data breaches and information theft. Cybercriminals often operate across international borders and the lack of cooperation between different countries can hamper investigations and make it harder to bring perpetrators to justice.

There are several steps to prevent data breaches and information theft. It is to be ensured that organisations are compliant with relevant regulations in Bangladesh. Another step is to develop and implement a comprehensive data protection policy that outlines procedures for collecting, storing, and protecting personal information. Furthermore, step can be taken to regularly review security measures and update them as needed to stay ahead of potential threats and use encryption technology to safeguard sensitive data, such as customer information and financial records.

However, users should be cautious with the information they share online and use secure passwords and encryption methods. It is also advisable to regularly update software and antivirus programmes to protect devices from potential threats. If someone is a victim of a data breach or information theft, it is essential to report the incident to the relevant authorities and take steps to mitigate the damage caused.

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