International Journal of Science and Research (IJSR)
ISSN: 2319-7064
SJIF (2022): 7.942

Institutional Framework for Japanese Private Investors Ensuring Safe Investment in Developing Countries

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Abstract: ***Investment projects are essentially subjected to various forms of risk that can impact expected performance such as the external environment, specific endogenous factors, operational structure, and functional investment objectives. This study explores the risks foreign investors, especially Japanese investors, will face in developing or underdeveloped countries, especially in trade secrets, trademarks, copyrights, patents, licensing, tax holidays, trade unions, and policies. Investors use personal relationships with business partners and government connections to reduce uncertainty by weak legal rules rather than substitutes for formal legal rules such as bilateral investment agreements and special economic zones. This research takes both primary and secondary sources of information. The main sources are local and foreign statutes, common law, codes of ethics, international documents, judicial decisions, and treaties. This essay recommends improving global trade and investment rules to prevent protectionist trade and investment.***

Keywords: Economic Globalization; Political Economy; Security issues; Developing countries; Intellectual property; Trademark; copyright; patent; licensing; tax holidays; and Cash return policy.

1. Introduction

Investment decision is as old as man and it is now shrouded in the mystery of antiquity. The decision is born out of the desire to make provision for the future or prepare for the rainy days. The need to reduce the uncertainty associated with future outcomes of present actions made investment decision impeccable. However, the certainty of future outcomes had always been elusive consequent upon changes in seasons and environmental factors which underline the concept of risk. Investment projects are essentially subjected to various forms of risk that can have impacts on the performance expected by beneficiaries. Factors such as external environment, endogenous specific factors, operational and functional structure of the investment objective can have, at a time, different manifestations than the one anticipated initially.

2. Background of the study

The growing labor cost is something that the Japanese investors are looking into, and more so, they can only put some of their investment in one country. There are many social, political, and economic risks for private Japanese investors in countries mentioned in this thesis, e.g., Nigeria, Ghana, Ethiopia, South Africa, Bangladesh, Myanmar, Vietnam, Taiwan, Indonesia, etc., ranging from political unitability to haphazard economic policies, among others. These prompt investors to ask questions about the safety of their investment. Hence, the bigger the noticed deviation, the higher is the risk of the project to fail to ensure reaching the expected result. Managing the operational risk of investment and capital project is crucial to the economic viability of many organizations. This study provides an exploration of the imminent risks foreign investor faces in developing countries, particularly in the areas of trade secrets, trademarks, copyright, patent and licensing, and how tax holiday, labor and capital return policies affect investment in the countries.

3. Statement of the Problem

Investors from countries around the world invest in emerging economies and developing countries. Foreign Direct Investment from individuals or groups of investors is highly critical to the economic development of any country, especially developing countries. However, there are risks to investing in these countries. **The legal and institutional framework for private investors, especially Japanese investors, needs clarifications in some grey areas for safe and easy investment in some developing countries.** In the spirit of globalization and expansion, private Japanese investors want to diversify their investments from China to other developing countries. However, one should address the uncertainty and risk of private Japanese investors about government policies in these developing countries that the Japanese investors might be considering. The reasons for this diversification are apparent.

4. Aims and objectives of the study

This research aims to identify the risks of investing and doing business in underdeveloped countries and propose steps to adapt the existing framework. This research also focuses on the technological security prerequisites required before investors can invest in a particular country. Hinged on this, the aims and objectives of this study are to:

1) Describe why FDIs are more beneficial to developed countries and how developing economies can benefit from FDIs.
2) Show how FDI stimulates the deepening of globalization and its efforts in shaping a new world economic order.
3) Trace the performance of FDI since its evolution and how it assists with financing Less Developed Countries.
4) Discuss the measurement and risks of FDIs and the various forms that FDIs may take.

5) Reconcile the definitional difficulties posed by countries like Japan and France's inability to count retained profits in a foreign subsidiary as worthy of falling under FDIs.
6) Analyze the risk of private investment in developing countries, particularly Japanese investments, and propose a mechanism for managing these risks.

5. Research questions

1) What are the risks associated with investing in underdeveloped countries as a private investor?
2) What are the security measures in place to protect foreign investors innovation?
3) Are there any legal framework to protect the international investment in underdeveloped countries and if so, how effective are these laws?
4) Are there tax incentives for foreign investors in the selected countries?
5) What is the impact of labor unions on foreign investment?
6) What is the capital return policy for the countries, and are they favorable?
7) Following the urgent need for economic expansion from private Japanese investors, an important question arose: Is it beneficial for Japanese private investors to move their investments from China to developing countries?

6. Significance of the study

This research is essential because it examines the legal framework for protecting international business intellectual property and advises stakeholders on enhancing and making better use of it in their jurisdictions. The legal and institutional framework of intellectual property law (1. Internet Law-Soft Law-Cybersecurity Law 2. Trademarks 3. Copyright 4. Patents 5. Licenses), Tax law including capital return policies, labor law including the negative influence of trade union movements in several countries it is necessary to pay close attention to identify potential risks in investing in these countries. The ILO is stringent regarding trade union rights. On the other hand, investors are worried about labor union activity. This research also discusses real situations in developing countries where it is beneficial for Japanese private investors to conduct pre-investment surveys.

7. Research Methodology

The research adopted in this study is the library research method. The research relied on primary and secondary sources. The primary sources are laws, case law, international conventions and international judicial body decisions while the secondary sources are textbooks, journal articles, and the internet.

8. Conceptual Clarification and Literature Review

8.1 What are the risks associated with investing in underdeveloped countries?

Private foreign investors in developing and underdeveloped countries face significant challenges in making strategic decisions because of uncertainty, and the consequences are difficult to predict. Political instability becomes a threat and opportunity in political regimes with actual changes in government. According to Bae (RIM, 2022) [1], one surefire way to increase a company's operational risk is through changes in the political situation of the host country and its countries. Other means include the destruction of infrastructure used in production, the composition of labor and skills, and a reduction in income as well as a decrease in demand for goods and services produced (RIM, 2022) [2] Changes in government policy such as income repatriation embargoes, fiscal and monetary reforms, as well as national threats constitute some of the main types of policy uncertainty govern. Good quality infrastructure has a positive effect on the performance of manufacturing and high-value service companies (RIM, 2022)[3] Companies operating in a quality infrastructure environment benefit from critical logistics and lower transaction costs that increase product competitiveness (RIM, 2022)[4] A better macroeconomic environment increases a country's market attractiveness and increases the efficiency of company performance. Financial systems were developed to fund investment projects and improve performance (Donald, 2021).[5] Illegal transactions between public officials and private businesses can create corporate uncertainty due to the secrecy of bribe payments (Habiyaremye, 2018).[6]

8.2 What are the security measures in place to protect foreign investors' innovation?

Encouraging FDI by creating clear and enforced policies will protect foreign investors and reduce political risks, thus making the host country more attractive (UNCTAD, 2009).[7] Moreover, host governments demonstrate a solid commitment to fulfilling their duties by allowing foreign investors access to international arbitration, which should further undermine investor confidence. Non-payment to investors, withdrawal of investment permits by the host country government, or denial of justice create concerns for foreign investors; this can be addressed by IIAs requiring the host country to compensate foreign investors for what has been confiscated due to the action. Government. In addition, many companies protect foreign investors from the host country from breaches of agreements made under individual investment contracts with foreign investors (UNCTAD, 2009).[8] Foreign investors concerned about the political risks of investing in developing countries can purchase political risk insurance from a variety of providers, including com large insurance companies, state-sponsored investment organizations in the home country, MIGA, or host country institutions if the FDI project is partially financed with equity and partly with debt, as is familiar with extensive infrastructure or mining projects, banks providing credit to such projects often require purchases such as political risk insurance or will purchase such insurance with limited resources.

8.3 Is there any legal framework to protect international business in underdeveloped countries, and if so, how effective are these laws?

IIAs do not discuss social problems such as labor or environmental issues but create a liberal atmosphere conducive to investment flows. BITs that the World Bank has compiled do not include social obligations for investors. BITs

Paper ID: SR24810013225 DOI: https://dx.doi.org/10.21275/SR24810013225

are states agreeing to a reciprocal standard of treatment of "aliens." States, as parties to the agreements, place these obligations only on each other. Investors accrue rights (as aliens), but the agreements do not burden them with any obligations (Bennie, 2008).[9] International investment agreements do not currently involve any social conditionalities for investors. The regime does not trade favourable treatment from states for positive investor behaviour; it only sets up a relationship between states for the reciprocal good treatment of foreign investors. The obligations rest entirely on States, though the rights and remedies accrue to the investors. The most progressive standard that can emerge from this framework is the inter-state agreement not to lower social standards to attract investment. Otherwise, language in agreement preambles about workers rights has no impact or remedy. The structure of these agreements is such that they cannot create legal obligations for the conduct of investors.

8.4 Are there tax incentives for private foreign investors in the selected countries?

Countries promote investments through their policies. In particular, it has been observed that incentive policies are being utilized for the development of low growth regions, employment creation, attracting investment to areas of high unemployment, technology transfer or export promotion and creating free trade zones (PWC, 2020).[10] that tax incentives are put into practice in different modes such as tax deduction/tax credit, tax exemption, tax exception, tax return and tax holiday (PWC, 2020).[11] Tax deductions are applied in property taxes with a reduction period ranging from 5-25 years. Tax exemptions are used to exempt baggage goods, which exclude goods in transit, goods imported from abroad and intended for export, and inventory exemptions. Tax credits are issued for business purposes designed to reduce investment costs. Tax Increment Financing (TIF) diverts tax proceeds (usually property taxes) for a specified period to fund existing capital improvements in the TIF district (PWC, 2020).[12]

8.5 What is the impact of the labor union on foreign investment?

In the face of rapid globalization, the recent decade has seen a surge in Foreign Direct Investment (FDI) flow. As this global competition intensifies, some developed countries appreciate what they perceive as an "unfair competitive advantage" held by certain developing countries due to their lower labor standards and less stringent worker rights regulations (UNCTAD, 2020). [13] This concern arises because many developing countries, in their bid to attract FDI, may offer lower wages and fewer labor protections to attract foreign investors. As a result, multinational corporations seeking to maximize profits may find investing in regions with lower labor costs economically advantageous, which could potentially disadvantage developing nations (UNCTAD, 2020).[14] They feel that the low labour standards of these countries may force them to lower their labour standards in order to remain in competition. This can lead to a “race to the bottom” where countries start weakening their regulations in order to gain a competitive edge. To avoid this, they claim some universal set of labour standards to be enforced on all countries. As manufacturing FDI moves to the emerging markets of the South, workers in the North see it as unskilled, labour-intensive jobs moving out of their countries. They feel that the main motivation for multinationals corporations (MNCs) to move abroad is to exploit deliberately neglected weak labour standards combined with low wages of the South. They demand action (like trade sanctions or other punitive measures) to be taken against the countries who might, on purpose, keep their labour standards low to attract FDI. Increasing trade and investment in the South has been considered as one of the main reasons of falling wages, rising income inequality and unemployment (Ritash, 2005).[15]

8.6 What is the capital return policy for the countries, and are they favorable?

International Monetary Fund (IMF) to require member states to set-up controls on capital flows, such as to prevent a misuse of its credits and to support monetary policy autonomy in the fixed exchange rate environment. Under the influence of main international and financial organizations (IMF, The World Bank, OECD), the US Treasury, etc., many emerging economies embraced this trend and gradually removed restrictions on international capital flows like taxes, administrative restrictions and prohibitions either on transfer of funds or the exchange rate (Jin, 2018)[16] Most developing countries, decided to develop and open their internal financial systems and break with a lasting period of almost exclusively public financing of large investment projects. In general, this process was associated to large privatization programs, which converted former state-owned firms into corporate firms. Simultaneously, as progress with capital market creation and development of the banking sector went on, emerging countries allowed for increasing participation of foreign capital to financing domestic investment projects. Especially in the privatization process, many governments chose to rely heavily on foreign investors (Jin, 2018).[17]

8.7 Following the urgent need for economic expansion from the private Japanese investors, an important question arose in the country. Is this a beneficial trend for Japanese private investors to move their investment from China to developing countries?

The private investor in an industrially developed capitalist country is usually faced with the economic phenomenon resulting from the advanced stage of his economy (Solis, 1962-1963).[18] The increasing growth of capital formation leads to an accumulation of capital (Solis, 1962-1963),[19] and faced with competition, the investor must increase both the accumulation of capital and the forces of production; this increase, in turn, leads to a decrease in capital yields and competition (Solis, 1962-1963).[20] FDI is motivated by the intention to supply a market that until then had been provided with exports (if at all) of locally produced goods. Appraisal of proximity to the foreign market versus the advantages of concentration of the production process at one location. Whenever the benefits of proximity outweigh those of concentration, FDI will appear to be a rational choice (Marcus, 2002) [21]. Regarding capability seeking, most of these developing countries offer fiscal and tariff incentives to foreign investors, often mentioned as a way to attract FDI. Empirical evidence, however, indicates that the impact of

Paper ID: SR24810013225 DOI: https://dx.doi.org/10.21275/SR24810013225

such policies on the inflow of FDI is only marginal (Marcus, 2002).[22] Only in a stalemate situation, when two competing regions appear to be equally attractive to an investor, might such incentives have a decisive influence on the location choice. Resource and efficiency-seeking FDI can be expected to pay special attention to the following parameters. One of the most critical determinants for resource-seeking FDI is unskilled labor's availability and price (efficiency wage rate). Regarding the intra-Chinese competition for FDI, this factor may be less important than might be deduced from the literature dealing with international location choices. The efficiency wage differentials between the various regions are comparatively minor, as a perpetual stream of migrants is flooding the centers for labor-intensive manufacturing at the Chinese coast belt. This intra-Chinese translocation of unskilled labor prevents the wages in the industrial growth centers from rising to prohibitive levels (Marcus, 2002). [23]

9. Conclusion

The findings of this study point to the heterogeneous nature of FDI flows across countries and across sectors. Most knowledge-intensive FDI projects tend to be concentrated in advanced economies and a few emerging economies. Non-Emerging Industrial Economies developing countries like China tend to receive a proportionately higher share of FDI projects in natural-resource intensive sectors such as, in particular, mining and construction. Given the high correlation that we found between host-country R&D capabilities and FDI flows into manufacturing sector (and into innovation activities) a major challenge for low-income countries in attracting such FDI is overcoming their rather weak technological capabilities. Our discussion also underlined that it is not enough to attract FDI, but that countries need to ensure the involvement of foreign affiliates with local companies. Absent close involvement between foreign firms and local firms, spillovers to local firms may not occur, and, even worse, foreign firms may crowd out local firms and create foreign enclaves that have considerable welfare-reducing consequences.

10. Recommendation

1) The global rules for trade and investment need to be improved and made to work better in support of level playing fields and an open, rules-based global economy.
2) As private sources of financing that align with and can support achievement of the sustainable growth retreat, public sources will become relatively more important and will need to play a countercyclical role. They cannot fill the gap left by the private sector, but they can soften the blow. This will be difficult in the developing countries themselves given the knock-on negative impact of declining business investment on the ability of governments to maintain adequate levels of tax receipts, which could feed negative spirals as public spending on critical business infrastructure is cut back, further undermining business climates. Coordination among donors to maximize the development impact of official development assistance and other forms of public financing will be critical.
3) Investors who invest in a free trade Zone like the Lekki Free Trade Zone can enjoy many tax benefits.
4) It is developing a more transparent and efficient system for approving foreign investments. This will help create a more business-friendly environment and reduce the time to grant approvals.
5) They are amending investment regulations and policies to make them more industry-specific and easier to understand and comply with. This will encourage investors to examine opportunities in the country more closely.
6) Implement measures to reduce uncertainty in the market to create a more stable economic environment. This will give investors greater confidence in the country's economy and its ability to sustain growth over the long term. Instability and uncertainty are vital factors.
7) Foster a pro-business culture by encouraging private sector involvement in policymaking and implementing reforms that will make it easier for businesses to operate in the country.
8) Infrastructure development will provide companies with the necessary facilities to do business, such as good transport links, telecommunications, and energy infrastructure.

References

[1] [2] [3] [4] Risk Management Initiative. *Operational Risk*. https://www.riminitiative.org/operational-risk/. Accessed September 18, 2022
[5] Capital Structure Theory, available at:< https://www.sciencedirect.com/topics/economics-econometrics-and-finance/capital-structure-theory last accessed 20th September 2022
[6] Habiyaremye, A., & Raymond, W. (2018). How do foreign firms' corruption practices affect innovation performance in host countries? Industry-level evidence from transition economies. *Innovation*, 20(1), 18-41.
[7] [8] UNCTAD Series 2009; 16
[9] [9] Bennie Penfolid 2008:3
[10] [11] [12] PWC. (2020). *Corporate - Tax credits and incentives*. https://taxsummaries.pwc.com/nigeria/corporate/tax-credits-and-incentives. Accessed September 21, 2022
[13] [14] UNCTAD. (2020). World Investment Report 2020: International Production Beyond the Pandemic. United Nations Conference on Trade and Development. Retrieved from https://unctad.org/system/files/official-document/wir2020_en.pdf
[15] Ritash Sarna 2005:4
[16] [17] Jin, Y., Liu, D., & Li, Y. (2018). Factors that have led to the collapse of the Bretton Woods system. *American Journal of Industrial and Business Management*, 8(10), 2133-2142.
[18] [19] [20] Solis, J. (1962-1963). Creation and enforcement of minimum standard of treatment applicable to foreign and domestic juristic persons Tulane Law Review 37(2), 205-234.
[21] [22] Marcus Taube and Mehmet Ögütçü 2002:9
[23] Marcus Taube and Mehmet Ögütçü 2002:11

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Date: March 30, 2024.

Paper ID: SR24810013225 DOI: https://dx.doi.org/10.21275/SR24810013225