

## LEGAL AND POLICY ANALYSIS OF SINGAPORE INVESTMENT FRAMEWORK. INSIGHTS FOR PAKISTAN AND EMERGING MARKETS

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### ***Abstract***

*The Foreign Direct Investment (FDI) is one of the foundations of modern economic growth enabling the formation of capital, the transfer of technologies, employment, and integration into the value chains worldwide. The competition between the states is growing to have quality FDI with the help of stable legal system, predictable policies, and effective institutions. This paper contributes to a comparative legal and policy study of the Singapore investment regime in order to derive lessons that can be transferred to Pakistan. This is because it posits that the Singapore success can not be narrowed down to incentives, but to the system, coordinated architecture of rule-based governance, integrity in institutional coordination, believable dispute resolution, and discipline in anti-corruption enforcement. In comparison, the Pakistani disjointed investment laws, unstable policy, and lax enforcement appear to destroy investor confidence, even with obvious liberalization. The article also presents a novel contribution by showing how selective legal transplantation in place of wholesale imitation would improve the investment governance of Pakistan without compromising regulatory autonomy and sovereignty. It ends with context-related reforms that are based on codification of the investment law, institutional empowerment, arbitration capacity and treaty rationalization that is in line with the current international investment law tendencies.*

### ***Keywords***

*Foreign Direct Investment, Investment Governance, Comparative Investment Law, Rule of Law, Arbitration.*

### ***Introduction***

Foreign direct investment (FDI) has become a very important driver of economic growth in an integrated global economy<sup>1</sup>. **By definition**, FDI involves the purchase of a long-lasting interest – usually understood to be at any rate of no less than ten percent of the voting rights – by a foreign investor in a home business FDI unlike transient flows of portfolio is an indication of a long-term commitment which usually involves managerial involvement<sup>2</sup>. International organizations underscore the fact that FDI is not only capital movement, but often comes with new technologies, new managerial experience, and access to global value chains. Economists believe that FDI

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<sup>1</sup> Lee, J. De Gregorio & E. Borensztein, *How Does Foreign Direct Investment Affect Growth?* (IMF Staff Paper 1994)

<sup>2</sup> OECD Benchmark Definition of Foreign Direct Investment (Fifth Edition) (EN)  
[https://www.oecd.org/content/dam/oecd/en/publications/reports/2025/03/oecd-benchmark-definition-of-foreign-direct-investment-fifth-edition\\_38a25baf/7f05c0a3-en.pdf](https://www.oecd.org/content/dam/oecd/en/publications/reports/2025/03/oecd-benchmark-definition-of-foreign-direct-investment-fifth-edition_38a25baf/7f05c0a3-en.pdf)

stimulates the host economies in terms of productivity and export diversification, creation of jobs, and a more robust balance of payments through an external financing. In underdeveloped countries where the level of domestic savings is low, FDI may complement investments thus leading to industrialization and development of infrastructure<sup>3</sup>.

To be able to take advantage of such benefits, practically every jurisdiction implements policies that are aimed at supporting FDI and protecting national sovereignty. The modern investment structure has become to include national laws, investment promotion organizations, bilateral investment agreements (BITs) and international arbitral tribunals<sup>4</sup>. States are rivals to display a predictable, rule-oriented environment with definite inducements. The underlying assumption is to prove credibility: when a government codifies the rights of the investors and makes the processes easier, it is an indication that this government will always be open to businesses in a predictable manner. As an example, according to the OECD Policy Framework on Investment and the World Bank surveys, the good legal framework, effective bureaucracy, and minimal corruption rates are invaluable to investment<sup>5</sup>. The risk premium are also reduced by monetary and political stability. Whereas tax breaks and grants are used regularly, research evidence indicates that their effectiveness depends on their clear and ruleful application]. Therefore, policy consistency and institutions are likely to counter unilateral incentive expenditure.

An example of such an integrated strategy is given in Singapore. Singapore has received FDI on a large scale, despite its small land area and absence of mineral endowments, making it one of the largest receivers of FDI in the world on a per-capita basis and a regional center to many multinational companies<sup>6</sup>. It is not an isolated subsidy scheme to the country but an overall governance frontier that is appealing. It has a complex English common-law regime, which provides a protection of property rights and regularly enforces contracts. Foreign and domestic investors are treated equally and there are few sectoral restrictions, and they are free to repatriate their profits<sup>7</sup>. Courts in Singapore have been described as efficient and fair; courts in the country have a reputation of minimal interference to the arbitral process and settling commercial disputes in a very short time<sup>8</sup>. At the same time, the state plays an active facilitative role: the state agencies that will interact with investors, coordinate approvals, and provide incentives particular to the

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<sup>3</sup> Lee, J. De Gregorio & E. Borensztein, *How Does Foreign Direct Investment Affect Growth?* (IMF Staff Paper 1994)

<sup>4</sup> Can countries legislate to attract more investment? <https://blogs.worldbank.org/en/psd/can-countries-legislate-attract-more-investment>

<sup>5</sup> *ibid*

<sup>6</sup> Singapore's recipe for becoming a top international arbitration hub | Uría Menéndez

<https://www.uria.com/en/publicaciones/8662-singapores-recipe-for-becoming-a-top-international-arbitration-hub>

<sup>7</sup> Repatriating Business Profits From Singapore | Acclime <https://singapore.acclime.com/guides/business-profit-repatriation/>

<sup>8</sup> Singapore's recipe for becoming a top international arbitration hub | Uría Menéndez

<https://www.uria.com/en/publicaciones/8662-singapores-recipe-for-becoming-a-top-international-arbitration-hub>

sector do so consistently<sup>9</sup>. The integrity of governance is also strong in Singapore, and the Corrupt Practices Investigation Bureau (CPIB) has strong powers and the country continues to top the anti-corruption lists<sup>10</sup>. Its screening of investment is still limited, only to the designated entities, which influence the national security as outlined in new laws<sup>11</sup>. All these are adding to create a predictable investment environment where the investors will be assured that there will not be arbitrary changes in regulations<sup>12</sup>.

Pakistan, on the other hand, is a warning example, where liberal investment practices have not brought similar results<sup>13</sup>. Pakistan started to liberalise its investment regime in the 1990s, following a period of nationalisation in the 1960s/70s and enacting laws including the Foreign Private Investment (Promotion and Protection) Act 1976 and the Board of Investment Ordinance 2001, and signing many BITs which guaranteed protection against expropriation and labour movement impediments<sup>14</sup>. Although the FDI inflows of Pakistan have been low and inconsistent even though the country has extended national treatment to foreign investors and unrestricted earnings repatriation, the country has continued to attract low levels of FDI inflows into the economy<sup>15</sup>. Political instability, frequent crisis (security issues, political transitions, IMF programmes), and inconsistency in regulations only deteriorate investor confidence. Indicatively, as it has been recently reported, land, licensing and energy project approvals in Pakistan are usually lengthy compared to other similar economies<sup>16</sup>. Unreliable financing lags, poor contract enforcement, and generally poor institutionalized structures have placed Pakistan in the lower quadrants of rule-of-law and business regulation ratings, with its 129 th place out of 142 in the 2024 World Justice Project Rule of Law Index<sup>17</sup>.

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<sup>9</sup> About EDB | Singapore EDB <https://www.edb.gov.sg/en/about-edb/who-we-are.html>

<sup>10</sup> 2024 TI CPI: Singapore Rises 2 Spots to 3rd Least Corrupt Country in the World, Top in Asia Pacific <https://www.cpi.gov.sg/2024-ti-cpi-singapore-moves-up-2-spots-to-3rd-least-corrupt-country-and-top-in-asia-pacific/>

<sup>11</sup> Singapore's New Investment Screening Law | Lawfare <https://www.lawfaremedia.org/article/singapore-s-new-investment-screening-law>

<sup>12</sup> Singapore's recipe for becoming a top international arbitration hub | Uría Menéndez <https://www.uria.com/en/publicaciones/8662-singapores-recipe-for-becoming-a-top-international-arbitration-hub>

<sup>13</sup> World Investment Report 2024 - Annex table 1: FDI flows, by region and economy, 2018–2023 [https://unctad.org/system/files/official-document/wir2024\\_annex-1\\_en.pdf](https://unctad.org/system/files/official-document/wir2024_annex-1_en.pdf)

<sup>14</sup> Pakistan terminates 23 BITs – Investment Treaty News <https://www.iisd.org/itn/2021/10/07/pakistan-terminates-23-bits/>

<sup>15</sup> World Investment Report 2024 - Annex table 1: FDI flows, by region and economy, 2018–2023 [https://unctad.org/system/files/official-document/wir2024\\_annex-1\\_en.pdf](https://unctad.org/system/files/official-document/wir2024_annex-1_en.pdf)

<sup>16</sup> Why FDI bypasses Pakistan - Business - DAWN.COM <https://www.dawn.com/news/1956877>

<sup>17</sup> worldjusticeproject.org [https://worldjusticeproject.org/sites/default/files/documents/Pakistan\\_2.pdf](https://worldjusticeproject.org/sites/default/files/documents/Pakistan_2.pdf)

Pakistan has a history of massive investor-state conflict which adds to its image problems. An example of such cases is the Tethyan Copper case which resulted in a verdict of around US\$5.8 billion against Pakistan<sup>18</sup>. These results highlight the high stakes that are created due to irregular governance and low quality of legal writing. To conclude, formal liberalism in Pakistan, many statutes, BIT commitments, IMF accords, have not yielded believable investor confidence, as it is mainly because of deficits in enforcement and deteriorating credibility<sup>19</sup>.

### **Investment Framework Legal and Policy Architecture in Singapore.**

#### **3.1 Rule of law and Legal foundations.**

The legal foundation of Singapore has contributed a lot to its success in attracting FDI. The legal framework of the city-state has strong English common law, which offers a clear and stable framework of commerce<sup>20</sup>. Its business laws including those related to companies, finance, agreements and bankruptcy are updated to date and they are applied equally to everyone. Foreign investors normally have equal rights as locals before the law<sup>21</sup>. This legal stability coupled with financial openness sends a strong message of confidence to investors. As an example, ASEAN Briefing informs that following payment of corporate tax dividends paid to foreign shareholders are subject to 0 tax withholding<sup>22</sup>. This kind of transparency in tax and foreign exchange avoidance eliminates a major source of friction in multinational companies.

Predictability is also further improved by the judiciary and the dispute resolution mechanisms. With arbitration, courts are strict in the principle of minimal curial intervention, and the autonomy of parties is strengthened<sup>23</sup>. The legal system itself has been constantly updated: e.g. the International Arbitration Act of Singapore uses the UNCITRAL Model Law and has been recently altered to allow third-party financing and conditional fee remuneration of international cases<sup>24</sup>. Singapore is not an exception: it ratified the ICAS Convention in 1968<sup>25</sup> and the New York Convention (1986). This implies that arbitral awards made in Singapore have enforceability in approximately 170 jurisdictions, and conversely, foreign awards have enforceability in

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<sup>18</sup> Pakistan terminates 23 BITs – Investment Treaty News <https://www.iisd.org/itn/2021/10/07/pakistan-terminates-23-bits/>

<sup>19</sup> World Investment Report 2024 - Annex table 1: FDI flows, by region and economy, 2018–2023 [https://unctad.org/system/files/official-document/wir2024\\_annex-1\\_en.pdf](https://unctad.org/system/files/official-document/wir2024_annex-1_en.pdf)

<sup>20</sup> A. Salcedo, “Singapore as Arbitration Centre: Institutional Framework and Reforms,” in *Southeast Asian Comparative Arb.* 2019

<sup>21</sup> US State Department, *2023 Investment Climate Statement: Singapore*.

<sup>22</sup> How Foreign Investors Should Repatriate Profits from Singapore <https://www.aseanbriefing.com/news/repatriating-profits-from-singapore-dividends-vs-royalties-vs-service-fees/>

<sup>23</sup> Singapore’s recipe for becoming a top international arbitration hub | Uría Menéndez <https://www.uria.com/en/publicaciones/8662-singapores-recipe-for-becoming-a-top-international-arbitration-hub>

<sup>24</sup> *ibid*

<sup>25</sup> Investor-State Arbitration Laws and Regulations Report 2025 Singapore <https://iclg.com/practice-areas/investor-state-arbitration-laws-and-regulations/singapore>

Singapore<sup>26</sup>. Both of these neutral, enforceable mechanisms have significant effect in mitigating the enforcement risk that cross-border investors face, as well as increasing confidence levels. Investors therefore consider Singapore as a safe seat to do business and settle disputes as seen in its steady ranking in indexes of anti-corruption and the rule of law<sup>27</sup>. An independent agency, Corrupt Practices Investigation Bureau (CPIB) observes anti-corruption laws in both the government and business world with strictness. In 2024, Singapore became the third least corrupt among 180 countries with the score of 84 by Transparency International<sup>28</sup>. The 2024 edition of the Rule of Law Index published by the World Justice Project placed Singapore on the same list close to the top of the anti-corruption indicator<sup>29</sup>. Investors note that there is no such thing as a person above the law and that there is limited discretion on the part of the officials, which is limited by transparency and the threat of the inquiry<sup>30</sup>.

### 3.2 institutional facilitation and coordination.

In addition to the statutory laws, Singapore has model characteristics, which include strong institutions that promote investment<sup>31</sup>. The core of this structure is the Economic Development Board (EDB) which is a statutory body that is answerable to the Prime Minister. The roles of the EDB are not confined to promotion but it is also a strategic map planner of the sector development<sup>32</sup>. Using sectoral studies and international benchmarking, the EDB selects priority industries (ex: finance, biotechnology, the digital economy, and advanced manufacturing) and constructs holistic value propositions on them. The board then participates investors during the lifecycle of an investment. Instead of reacting to the inquiries, the EDB takes a proactive approach of reaching out to international companies to explain the benefits of Singapore and align with them with local strengths<sup>33</sup>.

. The World bank notices that sound investment policies are entrenched in overall reforms and enforced by competent institutions<sup>34</sup>. The example of Singapore demonstrates that it is the combination of legislative reforms, tax policy, development of skills and infrastructural upgrades supporting each other through consistent planning. More crucially, there is no difficulty in institutional coordination in Singapore. The multi-agency aspect of government is lost in an

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<sup>26</sup> *ibid*

<sup>27</sup> Singapore's recipe for becoming a top international arbitration hub | Uría Menéndez  
<https://www.uria.com/en/publicaciones/8662-singapores-recipe-for-becoming-a-top-international-arbitration-hub>

<sup>28</sup> 2024 TI CPI: Singapore Rises 2 Spots to 3rd Least Corrupt Country in the World, Top in Asia Pacific  
<https://www.cpi.gov.sg/2024-ti-cpi-singapore-moves-up-2-spots-to-3rd-least-corrupt-country-and-top-in-asia-pacific/>

<sup>29</sup> *ibid*

<sup>30</sup> J. T. Gathii, *Investor-State Arbitration in Asia and Africa* (Univ. Chicago Press 2015).

<sup>31</sup> US State Department, *2023 Investment Climate Statement: Singapore*.

<sup>32</sup> Economic Development Board Singapore, *Investment Policies* (EDB 2024).

<sup>33</sup> About EDB | Singapore EDB <https://www.edb.gov.sg/en/about-edb/who-we-are.html>

<sup>34</sup> Can countries legislate to attract more investment? <https://blogs.worldbank.org/en/psd/can-countries-legislate-attract-more-investment>

experience of one-stop facilitation when an investor interacts with the EDB or any of the core agencies<sup>35</sup>. Trade, finance, man power etc ministries work together. This centralised nature is inherent in the definition of Singapore as a city-state and whilst this could not be copied en masse by other larger federations like Pakistan, the concept of coherence of the institutions could be duplicated.

### 3.3 Trade Agreement and International engagements.

The domestic investment policy of Singapore is supplemented with the rich system of international agreements<sup>36</sup>. The nation has entered into more than 40 bilateral investment treaties (BITs) and several free trade agreements (FTAs) which include investment chapters. These are high-quality agreements like: the Comprehensive and Progressive Agreement on Trans-Pacific Partnership (CPTPP), the Regional Comprehensive Economic Partnership (RCEP), and bilateral FTAs with key economies (e.g., China, the United States and the European Union through the EUSFTA). The total number of BITs and FTAs signed by Singapore is 44 and 21 respectively that guarantees access to foreign investors<sup>37</sup>. Each of these treaties gives legal guarantees, such as a safeguard against unjustified expropriation, fair and just treatment, and the free flow of funds, and most of them include investor-state dispute settlement. Besides, the regionally harmonised investment regulations are incorporated in Singapore as an active member of ASEAN, such as the ASEAN Comprehensive Investment Agreement<sup>38</sup>. These linkages enable the incorporation of Singapore into supply chains in the southeast of Asia and other regions<sup>39</sup>.

Besides, Singapore is using its openness by striking Free Trade Agreements (FTAs) with hubs of major markets. The Comprehensive and Progressive Agreement on Trans-Pacific Partnership (CPTPP) among eleven economies in Asia-Pacific and the Regional Comprehensive Economic Partnership (RCEP) among fifteen economies in Asia-Pacific not only entail the freeing of tariffs, but also include the investment chapters that offer protection to Singaporean investors in other countries and vice versa<sup>40</sup>. This setup incorporates Singaporean businesses in rule based markets. The strategy of Singapore shows that the involvement in the international structures can be used to supplement domestic law<sup>41</sup>. However, Singapore does not allow that consistency with its policies to be compromised by signing arrangements that are incompatible with the sovereign development plans. Overall, the treaty network of Singapore enhances the feeling of security by providing the legal protection and an option to resolve the disputes without the national sovereignty<sup>42</sup>.

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<sup>35</sup> Economic Development Board Singapore, *Investment Policies* (EDB 2024).

<sup>36</sup> Jeswald W Salacuse, *The Law of Investment Treaties* (2nd edn, OUP 2015).

<sup>37</sup> Investor-State Arbitration Laws and Regulations Report 2025 Singapore <https://iclg.com/practice-areas/investor-state-arbitration-laws-and-regulations/singapore>

<sup>38</sup> A. Salcedo, "Singapore as Arbitration Centre: Institutional Framework and Reforms," in *Southeast Asian Comparative Arb. 2019*.

<sup>39</sup> L. Qin, *Treaty Practice in Asia-Pacific Investment Law* (Brill 2019).

<sup>40</sup> *ibid*

<sup>41</sup> Can countries legislate to attract more investment? <https://blogs.worldbank.org/en/psd/can-countries-legislate-attract-more-investment>

<sup>42</sup> *ibid*

### 3.4 Governance, Anti-Corruption and Sovereignty.

One of the pillars that have been used to differentiate the Singapore model is the integrity of governance. The public sector is full of transparency and accountability<sup>43</sup>. An example of this is the Corrupt Practices Investigation Bureau (CPIB) that was discussed in the previous section. It has the right to look into any claims of corruption at any government or business-level<sup>44</sup>. This achievement is testified by Singapore having high scores on the governance indicators (e.g., third in the Transparency International Corruption Perceptions Index, top in the Asia-Pacific region)<sup>45</sup>. Meanwhile, Singapore defends its interests of core by means of disciplined actions. Major sectors of the economy are commonly the state-linked enterprises (SLEs) or the strategic regulation.. The latest Singapore Investment Repatriation Agreement (SIRA) framework (3.4) is clearly formulated to protect the national security without affecting the overall openness. The legislation is only that of limited designated entities and only in situations where foreign acquisition exceeds a given threshold<sup>46</sup>. Investment is comprised of free welcome without that small area. This is contrary to countries that execute extensive screening or equity limits on numerous sectors and which would scare away FDI. In this regard, Singapore finds a middle ground: the country is very open, but it is codifying narrow-scoped protection. These are transparent measures which are defined by the law and do not compromise investor trust but they fulfill the sound sovereignty concerns<sup>47</sup>. Overall, the governance structure of Singapore creates order and confidence. There is clarity in laws, professionalism in the institutes and also anti corruption is serious. The role of the state as a facilitator and regulator is also rule-making. When investors evaluate Singapore, they think about ways in which business to the law follow: in this case, the laws change as they should, but they are also changed by legislation and consultation, not by whim<sup>48</sup>. This predictability is based on controlled governance that has been vital in attracting sustainable FDI.

### Investment Framework: Policy, Law and practice in Pakistan.

#### 4.1 Legal Regime Governing FDI

The official system of investment in Pakistan is spread to several laws and regulations. Some of the major laws are the Foreign Private Investment (Promotion and Protection) Act, 1976<sup>49</sup>; the Protection of Economic Reforms Act, 1992; the Board of Investment (BOI) Ordinance, 2001<sup>50</sup>;

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<sup>43</sup> US State Department, *2024 Investment Climate Statement: Singapore*

<sup>44</sup> 2024 TI CPI: Singapore Rises 2 Spots to 3rd Least Corrupt Country in the World, Top in Asia Pacific  
<https://www.cpi.gov.sg/2024-ti-cpi-singapore-moves-up-2-spots-to-3rd-least-corrupt-country-and-top-in-asia-pacific/>

<sup>45</sup> *ibid*

<sup>46</sup> Singapore's New Investment Screening Law | Lawfare <https://www.lawfaremedia.org/article/singapore-s-new-investment-screening-law>

<sup>47</sup> *ibid*

<sup>48</sup> Singapore's recipe for becoming a top international arbitration hub | Uría Menéndez  
<https://www.uria.com/en/publicaciones/8662-singapores-recipe-for-becoming-a-top-international-arbitration-hub>

<sup>49</sup> Foreign Private Investment (Promotion and Protection) Act 1976 (Pakistan).

<sup>50</sup> Board of Investment Pakistan, *Investment Policy 2021*.

the Companies Act, 2017<sup>51</sup>; and the Special Economic Zones (SEZ) Act, 2012 and others. Generally, these laws are guaranteed to treat the country and protect the rights of the investors. But in reality, such patchwork in the law creates confusion. There are numerous outdated and overlapping provisions. The many laws were adopted over the decades without a common law<sup>52</sup>. As an illustration, a contradictory provision in land acquisition, environmental clearance or tax exemptions in different acts and regulations may be evident<sup>53</sup>. Arbitrary powers are in every corner. Various boards or ministries may grant certain incentives and approvals (e.g. duty waivers, location subsidies) on a case-by-case basis. According to private companies, tax exemption or land lease decisions usually rely on personal contacts and agency policies<sup>54</sup>. Lack of transparency of incentives implies that the investors cannot be assured that they can get support as and when they are promised to do so. And this discredits the liberal laws of Pakistan.

**Also, the problem is exacerbated by laxity in the rule of law.**

The judicial system in Pakistan is characterized by a high degree of congestion and slow pace especially in the hearing of business disputes<sup>55</sup>. The application of the contractual obligations is also often prolonged over a few years period, and there are not many specialized commercial courts established. According to reports by the State Bank and others, investors are still scared of retrospective tax demands or new regulations<sup>56</sup>. Simply put, the statutory guarantees in Pakistan are formal, yet the legal environment is undefined in real practice.

**4.2 Gaps in Institutional Fragmentation and Governance.**

The investment policy in Pakistan is very fragmented in its implementation. The principal investment promotion agency, which is known as the Board of Investment (BOI) is based on the federal Cabinet and is aimed at being a one-stop shop promoter<sup>57</sup>. The BOI, however, is not statutorily independent and its leadership is politically appointed and limited in powers. Critics believe that ad hoc solutions like the SIFC do not solve the main coordination issue and can in fact lead to less accountability<sup>58</sup>.

The provincial-federal overlap is also a problem. The 18th Amendment of the constitution (2010) has allowed provinces to have concurrent powers in most economic activities. Thus, the federal and provincial laws coincide in the 18<sup>th</sup>- and 19<sup>th</sup>-century legislation in such fields as labour legislation, environment legislation, and land tenure regulations<sup>59</sup>. Altogether, the institutional coordination of Pakistan is low. No single agency has empowerment and is armed with teeth of enforcement and hence investment facilitation is characterized by turf battles and delays. These

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<sup>51</sup> Companies Act 2017 (Pakistan).

<sup>52</sup> Ahmad Ali and Salman Iqbal, 'Foreign Investment and Legal Uncertainty in Pakistan' (2021) 41 *Pakistan J Law* 87.

<sup>53</sup> Hafiz A Pasha, 'Political Instability and Investment Flows in Pakistan' (2020) 59 *PDR* 1.

<sup>54</sup> Is the economy suffocating under red tape? <https://tribune.com.pk/story/2576733/is-the-economy-suffocating-under-red-tape>

<sup>55</sup> Supreme Court of Pakistan, *Maulana Abdul Haque Baloch v Federation* PLD 2018 SC 1

<sup>56</sup> Why FDI bypasses Pakistan - Business - DAWN.COM <https://www.dawn.com/news/1956877>

<sup>57</sup> Pakistan Board of Investment, *Investment Policy 2023*

<sup>58</sup> IMF Country Report Pakistan No. 23/296 (2023) on structural reforms

<sup>59</sup> Hafiz A Pasha, 'Political Instability and Investment Flows in Pakistan' (2020) 59 *PDR* 1.

governance loopholes augment transaction expenses as practitioners term it as bureaucratic friction<sup>60</sup>.

### 4.3 Political instability

The political stability of a nation is also a consideration in consideration of its ability to attract foreign investors.

The other issue that can be a big worry to investors in Pakistan is policy volatility. The economic policies have been changed by successive governments with minimal or no warning and commonly due to short term revenue requirements<sup>61</sup>. An example is the tax rates, such as the customs duties, which have been regularly raised and lowered occasionally retroactively. The Dawn business media and foreign commentators have condemned the trend that has seen Pakistan make impulsive tariff increases and tax increments that lead to uncertainty in investing in the country over a multi-year period<sup>62</sup>.

In connection with this, the incentive regime in Pakistan is non-transparent. Most of the tax concessions or land discounts are negotiated on a bilateral basis with an investor in contrast to the published incentive schedules in Singapore<sup>63</sup>. Therefore, foreign companies complain that their Pakistani counterparts can have dissimilar offers on similar projects, depending on whether they pay lobby or regional pressure. Such a fragmented method is a weakening of the rule of law<sup>64</sup>. It is this uncertainty that swells the expected risk-adjusted cost of investment. According to one of the industry leaders, we may discuss liberal laws the whole day, but why invest in capital when I do not know what policy to take tomorrow?<sup>65</sup>. As a matter of fact, the high-risk environment that Pakistan desires to attract foreign direct investment has been de facto in place due to the frequent change in policies and discretionary practices that are being conducted without any encouragement to the very foreign direct investment that Pakistan seeks to attract<sup>66</sup>.

### Comparative Analysis: Singaporean Lessons to Pakistan.

The above discussion shows that there is a stark difference in investment governance in both Singapore and Pakistan. The structure of Singapore is predictable, coordinated and structured. It is characterized by a robust legal basis and active facilitation and good governance integrity<sup>67</sup>. Pakistan on the other hand is disintegrated and uneven<sup>68</sup>. What should Pakistan do to make itself attractive to foreign direct investment by emulating the achievement of Singapore without jeopardizing its sovereignty and political realities?

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<sup>60</sup> Is the economy suffocating under red tape? <https://tribune.com.pk/story/2576733/is-the-economy-suffocating-under-red-tape>

<sup>61</sup> Hafiz A Pasha, 'Political Instability and Investment Flows in Pakistan' (2020) 59 *PDR* 1.

<sup>62</sup> Why FDI bypasses Pakistan - Business - DAWN.COM <https://www.dawn.com/news/1956877>

<sup>63</sup> World Bank, *Ease of Doing Business* (archive 2020).

<sup>64</sup> World Bank, *Investment Climate Statements: Pakistan 2024*.

<sup>65</sup> Why FDI bypasses Pakistan - Business - DAWN.COM <https://www.dawn.com/news/1956877>

<sup>66</sup> Is the economy suffocating under red tape? <https://tribune.com.pk/story/2576733/is-the-economy-suffocating-under-red-tape>

<sup>67</sup> US State Department, *2024 Investment Climate Statement: Singapore*

<sup>68</sup> US State Department, *2024 Investment Climate Statement: Pakistan*

### **Codification and predictability in the law.**

World Bank and UNCTAD recommend that an investment law should be used as a commitment signal, but point to the fact that this should be supported by enforceable measures<sup>69</sup>. Pakistan can emulate Singapore and maintain the law; however, the law must be upheld by regulations. This would lower conflicting provisions. As an illustration, instead of the expropriation protection being concealed within an ordinance, the code can clearly specify the rights and remedies of investors with reference to international commitments<sup>70</sup>. This would help eliminate the dark art of interpretation of rules by the officials who end up doing the same in different cases when they are not clearly codified<sup>71</sup>.

### **Organizational empowerment and alignment.**

Pakistan needs to empower its investment promotion organization of the pattern of Economic Development Board (EDB). The EDB model of Pakistan BOI could be motivated by Singapore of putting account managers on projects<sup>72</sup>. This should be incorporated into provincial governments through joint federal-provincial boards. The aim is to remove the multiple contact issue<sup>73</sup>. It will help to streamline and potentially consolidate regulators, as well as to create digital single-window portals.

### **Ability to resolve disputes and arbitrate.**

On the treaty level, Pakistan is a member of International Centre of Settlement of Investment Disputes (ICSID)<sup>74</sup>. Nevertheless, there is more that can be done in order to control Investor State Dispute Settlement (ISDS) risk. Singapore has wisely updated its treaties into conformity with its policy (e.g. introducing exceptions, specifying standards). Pakistan ought to take a rationalisation of its Bilateral Investment Treaties (BITs): as observed in the recent policy debate, the government is re evaluating and abandoning the old BITs signed without proper analysis<sup>75</sup>.

### **Corruption and governance reforms.**

Pakistan will have to deal with corruption and lack of rule of law to be able to emulate the credibility of Singapore. The fact that Singapore has high scores in corruption perception will prove to be its competitive advantage, Pakistan can strive to increase its scores with time through

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<sup>69</sup> UNCTAD, *Investment Policy Framework for Sustainable Development* (2015).

<sup>70</sup> Can countries legislate to attract more investment? <https://blogs.worldbank.org/en/psd/can-countries-legislate-attract-more-investment>

<sup>71</sup> Repatriating Business Profits From Singapore | Acclime <https://singapore.acclime.com/guides/business-profit-repatriation/>

<sup>72</sup> Economic Development Board Singapore, *Investment Policies* (EDB 2024).

<sup>73</sup> Is the economy suffocating under red tape? <https://tribune.com.pk/story/2576733/is-the-economy-suffocating-under-red-tape>

<sup>74</sup> ICSID, *Convention on the Settlement of Investment Disputes* (Washington 1965).

<sup>75</sup> Pakistan terminates 23 BITs – Investment Treaty News  
<https://www.iisd.org/itn/2021/10/07/pakistan-terminates-23-bits/>

the systematic implementation and transparency<sup>76</sup>. Part of this is the cut in red tape, such as simplifying administration of taxes and cutting back tax returns (as critics have demanded) would minimize contacts at which rent-seeking can take place<sup>77</sup>.

### **Recommendations on Policy and Legal Advice to Pakistan.**

Through the comparative analysis, we would suggest the following reforms to improve the investment governance in Pakistan taking into consideration the legal and constitutional environment of the nation as follows:

#### **Investment Law Codification.**

Put in place a single Investment Code that brings together the scattered statutes. It should clearly specify the rights of the investors (e.g., national treatment, payment rules, repatriation regulations, etc.), and specify the clear procedures of approvals<sup>78</sup>. It must reflect the experience of other models (e.g. the OECD Policy Framework) and be designed by a wide process of consultation to the stakeholders<sup>79</sup>. Pakistan would simplify and bring certainty to the laws that would affect investors by bringing them together into a single legislation<sup>80</sup>.

#### **Institutional Empowerment**

Grant a Board of Investment (or a reformed investment agency) statutory independence and increased power<sup>81</sup>. This body must act as the coordinator of the investment policy between the federal and provincial governments. It must have a clear mandate to grant approvals such as investment certificates binding other agencies and negotiation of a transparent incentive. Sector specialists should be improved. A special window (physical and online) amongst foreign investors would duplicate the one-stop approach adopted by Singapore<sup>82</sup>. The provincial governments must also be involved, possibly through a Federal-Provincial investor council, to align the rules which include the tax incentive among others to avoid the inter provinces discrepancies<sup>83</sup>.

#### **Dispute Resolution Reform**

To speed up the resolution process, special commercial courts or tribunals should be established to address the domestic investment dispute<sup>84</sup>. This is done by training judges and arbitrators on corporate and investment law. Pakistan must also promote arbitration through simplification of the law of arbitration- e.g. complete adoption of the UNCITRAL Model Law- and award

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<sup>76</sup> World Bank, *Worldwide Governance Indicators* (World Bank 2024).

<sup>77</sup> Why FDI bypasses Pakistan - Business - DAWN.COM <https://www.dawn.com/news/1956877>

<sup>78</sup> Can countries legislate to attract more investment? <https://blogs.worldbank.org/en/psd/can-countries-legislate-attract-more-investment>

<sup>79</sup> OECD, *Policy Framework for Investment* (OECD 2015).

<sup>80</sup> Can countries legislate to attract more investment? <https://blogs.worldbank.org/en/psd/can-countries-legislate-attract-more-investment>

<sup>81</sup> Douglass C North, *Institutions, Institutional Change and Economic Performance* (CUP 1990).

<sup>82</sup> IMF Country Report Pakistan No. 23/296 (2023) on structural reforms.

<sup>83</sup> *ibid*

<sup>84</sup> Gary Born, *International Commercial Arbitration* (2nd edn, Kluwer 2018).

recognition<sup>85</sup>. At the same time, establish domestic arbitration institutions (e.g., as part of ICAP or a commerce chamber) whose procedures are credible. Such steps would be a boost to believe that contracts will be implemented in Pakistan, and there will not be as much dependence on a foreign venue<sup>86</sup>.

### **Treaty Rationalization**

. Think about renegotiating or ending treaties that were not in the national interest or gave rise to claims (current cases of decision to end 23 BITs show that)<sup>87</sup>. The next generation of treaties ought to incorporate mediocre provisions that leave Pakistan with policy space (business-related health, environment, etc.), and potentially alternative dispute resolution options (e.g., mediation). At the same time, Pakistan will be able to be a signatory to appealing trade agreements (e.g., suggest being a part of regional FTAs) to demonstrate that it is open to more<sup>88</sup>.

### **Government and Anti-Corruption.**

Enhance accountability institutions and processes<sup>89</sup>. Enhance the transparency of the public procurements and licensing- e.g. by digitalizing land, utilities and visa applications. Ensure that anti corruption agencies (NAB, FIA) are given mandate and controlled to combat graft in investment projects<sup>90</sup>. Make sure that any vetting of foreign investment (in areas that are sensitive to security) should be done under some published legal regime (like Singapore SIRA) so as to have no arbitrary exclusions. These will ensure that the non-commercial risks are minimised and that the perception is made to match the low-corruption environment in Singapore<sup>91</sup>.

### **Conclusion**

The case of Singapore demonstrates that the appeal of foreign direct investment is largely dependent on the level of governance as opposed to the fiscal incentive or size of the market<sup>92</sup>. A consistent law system, professional bureaucracy and inflexible rule of law creates a virtuous cycle, investors, moved by confidence, invest in capital and technology which then reinforces economic growth and capacity. Singapore has shown how it is possible to reconcile openness together with

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<sup>85</sup> UNCITRAL, *UNCITRAL Arbitration Rules* (2013).

<sup>86</sup> Zachary Douglas, *The International Law of Investment Claims* (CUP 2009).

<sup>87</sup> Pakistan terminates 23 BITs – Investment Treaty News <https://www.iisd.org/itn/2021/10/07/pakistan-terminates-23-bits/>

<sup>88</sup> J. T. Gathii, *Investor-State Arbitration in Asia and Africa* (Univ. Chicago Press 2015).

<sup>89</sup> Douglass C North, *Institutions, Institutional Change and Economic Performance* (CUP 1990).

<sup>90</sup> IMF Country Report Pakistan No. 23/296 (2024) on structural reforms.

<sup>91</sup> 2024 TI CPI: Singapore Rises 2 Spots to 3rd Least Corrupt Country in the World, Top in Asia Pacific <https://www.cpib.gov.sg/2024-ti-cpi-singapore-moves-up-2-spots-to-3rd-least-corrupt-country-and-top-in-asia-pacific/>

<sup>92</sup> *ibid*

national sovereignty instead of allowing concerns over capital controls to trigger wholesale restrictions<sup>93</sup>.

The continual investment problems in Pakistan however are due to a lack of implementation than to the lack of formal liberalisation<sup>94</sup>. Though, formally, the country has the same legislation and treaty relations with Singapore, their efficacy has been compromised by inefficiencies in implementation, coordination and uniformity<sup>95</sup>. The low scores on the rule-of-law dimension in Pakistan (such as the WJP index 129/142) and the existence of high regulatory burdens are successful explanations of the persistently low foreign direct investment of about 0.7 percent of GDP which is more of a project-based than a transformative one<sup>96</sup>.

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<sup>93</sup> World Investment Report 2024 - Annex table 1: FDI flows, by region and economy, 2018–2023  
[https://unctad.org/system/files/official-document/wir2024\\_annex-1\\_en.pdf](https://unctad.org/system/files/official-document/wir2024_annex-1_en.pdf)

<sup>94</sup> Why FDI bypasses Pakistan - Business - DAWN.COM  
<https://www.dawn.com/news/1956877>

<sup>95</sup> ibid

<sup>96</sup> Is the economy suffocating under red tape?  
<https://tribune.com.pk/story/2576733/is-the-economy-suffocating-under-red-tape>