



**FOREIGN DIRECT INVESTMENT REGULATIONS: COMPARISON
BETWEEN INDIA AND BOSNIA AND HERZEGOVINA**

By

Seid Hodzic

LL.M. SHORT THESIS

COURSE: Legal Aspects of Doing Business in South-East Asia

PROFESSOR: Stefan Messmann, S.J.D.

Central European University

1051 Budapest, Nador utca 9

Hungary

© Central European University March 29, 2013

Abstract

Increased demand for the foreign capital has urged the countries to reconsider and reformulate their investment laws. As for the countries in transition such as Bosnia and Herzegovina and India, this demand was created in the beginning of the 1990s. Ever since countries are struggling with their investment policies in order to find the most suitable solution which would be beneficial to both, country and foreign investors. As a reform of the national legal system is ongoing process in both countries, it is necessary to see whether the countries have created the attractive legal environment for the inflow of FDI. This thesis identifies the major obstacles which investors are facing in these countries in terms of company law, dispute resolution mechanisms and sectoral caps imposed by the governments. With regard to the business registration, this thesis demonstrates that such a procedure is long and costly and it should be reconsidered by the policy makers.

Abbreviations

AIFTA- ASEAN-India Free Trade Area

ASEAN- Association of Southeast Asian Nations

BAM- Bosnian Domestic Currency

BiH- Bosnia and Herzegovina

BIPA- Bilateral Investment Promotion and Protection Agreement

BIT- Bilateral Investment Treaty

CEFTA- Central European Free Trade Area

D.D.- *Dionicko Društvo* [Joint Stock Company in Bosnia and Herzegovina]

D.O.O.- *Društvo Ograničene Odgovornosti* [Limited Liability Company in Bosnia and Herzegovina]

EU- European Union

FBiH- Federation of Bosnia and Herzegovina

FDI- Foreign Direct Investment

FIC- Foreign Investors Council

FIPA- Foreign Investment Promotion Agency

FIPB- Foreign Investment Promotion Board

GATS- General Agreement of Trade in Services

GATT- General Agreement on Tariffs and Trade

HGK- Hrvatska Gospodarska Komora [Croatian Chamber of Economy]

ICSID- International Convention on the Settlement of Investment Disputes between States and Nationals of other Countries

MIGA- Multilateral Investment Guarantee Agency

OECD- Organization for Economic Co-operation and Development

RBI- Reserve Bank of India

RS- Serb Republic

SAA- Stabilization and Association Agreement

TRIPS- Agreement on Trade Related Aspects of Intellectual Property

UNCTAD- United Nations Conference on Trade and Development

WTO- World Trade Organization

INTRODUCTION	1
1 BEHIND FOREIGN DIRECT INVESTMENT	3
1.1 WHY INVEST ABROAD?	4
1.1.1 <i>Benefits and Costs for both Home and Host Country of Investment</i>	5
1.2 SELECTION OF THE FDI LOCATION.....	6
1.2.1 <i>Competition of Developing Markets</i>	6
1.3 HISTORY OF FDI	7
1.3.1 <i>India</i>	7
1.3.2 <i>Bosnia and Herzegovina</i>	8
1.4 POLITICAL STABILITY AND FOREIGN DIRECT INVESTMENT.....	9
1.4.1 <i>India</i>	9
1.4.2 <i>Bosnia and Herzegovina</i>	10
1.5 LEGAL STABILITY.....	11
1.5.1 <i>Legal Environment in India</i>	11
1.5.2 <i>Legal Environment in Bosnia and Herzegovina</i>	12
2 TYPES OF FDI AND BUSINESS ENTITIES IN BOSNIA AND HERZEGOVINA AND INDIA.....	13
2.1 TYPES OF FOREIGN DIRECT INVESTMENT	13
2.1.1 <i>India</i>	15
2.1.2 <i>Bosnia and Herzegovina</i>	15
2.2 BUSINESS ENTITIES AND INVESTMENT LAW	16
2.2.1 <i>Bosnia and Herzegovina</i>	16
2.2.2 <i>India</i>	24
3 POLICY FRAMEWORK AS A WAY TO INCREASE FDI	27
3.1 IMPORTANCE OF THE POLICY FRAMEWORK	27
3.2 MULTILATERAL LEVEL.....	28
3.3 REGIONAL LEVEL	31
3.4 BILATERAL INVESTMENT TREATIES (BIT's)	33
3.5 NATIONAL LEVEL	34
4 LIMITATIONS AND OBSTACLES FOR FDI AND RESOLUTION OF INVESTMENT DISPUTES.....	38
4.1 LIMITATIONS FOR FDI	38
4.1.1 <i>Prohibited Sectors</i>	38
4.1.2 <i>Sector Specific Limitations</i>	40
4.2 OBSTACLES FOR FDI.....	41
4.2.1 <i>Starting a Business</i>	41
4.2.2 <i>Labor Regulations</i>	42
4.2.3 <i>Taxation</i>	44
4.3 SETTLEMENT OF INVESTMENT DISPUTES: <i>LITIGATION V. ALTERNATIVE DISPUTE RESOLUTION</i>	46
4.3.1 <i>India</i>	47
4.3.2 <i>Bosnia and Herzegovina</i>	49
CONCLUSION	52
BIBLIOGRAPHY.....	54

INTRODUCTION

The commitment of countries to open themselves up to foreign capital has been evident in the past 30 years. This is especially true for those countries in transition, meaning the countries which are changing their economies from state-planned to market-oriented. Countries have recognized the benefits which could come along with foreign capital so it has become apparent that they must commit reforms in order to welcome that capital. Bosnia and Herzegovina has recognized the importance of foreign capital, however it did never accomplished the task which was set at the beginning of 1990s which was to open the market for foreign capital as much as possible.

Poor infrastructure and technology which dates back from Yugoslav times has still not been replaced so the industry is weak to such an extent that it cannot even satisfy its own market. The government neglected opportunities which could come along with the foreign direct investment and it decided to engage in external borrowings. Bosnia and Herzegovina has struggled with account deficit ever since it proclaimed independence so the need for foreign direct investments in the country is evident. The obstacles for foreign direct investments could be easily traced in the regulatory framework, political situation, corruption, lack of cooperation between the political parties and many other fields.

Although extensive research has been devoted to the FDI in Bosnia and Herzegovina, namely by the OECD and UNCTAD, their reports did not identify the main issue which the country is facing and that is the number and complexity of national laws which are evident in Bosnia and Herzegovina. It is important to note that there is lack of scholarly articles on legal framework relevant to the foreign direct investment in Bosnia and Herzegovina. Most of the scholarly works were devoted to the economic aspect of FDI in the country. Therefore, it is

necessary to write about these issues and try to motivate policy makers in Bosnia and Herzegovina to react by enactment of new, less complex and more acceptable laws for the foreign investors.

Considerable research has been devoted to India as well, particularly by the Tony Khindria,¹ however the aim of his research was to identify the main Indian legislation relevant to the foreign direct investments, and did not take into consideration the current foreign direct investment policy in India and liberalization of certain sectors.

The main purpose of this research paper is to evaluate existing legal framework in both India and Bosnia and Herzegovina and to identify the main obstacles for the foreign direct investments in both countries.

This thesis will identify the main theories behind FDI in its first chapter. To do that, the focus will be given to the incentives of the corporations to go abroad and at the same time incentives of the countries to host those corporations. The first chapter will also cover the issues of the political and legal character of both India and Bosnia and Herzegovina.

The second chapter will be devoted more to the types of foreign direct investment and to the business entities in which those investments can be made in both countries subject of this comparative analysis.

In the third chapter, the emphasis will be put on importance of the sound policy framework whether it is on multilateral, regional, bilateral or national level.

The final chapter will be devoted to identifying the main obstacles and limitations for the foreign direct investment in both India and Bosnia and Herzegovina and to the investment dispute resolution mechanisms.

¹ Tony Khindria, Foreign Direct Investment in India (Sweet & Maxwell Asia 1997).

1 BEHIND FOREIGN DIRECT INVESTMENT

Foreign Direct Investment as one of the key features of the modern market economy is investment which has a cross-border element. If such an element is included, then it is to say that FDI should be defined on an international level.² FDI therefore is defined and regulated by host countries of the investment, meaning the country in which investment is to be made and by bilateral investment treaties concluded by the countries party to the agreement. According to the Consolidated Policy on Foreign Direct Investment (2012), foreign direct investment is made when a resident entity in one country acquires a “lasting interest” in an enterprise in another country.³ A decision to invest in another country other than your own can be influenced by many legal and economic factors related to the particular country. The number and complexity of the national laws can have an enormous impact on the decision to invest abroad. In this chapter I will analyze the most important factors, of both legal and economical nature which can influence the company to engage itself in the international business. I will also stress the main theories behind FDI; starting with those imposed by the skeptics claiming that the FDI is bad for the host countries since MNE’s want to extract as much as possible from the country in order to gain short term benefits, and those who claim that FDI is good for the targeting country in the sense that increases competitiveness and decreases unemployment.

² Oleksiy Kononov, *Foreign Direct Investment in Ukraine and Germany- Comparative Study* 3-22 (2007) LL.M Thesis, Central European University

³ Consolidated FDI Policy 2012 (effective from April 10, 2012), 109-111; hereinafter referred to as “Consolidated FDI Policy 2012 “ http://dipp.nic.in/English/Policies/FDI_Circular_01_2012.pdf (accessed March 27, 2013)

1.1 Why invest abroad?

Many business entities believe that the most effective way to penetrate a foreign market is by establishing a presence in the market⁴. Entering in the market by establishing a presence is a decision which has to be carefully made. The reasons can be various; however the most important reason is the market size. ⁵In the case of India, which has a population of more than 1 bn. ⁶the market size is not questionable. The huge number of consumers is the incentive for the foreign enterprises to invest in India and to take advantage of its market size. In comparison, Bosnia and Herzegovina has a small market which does not make it the very attractive place for investment.

Presence in the foreign market can be made because of other different reasons. One of the reasons is to take advantage of the cheap and educated labor of the country. The goal of the enterprises is to improve competitiveness therefore they are moving their production to the countries with the cheap labor in order to save production costs. ⁷ India has a relatively cheap and educated labor comparing to other countries in the region. Bosnia and Herzegovina also has a relatively cheap labor however it is not questionable that India has a comparative advantage in the labor in comparison with not just Bosnia, but with many other countries. Also another incentive can be the availability of natural resources.

In the case of Bosnia and Herzegovina, it is important to stress that the country has a lot to give to the foreign investor. The Bosnia and Herzegovina is welcoming foreign investors since as a country in transition, it is moving from a centrally planned to a market oriented

⁴ Daniel C. K. Chow & Thomas J. Schoenbaum, *International Trade Law* 321 (ASPEN Publishers 2008)

⁵ Bose, Tarun Kanti, *Advantages and Disadvantages of FDI in China and India*, *International Business Research*, Vol 5, No 5, 164-174 (2012)

⁶ Population of India in 2012 was 1,220,200,000 people which make the India second most populated country in the world. Tendency is increasing which means that by the year 2030, India will become the most populated country in the world.

⁷ Rosa Portela Forte, Aurora Amélia, Castro Teixeira, *LOCATION DETERMINANTS OF FDI: A LITERATURE REVIEW* 10 (March 27, 2013), FEP Working Papers (2011), <http://ideas.repec.org/p/por/fepwps/433.html>

economy. This is to say that most of the government owned enterprises are now being privatized and as such the foreign investors are welcomed to take part in privatization process.

1.1.1 Benefits and Costs for both Home and Host Country of Investment

As stated above, the decision for the business to expand in the foreign market can be influenced by many different factors. Such decision can have many positive and negative effects on both home country and host country of investment. The host country of investment can gain many benefits from FDI in form of increasing employment, reducing poverty, increasing competition and transferring knowledge. Foreign Direct Investment further enhances productivity of the labor force which is quintessential for the countries such as Bosnia and Herzegovina and India. OECD report from 2002 has recognized several potential drawbacks of the FDI, which include the *inter alia* harmful impact on the environment of the host country of an investment, the possibility that such an investment will disrupt competition in the market and possibility that it will cause the social disturbances in a country.⁸

Positive effect for Home Country of investment is predominantly reflected in lower prices for consumer. This is because the MNEs are using advantage of cheap labor and resources in order to get final product at lower price. Drawbacks have been noted in home countries as well. Possible drawback can be reflected in increased unemployment, because MNEs may move their production facilities to other country and from there serve their home market with better competitiveness.⁹

⁸ Organization for Economic Co-Operation and Development, Foreign Direct Investment for Development: *Maximizing Benefits, Minimizing Costs* (OECD Publ'g 2002).

<http://www.oecd.org/redirect/dataoecd/47/51/1959815.pdf> (March 27, 2013)

⁹ Lipsey, Robert E. "Home and Host Country Effects of FDI." National Bureau of Economic Research (Cambridge,MA) Working Paper No. 9293, (October 2002.)

1.2 Selection of the FDI location

Motivations of the enterprise to select a particular location for the FDI can be various, starting with such factors as the market size, availability of the natural resources, legal environment, political environment and financial stability. Market size plays an important role for the enterprise in making a decision to invest in a foreign country. The bigger the market, the bigger are the chances that investment will be profitable. According to the UNCTAD report on FDI Attraction vs. Potential Index from 2011¹⁰, both India and Bosnia and Herzegovina performed below expectation. This is to say that countries still have a lot to do in order to liberalize their economies and attract FDI.

1.2.1 Competition of Developing Markets

Both India and Bosnia and Herzegovina have strategic locations in the sense that both countries have a lot to offer to the potential investor. Bosnia and Herzegovina will be bordering with the European Union by the July 1, 2013¹¹, while the India has signed the free trade area with ASEAN which came in to the effect on January 1, 2010.¹²

Favorable regulations together with strategic location and cheap labor could make Bosnia and Herzegovina a haven for FDI inflows. As previously mentioned, Bosnia and Herzegovina is not very attractive market because of its size, however, the country is a member of a free trade area CEFTA which creates the opportunity for the potential investor to take advantage of larger market which CEFTA creates. However, the long industrial tradition which dates back from Yugoslavia means Bosnia and Herzegovina is the most interesting location for the

¹⁰ United Nations Conference on Trade and Development, World Investment Report 2012, 32 (United Nations Publications 2012), (March 27, 2013) http://unctad.org/en/PublicationsLibrary/wir2012_embargoed_en.pdf

¹¹ On 9 December 2011 leaders from the EU and Croatia signed the accession treaty. Subject to its ratification by all EU countries and Croatia, then the country will become the 28th EU member country on 1 July 2013 http://ec.europa.eu/enlargement/countries/detailed-country-information/croatia/index_en.htm

¹² AGREEMENT ON TRADE IN GOODS UNDER THE FRAMEWORK AGREEMENT ON COMPREHENSIVE

ECONOMIC COOPERATION BETWEEN THE REPUBLIC OF INDIA AND THE ASSOCIATION OF SOUTHEAST ASIAN NATION, <http://commerce.gov.in/trade/ASEAN-India%20Trade%20in%20Goods%20Agreement.pdf> (March 27, 2013)

manufacturing sector.¹³ The manufacturing sector therefore receives the most amount of FDI. The positive examples of foreign investment in this sector was the one made by the Indian company ArcelorMittal, the world's leading steel and mining company.¹⁴ The ArcelorMittal has invested more than \$200m in the manufacturing sector, which makes this investment the biggest one in the history of Bosnia and Herzegovina.¹⁵ Another important factor which makes Bosnia and Herzegovina a favorable place for investment is financial stability.¹⁶

In comparison to Bosnia and Herzegovina, India as the world's second most populated country with consumer market of more than a 300 million people is one of the most attractive places for FDI.¹⁷ The business climate in India has improved since implementation of industrial policy of 1991; however the obstacles for FDI inflow are still apparent.¹⁸

1.3 History of FDI

FDI inflows have been largely influenced by the trade policies of the country. Both Bosnia and Herzegovina and India have adopted a freer trade policy which has led to the rapid improvement of the country's economic performance. Both countries have moved from centrally planned economies to market oriented economies.

1.3.1 India

After it gained independence from Great Britain in 1947, Indian strong centralized government dictated both political and economic strategies of the country. In the fear of

¹³ Foreign Investment Promotion Agency of Bosnia and Herzegovina (FIPA), INVESTMENT OPPORTUNITIES IN BOSNIA AND HERZEGOVINA, http://www.fipa.gov.ba/publikacije_materijali/brosure/io_2012.02.11.2012.pdf 17 (accessed March 27, 2013)

¹⁴ ArcelorMittal, see: <http://www.arcelormittal.com/corp/>

¹⁵ *Mittal Steel Firm in Bosnia Deal*, BBC, Aug. 17, 2004. at: <http://news.bbc.co.uk/2/hi/business/3573656.stm> (accessed March 27, 2013)

¹⁶ Bosnian Currency (BAM) has been pledged to EURO. See: <http://www.fipa.gov.ba>

¹⁷ Baker, Mark B. "Awakening the Sleeping Giant: India and Foreign Direct Investment in the 21st Century" 15 *Ind. Int'l & Comp. L. Rev.* 389 (2005)

¹⁸ *Ibid.*

imperialism, India has closed its market for the foreigners and it begun to introduce strict regulations and trade barriers in order to restrict the inflow of FDI.¹⁹ This led the country to the tremendous economic downfall which lasted until beginning of the 1990s.²⁰ With new industrial policy at place, India has opened its doors for the FDI and welcomed investors. The FDI in the country increased rapidly which made India ninth largest recipient of the FDI by the developing countries.²¹ However, Indian skepticism toward a FDI still lasts therefore the government protective strategies are evident in almost every sector of investment. Current policy framework in India reflects state of openness to the FDI; however limitations are still apparent in the form of the sectoral caps.²²

1.3.2 Bosnia and Herzegovina

Foreign Direct Investment in Bosnia and Herzegovina can be traced back to the time when the country was a part of Yugoslavia. Yugoslavia was the first country in the “eastern bloc” which opened its doors to foreign capital. The most significant foreign investment in Bosnia and Herzegovina as a part of Yugoslavia was the automobile manufacturing factory in Vogosca (TAS), which was product of joint venture between UNIS and Volkswagenwerk AG. Tvornica Automobila Sarajevo (TAS) had split ownership between UNIS with the 51 % and VW with 49 %. TAS was one of the first positive examples of FDI in Yugoslavia and the most positive example of FDI in the history of Bosnia and Herzegovina.²³ However, dramatic change which would put FDI in the spotlight later on was adoption of the new market reforms led by Ante Markovic in the beginning of the 1990s. New reforms were prompted in order to

¹⁹ Robert J. Carbaugh, *International Economics* 261 (12th ed. South-Western Pub 2008)

²⁰ India has realized that its economy is strangling so the policy makers on the head with Finance Minister of India, Manmohan Sing responded by adoption of Industrial policy of 1991. The policy for its aim had to integrate India in the World Economy.

²¹ Sharma, Kishor, *Export Growth in India: has FDI Played a Role?* 2 (Yale University, 2000), http://www.econ.yale.edu/growth_pdf/cdp816.pdf (March 27, 2013)

²² For the full list of sectoral caps/limits on investments by persons resident outside of India or foreign companies for each Industry. See: <http://www.investinginindia.in/sectoral.htm> (accessed March 27, 2013)

²³ No. 265, *Fenomen Golf* (BH Dani 2002), <http://www.bhdani.com/arhiva/265/t26515.shtml> (accessed March 27, 2013)

transfer the ownership from the state to the individuals. As Markovic suggested, the state ownership had to come to an end and the process of privatization had to occur immediately.

²⁴He further advocated same conditions for the foreign and domestic investors. The market became deregulated with the new privatization policies at place and the economy of Bosnia and Herzegovina was shining.

After gaining independence from Yugoslavia, the political situation in the country became terrible and was followed by a four years long war. The privatization process was postponed and the country faced economic collapse. Post-war recovery still last in Bosnia and Herzegovina and the privatization tasks which were established in the 1990s are yet to be finished.

1.4 Political Stability and Foreign Direct Investment

Political stability in the countries nowadays is not at its best; however the tensions in the regions of the both countries have been decreased due to the mutual economic dependency. It is important to note that both India and Bosnia and Herzegovina are which countries have complex political structures and that both are composed from separate entities.

1.4.1 India

India has ongoing political and economic conflicts with several neighboring countries but primarily with Pakistan and China. Economic dependency and willingness to increase bilateral trade between India and China have been mainly responsible for the de-escalation of tensions. ²⁵ However, when it comes to the Pakistan-India relations, it is to be said that tensions do exist and that is evident. It is forbidden by the law for the Pakistani citizen or

²⁴ *Kako Je Ante Marković "oživeo" SFRJ* (2011), http://www.b92.net/biz/vesti/srbija.php?yyyy=2011&mm=11&dd=28&nav_id=561275 (accessed March 27, 2013)

²⁵ Shobhan Saxena, *India-China Bilateral Trade Set to Hit \$100 Billion by 2015* (2012), <http://timesofindia.indiatimes.com/business/india-business/India-China-bilateral-trade-set-to-hit-100-billion-by-2015/articleshow/14323128.cms> (accessed March 27, 2013)

business entity incorporated in Pakistan to invest in the India²⁶. Such regulations clearly indicate the existence and magnitude of the conflict.

Country is composed from 28 states and 7 union territories.²⁷ Most of these administrative units have certain level of autonomy and therefore different regulations can be found within the country. This is especially evident in the taxation, whereas both the central and the state government are responsible for imposing the taxes.²⁸

1.4.2 Bosnia and Herzegovina

After the signing Dayton Peace Agreement²⁹ which ended the war, the country was divided in two constituent entities, Federation of Bosnia and Herzegovina and Serb Republic which has contributed to the complexity of political system. The three constituent people and lack of trust between them has been one of the main obstacles for the replacing an obsolete laws and promotion of the common wellbeing in form of FDI. A lack of trust and cooperation between entities has resulted in a great degree of instability in Bosnia and Herzegovina which has put the country at a very high risk for social unrest³⁰.

Duplication and contradiction between laws and regulations on the state, entity, cantonal and municipality level have been apparent, however no cooperation and co-ordination between them whatsoever.³¹ Bosnia and Herzegovina is far behind its neighbors when it comes to the accession to the European Union. The country has not been recognized as a

²⁶ Consolidated FDI Policy 2012, 13

²⁷ U.S. Department of State, BUREAU OF ECONOMIC AND BUSINESS AFFAIRS, *2012 Investment Climate Statement- India* (June 2012) <http://www.state.gov/e/eb/rls/othr/ics/2012/191166.htm> (accessed March 28, 2013)

²⁸ *Ibid.*

²⁹ Office of the High Representative, The General Framework Agreement, (March 27, 2013) http://www.ohr.int/dpa/default.asp?content_id=380

³⁰ For political instability index see:

http://viewswire.eiu.com/site_info.asp?info_name=social_unrest_table&page=noads (accessed March 27, 2013)

³¹ Gábor Hunya, *FDI in South-Eastern Europe in the Early 2000s*, 4-5 (The Vienna Inst. for Int'l Econ. Studies - WIIW 2002), <https://www1.oecd.org/countries/croatia/1940829.pdf> (accessed March 27, 2013)

candidate country, however amended Stabilization and Association Agreement ³²has recognized the country as potential candidate ³³for the European Union membership. There is however a lot to be done in order to bring country closer to the European Union which is primary goal of the government. Progressive negotiations with the European Union would further harmonize the existing laws and regulations of Bosnia and Herzegovina with those of European Union.

1.5 Legal Stability

Constant changes in laws and regulations can make country undesirable place for the foreign direct investments. This is to say that foreign investors are demanding legal certainty from the host country in order to move their production facilities and do business there. Both India and Bosnia and Herzegovina are countries which are facing legal reforms and changes in laws are evident and constant. However as you will see in the next chapter, numerous bilateral treaties which have been concluded in past 20 years provide for some kind of protection of investment and further promote legal certainty to the investors.

1.5.1 Legal Environment in India

Main sources of law in India are the country's Constitution, customary law, statutes and case law. ³⁴It is important to note that courts in India are bound by the previous case law, since the country has a common law tradition. As the intention of the policy makers in India is to promote and attract foreign direct investment in the country; they did a lot in order to introduce new policies which would serve the purpose. Policies on FDI are clear and

³² European Commission, Stabilization and Association Agreement, http://ec.europa.eu/enlargement/policy/glossary/terms/saa_en.htm (accessed March 27, 2013)

³³ For more details about potential candidate countries see: http://ec.europa.eu/enlargement/policy/glossary/terms/potential-candidate-countries_en.htm (accessed March 27, 2013)

³⁴ Tony Khindria, Foreign Direct Investment in India 247 (Sweet & Maxwell Asia 1997).

transparent and they are being updated on yearly basis in order to stay in line with the regulatory changes.³⁵

1.5.2 Legal Environment in Bosnia and Herzegovina

Bosnia and Herzegovina has recognized the significance of this problem and the legislature responded to it in the most efficient way namely they introduced further protection to the investor in the case of enactment of new laws. Article 20 of Law on the Policy of Foreign Direct Investment in Bosnia and Herzegovina provides that all rights and benefits which foreign investor incur by the investment law shall not be affected as to the burden of investor, meaning that investor may choose to have his investment governed by the law which was effective as on time when the investor has made an investment or he can choose the subsequently passed law if he considers that this “new” law is more favorable to him.³⁶

This protection provided by law gives a greater level of legal certainty to the foreign investor and by that we can conclude that Bosnia and Herzegovina provides legal stability as a host country of foreign direct investment.

³⁵ Consolidated FDI Policy 2012, 5

³⁶ Article 20 of Law on the Policy of Foreign Direct Investment in B&H, Official Gazette No. 4/96, with two amending Laws published in the Official Gazette no. 13/03 and 48/10, hereinafter referred to as “Law on the Policy of Foreign Direct Investment in B&H”. Unofficial translation available at http://www.advokat-prnjavorac.com/legislation/law_on_the_policy_of_foreign_direct_investment_in_bih.pdf (accessed March 27, 2013)

2 TYPES OF FDI AND BUSINESS ENTITIES IN BOSNIA AND HERZEGOVINA AND INDIA

2.1 Types of Foreign Direct Investment

The most common and widely accepted classification of FDI differentiates among three types of FDI:

- Greenfield Investments
- Merger and Acquisition
- Concessions

Greenfield investments as FDI are those which are most favorable and welcomed in the host nations since they bring fresh capital and increase employment in the country. Such investments are enhancing the trust in the economy of the country and they are the indication of positive investing climate. As Van Hastenberg argues, Greenfield investments can be further classified into the three types:

1. 100% greenfield investment
2. joint venture greenfield investment
3. semi-greenfield investment³⁷

The first type of investment according to this classification is the most preferable type since the foreign investor creates whole new company in the host country. Such a company would introduce competitiveness in domestic market and it would create new employment possibilities. However such an investment can be either restricted by the sector investing caps or other governmental regulations.

³⁷ F.H. van Hastenberg, *Foreign Direct Investments in Hungary* 35 (Utrecht University 1999) cited from Darja Loncar, *Foreign Direct Investments in Croatia- Comparison with India and Germany* 29 (2001) LL.M Long Thesis, Central European University

Joint venture Greenfield investments are those which came as a product of cooperation between domestic and foreign partners. The result of that cooperation is a whole new company with the market knowledge provided by the domestic partner(s) and the financial support of the foreign investor. As argued by the (Dobkin, 1993), the main reason why separate enterprises opt to create the joint venture is because they will gain ability to combine all positive features such as expertise of each enterprise, know-how, technology and in the same time they will share the risks and the profits which such an investment may create.³⁸

The last type of the Greenfield investment- semi-greenfield investment is one of the most common and controversial investments in Bosnia and Herzegovina. Such an investment is a product of cooperation of the domestic and foreign partner, where the domestic partner provides the premises for operating the business and the foreign partner provides the financial resources.

In comparison with the Greenfield investment, the M&A do not enjoy public support. The reason behind this is because M&A do not contribute to the country with the fresh capital. M&A contribute with the know-how and sophisticated technology which developing countries lack; however such contribution is not often receiving public support in the host countries.³⁹

Concessions are the product of agreement between foreign investor and host government which gives exclusive rights to the investor to use natural resources or to perform certain activities in a country for a limited period of time and under certain conditions.

³⁸ Dobkin, James A., Burt, Jeffrey A., Krupsky, Kenneth J. And Spooner, Mark J., Joint ventures with International Partners-Structure and Negotiation with Forms, 2-3 (Butterworth Legal Publishers, 1993) Cited from Taida Begic, *Foreign Direct Investment in Successor States of the Former Yugoslavia* 10 (1998) LL.M Short Thesis, Central European University

³⁹ United Nations Conference on Trade and Development, TRADE AND DEVELOPMENT REPORT, 111-112 (2006) http://unctad.org/en/Docs/tdr2006_en.pdf (accessed March 27, 2013)

As stated above, the most predominant type of foreign direct investment in the developing markets are Greenfield investments which are followed by the privatization of the state owned enterprises by the foreign companies.⁴⁰

2.1.1 India

Forms of business by which the foreign enterprises can operate in India have been described in Consolidated FDI Policy which provides that foreign investor can incorporate a company in India by creating a joint venture with the domestic partner or by creating wholly owned subsidiary. Incorporation of the company should be done in accordance with the Companies Act from 1956. This act is comprehensive to such an extent that includes every aspect relevant for the both foreign and domestic investors. Another possibility for the foreign company to operate in India is by setting up the Branch or Liaison Office. It is important to note that such types of operations are strictly regulated by the relevant legislation, providing that their operation is limited by the time and that they can perform only certain type of activities.

2.1.2 Bosnia and Herzegovina

Regulations on forms of foreign direct investments allowed in Bosnia and Herzegovina can be found on both the entity and national level. No significant differences between them exists whatsoever and they both provide that a foreign investor can operate in Bosnia and Herzegovina by either establishing the legal entity fully owned by foreign invest, establishing a joint venture, by investing in the existing legal entity or by making special investment.⁴¹

⁴⁰ Organization for Economic Co-Operation and Development, Foreign Direct Investment for Development: *Maximizing Benefits, Minimizing Costs* (OECD Publ'g 2002).

<http://www.oecd.org/redirect/dataoecd/47/51/1959815.pdf> (March 27, 2013)

⁴¹ Article 2 of Law on the Policy of Foreign Direct Investment in B&H

2.2 Business Entities and Investment Law

It is important to identify main business entities by which foreign investors can operate in the countries. This part will analyze the most common types of business entities which foreign investors choose in order to do a business in both India and Bosnia and Herzegovina and it will further address the main features of those entities.

2.2.1 Bosnia and Herzegovina

The law of Bosnia and Herzegovina does not discriminate on the basis of nationality of the legal or natural persons, so it provides that foreign national or legal persons can establish a business entity under the same conditions as the domestic natural or legal person.⁴² Types of business entities which are available for the foreign investor are the same as those available to the domestic investor.⁴³

As noted above, the complexity of the Bosnian legal system leads the country in the situation in which it has three different sets of rules on establishment and operation of business. The rules can be found on entity levels and on the level of Brcko District. The types of companies do not differ in the respective laws so we can say that there are four main types of business entities in the country, namely:

- a. Unlimited Joint Liability Company (*Društvo s neograničenom solidarnom odgovornošću- D.N.O.*)⁴⁴
- b. Limited Liability Company (*Društvo s ograničenom odgovornošću- D.O.O.*)
- c. Limited Partnership (*Komanditno društvo K.D.*)
- d. Joint-Stock Company (*Dioničko društvo D.D.*)⁴⁵

⁴² Article 3 of Law on the Policy of Foreign Direct Investment in B&H

⁴³ Article 2(2) of Law on Companies of FBiH ("Official Gazette of the Federation of B&H", number 23/99, 45/00, 2/02, 6/02 and 29/03, 68/05) hereinafter referred to as "Law on Companies of FBiH"; excerpt http://www.fipa.gov.ba/publikacije_materijali/zakoni/default.aspx?id=317&langTag=en-US

⁴⁴ Equivalent to the d.n.o., in the Serb Republic (RS) is Unlimited Partnership (o.d.)

⁴⁵ Article 3 of Law on Companies of FBiH

Besides these types listed above, foreign investor could operate in Bosnia and Herzegovina by establishing a representative office. A representative office established by the foreign company does not enjoy the privilege to conduct any business activity which could generate a profit. This is to say that representative office limited abilities include the market research, promotion or obtaining the relevant market information which would be beneficial to the owner.

Bosnia and Herzegovina has strict regulations when it comes to the branch offices (*poslovnica*), providing that they do not enjoy separate legal personality, but rather that they personality is connected to the founding company. This is to say that a foreign investor cannot establish a branch office if such an investor was not previously established a legal entity in the country. Once the establishment of that legal entity has occurred, the foreign investor enjoys full privilege to set up the branch offices in entire country, providing that such branch office will be subjected to laws and regulations on branch offices of the relevant entity whether it is FBiH or RS.

When it comes to the business associations which enjoy the privilege to practice commercial activity in the country, the main distinction is the level of liability which the member(s) possess in the given case. For the Unlimited Joint Liability Company (D.N.O. or O.D.) and Limited Partnership (K.D.) the level of liability is unlimited, meaning that member(s) are/is responsible for the debts of the entity. Foreign Investors do not usually opt for these two types of entities and they rather choose to form or take part in D.O.O. or D.D.

Limited Liability Company or D.O.O. has been the most widespread type of the company in Bosnia and Herzegovina. This is due to the fact that procedure for establishing this type of the company is less demanding than in the case of D.D. While the company itself is being subjected for unlimited liability, it provides for limited liability for its members.⁴⁶

⁴⁶ Darja Loncar, *Foreign Direct Investments in Croatia- Comparison with India and Germany* 39 (2001) LL.M Long Thesis, Central European University

In order to incorporate in the country, there is a procedure to be followed, whether it is domestic or foreign company in question. The procedure for establishing the company is far away from excellent since it is quite often costly and time consuming. The first step in this procedure requires from the members of the business entity to prepare the Act of Establishment (*Osnivacki Akt*).⁴⁷ The content of Act of Establishment is different depending on the form of the business entity. In the case of Limited Liability Company, such content is regulated by the article 101 of the Company Law of RS or by the article 313 of the Company Law of FBiH. There are no apparent differences between these two laws and they both provide that Act of Establishment shall include following:

- a. Name and address of the founders (for individuals), or the name and seat of the founders (for legal entities);
- b. Name, seat and activity of the new company;
- c. Amount of original capital;
- d. Founders' rights and obligations (management, distribution of profit, etc.);
- e. Procedure in case that one of the founders did not deposit his share in the specified period or did not fulfill any of his obligations;
- f. Payment of the costs of establishing (by founders or new company);
- g. Management and representation of the company (it is necessary to nominate the persons authorized to manage and represent the company and also to submit the application with the documentation and complete other actions required for registration of company in the court register);
- h. Consequences in case of an unsuccessful establishment;
- i. Special regulations if the company is being established for unspecified duration of time.⁴⁸

Of course, this list is not exclusive, and the founders can include other elements which they consider appropriate and which are in accordance with the company law of the relevant entity.

⁴⁷ Article 7 of Company Law of RS Official Gazette of Serb Republic No.. 127/08 and 58/09 hereinafter referred to as "Law on Companies of RS"; excerpt

http://www.fipa.gov.ba/publikacije_materijali/zakoni/default.aspx?id=317&langTag=en-US

⁴⁸ Translation was taken from the Foreign Investment Promotion Agency (FIPA), *How to establish a business in BiH* 14-15 (2012);

<http://fipa.gov.ba/doc/brosure/HOW%20TO%20ESTABLISH%20A%20BUSINESS%20IN%20BH.pdf> (March 28, 2013)

It is important to note that in order to acquire legal personality; the company has to be registered at the register of the competent court whether it is at level of Federation of Bosnia and Herzegovina (FBiH)⁴⁹ or at the level of Serb Republic (RS).⁵⁰ In addition to the establishment act, the founders must prepare the Statute of the company (*Statut*).⁵¹ The Statute of the company regulates much of the business activities of the company, and it includes information such as *inter alia* registered name of an business entity, scope of the activities, amount of initial capital and contribution of each member to that amount, management of the company, rights and responsibilities of the members, termination of the company, procedure of changing and adapting the Statute.⁵²

Share capital necessary in order to start a Limited Liability Company (D.O.O.) in FBiH has been regulated by the article 314(1), which provides that minimum capital for establishing a D.O.O. is 2000 BAM (approximately 1000 €).⁵³ The minimal contribution from the each of the members to share capital is 100 BAM (approximately 50 €).⁵⁴ The law further provides that share capital can be different than the one provided, however the amount must not be less than 2000 BAM.⁵⁵

Ownership over the company has been divided among the members of the company provided that each member assumes ownership in the amount which equals to the amount of share contribution.⁵⁶

The Supreme body of the company as mandated by law is the general assembly (*Skupština društva*)⁵⁷. General assembly consists of company members⁵⁸ and unless it is

⁴⁹ Competent Court for registration of the company in FBiH is Municipality Court of the place of incorporation of the company.

⁵⁰ Competent Court for the RS is the Commercial Court of the place of incorporation.

⁵¹ Article 317 of Law on Companies of FBiH. This is requirement for both D.O.O. and D.D. in FBiH, while in RS only D.D. must have a Statute.

⁵² This refers only to the D.O.O. in FBiH. Statute of the D.D. has been regulated by the Article 123 of the Company Law of Federation of Bosnia and Herzegovina

⁵³ Article 314(1) of Law on Companies of FBiH

⁵⁴ *Ibid.* Article 314(2)

⁵⁵ *Ibid.* Article 314(3)

⁵⁶ Article 325(1) of Law on Companies of FBiH

provided otherwise by the Statute of the company, the simple majority is enough for the general assembly to decide on the issue presented before them. The general assembly usually decides on issues such as the election of the management or directors and the removal of them, issues related to the share capital, issues related to the change of form of business entity and issues concerning the Statute of the company (its amending and changes).

Company Law of FBiH also has a mandatory provision concerning the Supervisory Board (*Nadzorni odbor*) in the Limited Liability Companies which provides that a company must have Supervisory Board in the case where the share capital exceeds 1 million BAM and the company has at least two members and in the case where the company has more than 10 members.⁵⁹ Acknowledging the fact that a Supervisory Board is not mandatory in RS for Limited Liability Companies, the foreign investor may choose this entity if he wants to have lower standard of corporate governance.

When it comes to the Board of Directors, it is necessary for Limited Liability Company, whether incorporated in RS or in FBiH to have this organ. Board of Directors has been elected by the shareholders and responsibility of the board is to manage the company.

When it comes to the joint-stock companies, both entities FBiH and RS have their respective laws which are applicable in their territories. The main difference between laws of both entities is to the name and share capital.⁶⁰ Classification of joint-stock companies in both entities is made as to the availability of the shares. This type of the company is usually linked to the wealthier companies, providing that share capital for starting the D.D. is much higher than the one you need to start D.O.O.

⁵⁷ *Ibid.* Article 343

⁵⁸ According to the Article 343(2) of Law on Companies of FBiH, each member has a power of vote and his vote has been valued in amount of his share contribution. The total share capital has been represented as 100.

⁵⁹ Article 348 of Law on Companies of FBiH

⁶⁰ In FBiH Joint-Stock Company has been referred to as a *dioničko društvo (d.d.)* while in the RS the name for this type of the company is *akcionarsko društvo (a.d.)*

Share capital to start close joint-stock company in FBiH equals to approximately 25 000 EUR. In RS the share capital is much lower and to start close D.D. in RS it is necessary to contribute an amount of at least 10 000 EUR. When it comes to the open joint-stock companies, their shares are sold at the stock market and they are available for the public. According to the Company Law of FBiH, open joint-stock company can be bank, insurance company, or any other company which has initial capital of at least 4 million BAM and at least 40 shareholders.⁶¹ One should note that RS has less strict regulations for the open D.D. providing that amount of initial capital required to start open D.D. equals to the amount you need in FBiH to start closed D.D. (approximately 25 000 EUR). There is no specific provision in the Company Law of FBiH about the private joint-stock company, and such companies have been defined negatively as to the public joint-stock companies.⁶² The legal presumption for the private joint-stock company is that shares are issued only to the specific shareholders and that cannot be made available to the public. In comparison, RS has provision in its Companies Law about the closed D.D., providing that number of shareholders in such type of company must not exceed 100⁶³. It is further provided that close joint-stock company becomes open joint-stock company in cases where the number of the shareholders exceeds 100.⁶⁴

When it comes to the nominal value of the shares in the open and closed joint stock companies, the legislature of both FBiH and RS contain provision which sets the minimum nominal value. In the FBiH the minimum nominal value of the share is 10 BAM (approximately 5 EUR)⁶⁵ while in RS the minimum nominal value is 1 BAM (approximately

⁶¹ Article 107(3) of Law on Companies of FBiH

⁶² According to the Article 107(6), private joint-stock company which meets the requirement imposed in Article 107(3) will become public joint-stock company.

⁶³ Article 189(2) of Law on Companies of RS

⁶⁴ *Ibid.*, Article 189(3)

⁶⁵ Article 127(2) of Law on Companies of FBiH

0.5 EUR).⁶⁶ Both entities make a distinction between common (*obicne*) and preferential shares (*povlascene/prioritetne*).⁶⁷ The rights which shareholder of a common share acquires are the right to vote, right to receive dividends and right to claim the net assets in the case of liquidation of company. It is important to note that these rights can be limited to the extent of existence of preferential shares. Preferential shares as stated in law of both entities provide for further benefits to the preferential shareholders in terms of payment of dividends with priority over the common shares and as well priority in case of liquidation of company. However the right to vote in the general assembly is not limited for the common shareholders and it is provided that one share equals one vote, whereas this right has been taken from the preferential shareholders providing that preferential shares do not assume voting rights.

It is mandated by the law of both FBiH and RS that joint stock companies must have following bodies:

1. General Assembly (*Skupstina*)
2. Management Board (*Upravni Odbor*)
3. Supervisory Board (*Nadzorni Odbor*)

The General Assembly is the supreme body in the company and its powers are “standard powers” which are *inter alia* to change or amend the company Statute, to authorize payment of dividends, to change the form of the company, to appoint auditors, to dissolve the company and to perform any other action which is defined in the Statute of the company and not contradictory to the Company Law of respective entity (RS or FBiH).⁶⁸

The General Assembly is constructed from the shareholders and it is mandated by law of both entities that general assembly must meet at least once a year.⁶⁹ In the case where the meeting is necessary to take to take place more than once in the same year than such meeting

⁶⁶ Article 229(2) of Law on Companies of RS

⁶⁷ Article 229(1) of Law on Companies of RS, Article 219 of Law on Companies of FBiH

⁶⁸ Articles 266 to 297 of Law on Companies of RS

⁶⁹ *Ibid.* Article 267

would be convened whether by the supervisory board in case of FBiH and management board in case of RS. There is also the possibility for the shareholders to call a meeting; however this may only occur in such instances where the shareholders hold more than 10% of shares with voting rights.⁷⁰

When it comes to the Management of the joint stock companies it is important to note the differences which exist in RS and FBiH when it comes to the function of this organ of the company. In RS the closed joint-stock company must have Manager/Director which assumes the functions regulated by the law of the companies of RS or by the company's Statute. While the closed joint-stock companies may choose to have Management Board (it is not mandatory), the open joint-stock companies must have Management Board (it is mandatory).

⁷¹ The member(s) of the Management Board is/are elected by the General Assembly of the company. In FBiH there is no mandatory provision when it comes to the Management board as it is case in RS with public and private joint-stock companies. The law of FBiH provides only that management must be elected by the Supervisory Board and that it assumes the functions which are related to the managing company, representing a company and assuring the legality of its operations.⁷²

The Supervisory Board in FBiH assumes the functions of supervising the management in these activities mentioned above. It is important to note the difference which exists when it comes to the Supervisory Board in both entities of Bosnia and Herzegovina. Namely, the Supervisory Board in RS is not mandatory as stated above however, in the case of public joint stock companies the real supervision of the management is done by the audit committee. In FBiH, the Supervisory Board assumes those functions which are primarily intended for the management, so it means that they supervision is not that effective as it is case with audit committee. The number of supervisory board members has been defined in the Article 259 of

⁷⁰ *Ibid.*, Article 268(1) V

⁷¹ *Ibid.*, Article 298

⁷² Article 276 of Law on Companies of FBiH

Company Law of FBiH, which provides that such board must have at least three members, from which one of them would be a President of the board.⁷³ It is provided further that board can have more members, but in any case the number of the members sitting in the supervisory board cannot be even.⁷⁴

2.2.2 *India*

As stated above, foreign investor has several opportunities on how to operate in India.

One of the opportunities is by establishing liaison office in the country. The regulations concerning liaison offices are in some extent similar to those of Bosnia and Herzegovina, providing that activities of such office are limited to the researching of market, promoting parent company in India, promoting Indian companies to the parent company and being a link between Indian companies and parent company.⁷⁵ It is important to stress that no profit can be made by such type of associations and their activities are limited to those mentioned above. In order to establish a liaison office in India, company must previously get permission by the competent body. In case that activity of liaison office has been connected to the sector which does not require prior approval by the government, then the liaison office must be approved by the Reserve Bank of India (RBI), however, if the activities of the company planning to establish a liaison office in India are linked to the sectors which require prior Government approval, then the application will be considered by the Ministry of Finance. Besides liaison office, the same conditions for the approval apply to the branch office. It is important to note that activities of branch office are not limited in such extent as those of the liaison office, providing that branch office can engage in the:

1. Export and Import of goods
2. Rendering professional or consultancy services.

⁷³ *Ibid.* Article 259

⁷⁴ *Ibid.* Article 259(1)

⁷⁵ Reserve Bank of India, *Foreign Investments in India* (October 11, 2012), available at <http://www.rbi.org.in/scripts/faqvview.aspx?id=26#6> (accessed March 27, 2013)

3. Carrying out research work, in areas in which the parent company is engaged.
4. Promoting technical or financial collaborations between Indian companies and parent or overseas group company,
5. Representing the parent company in India and acting as buying/selling agent in India.
6. Rendering services in information technology and development of software in India.
7. Rendering technical support to the products supplied by parent/group companies.
8. Foreign airline or shipping company.⁷⁶

It is important to note that branch office cannot engage in the manufacturing activities in the country, so this type of association does not seem to be very attractive for the foreign investors.⁷⁷

The most common way which foreign investors use in order to do business in India is by the company which is incorporated in India.⁷⁸ In order to incorporate in the country, foreign company must do so in accordance with Companies Act.⁷⁹ Companies Act is comprehensive act which covers almost every aspect related to the companies' incorporation, registration, control (management, shareholders) and winding up. It came into the force in 1956, so it should not be strange why it reminds so much at the English company law.⁸⁰

Since most of foreign investments in India are made through the companies limited by shares, there is necessity of further analysis of these companies.⁸¹ The two main types of companies limited by shares as stated in the 1956 Companies Act are private limited company and public limited company.⁸²

Private Limited Company must in its Articles of Association restrict the right to transfer its shares, it must limit the number of shareholders to maximum 50 (not including the

⁷⁶ Reserve Bank of India, *Foreign Investments in India* (October 11, 2012), available at <http://www.rbi.org.in/scripts/faqview.aspx?id=26#F1> (accessed March 27, 2013)

⁷⁷ Mark B. Baker, "Awakening the Sleeping Giant:" *India and Foreign Direct Investment in the 21st Century*, 15 Ind. Int'l & Comp. L. Rev. 389, 405 (2005).

⁷⁸ Mark B. Baker, "Awakening the Sleeping Giant:" *India and Foreign Direct Investment in the 21st Century*, 15 Ind. Int'l & Comp. L. Rev. 389, 403 (2005).

⁷⁹ *Ibid.*

⁸⁰ Tony Khindria, *Foreign Direct Investment in India*, 90 (Sweet & Maxwell Asia, 1997)

⁸¹ *Ibid.*, p. 91

⁸² Section 3 of Companies Act, 1956 (Act No. 1 of 1956) hereinafter referred to as "Companies Act, 1956" http://www.mca.gov.in/Ministry/pdf/Companies_Act_1956_13jun2011.pdf (accessed March 27, 2013)

employees of the company) and its shares cannot be made available to the public.⁸³ Moreover, the minimum paid-up capital required to start the private limited company is around 1400 EUR (one lakh rupees).⁸⁴ As for the Public Limited Companies they are defined as companies which are not private companies, providing that they can make their shares available to the public and that the number of the shareholders is not limited.⁸⁵ The minimum paid-up capital required to start the public limited company is approximately 7000 EUR (five lakh rupees).⁸⁶

As for the number of shareholder, it is provided that in the case of public limited companies the minimum is seven members, while in the case of private limited companies the minimum is two members.⁸⁷

Comparing these two types of companies (Khindria 1997) noted that private limited companies provide more flexibility to the investors since there is less legal restrictions imposed on this type of company and its members can exercise the control over the company.⁸⁸ As for the public limited companies they are strictly regulated and shareholders cannot exercise control, but rather the control has been vested to the Board of Directors.⁸⁹ It should be noted however that shareholders are those who appoint the Board of Directors, so it could be said that besides the fact that they are the owners of the company, they can be also attributed as those who perform ultimate control.⁹⁰

⁸³ Tony Khindria, *Foreign Direct Investment in India*, 91 (Sweet & Maxwell Asia, 1997)

⁸⁴ Section 3(1) iii of Companies Act, 1956

⁸⁵ *Ibid.* Section 3(1) iv

⁸⁶ *Ibid.* Section 3(1) iv b

⁸⁷ Tony Khindria, *Foreign Direct Investment in India*, 91 (Sweet & Maxwell Asia, 1997)

⁸⁸ *Ibid.*

⁸⁹ Business Portal of India, *Public Limited Company*;

http://business.gov.in/starting_business/org_public_ltd.php (accessed March 27, 2013)

⁹⁰ Tony Khindria, *Foreign Direct Investment in India*, 113 (Sweet & Maxwell Asia, 1997)

3 POLICY FRAMEWORK AS A WAY TO INCREASE FDI

A policy framework whether on the international, regional or national level is a set of long-term goals and principles of nations which are working in order to promote FDI. This requires close examination of the importance and of countries commitments towards desirable policies. Policy makers have to face several different issues when they are regulating FDI.

According to the Solomon and Mirsky these issues have been described as follows:

1. how to attract foreign direct investment to a country;
2. how to preserve rights of a foreign direct investor and give him an adequate protection; and
3. how to design laws and tax system which would attract foreign direct investments and promote economic grow of a country.⁹¹

This chapter will therefore identify the importance of favorable policy and further explain what both countries have done so far in order to meet the requirements on the international level. It will further analyze the countries commitments on the national level.

3.1 Importance of the Policy Framework

As the World's economy became integrated with the occurrence of globalization, countries realized the benefits that could come along with this phenomenon are tremendous. International cooperation on these issues has been evident after the end of the World War II, and countries began to increasingly cooperate in order to mutually benefit from economic globalization. Besides integration on the international level, the countries have also integrated regionally. This has led to creation of a larger markets and better opportunities for businesses.

⁹¹ D. Salomon and D.H. Mirsky; *Direct Foreign Investment in the Caribbean: a Legal and Policy Analysis*, 11 Nw. J. Int'l & Bus. 257,257,259 (1990-1991) cited from: Oleksiy Kononov; *Foreign Direct Investment in Ukraine and Germany- Comparative Study* 23(LL.M thesis, Central European University, 2007)

European Union as one of the best examples of regional integration has done a lot to increase FDI within its member states by abolishing national barriers and promoting its “four freedoms”.

Another notable change was the liberalization of international trade on a bilateral level. Countries have concluded many bilateral investment treaties among themselves in order to reach full liberalization of trade policies. According to a UNCTAD report from 2012, the number of international investment agreements concluded in 2011 was 3,164 from which 2,833 were BIT's and 331 were free trade agreements containing foreign direct investment regulations.⁹²

The importance of the policy framework for FDI has also been evident at national level, where revision of existing laws and regulations is necessary in order to liberalize FDI.

3.2 Multilateral Level

The first attempt to integrate on multilateral level occurred back in 1944, when the world's leading nations have met at the Bretton Woods conference in United States to discuss about *inter alia* creation of International Trade Organization. This attempt however proved to be unsuccessful since creation of ITO was not approved by the United States.⁹³ At the same time, several countries have advocated for the creation of a multilateral treaty which would reduce trade barriers and achieve the desired goals in terms of economic integration. This has led to the creation of GATT, international treaty administered by the contracting states. GATT was multilateral treaty which was *de facto* international organization even though it lacked legal personality.⁹⁴

After many years of negotiation the World Trade Organization was established. The World Trade Organization assumes those functions which have been primarily intended for

⁹² United Nations Conference on Trade and Development, World Investment Report 2012, 84 (United Nations Publications 2012). http://unctad.org/en/PublicationsLibrary/wir2012_embargoed_en.pdf (March 27, 2013)

⁹³ Daniel C.K. Chow, Thomas J. Schoenbaum, International Trade Law 25 (ASPEN Publishers, 2008)

⁹⁴ *Ibid.*

International Trade Organization.⁹⁵ The establishment of the WTO led to the creation of three main agreements which are General Agreement on Tariffs and Trade (GATT),⁹⁶ General Agreement of Trade in Services (GATS) and Agreement on Trade Related Aspects of Intellectual Property (TRIPS). Along with the agreements administered under the roof of the WTO, there is TRIMs agreement, which according to its Article 1 applies to the investment measures related to trade.

It is important to stress that the WTO does not have a specific treaty related to FDI; however, all these treaties mentioned above have been promoting and encouraging FDI.⁹⁷ The attempt to make an agreement which would be exclusively related to foreign direct investment was made in 1995 by the OECD, however this agreement never saw the day light since it was “too ambitious” as argued by the Daniel C.K. Chow and Thomas J Schoenbaum, authors of International Trade Law. The need for Multilateral Investment Agreement is needed now more than ever before, since the amount of FDI is increasing.

When it comes to India and its participation in liberalization of trade on a multilateral level, then it is quintessential to state that India has been one of the founding members of the WTO, since the country became a member of the WTO on January 1, 1995.⁹⁸ In comparison to India, Bosnia and Herzegovina still has the status of observer which means that the country is not obliged to make any commitments in terms of meeting WTO requirements.⁹⁹

Another convention relevant to the FDI is related to dispute resolution, more precisely dispute resolution between States and nationals of other States. The convention is being

⁹⁵ *Ibid.*

⁹⁶ Original GATT has been renamed to GATT 1947.

⁹⁷ Daniel C.K. Chow, Thomas J Schoenbaum *International Trade Law* 325 (ASPEN Publishers, 2008)

⁹⁸ World Trade Organization, Members and Observers (March 28, 2013)

http://www.wto.org/english/thewto_e/countries_e/india_e.htm

⁹⁹ In the words of Steven Suranovic to become a WTO member, country has to follow procedure related to accession. “Generally aspiring members will first become observers; a status intended to allow governments to become familiar with WTO requirements and the accession process. Observers are not required to make any changes or commitments and are allowed to attend meetings and review WTO documents. As they develop a familiarity with WTO requirements, they may start unilaterally changing their foreign trade regime in anticipation of the accession process.” (Steven Suranovic) see: <http://internationalecon.com/index.php> (accessed March 27, 2013)

referred to as an ICSID Convention and it is administered by the World Bank. Bosnia and Herzegovina is signatory to the convention, which entered into force in the country on June 13, 1997.¹⁰⁰ It is important to mention that India has not been a signatory to the ICSID Convention; however more attention to this topic will be given in a later chapter. When it comes to issues of protection of foreign direct investments and guarantees for the same, the multilateral convention on force which addresses these issues is the Convention on Multilateral Investment Guarantee Agency (MIGA). Both countries of this comparative analysis are signatories to the convention.¹⁰¹

The organizations other than those mentioned above which are specialized in foreign direct investment field are the OECD and UNCTAD. The key feature of these organizations is that they provide periodic guidelines and reports to the countries with the intent to integrate them in the world economy. It is important to note that neither India nor Bosnia and Herzegovina are members of the OECD; however OECD closely works with India in order to help the country to improve its policy framework regarding FDI. The latest report on India's investment policy was released in 2009, where the OECD commended the country for tremendous progress in promoting investment, however it is stated also that there is still lot to do in order to fully benefit from FDI¹⁰². Bosnia and Herzegovina as a potential candidate country to the European Union is also receiving help from OECD in order to improve public governance and management.¹⁰³ Both Bosnia and Herzegovina and India are members of the

¹⁰⁰ International Center for Settlement of Investment Disputes (ICSID), List of Contracting States and Other Signatories of the Convention (March 28, 2013)
<https://icsid.worldbank.org/ICSID/FrontServlet?requestType=ICSIDDocRH&actionVal=ContractingStates&ReqFrom=Main>

¹⁰¹ Multilateral Investment Guarantee Agency, MIGA Member States (March 28, 2013)
<http://www.miga.org/whoweare/index.cfm?stid=1789>

¹⁰² OECD, *Investment Policy Reviews: India 2009* 13 (OECD Publishing, 2009)

¹⁰³ For more information about the help provided by the OECD to Bosnia and Herzegovina see:
<http://www.oecd.org/countries/bosniaandherzegovina/2/>

UNCTAD, whereas the India is member of Trade and Development Board which oversees the activities of the organization.¹⁰⁴

3.3 Regional Level

Regional integration as stated above plays a significant role in attracting and promoting foreign direct investment. Bosnia and Herzegovina is party signatory of Central European Free Trade Agreement (CEFTA), which according to its secretariat has objective to:

...expand trade in goods and services and foster investment by means of fair, stable and predictable rules, eliminate barriers to trade between the Parties, provide appropriate protection of intellectual property rights in accordance with international standards and harmonize provisions on modern trade policy issues such as competition rules and state aid.¹⁰⁵

CEFTA is important in the context of the countries signatories because it expands the market and provides for promotion of FDI. This can be noted under Article 31 of CEFTA where parties expressly bind themselves for protection and promotion of investments made in a country other than the home country of an investor. Article 31 of CEFTA provides that each party to the agreement must create conditions which are attractive for the investors which are coming from the countries of other parties and that such conditions must be transparent and stable.¹⁰⁶ In the context of Bosnia and Herzegovina, it can be concluded that country has provided for the stable and transparent conditions, since in its investment law, as I stated above, provides that foreign investor may choose to have his investment governed by either the law which was in the force when the foreign investor decided to invest in a country, or by subsequently passed law, if investor considers that this law is more favorable to him. Article

¹⁰⁴United Nations Conference on Trade and Development, Member States (March 28, 2013) <http://unctad.org/en/Pages/About%20UNCTAD/UNCTADs-Membership.aspx>

¹⁰⁵ It must be noted however distinction between CEFTA and CEFTA 2006. CEFTA 2006 includes Bosnia, Serbia, Montenegro, Croatia, Albania and Kosovo as parties to the agreement, while original CEFTA was agreement between Hungary, Slovakia, Poland, Czech Republic, Slovenia, Romania and Bulgaria. All members of “old” CEFTA are now members of the European Union. See: <http://www.cefta2006.com/>

¹⁰⁶ Article 31(1) of CEFTA, <http://www.questionnaire.gov.me/Annexes/Annex234.pdf>

31 further provides that parties to the agreement must promote investments which are made by the investors of other parties and that they must grant necessary administrative authorizations and permits in order to make that investment possible.¹⁰⁷

Central European Free Trade Agreement further recognizes the possibility that countries of the agreement would eventually become European Union member states so agreement provides a solution for such an occasion. Namely in its article 51, CEFTA provides that party which meets all the requirements imposed by the EU and becomes an EU member state, will lose its membership to the CEFTA.¹⁰⁸

Croatia as country which will become a member state of the European Union by July 1, 2013 will lose its membership of CEFTA. According to estimations made by the Croatian Chamber of Economy (*Hrvatska Gospodarska Komora-HGK*) this would cause tremendous consequences in Croatian economy which would lose more than a 3000 working places.¹⁰⁹ It is important to say than Bosnia and Herzegovina will gain from such occurrence since most of the Croatian exports were targeting Bosnia and Herzegovina. As stated by the HGK, major production facilities which were before producing the goods in Croatia and exporting it to Bosnia and Herzegovina will now move their facilities to Bosnia and Herzegovina and satisfy demands from the market from there. It is reasonable to conclude that this would cause a notable increase in FDI inflow.

India has been signatory to many preferential trade agreements from which the most notable one is with ASEAN called AIFTA or ASEAN-India Free Trade Area. By this agreement parties aimed towards tariff reduction and elimination and promotion of trade between themselves.

¹⁰⁷ Article 31(3) of CEFTA

¹⁰⁸ Article 51 of CEFTA

¹⁰⁹ Information was collected from <http://www.hgk.hr/>

3.4 Bilateral Investment Treaties (BIT's)

Integration on a bilateral level is continuously increasing and this tendency is applicable to both countries subjected to this comparative analysis. The Ministry of Finance of India reported that the country as of July 2012, had signed Bilateral Investment Promotion and Protection Agreements (BIPAs) with 82 countries.¹¹⁰ These agreements according to the OECD report on India have offered strong guarantees for foreign investors in a post-establishment phase.¹¹¹ It should be noted that India is using its own model of BIPA in the negotiation process with the countries. Therefore it follows that agreements have been different depending on the position taken by other country. However, most of the BIPAs provide for basic protection to the investor in the form of fair and equitable treatment, national treatment and MFN treatment, so as the rules against nationalization or expropriation. One of the BIPAs was even signed with Bosnia and Herzegovina, where the countries opted *inter alia* for reciprocal protection of investment and creation of favorable conditions for investors.¹¹²

Bosnia and Herzegovina has signed 42 Bilateral Investment Treaties (BITs) with its major trade partners.¹¹³ Since the country is mainly import oriented, this provides for further benefits to the home countries of foreign direct investment.

¹¹⁰ Ministry of Finance, Government of India, BILATERAL INVESTMENT PROMOTION AND PROTECTION AGREEMENTS (BIPA), http://finmin.nic.in/bipa/bipa_index.asp (March 28, 2013)

¹¹¹ OECD, *Investment Policy Reviews: India 2009*, 86-87 (OECD Publishing, 2009)

¹¹² AGREEMENT BETWEEN THE REPUBLIC OF INDIA AND BOSNIA AND HERZEGOVINA FOR THE PROMOTION AND PROTECTION OF INVESTMENTS, <http://finmin.nic.in/bipa/Bosnia%20&%20Herzegovina.pdf> (March 28, 2013)

¹¹³ Bosnia and Herzegovina has signed and ratified Bilateral Investment Protection and Promotion Agreements with following countries: Albania, Austria, Belgium, Belarus, China, Croatia, Czech Republic, Denmark, Egypt, Finland, France, Germany, Greece, Netherlands, Hungary, India, Iran, Italy, Jordan, Kuwait, Lithuania, Luxembourg, Macedonia, Malaysia, Moldova, Montenegro, Netherlands, Pakistan, Portugal, Qatar, Romania, Serbia, Libya, Slovakia, Slovenia, Spain, Sweden, Switzerland, Turkey, UAE, Ukraine, and the United Kingdom.

See: [http://unctad.org/en/Pages/DIAE/International%20Investment%20Agreements%20\(IIA\)/Country-specific-Lists-of-BITs.aspx](http://unctad.org/en/Pages/DIAE/International%20Investment%20Agreements%20(IIA)/Country-specific-Lists-of-BITs.aspx)

3.5 National Level

A lot of work has been done by the policy makers on the national level in the past 20 years in order to liberalize the economy and encourage the inflow of FDI.¹¹⁴ The governments of both India and Bosnia and Herzegovina as I already mentioned work closely in cooperation with the international agencies in order to revise their national laws. Both countries have established foreign investment promotion agencies whose primary responsibility is identifying major obstacles related to foreign direct investment inflow and providing the assistance to the possible investors. The quintessential governmental institution for the support of FDI in Bosnia and Herzegovina is FIPA. The main task of this agency is to provide assistance to the investor in the pre-establishment phase. Foreign Investment Promotion Agency¹¹⁵ has limited ability to react and to provide assistance to the investors since its budgetary limitations; however the agency is still managing to provide periodical reports which are mentionable contribution for both policy makers and investors.

Another notable support to both, government and the investors is the Foreign Investors Council (FIC). The main task of FIC is to identify major obstacles for the investors in Bosnia and Herzegovina. It is important to say that FIP is a non-governmental agency whose members are key foreign investors who are doing business in the country. This is to say that reports and analysis¹¹⁶ made by this agency represent first-hand experience of the investors and major obstacles that they are facing in both pre and post establishment phase.

Due to the complexity of the governmental structures in the country as I have mentioned earlier, different legal regulations related to foreign direct investment can be found

¹¹⁴ Daniel C.K. Chow, Thomas J Schoenbaum, *International Trade Law; Problems, Cases, and Materials* 324 (ASPEN Publishers 2008)

¹¹⁵ For more information about FIPA see: www.fipa.gov.ba

¹¹⁶ The most comprehensive report by FIC is the annual white book, which identifies major obstacles for the Foreign Direct Investment in the Bosnia and Herzegovina and suggests recommendations to resolve those obstacles.

on both the national and entity level. Bosnia and Herzegovina enacted the Law on Policy of Direct Foreign Investment ¹¹⁷ which lacks clearness and preciseness so it leaves a lot of space for further interpretations. This is not a good approach by the policy makers since investors as stated above are looking for legal framework which is predictable. The Law on Policy of Foreign Direct Investment contains five parts of which three are important for the sake of this master thesis.

The first relevant part which includes Articles 3 to 8, defines the entry process of foreign direct investment, meaning the allowed sectors, approval procedure for specific sectors and registration of investment, providing that no limitations on foreign equity ownership is allowed with the exception of the media sector and armament sector where the limitation stands at 49%.

Articles 8 to 17 talk about rights, benefits and obligations of foreign direct investors. Pursuant to the Article 8(1), foreign investors shall have the same rights and obligations as residents of Bosnia and Herzegovina ¹¹⁸. In the same Article under paragraph 2, the country bound itself and respective entities not to discriminate against foreign investor or against investments' state of origin. Rules on taxation have been addressed in Article 9 of the Investment Law which, however, does not provide any privileges to the foreign investors, but rather states that FDI are subjected to the tax legislation of the respective entities. ¹¹⁹ Law further recommends to the entities to revise their tax legislation in order to be attractive to the foreign investors. Tax legislation will be closely examined in the next chapter. Custom regulations applicable to the foreign direct investment have been addressed in Article 10. Pursuant to this article, the FDI are exempted from the custom duties but not from the

¹¹⁷ BiH Official Gazette", (no.17/98, 13/03,48/10)

¹¹⁸ According to the Article 2 of the same law the "Resident of Bosnia and Herzegovina": means a natural person who has a home or principal abode, carry out employment or independent service or has his or her center of economic interest in Bosnia and Herzegovina, or a legal person constituted under the laws of Bosnia and Herzegovina or the Entities and having its registered office, central administration or principal place of business in Bosnia and Herzegovina;

¹¹⁹ Article 9 of Law on the Policy of Foreign Direct Investment in B&H, Official Gazette No. 4/96, with two amending Laws published in the Official Gazette no. 13/03 and 48/10,

customs registration. Other articles in this part provide rules against expropriation and nationalization of assets and compensation in the case of their occurrence. According to Article 16 the expropriation is forbidden unless it is in public interest and done in accordance with the relevant laws and regulations on expropriation and nationalization. It is important to note that neither expropriation nor nationalization of foreign direct investment has been done by the state government so far.¹²⁰

Rules on settlement of investment disputes clearly indicate governmental determination to resolve disputes by litigation in Bosnia and Herzegovina; however the law still recognizes the possibility for the alternative dispute resolution.¹²¹

Indian policy on the foreign direct investment is much more comprehensive than the Bosnian one. This is due to the fact that foreign direct investments have been forbidden in many sectors, and that many sectors have limitations on foreign ownership. Besides these restrictions and limitations which will be addressed in next chapter, the Government of India also demands for the certain investments to be approved by the competent governmental body (Government Route). Competent Government body for approval depending on the sector can be Foreign Investment Promotion Board (FIPB), Department of Economic Affairs or Ministry of Finance. With few exceptions this is true in virtually all sectors with the FDI caps. Besides this entry route, there is also automatic entry route which means that foreign investors do not need to ask for Governmental approval, but rather they just have to report its investment to the Reserve Bank of India (RBI). Investments made through the Governmental Route are still subjected to reporting requirement. The consolidated foreign direct investment policy of India, provides data about all sectoral caps and limitations which could not be addressed in

¹²⁰ U.S. Department of State, BUREAU OF ECONOMIC AND BUSINESS AFFAIRS, *2012 Investment Climate Statement - Bosnia and Herzegovina*, (June 2012) <http://www.state.gov/e/eb/rls/othr/ics/2012/191113.htm> (accessed March 27, 2013)

¹²¹ Article 17 of Law on the Policy of Foreign Direct Investment in B&H, Official Gazette No. 4/96, with two amending Laws published in the Official Gazette no. 13/03 and 48/10,

this paper due to their complexity and comprehensiveness, however few of them would be mentioned in the next chapter.

It is important to note that consolidated foreign direct investment policy does not contain rules against expropriation and compensation for the same. The protection of investors lies at bilateral level with the Bilateral Investment Protection and Promotion Agreements (BIPAs), which usually contain rules against expropriation. As the country has opened itself for the foreign direct investments, only a few cases of expropriation have occurred.¹²²

¹²²U.S. Department of State, BUREAU OF ECONOMIC AND BUSINESS AFFAIRS, *2012 Investment Climate Statement- India* (June 2012) <http://www.state.gov/e/eb/rls/othr/ics/2012/191166.htm> (accessed March 28, 2013)

4 LIMITATIONS AND OBSTACLES FOR FDI AND RESOLUTION OF INVESTMENT DISPUTES

4.1 Limitations for FDI

Foreign direct investment can be limited by the governmental caps on investment for relevant sectors or by governmental prohibitions for investment. Such limitations do not contribute to the efficient foreign direct investment inflow and they are quite often the subject of debate on the international level. Both Bosnia and Herzegovina and India have certain limitations, however India as I have mentioned earlier has introduced limitations in many sectors. Another limitation for the foreign direct investment can be local content requirement. Recognizing the benefits for the host country of foreign direct investment in the terms of promotion of domestic manufacturing and employment, local content requirement can be one of the limitations for the foreign direct investment. India has introduced local content requirement in the automobile industry which demanded from the foreign automobile manufacturers to use no more than 50 % of imported inputs in the automobile manufacturing. This quantitative restriction was removed after United States and European Union brought a complaint before the WTO claiming that India has violated its international obligations.¹²³

4.1.1 Prohibited Sectors

A country may choose to prohibit the foreign direct investment in sectors which they deem to be of strategic importance. Bosnia and Herzegovina does not have provisions in its Investment law which talks about prohibitions for investment in any sector. This is to say that foreign investors have complete liberty to choose where to invest.

¹²³ Allegations made by European Union and United States were related to the violations of Articles III and XI (of the GATT and Article 2 of TRIMs).

In comparison, India has introduced prohibitions in several sectors which they consider to be very important for the country.

According to the Consolidated Policy on Foreign Direct Investment prohibited sectors are:

- a. Retail Trading (not effective as on September 20, 2012)
- b. Lottery Business
- c. Gambling and Betting
- d. Chit funds
- e. Nidhi company
- f. Trading in Transferable Development Rights (TDRs)
- g. Real Estate Business or Construction of Farm Houses
- h. Manufacturing of tobacco products and its substitutes
- i. Atomic Energy and Railway Transport (other than Mass Rapid Transport Systems).¹²⁴

Prohibition of retail trading has been subjected to debate on a daily basis. While the government allowed for the single brand product retailing, multi-brand retailing has been prohibited by law. This prohibition was however removed on September 20, 2012 when the Department of Industrial Policy and Promotion of Ministry of Commerce and Industry of Government of India amended the Consolidated Policy on Foreign Direct Investment providing that FDI in multi-brand retailing is allowed up to 51%.¹²⁵ This decision was welcomed by the largest multi brand retail stores since it allows them to expand at the retail market currently valued at over \$450 billion. On the other side, this decision did not received public support and the Indian trade unions organized a two day nationwide strike in order to protest against economic reform. They believe that the decision allowing multi brand retail stores to expand at Indian market is anti-labor and it should be repealed.¹²⁶

¹²⁴Consolidated FDI Policy; Effective from April 10, 2012

¹²⁵Government of India, Ministry of Commerce & Industry, Department of Industrial Policy & Promotion, Press Note No.4 (2012) http://dipp.nic.in/English/acts_rules/Press_Notes/pn4_2012.pdf

¹²⁶Khushita Vasant, *India Unions Call Strike*, The Wall Street Journal (February 19, 2013) <http://online.wsj.com/article/SB10001424127887323495104578313670512348596.html> (accessed March 28, 2013)

4.1.2 Sector Specific Limitations

Limitations by the sectors have been known to both countries subject of this comparison; however such limitations in Bosnia and Herzegovina are related only to the defense industry and media sector. Article 4(a) of Investment Law of Bosnia and Herzegovina provides that investments made in these two sectors can have foreign equity ownership in amount of 49 %¹²⁷ and that such investments are subject of government approval at entity level.¹²⁸ Approval should be granted by the relevant ministry, which is in the case of the defense industry, the Ministry of Defense, and in the case of the media sector, the Ministry of Education, Science, Culture and Sport.¹²⁹ All other investments made in the country have automatic approval and no governmental permission is needed.¹³⁰ However it is provided that investments with and without government approval must be registered at the competent court.¹³¹

Sector Specific Limitations in India which are effective as of April 10, 2012 can be found in the Consolidated FDI Policy. However the changes in the FDI policy are constant and several sectors have been liberalized since the policy was enacted. As I have mentioned above, one of the changes happened in the multi-brand retailing which was according to the last Consolidated FDI Policy prohibited and as from September 20, 2012 it is open for FDI but with limitation of 51%. Other limitations of foreign equity ownership are applicable in the Defense Industry where the cap for FDI is 26% and Government approval is needed, in Information Service Sector, Civil Aviation Sector, Satellites Establishment and Operation Sector, Private Security Agencies, Telecommunication Sector, Financial Sector.¹³² Note that this is not an exhaustive list of the limited sectors, but the ones that I consider important for

¹²⁷ Article 4(a) of Law on the Policy of Foreign Direct Investment in B&H, Official Gazette No. 4/96, with two amending Laws published in the Official Gazette no. 13/03 and 48/10,

¹²⁸ In the case of defense industry sector, relevant Ministry is at the State level.

¹²⁹ Article 4(b) of Law on the Policy of Foreign Direct Investment in B&H, Official Gazette No. 4/96, with two amending Laws published in the Official Gazette no. 13/03 and 48/10,

¹³⁰ *Ibid.* Article 3

¹³¹ *Ibid.* Article 5

¹³² Consolidated FDI Policy; Effective from April 10, 2012

the sake of this master thesis. As it can be concluded from the above changes in the foreign direct investment policy are continuous and it could be expected that these limitations would be removed in many sectors as it was done in the retail sector.

4.2 Obstacles for FDI

Investor may face many obstacles in the targeting country in both the pre and post establishment period. Recognizing the work which the governments of both countries have done since they started to reform their economies, I will address some of the important obstacles which they have to consider are react upon. These obstacles can be various starting with the procedures which foreign investor may face in order to establish a business in a country, labor regulations in the country, intellectual property protection and many others. Note that this is not the exhaustive list of the obstacles, but the ones that I consider relevant for the sake of this work.

4.2.1 Starting a Business

Foreign investors are seeking quick and efficient ways to start a business in a country. Since most of the foreign direct investments are coming from developed countries, investors expect to get at least similar treatment as they get home. However that is not the case when we speak about the countries subject to this comparison. They do not have speedy procedures and quite often these procedures represent the obstacle for the foreign investors. According to the World Bank report analyzing procedure of starting a business in Bosnia and Herzegovina and India, the both countries have slow and costly procedures which demand modernization.

Bosnia and Herzegovina is one of the slowest countries for starting a foreign business which according to the same report takes around 83 days. It is important to emphasize that countries in the region of Bosnia and Herzegovina have acknowledged this obstacle and they

reacted promptly to it.¹³³ A foreign Investor in Bosnia and Herzegovina has to face as much as 14 procedures¹³⁴ which are quite often demanding. This is to say that country must take further steps in order to establish fast-track procedure for starting a business. This would further provide incentives for the foreign investor and it would make the country more attractive for the foreign direct investments.

India on the other hand has more flexible procedures for the starting a business. To establish a foreign owned subsidiary in India, it takes around 46 days in which foreign investor must face 16 procedures. It is important to note that this is far more demanding than the average in the region, but the tendency is that they favor the investor, since the country started to review its procedures. The lesson for the both countries is that they should expedite establishment procedures and by that make the country more attractive for the foreign direct investments.

4.2.2 Labor Regulations

Labor regulations which in fact represent a clash between employers, employees and government can be an important obstacle for the FDI inflow. Employers are interested in having friendly labor regulations which would allow them to exercise their company labor policies and get the best experiences from the employees. Employees on the other hand want to be protected against unfair termination of employment contract and want to retrieve fair compensation for their work. The Government stands in the middle of these two groups and it wants to regulate the labor in way in which they think is the best for the country. These

¹³³ According to the World Bank report from 2010, Former Yugoslav Republic Macedonia and Albania are one of the fastest countries for starting a foreign business. In FRY Macedonia it takes 8 days to start a foreign business, while in Albania such procedure takes 7 days.

¹³⁴ World Bank, Investing Across Borders- Indicators of FDI Regulation: Bosnia and Herzegovina (March 28, 2013) <http://iab.worldbank.org/Data/Explore%20Economies/Bosnia-and-Herzegovina/Starting-a-foreign-business/procedures#dgTimeMotionDet:1> (for the full list of the procedures which foreign investor must face when starting a business in Bosnia and Herzegovina)

regulations sometimes are not beneficial for either side since they can result in the slowing down of economic growth of the country.

In Bosnia and Herzegovina, labor regulations can be found in both entities and on the state level. Bosnian labor regulations are both employer and employee friendly since they are the product of economic reforms which occurred in the country in the post-war period. The labor law of Federation of Bosnia and Herzegovina provides for protection of employees in the terms of *inter alia* compensation for the work done, working hours and holidays,¹³⁵ while it still provides possibility for termination of the employment contract by both sides. Reasons for termination of employment contract can be various; however possibility to lay off the employee with or without cause is from significant importance for the employer. This is true especially in Bosnia and Herzegovina which is low-productive society and competition between the people to enter in the job market is high.¹³⁶

In comparison, India has very restrictive labor policies which are quite often criticized by many investors. Economic reforms which occurred in India as I indicated above have led to the increase in the FDI inflow; however it does not mean that obstacles for the FDI do not exist. Labor regulations in India are clear example of those obstacles. Need for the modernization of these regulations is evident, since they are still socialist oriented. One of the key indications of such non-market oriented regulations can be found in the Industrial Dispute Act, 1947 which *inter alia* regulates lay-off of the employees providing that dismissal of the employee can occur only after the approval by the competent Governmental body is granted.

137

¹³⁵ Articles 48 to 85 of Labor Law of Federation of Bosnia and Herzegovina

¹³⁶ According to the Agency for Statistics of Bosnia and Herzegovina (*Agencija za statistiku BiH*), unemployment rate in the country as for the November, 2012 is almost 28%, however this report includes also temporary jobs upon which is not possible to base statistics. In the estimation by the competent international sources, unemployment rate in Bosnia and Herzegovina is high as 44 %. See:

<http://www.tradingeconomics.com/bosnia-and-herzegovina/unemployment-rate> (March 28, 2013)

¹³⁷ 25M (1) of Industrial Disputes Act, 1947 (ACT NO. 14 OF 1947)

According to the Aditya Gupta, such permission is rarely granted and the employers choose not to hire people even in cases where the business is booming.¹³⁸ Of course, this is not only issue related to the labor regulations in India; however it is not in the framework of this master thesis to elaborate further on this topic.

4.2.3 Taxation

When discussing about taxation as an obstacle for the foreign direct investment inflow I am emphasizing the importance of the tax incentives for the foreign investors.¹³⁹ The incentive can be done by the tax holidays for the foreign owned enterprise. Bosnia and Herzegovina is offering tax incentives for the foreign investors; however these incentives are not attractive as they should be. The most notable tax incentive by the government toward FDI is the one which is offered in FBiH, and it deals with the corporate profit tax. According to the Tax Law of FBiH, the company which in the period of one year achieves 30 percent of its income by the exports that company is exempted from payment of this tax.¹⁴⁰ This is notable incentive for the foreign investor, since as I stated above, Bosnia and Herzegovina is not attractive to the foreign investors because of its market size, but rather because of opportunity to efficiently place the products “made in Bosnia and Herzegovina” in neighboring markets such are the EU¹⁴¹ and CEFTA. Another incentive at level of Federation of Bosnia and Herzegovina is given to any enterprise which in the period of five constructive years (starting with the first year of an investment) makes an investment in amount of approximately 10 million EUR.¹⁴² It

¹³⁸ Aditya Gupta, *How wrong has the Indian Left been about economic reforms?* (2006), Center for Civil Society, Working Paper No. 171 (March 28, 2013) <http://www.ccsindia.org/ccsindia/interns2006/How%20Wrong%20is%20left%20about%20economic%20reforms%20in%20India%20-%20Aditya.pdf>

¹³⁹ United Nations Conference on Trade and Development, TRADE AND DEVELOPMENT REPORT, 182-193 (2006) http://unctad.org/en/Docs/tdr2006_en.pdf (accessed March 27, 2013)

¹⁴⁰ Article 31 of FBiH Law on Corporate Income Tax - (Official Gazette of Federation Bosnia and Herzegovina 97/07) http://www.advokat-prnjavorac.com/legislation/Law_on_Corporate_Tax_of_FBiH.pdf

¹⁴¹ Bosnia and Herzegovina has preferential export agreement with European Union.

¹⁴² Article 32(1) of FBiH Law on Corporate Income Tax - (Official Gazette of Federation Bosnia and Herzegovina 97/07)

should be noted however that this exemption is given in this stated period and that company which does not meet the requirement (10 million EUR) in this period, but it was enjoying the privilege of corporate profit tax exemptions will be subjected to payment of this tax with additional default interest which will be calculated in accordance with the tax law.¹⁴³ Other constituent entity of Bosnia and Herzegovina is also allowing tax incentives to the investors in the terms of Real Estate taxes. Besides these incentives offered at the entities level, it is important to note that Bosnia and Herzegovina has concluded double taxation avoidance agreements with several different countries which results in further attractiveness of the country for the FDI inflow.¹⁴⁴

It should be noted that Bosnia and Herzegovina is far away from tax haven and that country has very complex tax structure which sometimes causes that double taxation occurs even within the country. Country should further harmonize the law of entities concerning the taxation, and with that it would make a place more attractive in the terms of FDI.

When it comes to the India and its taxation policies, it is important to stress that its complex tax structure is regulated on different levels of Government; therefore the tax incentives have given at the different levels. Indian corporate tax rate is different for domestic and foreign companies, providing that tax rate which is applicable to the foreign companies equals 48 percent, while the same tax rate for national companies equals 35 percent.¹⁴⁵ It is important to say that domestic company is considered to be the company which is incorporated in accordance with the Company Act, 1956 which means that foreign investors which are incorporated in the country will enjoy the benefits of lower tax rate.

¹⁴³ *Ibid.* Article 32(2)

¹⁴⁴ As on February 27, 2012 Bosnia and Herzegovina has signed/ratified double taxation avoidance agreements with Albania, Algeria, Austria, Belgium, Montenegro, Czech Republic, Denmark, Egypt, Finland, France, Croatia, Netherlands, Iran, Ireland, Italy, Jordan, Kuwait, Qatar, Cyprus, China, Hungary, Malaysia, Moldova, Germany, Pakistan, Poland, Romania, Slovakia, Serbia, Sweden, Sri Lanka, Turkey, United Kingdom, North Ireland, UAE, Spain and Norway. see:

<http://www.fipa.gov.ba/informacije/povlastice/oporezivanje/default.aspx?id=152&langTag=bs-BAn>

¹⁴⁵ UNCTAD, Tax Incentives and Foreign Direct Investment: A Global Survey 85 (2000)
http://unctad.org/en/Docs/iteipcmisc3_en.pdf (accessed March 28, 2013)

Foreign investor can benefit from the tax incentives if he sets up the company in one of undeveloped Indian regions. This incentive is aimed to develop those regions and it is provided that, depending on the region, investor could gain up to the 100 per cent tax exemption for the limited period of time.¹⁴⁶

In addition to these incentives mentioned above, India has several free trade zones which are aimed to increase exportation from the country. It is provided that new undertaking, which operates in these specialized zones, will be exempted from payment of tax.¹⁴⁷

4.3 Settlement of Investment Disputes: *Litigation v. Alternative Dispute Resolution*

Investment dispute could be resolved by many means of which however the most notable are litigation and arbitration. Other means of dispute resolution are conciliation and mediation, and they are usually referred to as alternative dispute resolution mechanisms. The arbitration is also alternative mechanism, however as suggested by the Tibor Varady, the arbitration has become mainstream mechanism in international commercial disputes.¹⁴⁸ The reason why this sudden change occurred and why the arbitration has gained its global importance in the commercial disputes is because each party of a dispute wants to escape from the court of an opposing party.

Truth to be told, arbitration has become mature and developed and with assistance of the conventions on the international level such as New York Convention on Recognition and Enforcement of Arbitral Awards, it has gained the value which is sometimes if not always more appreciated than a value of a domestic court. Arbitration has also provided for the benefits of the investor in the case where the investor deals directly with a state. Besides arbitration as I have mentioned, there is litigation which takes place at the host country of

¹⁴⁶ *Ibid.* 83

¹⁴⁷ *Ibid.* 84

¹⁴⁸ Tibor Varady, lecture at the CEU, Budapest 2012

investment. Litigation is not always favorable way to resolve investment dispute. This is true especially in the cases where the host country of investment has poor legal tradition with the often corrupted judges and where the legal system is biased by the domestic party to the dispute. Foreign investor in case of litigation will be subjected to the laws of the country which are unknown to him and court proceeding will not be in their native language. Conciliation and mediation are the most preferable ways to settle a dispute since such a dispute is settled amicably, however there is a little if any possibility that parties will opt for these two types since they do not provide for legally binding solution.¹⁴⁹

4.3.1 India

Judicial system in India has a long common law tradition and it provides for the adequate but not that efficient method of resolving the commercial disputes. The reason why I am stating that it not efficient system is because the courts in India are struggling with an excessive litigation and they lack of capacity to deliver the decisions in timely manner. The courts in India have been developed in accordance with a Constitution which contains provision about functioning of judicial system in the country. Constitution provides for following courts:

1. The Supreme Court of India
2. The High Courts
3. Lower Judiciary (District and lower civil/criminal court of States)

As the judicial system in the country has been governed by hierarchy, the highest court in the county is Supreme Court of India, which has final appellate authority in both criminal and civil matters.¹⁵⁰ The High Courts have been established in State or in the region, depending on the size of territory of the States. The High Court represent highest appellate authority in the

¹⁴⁹ Tibor Varady, John J. Barcelo III, Arthur T. von Mehren, *International Commercial Arbitration* 2-9 (5th Ed. Thomson/West 2012).

¹⁵⁰ Tony Khindria, *Foreign Direct Investment in India*, 248 (Sweet & Maxwel Asia, 1997)

respective State or region in which they operate, and they have a jurisdiction to hear the appeals from the lower court whether the appeal is civil or criminal matter.¹⁵¹

The lower courts have been organized in accordance with the State legislature, and the Constitution of India vested the power to the States to organize the courts and to identify the territorial jurisdiction of those courts.¹⁵²

Besides these courts listed above, the India's judiciary also recognizes tribunals which are not subjected to this hierarchy. The Tribunals have been established in order to reduce the burden of the High Courts and they are from particular importance for the foreign investors since they hear the cases related to the labor disputes, foreign exchange, competition, consumer protection and so on. It is important to note that since they are not subjected to the hierarchy mentioned above, appeals from Tribunals do not have to go through the High Courts, but rather they go directly to the Supreme Court of India¹⁵³.

Need for efficient alternative dispute resolution mechanisms came in the focus in India at beginning of 1990s, with the enactment of market reforms.¹⁵⁴ The old Arbitration Act 1940 did not provide for independent arbitration, but rather for arbitration which was strictly controlled by the court.¹⁵⁵ In order to get in line with international standards for arbitration, India has enacted the 1996 Arbitration Act. The new Arbitration Act is based on the UNCITRAL Model Law, which means that country has gained the arbitration which is before all based on international standard. Judicial intervention in arbitration proceeding is reduced to the minimum and arbitration in India has opportunity to become the main dispute resolution mechanism in commercial disputes. The reason why I am saying that it has opportunity, rather than it became the main dispute resolution mechanism is because there are

¹⁵¹ *Ibid.* 249

¹⁵² *Ibid.* 250

¹⁵³ *Ibid.* 252

¹⁵⁴ Hilmer, Sarah Elisabeth, *Has Arbitration Failed India or Has India Failed Arbitration?* (April 1, 2007). *International Arbitration Law Review*, Vol 10, No. 2, 33- 37 (April 2007)

¹⁵⁵ *Ibid.*

still many obstacles when which arbitration faces in order to reach its desired aims. As suggested by the Sarah E. Hilmer, the main concern in the field of arbitration is that Indian arbitrators lack sufficient skills in order to conduct the arbitration proceeding. Most of the arbitrators in India are retired judges, which as suggested by the author constitutes drawback because they tend to conduct the arbitration proceeding in the same way as they were conducting the court proceeding. Other obstacle as indicated by the author are that arbitration is often time consuming and expensive. As indicated in survey conducted by the Christian Bühring Uhle (2004), the arbitration proceeding is often more expensive than litigation, and no significant advantage over litigation exist in the terms of time consumption.¹⁵⁶ Therefore it is to say that arbitration is not always advantageous in the terms of these two features, but rather because of other features which have distinguished arbitration from other methods of dispute resolution. It could be concluded that India is following a right path and besides obstacles mentioned above, arbitration in India is becoming more important mechanism for dispute resolution.

As stated above, India has concluded BIT's with many countries. Those treaties, besides the substantive rules contain also the dispute resolution mechanism in case where the violation of those substantive rules has occurred.¹⁵⁷

4.3.2 *Bosnia and Herzegovina*

When it comes to the settlement of investment disputes in Bosnia and Herzegovina, it is clearly indicated in the Investment Law that disputes should be settled by litigation in courts of the country.¹⁵⁸ Pursuant to the Article 17 of Investment Law which deals with settlement

¹⁵⁶ Chrisitan Buhring-Uhle, Lars Kirschhoff & Gabriele Scherer, ARBITRATION AND MEDIATION IN INTERNATIONAL BUSINESS (2006) in Tibor Varady, John J. Barcelo III, Arthur T. von Mehren, International Commercial Arbitration 27 (5th Ed. Thomson/West 2012).

¹⁵⁷ Franck, Susan D., *Foreign Direct Investment, Investment Treaty Arbitration and the Rule of Law*. McGeorge Global Business and Development Law Journal, Vol. 19, p. 337, (2007)

¹⁵⁸ Article 17 of Law on the Policy of Foreign Direct Investment in B&H, Official Gazette No. 4/96, with two amending Laws published in the Official Gazette no. 13/03 and 48/10,

of investment disputes, parties to the investment agreement may choose alternative methods of dispute resolution such as domestic or even international arbitration or conciliation.¹⁵⁹

Litigation in the courts of Bosnia and Herzegovina is not always a preferable way to settle a dispute, especially in the case where the “foreign” party is included. This is to say because of the complexity of the judicial system in the country which often causes tremendous troubles to the investor. The country has 76 different courts from which only two are at the level of the State, while remaining 74 are at the level of entities. There are 6 commercial courts in the country, and all of them are placed in the RS. Commercial courts have responsibility to adjudicate the disputes which are related to *inter alia* intellectual property, bankruptcy, unfair competition, foreign investment disputes, disputes related to the establishment of legal entities and other commercial disputes which may arise from trade in goods or performance of services.¹⁶⁰

The jurisdiction over the commercial disputes in the Federation of Bosnia and Herzegovina has been assumed by the Municipality Courts which have commercial divisions.¹⁶¹ Because of the lack of commercial courts in the country, the process of resolving a dispute by the means of litigation has not proven to be efficient and it is often time consuming. It takes several years in order for the case to be heard by the court, so foreign investors should definitely search for other method of dispute resolution.¹⁶²

Arbitration as an alternative method of dispute resolution, has never received the necessary attention in Bosnia and Herzegovina. The reason behind this is because Bosnia and Herzegovina has never enacted its own law on commercial arbitration, but rather rules on

¹⁵⁹ *Ibid.*

¹⁶⁰ Jasenka Ferizović, *The Court System in Bosnia and Herzegovina* 18 (2004) <http://www.bosnianbonesspanishghosts.org/resources/The%20%20court%20system%20in%20Bosnia%20and%20Herzegovina.pdf> (March 28, 2013)

¹⁶¹ Municipal Courts which have commercial divisions are Municipal Courts of Orasje, Tuzla, Goražde, Bihac, Travnik, Zenica, Mostar, Sarajevo, Livno and Siroki Brijeg.

¹⁶² U.S. Department of State, BUREAU OF ECONOMIC AND BUSINESS AFFAIRS, *2012 Investment Climate Statement - Bosnia and Herzegovina*, (June 2012) <http://www.state.gov/e/eb/rls/othr/ics/2012/191113.htm> (accessed March 27, 2013)

commercial arbitration in the country can be found in the Law of Civil Procedure of respective entity.¹⁶³ Rules on Arbitration are not based on UNICITRAL Model Law, but still they provide the essential rules which are related to arbitration such as composition of tribunal, the responsibility of arbitrators, rules on binding nature of arbitration and rules on setting aside the award.¹⁶⁴ It is important to note that country is a party to a New York Convention on Recognition and Enforcement of Arbitral Awards, so it follows that award which is rendered in the country other than Bosnia and Herzegovina can be enforced in the Bosnia. This is of a crucial importance since lack of law on commercial arbitration is a good reason for the parties to conduct their arbitration proceeding in the foreign country with developed commercial arbitration laws.¹⁶⁵ The competent court for the enforcement and recognition of foreign awards has been a court in a territory where the enforcement is to be sought, whether in FBiH or in RS.¹⁶⁶

When it comes to the investment dispute resolution in Bosnia and Herzegovina, it is crucial to stress that country has been signatory of ICSID Convention. However it is provided by the Article 17 of Investment Law that arbitration is not a preferable method of settlement of dispute and that parties if they agree, should first try to settle their dispute amicably by either domestic or international conciliation.¹⁶⁷ There is no period provided in which the parties should change from one dispute resolution mechanism to another, but it is reasonable to conclude that this period should be defined by the parties agreement.

Arbitration in Bosnia and Herzegovina leaves much to be desired; however it is still a more preferable method of dispute resolution than litigation in the country.¹⁶⁸

¹⁶³ E. Saracevic, A. Gazibegovic, I. Osmic, *Arbitration in Bosnia and Herzegovina*, CMS Guide to Arbitration, Vol I 133 (March 28, 2013)

¹⁶⁴ *Ibid.* 133-147

¹⁶⁵ *Ibid.* 148

¹⁶⁶ *Ibid.* 147

¹⁶⁷ Article 17 of Law on the Policy of Foreign Direct Investment in B&H,

¹⁶⁸ U.S. Department of State, BUREAU OF ECONOMIC AND BUSINESS AFFAIRS, *2012 Investment Climate Statement - Bosnia and Herzegovina*, (June 2012)
<http://www.state.gov/e/eb/rls/othr/ics/2012/191113.htm> (accessed March 27, 2013)

CONCLUSION

Attractive and predictable regulatory framework is one of the most important prerequisites for the country in order to gain the benefits which foreign direct investments are carrying. Those benefits can be crucial for the economic growth of the country, since they are coming in the form of fresh capital and new technologies which are necessary for growth of productiveness of a country. This paper has provided an comparative overview of current legal framework relevant to the foreign direct investments in both India and Bosnia and Herzegovina and it has further examined whether the regulations relevant to the foreign direct investments in these countries are welcoming foreign investors or they are being hostile towards them.

Analysis of the Indian legal framework has showed that country is still highly regulated in the terms of foreign direct investments, however country has begun to introduce more liberal policies and it has started to open certain sectors for which they deemed before to be from the national interest. Bosnia and Herzegovina on the other side is aware that its legislation must be attractive for the foreign investor in order to do business in the country. Bosnian regulatory framework provides for the same treatment of the foreign and domestic investors and country does not have restrictions on the foreign investments as it is in case of India. Bosnian legislator is aware that country does not have comparative advantage in the factor which is vital to the foreign investors as market size. It has became obvious that integration at the international and regional level is a must in order to benefit from the larger market and increase its attractiveness as for the host country of foreign direct investment.

Indian legislator can still afford itself to be hostile toward the foreign investors and at the same time represent one of the best foreign investment locations. The reason why the country has this leverage is because India possesses extremely large market and cheap and educated labor which, as I stated, foreign investors consider as the most important incentive. However,

in order to fully benefit from the foreign direct investments, country must remove sectoral limitations and invite the foreign investors to participate in its big market.

Moreover, both countries must reconsider their procedures for starting a business, since they represent very long and costly process. They should modernize the institutions responsible for conducting the company's registration and the number of institutions should be definitely reduced.

Bosnia and Herzegovina must continue to cooperate with the international organizations in order to adopt its law on commercial arbitration. This would further promote the attractiveness of the Bosnia and Herzegovina as a potential FDI location, since investors are interested to have predictable and neutral rules of arbitration. Country may consider incorporating UNICITRAL model law in its domestic law in order to get desired level of uniformity with the other countries.

Although this comparative study was aimed to address the major obstacles in the India and Bosnia and Herzegovina, it could be useful, not just to them, but also to other transitional countries which are facing with similar issues.

BIBLIOGRAPHY

Books and Articles

1. Aditya Gupta, *How wrong has the Indian Left been about economic reforms?* (2006), Center for Civil Society, Working Paper No. 171 (March 28, 2013)
<http://www.ccsindia.org/ccsindia/interns2006/How%20Wrong%20is%20left%20about%20economic%20reforms%20in%20India%20-%20Aditya.pdf>
2. Tarun Kanti Bose, *Advantages and Disadvantages of FDI in China and India*, International Business Research, Vol 5, No 5, 164-174 (2012)
3. D. Salomon and D.H. Mirsky; *Direct Foreign Investment in the Caribbean: a Legal and Policy Analysis*, 11 Nw. J. Int'l & Bus. 257,257,,259 (1990-1991)
4. Daniel C. K. Chow & Thomas J. Schoenbaum, *International Trade Law* 321 (ASPEN Publishers 2008)
5. Darja Loncar, *Foreign Direct Investments in Croatia- Comparison with India and Germany* 29 (2001) LL.M Long Thesis, Central European University
6. James A. Dobkin, Jeffry A. Burt, Krupsky, Kenneth J. And Mark J. Spooner, *Joint ventures with International Partners-Structure and Negotiation with Forms*, 2-3 (Butterworth Legal Publishers, 1993)
7. E. Saracevic, A. Gazibegovic, I. Osmic, *Arbitration in Bosnia and Herzegovina*, CMS Guide to Arbitration, Vol I 133 (March 28, 2013)
8. F.H. van Hastenberg, *Foreign Direct Investments in Hungary* 35 (Utrecht University 1999)
9. Susan D. Franck, *Foreign Direct Investment, Investment Treaty Arbitration and the Rule of Law*. McGeorge Global Business and Development Law Journal, Vol. 19, p. 337, (2007)
10. Gábor Hunya, *FDI in South-Eastern Europe in the Early 2000s*, 4-5 (The Vienna Inst. for Int'l Econ. Studies -WIIW 2002),
<https://www1.oecd.org/countries/croatia/1940829.pdf> (accessed March 27, 2013)
11. Sarah Elisabeth Hilmer, *Has Arbitration Failed India or Has India Failed Arbitration?* (April 1, 2007). International Arbitration Law Review, Vol 10, No. 2, 33- 37 (April 2007)
12. Jasenka Ferizović, *The Court System in Bosnia and Herzegovina* 18 (2004)
<http://www.bosnianbonesspanishghosts.org/resources/The%20%20court%20system%20in%20Bosnia%20and%20Herzegovina.pdf> (March 28, 2013)
13. Robert E. Lipsey, *"Home and Host Country Effects of FDI."* National Bureau of Economic Research (Cambridge,MA) Working Paper No. 9293, (October 2002.)

14. Mark B. Baker, *"Awakening the Sleeping Giant:" India and Foreign Direct Investment in the 21st Century*, 15 Ind. Int'l & Comp. L. Rev. 389, 405 (2005).
15. OECD, *Investment Policy Reviews: India 2009* 13 (OECD Publishing, 2009)
16. Oleksiy Kononov, *Foreign Direct Investment in Ukraine and Germany- Comparative Study* 3-22 (2007) LL.M Thesis, Central European University
17. Robert J. Carbaugh, *International Economics* 261 (12th ed. South-Western Pub 2008)
18. Rosa Portela Forte, Aurora Amélia, Castro Teixeira, LOCATION DETERMINANTS OF FDI: A LITERATURE REVIEW 10, FEP Working Papers (2011)
<http://ideas.repec.org/p/por/fepwps/433.html> (March 27, 2013)
19. Sharma, Kishor, *Export Growth in India: has FDI Played a Role?* 2 (Yale University, 2000), http://www.econ.yale.edu/growth_pdf/cdp816.pdf (March 27, 2013)
20. Taida Begic, *Foreign Direct Investment in Successor States of the Former Yugoslavia* 10 (1998) LL.M Short Thesis, Central European University
21. Tibor Varady, John J. Barcelo III, Arthur T. von Mehren, *International Commercial Arbitration* 27 (5th Ed. Thomson/West 2012).
22. Tony Khindria, *Foreign Direct Investment in India* (Sweet & Maxwell Asia 1997).

Legislative Materials

23. Central European Free Trade Agreement (CEFTA 2006),
<http://www.questionnaire.gov.me/Annexes/Annex234.pdf>
24. Companies Act, 1956 (Act No. 1 of 1956)
http://www.mca.gov.in/Ministry/pdf/Companies_Act_1956_13jun2011.pdf (accessed March 27, 2013)
25. Company Law of RS Official Gazette of Serb Republic No. 127/08 and 58/09 excerpt
http://www.fipa.gov.ba/publikacije_materijali/zakoni/default.aspx?id=317&langTag=en-US
26. Convention on the Settlement of Investment Disputes between States and Nationals of Other States, 17 UST 1270, TIAS 6090, 575 UNTS 159
27. Consolidated FDI Policy 2012 (effective from April 10, 2012),
http://dipp.nic.in/English/Policies/FDI_Circular_01_2012.pdf (accessed March 27, 2013)
28. Industrial Disputes Act, 1947 (ACT NO. 14 OF 1947)
http://hrylabour.gov.in/docs/labourActpdfdocs/ID_Act.pdf

29. Labor Law of Federation of Bosnia and Herzegovina, http://www.advokat-prnjavorac.com/lawoffice/labour_law.html
30. Law on Companies of FBiH "Official Gazette of the Federation of B&H", number 23/99, 45/00, 2/02, 6/02 and 29/03, 68/05 excerpt
http://www.fipa.gov.ba/publikacije_materijali/zakoni/default.aspx?id=317&langTag=en-US
31. Law on the Policy of Foreign Direct Investment in B&H, Official Gazette No. 4/96, with two amending Laws published in the Official Gazette no. 13/03 and 48/10, Unofficial translation http://www.advokat-prnjavorac.com/legislation/law_on_the_policy_of_foreign_direct_investment_in_bih.pdf (accessed March 27, 2013)
32. Law on Corporate Income Tax in FBiH, Official Gazette of Federation Bosnia and Herzegovina 97/07. Unofficial translation http://www.advokat-prnjavorac.com/legislation/Law_on_Corporate_Tax_of_FBiH.pdf

Reports, Newspaper Articles and Internet Sources

33. BBC, *Mittal Steel Firm in Bosnia Deal*, (Aug. 17, 2004)
<http://news.bbc.co.uk/2/hi/business/3573656.stm> (accessed March 27, 2013)
34. Business Portal of India, *Public Limited Company*;
http://business.gov.in/starting_business/org_public_ltd.php (accessed March 27, 2013)
35. Foreign Investment Promotion Agency (FIPA), *How to establish a business in BiH* 14-15 (2012);
<http://fipa.gov.ba/doc/brosure/HOW%20TO%20ESTABLISH%20A%20BUSINESS%20IN%20BH.pdf> (March 28, 2013)
36. Foreign Investment Promotion Agency of Bosnia and Herzegovina (FIPA), *INVESTMENT OPPORTUNITIES IN BOSNIA AND HERZEGOVINA* (2012)
http://www.fipa.gov.ba/publikacije_materijali/brosure/io_2012.02.11.2012.pdf (accessed March 27, 2013)
37. Government of India, Ministry of Commerce & Industry, Department of Industrial Policy & Promotion, Press Note No.4 (2012)
http://dipp.nic.in/English/acts_rules/Press_Notes/pn4_2012.pdf
38. International Center for Settlement of Investment Disputes (ICSID), List of Contracting States and Other Signatories of the Convention (March 28, 2013)
<https://icsid.worldbank.org/ICSID/FrontServlet?requestType=ICSIDDocRH&actionVal=ContractingStates&ReqFrom=Main>
39. *Kako Je Ante Marković "oživeo" SFRJ* (2011),
http://www.b92.net/biz/vesti/srbija.php?yyyy=2011&mm=11&dd=28&nav_id=561275 (accessed March 27, 2013)

40. Khushita Vasant, *India Unions Call Strike*, The Wall Street Journal (February 19, 2013)
<http://online.wsj.com/article/SB10001424127887323495104578313670512348596.html> (accessed March 28, 2013)
41. Ministry of Finance, Government of India, BILATERAL INVESTMENT PROMOTION AND PROTECTION AGREEMENTS (BIPA),
http://finmin.nic.in/bipa/bipa_index.asp (March 28, 2013)
42. Multilateral Investment Guarantee Agency, MIGA Member States (March 28, 2013)
<http://www.miga.org/whoweare/index.cfm?stid=1789>
43. No. 265, *Fenomen Golf* (BH Dani 2002),
<http://www.bhdani.com/arhiva/265/t26515.shtml> (accessed March 27, 2013)
44. Office of the High Representative, The General Framework Agreement, (March 27, 2013) http://www.ohr.int/dpa/default.asp?content_id=380
45. Organization for Economic Co-Operation and Development, Foreign Direct Investment for Development: *Maximizing Benefits, Minimizing Costs* (OECD Publ'g 2002). <http://www.oecd.org/redirect/dataoecd/47/51/1959815.pdf> (March 27, 2013)
46. Reserve Bank of India, *Foreign Investments in India* (October 11, 2012), available at <http://www.rbi.org.in/scripts/faqview.aspx?id=26#6> (accessed March 27, 2013)
47. Shobhan Saxena, *India-China Bilateral Trade Set to Hit \$100 Billion by 2015* (2012), <http://timesofindia.indiatimes.com/business/india-business/India-China-bilateral-trade-set-to-hit-100-billion-by-2015/articleshow/14323128.cms> (accessed March 27, 2013)
48. U.S. Department of State, BUREAU OF ECONOMIC AND BUSINESS AFFAIRS, *2012 Investment Climate Statement- India* (June 2012)
<http://www.state.gov/e/eb/rls/othr/ics/2012/191166.htm> (accessed March 28, 2013)
49. United Nations Conference on Trade and Development, TRADE AND DEVELOPMENT REPORT, 111-112 (2006)
http://unctad.org/en/Docs/tdr2006_en.pdf (accessed March 27, 2013)
50. United Nations Conference on Trade and Development, Tax Incentives and Foreign Direct Investment: A Global Survey (2000)
http://unctad.org/en/Docs/iteipcmisc3_en.pdf (accessed March 28, 2013)
51. United Nations Conference on Trade and Development, World Investment Report 2012, 32 (United Nations Publications 2012). :
http://unctad.org/en/PublicationsLibrary/wir2012_embargoed_en.pdf (March 27, 2013)
52. World Trade Organization, Members and Observers (March 28, 2013)
http://www.wto.org/english/thewto_e/countries_e/india_e.htm

53. World Bank, Investing Across Borders- Indicators of FDI Regulation: Bosnia and Herzegovina (March 28, 2013)
<http://iab.worldbank.org/Data/Explore%20Economies/Bosnia-and-Herzegovina/Starting-a-foreign-business/procedures#dgTimeMotionDet:1>