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Foreign Investment Incentives in the Developing World: The Legislation of Greece, Egypt, Pakistan, Thailand and the Republic of China*

by Paul Stephen Dempsey**

Prof. Dempsey has provided the reader with a concise survey of the investment laws of five developing nations. The article seeks to examine these laws in terms of the social, political and economic forces which control the future of these nations. Particular significance is attributed to military posture and political orientation.

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I. Introduction

In order to understand the flow of world capital, one must examine not only foreign trade, which is the focus of much contemporary legal and economic literature, but foreign investment as well. The existence or absence of foreign investment plays a significant role in the determination of national prosperity or impoverishment. Many of the poorer nations of the world which have not embraced a communist or extreme socialist model have recognized the tremendous value of private foreign investment as an effective, expedient, and efficient method of stimulating economic growth. In order to enhance their attractiveness as potential recipients of investment capital, many of these capital poor nations have enacted generous statutory incentives.
to encourage foreign investment. The objective of these statutory incentives is to attain economic growth and political stability by encouraging industrial development, reducing unemployment and increasing per capita income.¹

This article shall examine the statutory incentives which have been enacted by five nations of the developing world in response to their desire for economic enhancement. The five developing countries selected include one from Europe (Greece), one from Africa (Egypt), and three from Asia (Pakistan, Thailand, and the Republic of China [hereinafter Taiwan]). Three criteria have been employed in their selection: first, each is now or has traditionally been relatively pro-Western in its political orientation; second, each may be considered a developing nation vis-a-vis other members of the world community; and third, each has at least one hostile militarily superior neighbor with which it may find itself engaged in armed conflict before the end of the century. It is the intent of the article to demonstrate that nations which fall within each of these categories may be particularly inclined to facilitate, if not vigorously promote, foreign capital investment in an effort to stimulate economic growth and guarantee political stability. Before turning to a discussion of the statutory incentives themselves, it is necessary to examine in further detail the criteria employed in selecting these five nations. The object of this discussion is to examine the relationship between the criteria used in the selection of these five nations and the motivation which led these governments to offer statutory incentives for foreign investment.

The first criterion is one of political persuasion. None of the five countries is communist, and all are or have been traditionally friendly towards the United States. The United States is formally allied with

Greece in the North Atlantic Treaty Organization (NATO) and with Pakistan in the Central Treaty Organization (CENTO). Thailand has also been a friend of the United States, permitting the United States to construct air bases in Thailand which were used extensively during the Vietnam War. Relations between the United States and Egypt are extremely strong as a result of the initiatives on the part of the United States to promote peace in the Middle East. However, relations between the United States and Taiwan are exceptionally weak as a result of American diplomatic recognition of the government of the People's Republic of China and renunciation of the defense treaty with Taiwan. Nevertheless, absent an invasion by the mainland, Taiwan is highly unlikely to drift into the communist orbit or abandon capitalism in the foreseeable future. Taiwan is as politically and economically "Western" as any nation in Asia, save Japan. Thus none of these five nations could be viewed as being philosophically opposed to western political values or capitalism.

Second, each country is in an economic posture which warrants, if not requires, efforts to stimulate development of its natural and human resources. Greece is the wealthiest nation in this group with an annual per capita income of $2,324. Yet, it is still among the poorest nations of Europe ranking only slightly ahead of Spain and Portugal. Taiwan ranks second among these five nations with a per capita income of $800. The remaining three countries in this group, Thailand, Egypt and Pakistan, are among the poorest nations in the world with per capita incomes of $351, $263, and $179 respectively. This low

2 WORLD ALMANAC AND BOOK OF FACTS 539 (1979) [hereinafter cited as 1979 WORLD ALMANAC].
3 World Bank, WORLD TABLES (1976), 496 (1977) [hereinafter cited as 1976 WORLD TABLES]. Greece ranks 30th of 145 nations surveyed by the World Bank; Spain and Portugal rank 33d and 41st, respectively. Id. Greece had a 1975 gross national product (GNP) of only $22 million. (1978) EUROPA Y.B. Vol. 1, xviii (Europa Publications Ltd., London [hereinafter cited as EUROPA Y.B.]).
4 1979 WORLD ALMANAC, supra note 2, at 526. Taiwan ranks 63d among nations of the world in this respect. 1976 WORLD TABLES, supra note 3, at 498. Its 1975 GNP is $14 million. EUROPA Y.B., supra note 3, at xviii.
5 They rank 102d, 104th, and 125d, respectively, among the world's nations. 1976 WORLD TABLES, supra note 3, at 500. Their GNPs are $14,540 million (Thailand), $11,550 million (Egypt) and $9,830 million (Pakistan). EUROPA Y.B., supra note 3, at xviii-xx.
6 1979 WORLD ALMANAC, supra note 2, at 582.
7 Id. at 532.
8 Id. at 566.
level of economic development is due to heavy dependence on agriculture, and inadequate industrial development.9

Several of these nations also face the problem of spiraling population growth which devours the limited measure of existing economic progress. Both Pakistan's population of sixty-four million and Thailand's population of thirty-nine million are expected to double before the end of the century.10 Another problem related to that of population growth is population density. Both Egypt and Taiwan face considerable density problems. The majority of Egypt's thirty-seven million people11 live in a narrow strip of fertile land in the Nile basin. Taiwan's population of sixteen million live on an island where the density ratio is 442 people per square kilometer. This makes Taiwan the most densely populated of the group.12 These demographic and economic factors are significant inducement for pragmatic leaders in these nations to encourage industrial development in an effort to enhance the quality of life for their people.

The final criterion used in selecting these countries is the military posture of each nation vis-a-vis its neighbors. Each of these five countries faces at least one hostile, well armed neighbor who poses a military threat. Indeed, all but Thailand have fought and lost bitter military disputes with neighboring states since World War II.

The animosity between Greece, and Turkey is centuries old. Most recently hostilities surfaced in Cyprus where a Greek led coup d'etat caused the Turkish army to invade and annex large portions of the island.13 Turkey, however, is not the only troublesome neighbor for Greece. The Greeks fought a communist insurgece shortly after the Second World War and now share their Northern border with several communist nations. Bulgaria, a member of the Warsaw Pact, is the most awesome of those communist neighbors.14

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9 The economies of these nations may be divided as follows: China (fifty percent agricultural, eighteen percent manufacturing); Egypt (fifty-three percent agriculture, sixteen percent manufacturing); Greece (forty percent agriculture, twenty-six percent manufacturing); Pakistan (fifty-eight percent agriculture, sixteen percent manufacturing); and Thailand (seventy-nine percent agriculture, six percent manufacturing). Id., World Bank, at 514-517.

12 EUROPA Y.B., supra note 3. Greece is the least populated of the five, with fewer than ten million inhabitants. Id., at xvii.
13 N.Y. Times, July 20, 1974, at 1, col. 8.
Egypt's constant enemy in recent years has been the State of Israel. Since 1948 the Egyptians have fought and lost numerous wars with the Israelis.\textsuperscript{15} Should the recent peace treaty with Israel prove ineffective or should hostilities with other neighboring Arab States develop as a result of the treaty, Egypt could again be faced with war.\textsuperscript{16} Moreover, one wonders whether a change in Egypt's present leadership might return Egypt to its former position of hostility toward the State of Israel.

India is Pakistan's most threatening neighbor. These two nations have frequently clashed over border and religious disputes in the past, the latest of which cost Pakistan the loss of Bangladesh.\textsuperscript{17} Pakistan also shares a border with Afghanistan, the site of a recent communist takeover.\textsuperscript{18}

The Republic of China has only one threatening neighbor, the People's Republic of China. Since the Nationalist retreat to Taiwan shortly after the Second World War the Communists have regularly shelled and threatened the offshore islands held by the Nationalists.\textsuperscript{19} With the recent loss of diplomatic recognition from the United States and the loss of the United States military umbrella, Taiwan may face a most precarious future.\textsuperscript{20}


Sadat's mission to Jerusalem last November was viewed as the first step for a new life for Egypt—an era of peace that would permit a redirection of the economy from defense to development and attract badly needed foreign investment. But too many of Cairo's ten million citizens still huddle homeless on rooftops or in the tombs of the old Mameluke cemeteries, unable even to buy enough food because of inflated prices. NEWSWEEK, July 17, 1978, at 49.

\textsuperscript{17} N.Y. Times, Dec. 17, 1971, at 1, col. 8.

\textsuperscript{18} See N.Y. Times, Jan. 29, 1955, at 1, col. 6.

\textsuperscript{19} See NEWSWEEK, Dec. 25, 1978, at 14; NEWSWEEK, Jan. 1, 1979, at 29. “China could probably conquer Taiwan if it wanted to; the Nationalist armed forces of 500,000 men are outnumbered 9 to 1.” NEWSWEEK, Feb. 5, 1979, at 56.

\textsuperscript{20} “The Vietnamization of Indochina may place Thailand in 'the gaping mouth of the Vietnamese tiger' . . .” NEWSWEEK, Jan. 22, 1979, at 35. To a lesser extent, it has faced guerrilla warfare by communist insurgents along its southern borders with Malaysia for several years. Thailand has recently sought some U.S. support which “might dissuade Hanoi's military strategists from viewing Thailand as ultimately just another domino. . . . No matter how much the U.S. increases its arms shipments,
The last of these five nations, Thailand, faces a future as uncertain as any of the remaining four nations in this group. The fall of Cambodia to communist forces leaves Thailand's border open to the well-equipped and battlehardened troops of Vietnam.\textsuperscript{21}

Hence, each of these five nations has a strong military incentive to encourage economic development. From the military perspective, economic growth is essential to rebuild and replace that which war has destroyed, to finance the costs of maintaining an adequate defense system, and to promote domestic political stability so that internal dissention does not entice foreign aggression. Yet, from the investor's perspective, this dubious strategic environment is not inviting. The potential risks may appear likely to outweigh any benefits to be derived from investment in such a nation.

Among the risks to be considered are military invasion or occupation by external forces which may lead to destruction or confiscation of facilities. Prolonged conflicts may cost an investor skilled workers as men are conscripted for military service. Moreover, the economic costs of defense may lead to excessive taxation and unreasonable inflation. In the absence of strong statutory incentives for investment, these nations would not be desirable locations for investment. Hence, it is necessary for these nations to offer investment incentives in order to obtain the benefits of foreign investment.

This article is not intended to be an exhaustive survey of foreign investment laws in the developing world. It examines only five of the nations which satisfy the three aforementioned criteria. Other nations such as Jordan, Zimbabwe-Rhodesia and Turkey, might also be viewed as sharing similar characteristics. The analysis in this article is also limited to legislation affecting direct rather than portfolio investment. Nevertheless, it is believed that this provides a sufficiently expansive survey to demonstrate the effects of these criteria upon the need for foreign investment. The substance of this article is a survey of the relevant legislation of these five nations. It begins with the investment laws of Greece followed by an examination of those of Egypt, Pakistan, Thailand and Taiwan.

II. THE REPUBLIC OF GREECE

The Greek government’s expressed policy on foreign investment is that it:

considers private enterprise as the prime mover of the economy... [and it] recognizes, as do all West European governments, that to seek lawful, taxable profit, within a framework of free market competition, is the right of every manufacturer, artisan, merchant or other professional, together with the satisfaction of creative activity, as the mainspring of his productive effort.2

Thus, the government of Greece perceives the inherent incentives derived from the capitalist model as affording the most effective means of enhancing economic development. An inflow of foreign entrepreneurial capital is encouraged, first because Greece had traditionally suffered retarded economic growth as a result of a balance of payments outflow, and second because the influx of foreign capital creates an environment in which advanced technology, management and marketing skills are stimulated.23

As a further incentive to economic development, Greece on June 12, 1975, filed an application for full membership in the European Economic Community.24 It has been an associate member since 1962.25

A. Investment in Export Enterprises

In order to stimulate investment in export related activities, Greece offers several tax exemptions and deductions, and reduced interest rates on loans. Thus, imported raw materials and energy resources are exempt from import taxes and duties where their importation is designed to facilitate the manufacture of products intended for export.26 These imported commodities, as well as manufactured and

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23 Id. at 9. Moreover, certain foreign investment guarantees have been incorporated into the Greek Constitution. FORTUNE, Mar. 13, 1978, at 22 (advertisement section).
26 Legislative Decree, 4231/1962, art. 11; Law 2861/1954 art. 2, both as discussed in ETBA: Investment Guide 15 (1977) (the guide is published by Hellenic In-
handicraft items, which are domestically produced are also exempt from the turnover tax where they are employed in the manufacture of export products. Export enterprises may also avail themselves of special reduced rates on capital borrowed from Greek lending institutions. Finally, they may enjoy a fixed corporate income tax rate for a period of ten years, as well as a ten year reduction or exemption of tariffs, duties, turnover taxes, and all local government imposed taxes and duties.

Certain foreign trading, manufacturing, engineering, and shipping activities, which are engaged in activities unrelated to the Greek domestic consumer market may apply to the Ministry of Coordination for additional favorable treatment. Approved enterprises may be exempted from all import duties and related taxes on any imported commodities which are essential to equip their offices. They may also be exempted from all income taxes on income earned abroad. To qualify for these advantages, eighty percent of the firm's total personnel must be of Greek nationality, and sixty percent of any particular category of personnel must also be Greek.

The proceeds derived from the sale abroad of exported commodities are also exempt from the turnover tax. Law 660/1937; Law 2861/1954, arts. 1 and 8; L.D. 4231/1962, art. 1, all as discussed in ETBA: Investment Guide, supra note 26, at 18. In determining net taxable profits, exporters are permitted to deduct three percent of their gross proceeds derived from export sales. Law 542/1977, art. 13, as discussed in ETBA: Investment Guide, supra note 26, at 17. The six percent tax ordinarily levied on wages and salaries may be refunded to exporters. Law 843/1948; Law 2861/1954, art. 4, both as discussed in ETBA: Investment Guide, supra note 26, at 18.


Greece: Economic Activity and Development, supra note 22, at 23.

The enterprise may not “engage in business operations in Greece, but shall limit its activities to coordinating and supervising company operations taking place in other countries.” Law 89/1967 and Law 378/1968, both as discussed in Greece: Economic Activity and Development, supra note 22, at 24. In order to qualify for favorable treatment, it must deposit at least $5,000 in a Greek Bank, payable to office personnel, and it must submit an annual report to the Ministry of Coordination explaining the amount of foreign capital imported, the office staff, and any alterations in company name or management. Id.

B. Regional Development Incentives

Greece also offers a series of incentives designed to stimulate investment outside the metropolitan Athens area. Thus, the nation has been divided into five zones, each with its unique system of investment incentives.

Region A consists of the Prefectures of Attica (which includes Athens), except the municipality of Laurion. Incentives in this zone are inconsequential. Region B embraces the municipality of Laurion, the Province of Chalkis, and the Prefectures of Thessaloniki, Boeotia and Corinthia. Incentives here are also limited.

Region C includes virtually the remainder of the nation. New investments in this zone are allowed a 100 percent reduction of the turnover tax.

Region D includes certain less developed Prefectures located within Region C. Investments within this zone enjoy the attributes of Region C treatment, supplemented with a twenty-five percent governmental subsidy on the costs incurred in establishment.

Region E embraces certain border Prefectures, where investors enjoy a 150 percent deduction from net profits of expenses incurred, a fifty percent reduction of the property transfer tax on real property, a seventy-five percent reduction of the turnover tax, and a forty percent governmental subsidy on the cost of the building construction.

C. Domestic Industry Preferences

Domestic industries may enjoy preferential treatment vis-a-vis foreign competitors in sales to governmental entities, even if the prices charged for the domestically produced commodities are eight percent

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52 Legislative Decree (L.D.) 1078/1971, as discussed in ETBA: Investment Guide, supra note 26, at 18 and accompanying chart on Regional Development Incentives.
53 Id. at 19.
54 Id.
56 L.D. 289/1976 as discussed in ETBA: Investment Guide, supra note 26, at 19 and accompanying chart on Regional Development Incentives. In order to qualify for these incentives, the enterprise must receive the approval of the Minister of Coordination. Id. Greece has also established a number of industrial zones throughout the nation where certain additional incentives are available. See L.D. 4458/1965; L.D. 742/1977; and L.D. 4171/1961, art. 6, as described in ETBA: Investment Guide, supra note 26, at 20.
higher than their foreign counterparts. As an alternative to such treatment, the investor may instead select an exemption on duties imposed on imported raw materials.

D. Large Investments

Where the Minister of Coordination and Planning concludes that an investment exceeding 150 million drachmas (approximately 4.12 million dollars) in new facilities, or an investment in the expansion of existing facilities totaling more than fifty million drachmas (1.37 million dollars), will stimulate national production, employment and the exportation of commodities, such investment is eligible for a number of tax incentives and other concessions. Productive investments of this nature are exempt from all taxes, duties and other fees on machinery, accessories, instruments for research and construction equipment. The tax rates on undistributed income may be frozen for a period not exceeding ten years, until all long-term debts have been satisfied. Moreover, local and municipal taxes may be frozen for an identical period. Such enterprises may also freely utilize harbor facilities constructed by them without charge until full depreciation of the amount paid for the construction thereof have been amortized. The Greek government may also grant free and exclusive use of a strip of coastal and waterfront land to the firm, commensurate with its needs, for a period of fifteen years. Where necessary, the government may also expropriate real property to be sold to the enterprise.

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39 Law 4171/1961, as amended by Law 916/1971 and Law 159/1975, as discussed in Greece: Economic Activity and Development, supra note 22, at 23. If an existing enterprise is to be expanded, the investment therein must already total 150 million drachmas. As of July 1, 1978, Dr. 36.40 = U.S. $1.00. National Bank of Greece, Greece in Figures (1978).
41 Id.
42 Id. art. 3.
43 Id.
44 Id.
Where the investment exceeds 500 million drachmas (13.74 million dollars), the investor may enter into a contractual agreement with the Greek government whereby the aforementioned requirement of approval of the proposal by the Minister of Coordination is eliminated, and supervening rights and privileges may be substituted. The duration of these special privileges may not exceed ten years from the year within which the enterprise began production.\textsuperscript{45}

E. Repatriation of Capital

The importation of investment capital from abroad is generally unrestricted by Greek law.\textsuperscript{46} However, the repatriation of imported capital is limited to investments deemed to be "productive" by the Ministry of Coordination.\textsuperscript{47} Subject to this condition, such capital may be remitted abroad at a rate of up to ten percent per annum. Profits may be expatriated at a rate of twelve percent per annum on the unrepatriated portion of the imported equity capital and interest may be remitted at the rate of ten percent per annum on debt capital.\textsuperscript{48} The assets of approved business enterprises may not be expropriated, except for the requirements of the armed forces in time of war.\textsuperscript{49}

III. THE ARAB REPUBLIC OF EGYPT

Egypt pursues an aggressive "open door" policy of encouraging direct foreign investment as a means of enhancing its economic and

\textsuperscript{45} Id. art. 4. The terms and conditions of the investment may not be unilaterally amended by governmental action. L.D. 2687/1953, as discussed in ETBA: Investment Guide, supra note 26, at 28.

\textsuperscript{46} Under Law 2687/1953, as discussed in ETBA: Investment Guide, supra note 26, at 27, such capital may be imported in the form of debt or equity capital, regardless of whether it is in a foreign currency, machinery, equipment, patents, or technology or trademarks.

\textsuperscript{47} L.D. 2687/1953, as discussed in ETBA: Investment Guide, supra note 26, at 27. The export orientation of the enterprise is also scrutinized under this legislation. Foreign investments which seek to exploit the Greek domestic consumer market, or which involve low value added in Greece, are discouraged. Law 2687/1953, as discussed in Greece: Economic Activity and Development, supra note 22, at 9.


\textsuperscript{49} Id. Departures from these regulations may be permitted where the Ministry of Coordination concludes that the investment is "exceptionally important to the nation's economy." Law 2687/1953 as discussed in Greece: Economic Activity and Development, supra note 22, at 22.
social development. Abdel Roushdy, Chairman of the National Bank of Egypt, once described the Egyptian policy as follows:

Egypt needs to feed and create meaningful work for its rapidly growing population. To achieve this and at the same time improve living standards, it needs substantial "injection" of capital funds and technology.

Investment requirements are so large that domestic resources alone cannot meet them. Additional resources have to be attracted to keep the development wheel turning. A sizeable portion of the capital expenditure required is to be made in foreign exchange. . . . Something has to be done quickly to increase the flow of foreign resources into the country.50

This posture was formalized with the implementation of the Open Door Policy, or Al-Infitah by President Anwar Sadat in 1974.51 As a result of this effort, Egypt promulgated Law No. 43 of 1974 Concerning the Investment of Arab and Foreign Funds and Free Zones,52 which is the nation's basic law on foreign investment. The statute created a General Authority for Investment and Free Zones which regulates and facilitates industrial development and foreign investment. The Authority reviews and approves proposals for foreign capital investments and assists investors in the implementation thereof.53 The statute also established two broad categories of investment incentives: a general investment regime for those enterprises which seek, in some part, to serve the local Egyptian market, and the free zone regime for enterprises which are export-oriented. We shall first explore the principal investment incentives offered under the general regime.

50 A. Roushdy, Investment Opportunities in Egypt 7 (March 1978) (pamphlet, copy on file at the offices of the Case W. Res. J. Int'l L.) [hereinafter Investment Opportunities in Egypt].


53 Investment Opportunities in Egypt, supra note 50, at 4.
A. The General Investment Regime

1. General Requirements for Incentive Eligibility

There are essentially three criteria evaluated by the General Authority in its determination of whether an investment proposal will be approved: (1) the nature and origin of the invested capital; (2) the activities or enterprises into which the person seeks to invest; and (3) the organizational structure the investment will take.

With respect to the first, before an investor may enjoy the benefits afforded by Law No. 43, its proposal must satisfy the definition of "invested capital". As such it may take either a monetary or non-monetary form. The former may consist of free foreign currency transferred through a registered Egyptian bank for employment in the "execution or expansion of a project," on preliminary studies and research, in the purchase of land for the construction of buildings, or the acquisition of stock. Another monetary form of invested capital may consist of "profits realized by the project if utilized in increasing its capital or if invested in another project. . . ."55

Non-monetary invested capital includes either imported machinery, equipment, raw materials and commodity requirements "necessary for the establishment or expansion of the project," or "intangible assets, such as patents and [registered] trademarks. . . ."56

The second criterion involves an evaluation by the General Authority of the activities or enterprises into which the person seeks to invest. In analyzing the investment proposal, Law No. 43 directs the General Authority to regard the promotion of Egyptian economics and social development as an objective of the highest priority. Investment is to be made in those "projects in need of international expertise in the spheres of modern development or in projects requiring foreign capital."58 It also seeks to promote investments which encourage

54 Law No. 43 of 1974 as amended by Law No. 32 of 1977, art. 2 [hereinafter cited as Law No. 43].
55 Id. art. 2(v). Under both circumstances, prior approval must be conferred by the General Authority. Id.
56 Id. art. 2(ii) and (iii). Generally speaking, the statutory scheme seeks to acquire modern and advanced technology and machinery. However, the General Authority may exempt investors from this requirement where the investment proposal promises enhanced employment opportunities or use of Egyptian raw materials or natural resources through utilization of less advanced or sophisticated technology. Legal Guide to Egyptian Investment, supra note 52, at 25.
57 Law No. 43, supra note 54, art. 3.
58 Id.
tourism, stimulate exports or diminish domestic dependency on imported commodities, require sophisticated technological expertise, or employ patents or trademarks of international reputation.\textsuperscript{59}

Among those areas into which foreign investment is to be encouraged are the following: (1) "\textit{industrialization, mining, energy, tourism, transportation and other fields}"; (2) the "\textit{reclamation of barren land and cultivation thereof}"; (3) "\textit{construction activities in regions outside the agricultural area and the perimeters of existing cities}"; (4) joint venture construction-contracting activities in which there is at least fifty percent Egyptian capital participation; (5) various banking and investment activities; (6) joint venture technical consulting activities; and (7) housing and urban development projects.\textsuperscript{60}

The "\textit{and other fields}" language of category (1) above patently seems broad enough to permit the General Authority to approve virtually any investment proposal which may enhance the "economic and social development" of Egypt.

The third criterion, involving an evaluation of the organizational structure the investment will take, generally requires the establishment of joint venture activities which permit participation of Egyptian capital,\textsuperscript{61} except in certain investment banking activities, or where the General Authority, by a two-thirds vote of its Board of Directors, may exempt a project from this requirement.\textsuperscript{62} However, construction of housing projects may be undertaken only with the support of Arab investment capital.\textsuperscript{63}

2. Guarantees, Privileges & Exemptions

Proposed projects which have satisfied the aforementioned requirements are eligible for a number of guarantees, privileges and exemptions. Law No. 43 of 1974 assures investors that their property will neither be expropriated nor nationalized without due process of law.\textsuperscript{64} This protection is reaffirmed by the Egyptian Constitution, which also provides that such "\textit{eminent domain}" expropriation may only be made

\textsuperscript{59} Legal Guide to Egyptian Investment, \textit{supra} note 52, at 28.

\textsuperscript{60} Law No. 43 art. 3(i)-(ix) \textit{supra} note 54. However, proposed investments in existing buildings or in vacant land for purposes of resale are not to be approved, except where such investments have, as their purpose, construction or renovation within a specified period of time. \textit{Id.} art. 3(iii).

\textsuperscript{61} \textit{Id.} art. 4. \textit{See also,} Legal Guide to Egyptian Investment, \textit{supra} note 52, at 42.

\textsuperscript{62} Law No. 43, \textit{supra} note 54, art. 4(b) and (c).

\textsuperscript{63} \textit{Id.} art. 4(a).

\textsuperscript{64} \textit{Id.} art. 7.
for a public purpose and upon payment of fair compensation.\textsuperscript{65} Approved projects are also not subject to legislation which requires Egyptian businesses to distribute a fixed portion of net profits to their employees,\textsuperscript{66} nor to legislation which requires local labor representation on the firm’s board of directors.\textsuperscript{67} They are also exempted from Egyptian legislation which would otherwise require (a) that a majority of the company’s board of directors be of Egyptian nationality, (b) that at least forty-nine percent of the stock be available for purchase by Egyptians, (c) that job vacancies be advertised, and (d) that workers be employed in the order of their registration with the government labor office.\textsuperscript{68}

Approved projects are also exempted from various import and export regulations. They may freely import the “production facilities, material, machinery, equipment, spare parts, and transportation equipment required for the installation and operation of the project”, and export their products, without a license.\textsuperscript{69}

3. Exchange Controls and the Repatriation of Profits & Capital

Law No. 43 also exempts approved projects from certain foreign exchange controls.\textsuperscript{70} Foreign investors are authorized to maintain a foreign currency account with a local registered bank into which they may deposit loans, and the proceeds derived from exports and from local sales in foreign currency. The approved enterprise may freely transfer these sums in order to pay “for imports of commodities and investment goods necessary for the operation of the project, for meeting invisible expenses in connection with such imports, for the payment of interest and principal on foreign currency loans, for settling any other expenses necessary for the project, and for purchases of local currency at the highest rate prevailing and declared for in foreign

\textsuperscript{65} Const. of the Arab Republic of Egypt arts. 34-36, as discussed in Legal Guide to Egyptian Investment, supra note 54, at 10.

\textsuperscript{66} Law No. 43, supra note 54, art. 12, which overrides Law No. 26 of 1954, art. 14(5).

\textsuperscript{67} Law No. 43, supra note 54, art. 10, which overrides Law No. 73 of 1973.

\textsuperscript{68} Law No. 43, supra note 54, arts. 11 and 12, which overrides Law No. 26 of 1954, arts. 28 and 11, Law No. 113 of 1958, and Law No. 91 of 1959, art. 21. See Legal Guide to Egyptian Investment, supra note 52, at 31.

\textsuperscript{69} Law No. 43, supra note 54, art. 15.

\textsuperscript{70} Id. art. 14. In the absence of this exemption, transactions of this nature would be prohibited by Law No. 97 of 1976.
currency."\textsuperscript{71} The "invisible expenses" and "any other expenses" language seems sufficiently broad to permit virtually any reasonable expenditure from this fund. Conditions governing the repatriation of profits are imposed by the General Authority at the time approval is issued for the project\textsuperscript{72}, consistent with the following guiding principles:

(1) Those projects which attain self-sufficiency in their foreign currency requirements, and whose profits derived from exports cover the cost of imported machinery, equipment and materials, may ordinarily repatriate their annual net profits within the limits of their foreign currency account, described above.

(2) Those projects which, although not export oriented, diminish the nation's needs for imports may usually repatriate their net profits subject to existing currency regulations; and

(3) Housing projects whose rents are paid in foreign currency may transfer their profits in full.\textsuperscript{73}

The foreign investor is generally prohibited from expatriating his invested capital for the first five years following its importation.\textsuperscript{74} Following this period, such capital may be transferred abroad in five equal annual installments, to the extent of the project's credit balance in its foreign exchange account, described above.\textsuperscript{75} Capital imported in kind may, with the Authority's approval, be exported in kind.\textsuperscript{76} Where the foreign investor has sold his invested capital for free foreign currency, he may expatriate his capital in a single transaction.\textsuperscript{77}

4. Tax and Customs Exemptions

Egypt also offers numerous tax incentives to approved investors. Among the most generous is a five to eight year exemption\textsuperscript{78} on net

\textsuperscript{71} Law No. 43, \textit{supra} note 54, art. 14.
\textsuperscript{72} Legal Guide to Egyptian Investment, \textit{supra} note 52, at 33.
\textsuperscript{73} Law No. 43, \textit{supra} note 54, art. 22(i), (ii), and (iii). Revenue derived in the form of Egyptian currency may be repatriated at the rate of eight percent per annum of invested capital. Profits derived from housing projects constructed in certain select geographic regions may be repatriated at the rate of fourteen percent of invested capital. \textit{Id.} art. 22(iii).
\textsuperscript{74} \textit{Id.} art. 21.
\textsuperscript{75} \textit{Id.} art. 21(i).
\textsuperscript{76} \textit{Id.} art. 21(ii).
\textsuperscript{77} \textit{Id.} art. 21(iii).
\textsuperscript{78} This period begins to run "from the first fiscal year following commencement of production or engagement in activities. . . ." \textit{Id.} art. 16. The General Authority
earnings from the tax on commercial and industrial profits, the
defense, military and national security taxes computed on the basis of
the profits tax, the revenue taxes on distributed profits and reinvested
earnings, and the general income tax. This last exemption is con-
tingent upon such income not being taxed in the investor's home coun-
try. Also exempted are "undistributed profits earned during the ex-
emption period and distributed after such period has elapsed." Should more generous tax treatment be afforded by other statutes, the
latter will govern.

Another generous incentive is offered in the form of a ten to fif-
ten year exemption on profits of "projects involving reconstruction,
establishment of new cities outside the agricultural area and the
perimeters of existing cities, and land reclamation. . . ." In this man-
ger Egypt seeks to rebuild that which time and war has ravaged, and
to expand the geographic reach of its habitable areas. Upon expiration
of the aforementioned tax exemptions, distributed profits are exempt
from the general income tax at a level of up to five percent of the tax-
payer's original share of the invested capital. Interest on foreign cur-

may extend the tax holiday to eight years, where such an increase is warranted upon
consideration of the "nature of the project, its geographical location, its importance to
economical development, the volume of its capital, and the extent to which it par-
ticipates in exploiting natural resources and increasing exports." Id.

Id. See also Legal Guide to Egyptian Investment, supra note 52, at 36.

Law No. 43, supra note 54, art. 16. The taxation of these items by the in-
vestor's home country would eliminate the pecuniary advantages which would other-
wise be derived by the enterprise from the exemption, and the incentive which would
otherwise exist for investment in Egypt. It would also result in a shift of revenue derived
from taxation from Egypt to the investor's home country, despite the fact that Egypt's
revenue demands may be more acute. See generally, Wang, Code of Conduct and
Taxation of Transnational Corporations, 8 GA. J. INT'L & COMP. L. 809, 811 (1978). In
order to avoid these consequences, Egypt does not offer such generous exemptions
where such income is taxed elsewhere. Nevertheless, the danger of double taxation ex-
ists where the investor's home country does not offer a credit against taxes paid in
Egypt. The most efficient means of avoiding such double taxation is perhaps the con-
summation of a tax treaty which would provide that developed nations recognize taxes
paid abroad as a credit against domestic taxation. See Atchabahian, International
Taxation From a Latin American Perspective, 8 GA. J. INT'L & COMP. L. 823, 825
(1978).

Id. See also Legal Guide to Egyptian Investment, supra note 52, at 36.

Law No. 43, supra note 54, art. 16.

Id.

Id. The ten year exemption may be extended an additional five years with the
approval of the President of Egypt upon recommendation of the General Authority.

Id.
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rency loans is also tax exempt, including that portion attributable to the proportional share of any Egyptian participant.\footnote{Id. art. 18.}

A deferral or complete exemption from customs duties may be granted to investors for their capital assets, imported construction material and necessary components.\footnote{Id. art. 16. The exemption is offered upon recommendation of the General Authority and approval of the Egyptian President. Id. art. 16.} Should these commodities be sold locally within five years of their importation, all such taxes and duties previously exempted must be paid.\footnote{Id.}

B. The Free Zone Regime

The free zone regime is designed to stimulate investment by those seeking to serve the international export market while enjoying Egypt’s relatively low production costs.\footnote{Legal Guide to Egyptian Investment, supra note 52, at 46.} Law No. 43 establishes three types of free zones: (1) public free zones, which have an independent juridical personality; (2) private free zones, created solely for a single project; and (3) entire cities which are designated as free zones.\footnote{Id. Law No. 43, supra note 54, art. 30.} The city of Port Said was so designated in 1976\footnote{Legal Guide to Egyptian Investment, supra note 52, at 47.} and public free zones have been established at Port Said, El Nasr City (near Cairo), Alexandria and Suez.\footnote{Egypt-U.S. Business Council, Free Zone Foreign Investment Opportunities 2 (1978) (printed in connection with The Investment Stimulation Program, pamphlet, copy on file at the offices of the Case W. Res. J. Int'l L.) [hereinafter Foreign Investment Opportunities].}

Licenses may be granted to foreign investors who seek to operate within the free zones in any of the following four general categories of activities: (1) storage of goods in transit; (2) “sorting, cleaning, mixing, blending [and] repacking” of commodities; (3) “manufacturing, assembling, mounting, processing, renewing, or other operations which need the advantage of a free zone to benefit from [Egypt’s] geographical position”; and (4) any enterprise “warranted by [free zone] activities . . . . or intended for the comfort of the employees” located therein.\footnote{Law No. 43, supra note 54, art. 35.}

Investors from the United States have heretofore concentrated their free zone investment activities in petroleum, textile, insurance, and banking activities, and the assembly and manufacture of
vehicles, washing machines, water heaters and electronic equipment. Free zone investments are not subject to the joint venture requirement, described above, which imposes the obligation of local Egyptian capital participation in the enterprise.

Egypt offers a tremendous tax incentive to approved investors who locate in a free zone; the projects and their dividends are exempted from all the tax and duty laws of Egypt. However, the project is obligated to pay an annual fee not exceeding one percent of the value of commodities entering or leaving the zone. Goods which are only in transit are exempt from this fee. Free zone expatriate employees also receive an income tax exemption on wages, salaries and other compensation paid within the zone.

The importation and exportation of commodities to and from the free zones are not subject to normal Egyptian customs procedures or duties. With respect to taxes and duties levied upon commodities, "all instruments, machinery, equipment and transportation equipment" required to conduct the free zone enterprise are exempt. Such duties and taxes are imposed, however, upon commodities "withdrawn from the free zone for local consumption." Such taxation is consistent with the overriding purpose of stimulating the growth and development of export-oriented enterprises.

Free zone projects are also not subject to those laws, described above, which require an annual distribution of a fixed percentage of net profits to workers nor to those laws which require labor representation on the company's board of directors. In addition, free zone capital transactions are exempt from Egyptian exchange control legislation.

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93 Foreign Investment Opportunities, supra note 91, at 2.
94 Legal Guide to Egyptian Investment, supra note 52, at 48.
95 Law No. 43, supra note 54, art. 46.
96 Id. Where projects do not require the importation or exportation of commodities, a fee not exceeding three percent is levied on the annual added value thereof. Id.
97 Id.
98 Id. art. 47.
99 Id. art. 36.
100 Id.
101 Id. art. 37. Such taxes and customs duties are levied on products containing local components in proportions to the ad valorem value of the foreign components contained therein. Where the local component share constitutes forty percent or more of the whole, such taxes and duties are reduced by fifty percent. Id.
102 Law No. 43, supra note 54, art. 50.
103 Id. art. 49.
IV. THE ISLAMIC REPUBLIC OF PAKISTAN

Pakistan views foreign investment as a "vital factor in improving the standard of living of the people, exploiting natural resources and imparting strength and stability to the economy."\(^{104}\) Hence, it encourages private foreign investment and has established a wide range of incentives and protections designed to stimulate such investments.\(^{105}\) Pakistan is firmly committed to a policy of enhancing industrialization by promoting private investment.\(^{106}\) This strategy is based upon the desirability of increasing export earnings and reducing import dependence.\(^{107}\) In particular, Pakistan seeks to promote labor intensive investments which provide essential consumer products and to promote investment in less developed regions of the nation.\(^{108}\)

In order to attract foreign capital, Pakistan has promulgated the Foreign Private Investment (Promotion & Protection) Act of 1976.\(^{109}\) Under this legislation the government may authorize foreign investment in industrial enterprises which: (a) do not already exist within the nation and are desirable; (b) would be involved in an activity not already being carried on in Pakistan on a scale sufficient to satisfy national economic and social needs; or (c) will contribute to the development of domestic capital, technological and managerial resources, the discovery or enhanced development of natural resources, the strengthening of the balance of payments, increased employment, or the nation's economic development.\(^{110}\) The reduction of unemployment by promoting investments in labor intensive enterprises is a major

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\(^{104}\) Ministry of Industries and Department of Investment Promotion & Supplies, Pakistan Foreign Investment Guide § 2.1 (May 1977) [hereinafter cited as Pakistan Investment Guide].


\(^{106}\) Pakistan Investment Guide, supra note 104, § 3.1.

\(^{107}\) Id. § 2.2.

\(^{108}\) Id. §§ 2.2-2.3.


\(^{110}\) Id. art. 3. Approval of private foreign investment shall be subject to such conditions as the government may specify. Id. art. 4. Investment proposals must be submitted to the Department of Investment Promotion and Supplies, Karachi, which has primary responsibility for promoting foreign investment and facilitating private industrial investment. Pakistan Investment Guide, supra note 104 § 4.1. Registration of foreign companies operating within Pakistan must ordinarily be made under § 277 of the Companies Act of 1913. Id. §§ 5.8 and 5.11.
policy of this nation of seventy-two million people. At the present
time, foreign investment in Pakistan is concentrated in the petroleum,
fertilizer and pharmaceutical industries.

A. Tax Incentives

1. Regional Development

In order to stimulate the economic growth of less developed regions
of the nation, Pakistan allows industries located in Baluchistan, Tribal
Areas, Azad Kashmir and Northern Areas to reduce their taxable in-
come by ten percent of the capital employed in the enterprise. There
is a five percent reduction for investments in the remainder of the
country (except the Talukas of Karachi and Hyderabad, Tehsils of
Leyallpur and the Lahore region and its specified contiguous
regions). All approved new or expanded industrial enterprises which
are not located in the regions excluded above in the income reduction
 provision, receive a tax credit of fifteen percent on investments.

2. Export Promotion

To stimulate investments in export-related activities, Pakistan pro-
vides a fifty percent rebate on the export tax otherwise payable on in-
vestments.

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111 Pakistan Investment Guide, supra note 104, § 2.8. Labor salaries and working
  conditions are governed by the Factory Act of 1934. It is anticipated that foreign na-
  tionals will be employed only to the extent necessary to handle specialized positions for
  which Pakistani nationals of suitable qualifications are not available. Pakistan Invest-


113 Pakistan Investment Guide, supra note 104, § 6.1(i). This incentive is available
  only until June 30, 1981. Id.

114 Id. § 6.1(ix).

115 Id.

duty is imposed at the rate of twenty percent ad valorem in much of the remainder of
the nation, with the exclusion of some other less developed areas where a fifty percent
exemption in duty is granted. Id. Eligible machinery and components are defined in
Notification No. SRO. 372 (1)/72 (June 8, 1972). Id. Machinery and components are
also exempt from the sales tax. Id. § 6.1(xv). Pakistan has developed a program
whereby raw materials not domestically available in sufficient quantities may be freely
imported. See id. § 2.12. The government also offers tariff production to domestic in-
dustries whenever justified. Id. § 2.7(ii).
come from exports of approved commodities manufactured in Pakistan. Exported manufactured goods and the raw materials employed in their manufacture are also exempt from the nation's sales tax.

3. Other Tax Incentives

A tax exemption is offered to both new and existing enterprises on income derived from poultry, dairy, cattle, sheep farming and fishing.

In addition to those tax incentives specified above, an additional five percent rebate is offered to investors in industrial enterprises established before June of 1980, where the cost of all assets except land does not exceed 3.0 million rupees (Rs). To stimulate the replacement and modernization of obsolete machinery, a ten percent tax credit is permitted on the cost of new machinery installed before June 30, 1979.

B. Repatriation & Expropriation—Protections & Guarantees

Pakistan's Foreign Investment Act guarantees that foreign investors may freely repatriate foreign currency in sums equal to the original investment, profits derived therefrom, and additional amounts resulting from reinvested profits or capital appreciation. A creditor may also repatriate foreign currency loans. The Act further assures that foreign investments may not be expropriated without due process of law and adequate compensation. In the past no foreign-owned industry has ever been nationalized in Pakistan. Foreign industrial investments are also guaranteed treatment equal to that of domestic enterprises with respect to the importation and exportation of commodities.

117 Id. § 6.1(ii).
118 Id. § 6.1(xvi).
119 Id. § 6.1(iii). The exemption expires on June 30, 1980. Id.
120 Id. § 6.1(v).
121 Id. § 6.1(x). Pakistan also seeks to avoid double taxation of foreign investments. Foreign Investment Act, supra note 109, art. 8.
122 Foreign Investment Act, supra note 109, art. 6(a). See Pakistan Investment Guide, supra note 104, § 3.3. There is no requirement that the foreign investor permit Pakistani capital participation. Id. § 3.4.
123 Foreign Investment Act, supra note 109, art. 6(b).
124 Id. art. 5(2).
126 Foreign Investment Act, supra note 109, art. 9.
V. THE ROYAL KINGDOM OF THAILAND

Thailand provides generous incentives for foreign investment, particularly those investments made in developing regions and in export industries. At the same time, Thailand restricts alien ownership of specified businesses and inhibits expansion in others. By encouraging investment in desired enterprises and desired geographic areas, foreign investment is used as a means of enhancing economic development on a selective basis.

Thailand’s Investment Promotion Act of 1977\textsuperscript{127} establishes a general regulatory scheme whereby its Board of Investment (BOI)\textsuperscript{128} may extend a variety of incentives, guarantees, permissions and protective measures to both domestic and foreign investors.\textsuperscript{129}


\textsuperscript{128} Id. Investment Promotion Act, supra note 127, ch. 1, §§ 6-15. The BOI was established in 1959 “to provide investment services and perform other investment functions in the promotion of activities which are of economic and social importance and necessity to the nation.” Thailand Board of Investment, Investing in the Dynamic Growth of Thailand 4 (6th ed. 1977) (copy on file at the offices of the Case W. Res. J. Int’l L.) [hereinafter cited as Investing in Thailand].

\textsuperscript{129} See Investment Promotion Act, supra note 127, chs. 3, 4, and 5. Prior to 1977, much the same economic regime existed under Thailand’s Investment Promotion Act of 1972, National Executive Council Announcement No. 227 (Oct. 18, 1972), repealed by the Investment Promotion Act of 1977, supra note, 127. Comment, Foreign Investment in Thailand: The Effect of Recent Legislation, 3 DENVER J. INT’L L. & POL. 293, 294 n. 6 (1973) [hereinafter Foreign Investment in Thailand]. The prior Act provided generous guarantees, permissions, tax reductions and exemptions to both domestic and foreign investors who were awarded a promotion certificate by the nation’s Board of Investment (BOI). Id. at 295. Such guarantees assured that the private investment would be free of governmental competition and nationalization, and that the exportation of commodities would not be restricted. Repatriation of capital by the investor was limited only in periods during which Thailand suffered a balance of payment deficit. Id. at 296. Foreign investors were permitted to purchase real estate within Thailand, and to bring in skilled workers from abroad in numbers exceeding ordinary immigration quotas. Id. The investor received an exemption from import duties and business taxes on machinery used in manufacturing and, at the discretion of the BOI, could enjoy a three to eight year income tax exemption. Id. at 296. The BOI was also free to levy an import duty on or prohibit the importation of commodities like or similar to those produced in Thailand by the foreign investor. Id. at 297. The 1972 Act also permitted the BOI to offer various incentives to enterprises which located in “investment promotion areas.” It could, (a) reduce the import duty and business tax on imported raw materials up to fifty percent, (b) reduce the business tax on the sale of goods produced by the investor up to ninety percent for a period of
which are eligible for such favorable treatment are those which stimulate economic and social development, engage in the exportation of commodities, are capital or labor intensive, utilize agricultural products or natural resources, or stimulate the economy of provincial areas. In particular, Thailand seeks to encourage foreign investment in agribusiness, export-oriented industries, and labor intensive enterprises.

A. Guarantees, Protections & Permissions

If an investor is eligible for investment promotion, and consequently, is awarded a promotion certificate by the BOI, a wide range of up to five years, (c) permit deduction of 200 percent of the cost of utilities from gross income for purposes of computing income tax, (d) allow a deduction in excess of normal depreciation of the cost of construction, and (e) reduce the corporate income tax up to fifty percent for a period of five years following expiration of the three to eight year normal tax holiday, described above. Id. at 297. The BOI could also grant various tax exemptions to export-related businesses, including exemptions on imported raw materials and on exported finished products. Id. at 298.

Investment Promotion Act, supra note 127, §16. The BOI must conclude that such activities do not already exist within the Kingdom of Thailand, or if they do exist, that they are inadequate or employ obsolete production processes. Id. It must also find that the investment project is sound both from an economical, technological, and environmental standpoint. Id. §§18-19.


2 Thailand Investment Bull. No. 4, 20 (Jan. 1978). Aliens, however, are prohibited from investing in certain specified types of enterprises. See Alien Business Law, National Executive Council (N.E.C.) Announcements No. 281 (1972). Reprinted in Office of the Board of Investment, Collection of Laws Pertaining to Investment Promotion 57 (1978) (copy on file at the offices of the Case W. Res. J. Int'l L.). The Announcement required that foreign investors divest themselves of certain industries. Those businesses which must be fifty-one percent Thai owned and controlled, after 1974, are rice, farming, salt farming, native agricultural products, real estate, accounting, law, architecture, advertising, brokerage, auctioneering, barbering and building construction. Foreign Investment in Thailand, supra note 129, at 300, n. 54. Announcement No. 281 also prohibited inauguration of business in other fields. Id. These business are agricultural production, sugar, beverages, medicine, cement, plywood, hotels, the sale of food and beverages, natural ores and most retail businesses. Id. at 301, n. 58. Expansion by aliens of existing enterprises in these areas is limited to thirty percent per annum. Id. at 300. Further, it limited alien expansion in the fields of wholesale trade, export trade, retail trade in machinery, engines and tools, production of animal feed, vegetable oils, textiles, glass containers and paper, mining, services and all construction (except building construction). Id. at 301, n. 59. See generally, Thailand Legal Handbook, supra note 191, at 13.
guarantees, protection measures, permissions and incentives becomes available to him.\textsuperscript{133} The Investment Promotion Act specifically guarantees that such activities will not be nationalized, that the government will not compete with the enterprise and that the government will not monopolize the sale of or impose price controls on the involved commodities.\textsuperscript{134} Governmental agencies are generally prohibited from importing tax-exempt commodities which are essentially the same as those produced or assembled domestically by the investor being promoted.\textsuperscript{135} The investor is free to export his products, except when a prohibition is necessary "for the economic and social development and for the security of the country."\textsuperscript{136}

Among the most generous protections are those which inhibit the importation of competitive products into Thailand. The BOI may impose a surcharge of up to fifty percent of the cost, insurance and freight price of an imported commodity which is the same as, similar to, or a substitute for that which is produced or assembled domestically by the investor, "where [such fees are] necessary to protect the activity of the promoted person. . . ."\textsuperscript{137} Where the BOI concludes that even

\textsuperscript{133} Investment Promotion Act, supra note 127, ch. 2. The BOI may impose a number of restrictions and conditions in the promotion certificate prescribing the activities into which the foreign investor may engage. \textit{Id.} § 20. Should the investor fail to comply with the conditions stipulated, the BOI may withdraw the privileges and opportunities granted. \textit{Id.} § 54.

Since 1960, Japanese investors have held the largest such investments in Thailand, accounting for over 35.1 percent of all foreign capital invested in the nation. It is followed by the United States with 15.5 percent, Taiwan with 13.4 percent, Hong Kong with 5.6 percent, and the United Kingdom with 5.5 percent. Office of the Board of Investment, Key Indicators of Thailand 22 (1978) (copy on file at the Case W. Res. J. Int'l L.). Japan is also the most significant trading partner of Thailand, accounting for thirty-two percent of Thailand's imports and twenty-five percent of its exports. Investing in Thailand, \textit{supra} note 128, at 17.

\textsuperscript{134} Investment Promotion Act, \textit{supra} note 127, §§ 43-46.

\textsuperscript{135} \textit{Id.} § 48. For this protection to apply, the commodities must be comparable in quality with those sought to be imported. The importation of munitions by the Ministry of Defense is exempted from this provision. \textit{Id.}

\textsuperscript{136} \textit{Id.} § 47. The Treaty of Amity and Economic Relations Between the Kingdom of Thailand and the United States of America, art. IX(2), May 28, 1966, (effective June, 1968), 19 U.S.T. 4843, T.I.A.S. No. 6540 [hereinafter cited as U.S.-Thailand Treaty of Amity and Economic Relations], provides that most favored nation treatment shall be accorded to U.S. nationals engaged in the importation and exportation of commodities to and from Thailand.

\textsuperscript{137} Investment Promotion Act, \textit{supra} note 127, § 49. This surcharge may remain in effect for periods of up to one year following its publication in the Government Gazette. \textit{Id.}
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this relief is inadequate to protect the interests of the investor, the importation of competitive products is prohibited.\textsuperscript{138}

Subject to Thailand's immigration laws and the approval of the BOI, the investor may bring in foreign nationals to study investment opportunities, as well as foreign skilled workers, experts, and their spouses and dependents.\textsuperscript{139} A foreign investor is generally free to acquire real estate "in order to carry on the promoted activity. . . ."\textsuperscript{140} He is also allowed to repatriate (a) foreign currency which represents his invested capital brought into Thailand from abroad, and his "dividends or other returns on such capital," (b) approved foreign loans and interest thereon, and (c) contractual payments under an approved foreign obligation "for the use of rights and services relating to the promoted activity. . . ."\textsuperscript{141}

A bilateral treaty between Thailand and the United States guarantees that American nationals and companies which establish or acquire interests in commercial, industrial, financial and other business enterprises within Thailand will receive all the rights and privileges afforded to Thai nationals.\textsuperscript{142} It also provides that national treatment shall be accorded in the lease, purchase, and sale of real

\textsuperscript{138} Id. § 50.
\textsuperscript{139} Id. §§ 24-25.
\textsuperscript{140} Id. § 27. However, an investor may not establish or expand a factory unless he first receives a license authorizing such establishment by the Under-Secretary of State for Industry. Factory Act, B.E. 2512, §§ 8 and 21, published in 86 Thailand Government Gazette Part 19 (March 6, 1969) and amended by Factory Act (No. 2) B.E. 2518, reprinted in Office of the Board of Investment, Collection of Laws Pertaining to Investment Promotion, supra note 132, at 17.
\textsuperscript{141} Investment Promotion Act, supra note 127, § 37. However, such remittance may be temporarily restricted by the Bank of Thailand, "[d]uring any period when there is an adverse balance of payments which requires the preservation of foreign currency at a reasonable level. . . ." Id. However, § 4 of Thailand's Exchange Control Act, B.E. 2485, permits the control, restriction or prohibition "of all exchange or other operations in which foreign currency is concerned" including "the exportation of currency" and "the transfer of securities out of Thailand." The Exchange Control Act, B.E. 2485, reprinted in Office of the Board of Investment, Collection of Laws Pertaining to Investment Promotion, supra note 132, at 26. The U.S.-Thailand Treaty of Amity and Economic Relations, supra note 136, art. VII(1) prohibits the imposition of restrictions on the transfer of capital except, inter alia, "to the extent necessary to assure the availability of foreign exchange for payments for goods and services essential to the health and welfare of its people. . . ." U.S. investors are generally free to withdraw earnings, compensation, and loans. Id. art. VII(2).
\textsuperscript{142} The U.S.-Thailand Treaty of Amity and Economic Relations, supra note 136, art. IV(1).
estate, and in the use of patents, trademarks, trade names, designs and copyrights.\textsuperscript{143} The Treaty establishes most favored nation treatment for United States investors who seek to establish or acquire enterprises in the fields of "communications, transport, fiduciary functions, banking, . . . the exploitation of land or other natural resources, or domestic trade in indigenous agricultural products. . . ."\textsuperscript{144}

B. General Tax Incentives

In order to appreciate the generous tax incentives offered to foreign investors one needs to understand the primary taxes to which a foreign investor would ordinarily be subject. Thailand imposes a Companies Income Tax upon both domestic and foreign corporations on the net profits of the business carried on in Thailand.\textsuperscript{145} The tax rates are twenty percent on net profits not exceeding 500,000 baht, twenty-five percent on net profits between 500,000 and 1,000,000 baht, and thirty percent on net profits exceeding 1,000,000 baht.\textsuperscript{146} Thailand also imposes a business tax which is levied on the gross receipts of various categories of businesses,\textsuperscript{147} and a tax on remittances

\textsuperscript{143} Id. art. V(1) and (2).

\textsuperscript{144} Id. art. IV(2).

\textsuperscript{145} Thailand Legal Handbook, \textit{supra} note 131, at 7. The definition of "carrying on business" in Thailand is as follows:

If a juristic company or partnership incorporated under a foreign law has in Thailand for carrying on its business an employee, a representative or a go-between and thereby derives income or gains in Thailand, such juristic company and partnership shall be deemed carrying on business in Thailand, and such employee, representative or go-between, whether a natural or juristic person, shall insofar as the said income or gains are concerned, be deemed to be the agent of the said juristic company or partnership and shall have the duty and liability to file a return and pay tax.


\textsuperscript{146} Thailand Legal Handbook, \textit{supra} note 131, at 19.

\textsuperscript{147} Id. at 20. The following list summarizes the business tax schedule:

<table>
<thead>
<tr>
<th>Category of Business</th>
<th>Tax Rate</th>
<th>Person Liable</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Sale of goods</td>
<td>1.5-40.0%</td>
<td>importer or manufacturer</td>
</tr>
<tr>
<td>2. Saw milling</td>
<td>4.0%</td>
<td>operator</td>
</tr>
<tr>
<td>3. Hire of work</td>
<td>2.0-5.0%</td>
<td>contractor</td>
</tr>
<tr>
<td>4. Letting of movable property</td>
<td>2.5%</td>
<td>lessor</td>
</tr>
<tr>
<td>5. Warehousing</td>
<td>2.5%</td>
<td>operator</td>
</tr>
<tr>
<td>6. Hotel, restaurant and night club</td>
<td>2.0-10.0%</td>
<td>operator</td>
</tr>
</tbody>
</table>
abroad. The BOI may exempt the investor from import duties and/or business taxes on imported machinery where machinery of comparable quality is not domestically available in a quantity sufficient to satisfy the investor's needs. If the investor purchases domestically manufactured or assembled machinery, the vendor shall be exempt from Thailand's business taxes. The BOI may also grant up to a ninety percent reduction of duties and business taxes on imported raw materials for a period not exceeding one year, provided that comparable domestic raw materials are not readily available in sufficient quantities. The investor may be exempted from the payment of income taxes on profits derived from the promoted activity for periods of not less than three nor more than eight years, and may carry forward losses (which he may deduct from profits at his discretion) for up to five years. He may also receive a five year exemption from withholding taxes on goodwill and copyrights, pursuant to regulations prescribed by the BOI. During the tax free period dividends shall be excluded from taxable income. An extraordinary provision permits the Chairman of the BOI to order any other governmental entity to take remedial action "where the structure, rates, or procedure for the

<table>
<thead>
<tr>
<th>Category of Business</th>
<th>Tax Rate</th>
<th>Person Liable</th>
</tr>
</thead>
<tbody>
<tr>
<td>7. Transport</td>
<td>0.5%</td>
<td>operator</td>
</tr>
<tr>
<td>8. Pawn broker</td>
<td>2.5%</td>
<td>operator</td>
</tr>
<tr>
<td>9. Brokerage and agency</td>
<td>5.5%</td>
<td>broker, agent or performer</td>
</tr>
<tr>
<td></td>
<td></td>
<td>of service</td>
</tr>
<tr>
<td>10. Sale of immovable properties</td>
<td>3.5%</td>
<td>seller</td>
</tr>
<tr>
<td>or for profit</td>
<td></td>
<td></td>
</tr>
<tr>
<td>11. Banking</td>
<td>2.5-10.5%</td>
<td>operator</td>
</tr>
<tr>
<td>12. Insurance</td>
<td>2.5-3.0%</td>
<td>insurer</td>
</tr>
</tbody>
</table>

\textit{Id.} An additional surcharge of ten percent of this tax is levied as a municipal tax. \textit{Id.} The tax is levied at the rate of twenty-five percent of net profits remitted abroad. \textit{Id. See generally,} Investing in Thailand, \textit{supra} note 128, at 96. Investment Promotion Act, \textit{supra} note 127, \textit{§} 28. Certain restrictions are, however, placed on the use of such machinery. \textit{See id. §§ 40-42.} The granting of these exemptions falls within the discretion of the BOI. \textit{Id.} \textit{§} 29.

\textit{Id.} \textit{§} 30. Again, where they are purchased domestically, the vendor may receive a ninety percent reduction in his business taxes on the sale. \textit{Id.}

\textit{Id.} \textit{§} 31. Such tax relief may not be granted where the BOI concludes that it would be "inappropriate." \textit{Id.} \textit{§} 32.

\textit{Id.} \textit{§} 33.

\textit{Id.} \textit{§} 34.
collection of taxes and duties, service charges or fees are found to be an obstacle to the promotable or promoted activities. . . ."\textsuperscript{155}

The Treaty of Amity and Economic Relations between the United States and Thailand guarantees most favored nation treatment for the taxation of American investments in Thailand.\textsuperscript{156} It also restricts Thai taxation to income derived from operations within Thailand.\textsuperscript{157}

C. Export Incentives

Thailand has also established a generous selection of tax incentives for enterprises engaged in the export of commodities. The BOI may, for example, exempt raw and essential materials from import duties and business taxes where the commodities are "imported for use specifically in producing, mixing, or assembling products or commodities for export," or are imported for subsequent export.\textsuperscript{158} The investor may also be exempted from paying export duties and business taxes on commodities which he assembles or produces in Thailand.\textsuperscript{159} Further, the investor may be permitted an income tax deduction of five percent on any increase in his taxable income attributable to exports.\textsuperscript{160}

D. Geographic Incentives

1. Export Processing Zones and Warehouses

In order to encourage both exports and investment in selected geographic regions, Thailand has established an Industrial Estate Authority (IEA) which may procure and improve real estate suitable for industry, enter into joint investments with private concerns, issue bonds, and grant loans.\textsuperscript{161} A licensee who operates a business in the

\textsuperscript{155} Id. § 52.
\textsuperscript{156} U.S.-Thailand Treaty of Amity and Economic Relations, supra note 136, arts. VI(1) and VIII(1).
\textsuperscript{157} Id. art. VI(3).
\textsuperscript{158} Investment Promotion Act, supra note 127, §§ 36(1) and (2). Where the investor purchases such commodities in Thailand, the vendor is exempted from the business taxes ordinarily levied thereon. Id.
\textsuperscript{159} Id. § 36(3).
\textsuperscript{160} Id. § 36(4).
\textsuperscript{161} National Executive Council Announcement No. 339, arts. 2(1), (2) and (4), and 5(1)-(8), published in 85 Thailand Government Gazette, part 121 (Dec. 31, 1968), reprinted in Office of the Board of Investment, Collection of Laws Pertaining to Investment Promotion 35.
export-processing zone is eligible for an exemption on the import duty and/or business taxes levied on machinery and raw materials. To be eligible for these incentives, the enterprise must (a) be the result of a wholly new investment, (b) not have a deleterious effect upon other domestic export enterprises, (c) be engaged in a business for which inspection and control can be rendered easily, and (d) not be hazardous to the health of the people. The industry may bring skilled workers, and their spouses and dependents into Thailand. It may also freely remit foreign currency out of the country under the circumstances described above.

Thailand has also established bonded export warehouses and duty-free shops so that ninety percent of the duty (or one thousand baht, whichever is greater) on imported commodities will be refunded to the importer where such products are exported within one year.

2. Investment in "Promotion Zones"

In addition to the numerous incentives discussed above, Thailand offers the foreign investor significant inducements designed to stimulate the development of selected geographic regions. For investments in "Investment Promotion Zones," the BOI may reduce by up to ninety percent the business taxes on the sale of products produced or assembled in the zone, when produced by a promoted investor. The exemption shall not continue beyond "five years from the date income is first derived from the promoted activity." Income taxes may be reduced up to fifty percent during this period. The investor may also be permitted to deduct 200 percent of the costs of transportation,

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162 Id. art. 49. The commodities for which an exemption is sought must not be of a type produced locally whose price and quality is similar to the imported items and is available in sufficient quantities. Id.
163 Id. art. 48.
164 Id. art. 52.
165 Id. art. 53.
166 National Executive Council Announcement No. 329 art. 3 (1973), amending Customs Act B.E. 2469, § 8 bis, reprinted in Office of the Board of Investment, Collection of Laws Pertaining to Investment Promotion, 42.
167 Id. art. 16, amending Customs Act B.E. 2480 § 19, reprinted in Office of the Board of Investment, Collection of Laws Pertaining to Investment Promotion 46.
168 Investment Promotion Act, supra note 127, § 35.
169 Id. § 35(1).
170 Id.
171 Id. § 35(2).
electricity and water.\textsuperscript{172} Finally, the BOI may permit deduction of twenty-five percent of the cost of installation or construction of infrastructure facilities in these zones for ten years from the date on which income is first earned by the promoted activity.\textsuperscript{173}

VI. THE REPUBLIC OF CHINA

The Republic of China (Taiwan) seeks to encourage foreign investment and thereby accelerate its economic development\textsuperscript{174} by offering a wide range of investment incentives promulgated in two principal pieces of legislation, the Statute for Encouragement of Investment\textsuperscript{175} and the Statute for Investment by Foreign Nationals.\textsuperscript{176} As of June 1978, foreign investment in China totaled approximately 1.3 million dollars.\textsuperscript{177}

A. Eligible Investments

Foreign investments in China are limited to those in (1) "productive or manufacturing enterprises which are needed domestically," (2) export enterprises, (3) "important industrial, mining or communications enterprises," or (4) "other enterprises which are conducive to the economic and social development of China."\textsuperscript{178} Those investors who seek to engage in these activities must, as a condition precedent to the inauguration of operations, obtain the approval of the Ministry of Economic Affairs.\textsuperscript{179} In order to take advantage of the significant investment incentives, described below, the proposed activity must also meet the definition of a "productive enterprise"\textsuperscript{180} as defined in certain

\begin{itemize}
\item \textsuperscript{172}Id. \textsuperscript{§} 35(3).
\item \textsuperscript{173}Id. \textsuperscript{§} 35(4).
\item \textsuperscript{175}Id.
\item \textsuperscript{176}Statute for Investment by Foreign Nationals (July 14, 1954), as amended Dec. 14, 1959; Jan. 8, 1968 and June 22, 1968 [hereinafter cited as Foreign Investment Act]. The jurisdiction of this Act is "temporarily" limited to the area of Taiwan. Id. art. 21.
\item \textsuperscript{177}Letter from Martin Wong, Minister, Republic of China, to Paul Stephen Dempsey (Nov. 30, 1978) (copy on file at the offices of the Case W. Res. J. Int'l L.).
\item \textsuperscript{178}Foreign Investment Act, supra note 176, art. 5.
\item \textsuperscript{179}Id. art. 7. See also id. arts. 6-10.
\item \textsuperscript{180}Investment Encouragement Act, supra note 174, art. 3.
\end{itemize}
guidelines established by the Executive Yuan.181 In general, foreign owned enterprises enjoy the same treatment as that accorded domestically owned or controlled enterprises.182

B. Tax Incentives

Perhaps the most generous of China's incentives are its extensive tax benefits. A newly established productive enterprise may select either (a) a five year income tax exemption, or (b) accelerated depreciation on its equipment and facilities.183 Virtually the same alternatives exist for the expansion of a productive enterprise through an influx of new capital, except that the income tax exemption alternative is limited to four years.184 A new or expanded enterprise may also defer inauguration of the income tax exemption for up to four years.185 Moreover, the income tax imposed upon the operations of a productive enterprise will not exceed twenty-five percent of its total income.186

In order to encourage investments in export related enterprises, China offers a business tax exemption on that portion of operations attributable to: (1) the exportation of commodities; (2) commissions

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181 See, Categories and Criteria of Productive Enterprises Eligible for Encouragement, promulgated by the Executive Yuan on Nov. 11, 1971, as per decree No. Tai(60) Tsai-1076, revised on May 6, 1976, No. (65) Tsai-3707.
182 Foreign Investment Act, supra note 176, art. 19.
183 Investment Encouragement Act, supra note 174, art. 6. Where the service life on equipment or machinery is ten years or longer, depreciation may be accelerated to five years; where it is fewer than ten years it may be accelerated by fifty percent. Building and other facilities may be accelerated by one-third. Id. Where the productive enterprise renovates its machinery or equipment in order to extend its productive life or increase its capacity, it may enjoy an accelerated depreciation on such additional investment of up to one-third of the cost thereof. Id. art. 8. Eligible equipment, unless imported from abroad due to an actual need, is limited to new equipment. Id. art. 9.
184 See id. art. 6.
185 Id. art. 6-1.
186 Id. art. 10. Investments in certain specified activities may be entitled to enjoy an income tax rate of only twenty-two percent. See id. Shareholders receive an exemption on income taxation of income derived from an expansion in machinery or equipment arising as a result of the firm's reinvestment of undistributed profits. Id. art. 12. Dividends realized from reinvestment profits may be exempt from corporate income taxation as well. Id. art. 13. Research and development expenses are deductible from corporate taxable income. Id. art. 23-1. The deed tax placed upon the acquisition of real property utilized by the productive enterprise is imposed at only half the statutory rate. Id. art. 31.
derived from the sale of commodities to exporters; (3) the processing of export goods; (4) the supplying of commodities among factories or suppliers which operate "united export trade companies for purposes of facilitating export business under joint management;" (5) engaging in international transportations; and (6) obtaining foreign exchange through the provision of services.\textsuperscript{187} Such enterprises may also be exempted from import duties on imported machinery and equipment where domestically manufactured alternatives are not available.\textsuperscript{188} Firms involved in the construction, repair or inspection of maritime vessels operating on international routes are also exempt from business taxes.\textsuperscript{189}

C. Protection and Guarantees

The repatriation of invested capital is limited to the currency in which the investment was made except that repatriation may be permitted in other currencies if the medium of investment was United States dollars.\textsuperscript{190} The investor may seek the repatriation of as much as fifteen percent of his invested capital two years following completion of his approved investment plan.\textsuperscript{191} There is no currency restriction on the repatriation of profits derived from or interest accruing on the investment.\textsuperscript{192}

If more than fifty-one percent of the total capital in an enterprise is owned by foreign investors, the Taiwan government has guaranteed that the enterprise will not be expropriated for a period of twenty years following the commencement of business.\textsuperscript{193} If foreign investors

\textsuperscript{187} Id. art. 22. The government is also authorized to appropriate funds to provide a scheme of non-profit export insurance. Id. art. 24.

\textsuperscript{188} Id. art. 27. The exemption is granted for products used in the development of new products, improvement of quality, conservation of energy, prevention of public pollution, promotion of utilization of wastes or improvement of manufacturing method. Id. Even where such duties are imposed on imported machinery or equipment, if domestically produced items are unavailable such duties may be paid in installment. Id.

\textsuperscript{189} Id. art. 22-1. In any event, any business tax which may be applicable shall be imposed on only that portion of the firm's activities which are performed domestically. Id. art. 30.

\textsuperscript{190} Foreign Investment Act, supra note 176, art. 16(1).

\textsuperscript{191} Id. art. 12. This percentage may be raised upon approval of the Executive Yuan. Id.

\textsuperscript{192} Id. art. 16(1). See also, id. arts. 11, 12, 13 and 16(2).

\textsuperscript{193} Id. art. 15.
own less than fifty-one percent of an enterprise, its assets may be appropriated to satisfy national defense needs, but the investors shall be reasonably compensated for such expropriation. 194

VII. CONCLUSION

This survey of investment laws illustrates striking similarities in the political, economic and military perspectives on foreign investment of these five nations. One cannot help but be impressed by the parallels which are manifest in their legislative schemes. Each vigorously supports foreign investment and embraces the capitalist model as an effective means of attaining economic growth. Generous incentives, protections, guarantees, and privileges assure the investor that the prospects for commercial activity will be lucrative. As a result, potential investors can not ignore these five nations as among the most promising recipients of investment capital in the developing world.

The investment schemes are complex, and the relative attractiveness of the incentives will vary depending upon the particular needs or requirements of the activity which the investor proposes. Although the investment schemes are similar, when coupled with a nation's character they are individual enough to affect investors differently. Yet even with these differences a comparative analysis demonstrates the presence of the same essential characteristics in each scheme.

First, each of these nations offers tax and other incentives for investment in export activities. These incentives exist as a reflection of the importance of a favorable balance of payments. By diminishing dependency upon imports, and by increasing export earnings, these nations hope to become more self-sufficient and to prosper. Indeed by stemming the capital outflow and stimulating its inflow, they hope to improve their economic position with respect to other members of the world community.

Second, all five countries except Taiwan, offer incentives designed to stimulate investment in underdeveloped regions within their borders. 195 This serves as a mechanism to disburse economic growth to previously undeveloped regions while avoiding further concentration

194 Id. art. 14.
195 Taiwan is the most heavily populated of the five nations, and the limited area upon which its concentrated population dwells leaves little room for remote or secluded regions which might be in a more neglected economic posture. Hence, there are no laws favoring investment in particular regions.
and overcrowding in urban centers. Thailand and Pakistan, both heavily populated, offer incentives tailored to encourage labor intensive investment in order to employ their large labor forces.

Third, all of these nations protect the investor in some way. Several of these countries seek to protect the investor from adverse competition. Thailand’s BOI may, at its discretion, inhibit the importation of competitive products and shield the investor from private foreign competition. Greece offers domestic industry preferences. These incentives tend to assure profitability. All five countries also afford some protection for the investment assets against expropriation or nationalization.

Finally, although several of these nations impose certain restrictions on the outflow of capital, each ultimately permits the repatriation of foreign invested capital, profits and interest.

It must be recognized that there is a cost for these incentives which must be borne by the national treasury. For example, a tax moratorium enjoyed by a particular industrial enterprise deprives the nation of revenue at a time when the demand for governmental services experiences a corresponding increase. This may inevitably place a larger tax burden upon individuals and/or upon existing industries. To the extent that existing, domestic industries must shoulder this increased burden, they are placed in a less favorable competitive position vis-a-vis the new entrant. Moreover, because a new manufacturing facility ordinarily employs more sophisticated and, hence, more productive machinery, it may already stand in a more favorable competitive posture without the tax incentive. However, because a new investment is likely to have an affirmative “riple effect” upon the economy of the nation by generating increased sales and revenue in other industries, tax revenues may rise even without a tax rate increase upon individual or existing facilities.

To the extent that an incentive is given to an investor who might invest even in its absence, it represents an unnecessary gratuity for which the public treasury suffers a needless loss. The frequency with which this phenomenon arises is difficult to measure, and a cost-benefit analysis of this nature is beyond the scope of this article. Several of these nations have attempted to obviate such losses by placing discretionary authority in the hands of a governmental regulatory

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196 This, of course, is a distribution of wealth concept with two objectives: (1) improving the economic well being of the populace domiciled in neglected regions; and (2) improving the quality of life of those domiciled in urban areas through the geographic disbursement of labor.
authority. This authority is responsible for scrutinizing proposed investments in order to discern whether they will assist the implementation of national economic objectives, and thus, whether issuance of various incentives will fall within the public interest.

Nevertheless, it is fair to conclude that many investors will perceive the war-prone environment of these nations to be less than favorable and may expect some assurances and guarantees, if not incentives and privileges, before they commit their capital. This fact apparently is recognized by these five nations for they have unhesitatingly provided the necessary investment incentives in an effort to assure political stability and enhance the material well-being of their inhabitants.

Western investors must recognize that if private investment is to continue to be a dynamic force in molding economic development in the world, it is essential that the business community play a fundamental role in enhancing the political stability and economic growth of these nations. The legislative schemes presented are exceptionally attractive and the pecuniary rewards are considerable. It is hoped that investors will come to recognize the generous incentives to industrial development described herein, and enjoy their benefits. It is further hoped that such investment will indeed have the desired beneficial effects upon the economies of these five nations.