Denver Journal of International Law & Policy

Volume 3
Number 2 *Fall*

Article 8

May 2020

Foreign Investment in Thailand: The Effect of Recent Legislation

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COMMENT

FOREIGN INVESTMENT IN THAILAND: THE EFFECT OF RECENT LEGISLATION*

I. INTRODUCTION

Behind the exotic culture and visual delights of the Kingdom of Thailand is one of Asia's more successful economies. Thailand's 35 million people have witnessed encouraging economic growth in their country in recent years. The real per capita Gross Domestic Product (GDP) increased from 2810 baht in 1967 to 3310 baht in 1972.[1] The Kingdom has enjoyed a generally favorable, although fluctuating, balance of payments (3970 million baht in 1972),[2] but an unfavorable balance of trade. The trade deficit has decreased since 1970, moving from a negative 12,258 million baht in 1970 to a negative 8,508 million baht in 1972. The country assiduously attempts to limit imports (there is a 150 percent tax on many luxury imported goods) and enjoys steadily increasing exports.

Traditionally, Thailand has attracted a considerable amount of foreign investment which has continued unabated in recent years. There is no system of registration of foreign investments, and hence no totally reliable data as to their number and size. However, some clue as to the relative amounts of foreign investment can be derived from the statistics for industries which were promoted by the Thai government under the investment incentives legislation prior to 1972. During the period from April 1959 to June 1971, Thai investors provided 66.77 percent of the total capital in promoted industries; Japanese investors[3] provided 11.35 percent; U.S. investors provided 6.23

* The author is much indebted to Mr. Chira Panupong, Senior Economist, Board of Investment, for granting a helpful interview in Bangkok, March 15, 1973. It should be noted that this comment was written before the change of governments in Thailand in October, 1973. The author believes that the new government will, initially, continue the economic policies of the Thanom-Prapass regime. The long term situation, however, can only be seen as uncertain.

1. BUSINESS INTERNATIONAL CORPORATION, *The Business Outlook: Thailand*, 4 BUSINESS ASIA 201 (1973). The exchange rate is 20.8 baht to 1 dollar.

2. BANK OF THAILAND, 13 MONTHLY BULLETIN 69 (1973).

3. The exact amount of Japanese direct investment is unknown, but is thought to be much greater than that of the United States. Japanese investment has increased in recent years as Japan has faced restrictons on its operations in Europe and elsewhere. The use of the Board of Investment's data, therefore, which covers a 12 year period, probably understates the relative extent of Japanese participation in the Thai economy.

percent; and Taiwanese investors provided 5.3 percent.[4] The estimated amount of U.S. investment is 150 million dollars,[5] which is distributed among some 200 firms doing business in the country.

During the year 1972, however, the Thai government enacted three pieces of legislation which could have a significant impact on foreign participation in the country's economic life, and which have created an atmosphere of uncertainty regarding continued foreign investment. Briefly, the Investment Promotion Act[6] increased the incentives offered to selected investors. Paradoxically, the Alien Business Act[7] seems to sharply restrict the participation of foreigners in certain industries and the Alien Occupation Act[8] closed some occupations to non-Thai nationals. The purpose of this comment is to present and analyze these pieces of legislation, and to discuss their effect on foreign investors.

II. THE INVESTMENT PROMOTION ACT

The Investment Promotion Act, announced on October 18, 1972, generally provides more generous incentives to the investor than the previous comparable legislation, which had existed since 1962.[9] It should initially be noted that the benefits of both acts apply to all investors, not merely foreigners. In the past, most investments promoted by the government have been made with local capital by Thai nationals.

To be eligible for the incentives of the Act, an investor must be awarded a promotion certificate by the Board of Investment (BOI), which is responsible for administering the Act. The certificate, ob-

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4. BOARD OF INVESTMENT, INVESTING IN THE DYNAMIC GROWTH OF THAILAND 64 (1972).

5. U.S. DEP'T OF COMMERCE, *Establishing a Business in Thailand*, OVERSEAS BUSINESS REPORTS, OBR 72-038 (August, 1972) at 5. This compares with $900 million in Indonesia, $710 million in the Philippines, $310 million in Singapore, $200 million in Malaysia, and virtually none in South Vietnam, Cambodia and Laos. U.S. DEP'T OF COMMERCE, *Market Profile for the Far East*, OVERSEAS BUSINESS REPORTS, OBR 72-054 (September, 1972).

6. National Executive Council Announcement No. 227, Investment Promotion Act (October 18, 1972); COLLECTION OF LAWS PERTAINING TO INVESTMENT PROMOTION compiled by Investment Services Division, Office of the Board of Investment, Thailand (March 1973) [hereinafter cited as Investment Promotion Act].

7. National Executive Council Announcement No. 281, Alien Business Act (November 26, 1972); COLLECTION OF LAWS PERTAINING TO INVESTMENT PROMOTION compiled by Investment Services Division, Office of the Board of Investment, Thailand (March 1973) [hereinafter cited as Alien Business Act].

8. National Executive Council Announcement No. 322, Alien Occupations Act (December 13, 1972); COLLECTION OF LAWS PERTAINING TO INVESTMENT PROMOTION compiled by Investment Services Division, Office of the Board of Investment, Thailand (March 1973) [hereinafter cited as Alien Occupations Act].

9. Promotion of Industrial Investment Act (1962), *as amended* in 1965 and 1969.

tained by filing an application[10] with the BOI, qualifies one as a "promoted person." A promoted person must be a limited company (corporation) or a cooperative.[11] Investors currently receiving the incentives of the 1962 legislation may request any of the benefits which they do not presently receive by applying for a new certificate under the 1972 Act.[12] The ultimate decision with respect to the issuance of the promotion certificate and the extent of the benefits awarded lies with the BOI.[13] Some of the criteria which it considers important are employment, the potential production of foreign exchange, the location of the industry and the time of the application.[14]

The general incentives available under the Investment Promotion Act are classified as guarantees, permissions, tax reductions and exemptions, and protections. Additional incentives are available if the promoted person locates the activity in specified areas of the Kingdom, or if the business is export oriented.

A. *Guarantees*

The government will not engage in an activity which is competitive with that of the promoted person,[15] although the Thai government has traditionally been rather active in both the agricultural and the industrial sectors.[16] This guarantee, which was also included in the 1962 Act, appears to have largely been the result of a World Bank Mission which recommended in 1959 that private investment be encouraged, and the Thai government's perception that its high degree of activity might frighten away potential foreign investors.[17] The government still provided an average of 31 percent of the total gross domestic fixed investment during the period of 1959-1969,[18] and continues to operate a number of businesses with notorious inefficiency. The guarantee against competition from the government can, there-

10. Board of Investment form 9.1.

11. Investment Promotion Act, *supra* note 6, art. 12.

12. *Id.* art. 37.

13. At unspecified intervals BOI issues lists of specific activities eligible for promotion. A 1973 BOI announcement listed such activities as mining, metals, ceramics, chemicals and chemical products, mechanical and electrical equipment, construction materials, textiles, service and miscellaneous industries. Announcement of the Board of Investment Number 1/2516, List No. 1/2516, January 9, 1973.

14. Interview with Mr. Chira Panupong, Senior Economist, Board of Investment, Bangkok, Thailand, March 15, 1973 [hereinafter cited as Interview].

15. Investment Promotion Act, *supra* note 6, art. 15.

16. *See generally*, J. INGRAM, ECONOMIC CHANGE IN THAILAND 1850-1970, at 139-44, (1971) [hereinafter cited as INGRAM]. Despite assertions by conservative Thai political leaders that Dr. Pridi Phanomyong's Economic Plan of 1933 was "Bolshevism" [D. WILSON, POLITICS IN THAILAND 17 (1962)], the debate over government operation of industry has seldom been ideological.

17. INGRAM, *supra* note 16, at 231.

18. *Id.* at 230.

fore, be of some value to the foreign investor.

The enterprise of a promoted person will not be nationalized.[19] However, this has never been a threat to the foreign investor in Thailand. Additionally, exportation of the goods produced by a promoted person is permitted.[20]

Foreign currency may be remitted abroad if it represents investment capital from a foreign country, a foreign loan or interest thereon, or profit from the promoted activity on obligations assumed as a result of the promoted activity. These remittances may, however, be restricted during periods of adverse balance of payments to a yearly rate no lower than 20 percent for capital and 15 percent for earnings after the promoted person has engaged in business for two years.[21] Being elevated to a guarantee from its former status as a "right," this provision presumably implies a higher degree of protection. Although there is no absolute right to repatriate all funds, the investor can rely on Thailand's healthy balance of payments position.[22] Also, most foreign firms have in the past had little problem with remittances.[23] This felicitous circumstance should continue as the Kingdom's economy develops.

B. *Permissions*

The promoted person may own land in the Kingdom.[24] This provision seems to be directly aimed at foreign investors, since aliens, in general, are not permitted to own real property in the absence of a treaty. While Thailand has such treaties with most industrial countries, none exist between Thailand and the United States.[25]

Alien Skilled Workers and experts may be brought into the country in excess of ordinary immigration quotas.[26] The Thai immigration law stipulates that no more than 200 immigrants per year from any single country may enter Thailand. As might be expected, applications from nationals of the countries which export large amounts of capital to Thailand greatly exceed this annual quota.

C. *Tax reductions and exemptions*

The promoted person is granted an exemption from import du-

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19. Investment Promotion Act, *supra* note 6, art. 15 (2).
20. *Id.* art. 15(4).
21. *Id.* art. 15(3).
22. Thailand's balance of payments was 1.21 billion dollars in total reserves at the end of February 1973, as compared with 0.99 billion dollars a year earlier; STATISTICAL OFFICE OF THE UNITED NATIONS, 27 MONTHLY BULLETIN OF STATISTICS 237 (May, 1973).
23. 3 BUSINESS ASIA 344 (1972).
24. Investment Promotion Act, *supra* note 6, art. 16.
25. CHARLES KIRKWOOD AND ASSOCIATES, THAILAND BUSINESS—LEGAL HANDBOOK 64 (1969).
26. Investment Promotion Act, *supra* note 6, art. 17.

ties and business taxes on machinery required for the promoted activity, provided that such machinery is not produced in Thailand.[27] The Thai business tax is a gross receipts tax payable by the manufacturer or importer. It should be noted that the machinery which has been exempted from import duties and business taxes cannot be used for purposes other than the conduct of the promoted person's business,[28] unless permission is granted by the BOI.[29]

Additionally, the promoted person is exempted from payment of income tax for a period of three to eight years from the date net income is derived from the business.[30] This provision places a great amount of discretion in the BOI and the criteria are the same as those used in the decision to grant a certificate or promotion. This exemption, however, is a benefit which may be omitted from the package of incentives at the discretion of the BOI.[31]

D. *Protections*

The importation of products competitive with those produced by the promoted person may be prohibited,[32] or the import duty on competitive products may be increased.[33] As an alternative, "special fees" up to 50 percent of an item's cost may be imposed on imported goods competing with products of the promoted person.[34] These protective provisions enable the BOI to award a virtual monopoly position if it so chooses.

E. *Additional incentives*

Thailand has arrived at a point in its development at which it can enjoy a degree of selectivity with respect to foreign investments. This desire to select foreign investments is manifested in the Investment Promotion Act by special incentives given to industries located outside the Bangkok metropolitan area or industries that are export-related.

In addition to the incentives granted to all promoted persons for enterprises located in "investment promotion areas,"[35] the BOI may, at its discretion, grant any or all of the following benefits:

(1) A reduction of import duty and business tax of up to 50 percent of the collectable rate on imported raw materials to be used

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27. *Id.* art. 18.
28. *Id.* art. 21(1).
29. *Id.* art. 22.
30. *Id.* art. 20.
31. *Id.* art. 26.
32. *Id.* art. 24(1).
33. *Id.* art. 24(2).
34. *Id.* art. 27.
35. These areas have not yet been delineated, but it is thought that they will include most of the country, except the capital city of Bangkok.

by the promoted activity.[36]

(2) A reduction of the business tax of up to 90 percent of the collectable rate on the sale of goods produced by the promoted person for a period of up to five years.[37]

(3) A deduction of twice the costs of the transportation, electricity and water from gross income in the determination of the income tax.[38]

(4) A deduction from net income of 25 percent of the costs of construction and installation of facilities used in the promoted business. This deduction is in excess of normal depreciation. It may be used in one year, or may be allocated over a period of up to ten years commencing from the date net income is first derived from the enterprise.[39]

(5) A reduction of 50 percent of the normal corporate tax rate for a period of five years commencing from the date at which the normal tax holiday, which is granted as an ordinary incentive, expires.[40] A business locating in an "investment promotion area" may, therefore, receive favored income tax treatment for a period of up to 13 years from the year at which a profit is made.

At the discretion of the BOI, export-related businesses may be granted the following special incentives:

(1) Exemption from import duty and business tax on raw materials which are used in the promoted activity;[41]

(2) Exemption from import duty and business tax on items which the promoted person imports for re-export;[42]

(3) Exemption from export duty and business tax on items which the promoted person exports;[43]

(4) A 2 percent reduction of that part of net income attributable to an increase over the previous year's net income which is a result of export.[44]

F. *Distinguishing features of the old and the new*

Although most of the incentives offered under the current legisla-

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36. Investment Promotion Act, *supra* note 6, art. 23(1).
37. *Id.* art. 23(2).
38. *Id.* art. 23(3). This is a classic infrastructure-building device and is needed in a country in which transportation, electricity and water are either inadequate or lacking in many places.
39. *Id.* art. 23(4).
40. *Id.* art. 23(5).
41. *Id.* art. 25(1).
42. *Id.* art. 25(2).
43. *Id.* art. 25(3).
44. *Id.* art. 25(4).

tion were present in the 1962 Act, there are some important changes. One of the more significant differences between the new act and the former one is that under the new legislation there is no express classification of industries with respect to their importance. The Act merely states that the BOI may designate an investment as promoted if it is "of economic and social importance to the nation."[45] Article 11 of the Act also specifically excludes certain activities from eligibility for promotion.[46]

The provision relating to the repatriation of earnings has been raised from the "rights and benefits" section of the former law to a "guarantee" in the new act. This move has been well received by foreign investors since it eliminates some of the "uncertainty" of the prior legislation.[47] The income tax provisions are more favorable. The maximum tax holiday available under the 1962 act was five years compared with eight years under the present legislation.

The provisions which allow extra incentives for businesses in rural areas and those which are designed to increase Thailand's exports are all new. The special incentives to export industries are designed to improve the country's trade balance. It is submitted, however, that both these moves are propitious. Too much has been made of the limited Communist insurgency[48] in Thailand's rural areas, but, despite the exaggeration, positive action by the Thai government to develop the country outside Bangkok is a welcome move.

A significant aspect of the new legislation is the substantial increase in authority which it gives the BOI. The former Act divided promoted industries into three groups which were ordered in decreasing importance to the development of the country and which received decreasing benefits. The new Act eliminates this classification and allows the BOI to specify the extent to which the discretionary benefits, for example, the length of the income tax holiday, will be awarded. The new authority has admittedly placed an initial strain on the BOI's resources.[49] It is submitted, however, that placing more authority in the hands of the BOI indicates a flexibility and a potential for selectivity which is desirable as Thailand's development continues.

45. *Id.* art. 11. Examples of important areas are transportation, fishery, agriculture, animal husbandry, industry, production of goods for export, export trade, tourism, organization and improvement of land for industrial purposes, and repair and maintenance of machinery used in the above activities.

46. *Id.* Those activities excluded from eligibility for promotion are banking, financial institutions, and "normal" trading businesses.

47. 3 BUSINESS ASIA 343 (1972).

48. *See, e.g.*, L. LOMAX, THAILAND, THE WAR THAT IS, THE WAR THAT WILL BE (1967).

49. Interview, *supra* note 13.

The new Act shows that, in addition to the desire for domestic investment, Thailand continues to desire helpful foreign investment. The Act has many of the same provisions as incentive legislation of the country's neighbors,[50] which generally offer the same economic advantages to the foreigner as does Thailand.

III. THE ALIEN BUSINESS ACT

The Alien Business Act, announced on November 24, 1972, restricts the participation of aliens in certain industries. It is a piece of legislation which, at first glance, seems to contradict the attitude of the Thai government as expressed in the Investment Promotion Act. On its face, it merely prohibits majority ownership of a rather short list of businesses by aliens. The dilemma for the foreign investor, however, is not this limitation, but rather the confusion which the Act has caused with respect to the continued welcome reception of foreign investment in the Kingdom. The term "alien" is defined by the Act as a natural person,[51] or a juristic person whose ownership is more than 50 percent alien.[52]

In general, the Act divides the restricted businesses into three categories. Those businesses which appear on List A of the Annex to the Act may be operated for a period of two years following the date of the Announcement.[53] At that time the firm must either cease operations or become 51 percent owned by Thai nationals. The businesses on List A are generally very basic enterprises carried on in any country.[54]

The Act provides that businesses on List B may continue to be operated indefinitely by aliens, but that no new businesses may be initiated.[55] Those businesses which are allowed to continue operation may not increase production or distribution at a rate in excess of 30 percent annually,[56] nor may they open new branch offices without the

50. *See, e.g.*, Malaysia, Investment Incentives Act, 1967, *as amended*, 1969, 1971, in INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES, INVESTMENT LAWS OF THE WORLD, Section 5:2A-1.1 (1972); Republic of Vietnam, Law No. 4/72 in 11 INT'L LEGAL MATERIALS 883 (1972); Philippines, R.A. 5186, in Bengzoan, *National Treatment of Americans in the Philippines: Parity Rights, Retail Trade, and Investments*, 3 INT'L LAW 339 (1969); Indonesia, Law Concerning Investment of Foreign Capital, Act No. 1, year 1967, in INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES, INVESTMENT LAWS OF THE WORLD, Chapter 5 (1973).

51. Alien Business Act, *supra* note 7, art. 3.

52. *Id.*

53. *Id.* art. 30(2).

54. Alien Business Act, Annex, List A. The complete List A is as follows: rice, farming, salt farming, trade in native agricultural products, trade in real estate, accountacy, law, architecture, advertising, brokerage, auctioneering, barbering and building construction.

55. Alien Business Act, *supra* note 7, arts. 4, 30(2).

56. *Id.* art. 30(2).

consent of the Director General of the Department of Commercial Registration.[57] The businesses on List B are somewhat more numerous than those on List A,[58] but still not so numerous as to have more than a very mild effect on the amount of foreign investment which the country is willing to receive.

Businesses on List C[59] are also subject to the 30 percent annual limitation on production or distribution increases,[60] but new businesses within this category can, at least, begin operation upon obtaining a license from the Department of Commercial Registration.[61] This license is granted automatically to businesses which have received a Certificate of Promotion from the BOI.[62] The Department of Commercial Registration may, however, impose any or all of the following conditions upon granting the license:

(1) specification of the debt/equity ratio to be used in the capitalization of the business;[63]

(2) specification of the amount of capital which is to be imported for the operation of the business;[64]

(3) specification of the amount of capital contributed by Thai nationals which must be in the business' capital structure;[65]

(4) specification of the ratio between Thai and foreign workers to be employed by the business.[66]

Aliens who operate businesses in violation of the Act are punishable by a fine of between 30,000 and 500,000 baht, and will receive a court order to discontinue the business.[67] Additionally, shareholders or partners of alien juristic persons who fraudulently evade the requirements of the Act are punishable to the same extent.[68]

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57. *Id.*

58. Alien Business Act, Annex, List B. The more important businesses on List B are as follows:

> agricultural production; production of sugar, beverages, medicine, cement and plywood; most retail trade; hotels; the sale of foods and beverages; and trade in natural ores.

59. Alien Business Act, Annex, Lict C. The List C includes:

> all wholesale trade, except that in List A; all export trade; retail trade in machinery, engines and tools; production of animal feed, vegetable oils, textiles, glass containers and paper; mining; all services, except those on Lists A and B; and all construction, except building construction.

60. Alien Business Act, *supra* note 7, art. 30(2).

61. *Id.* art. 5.

62. *Id.* art. 6.

63. *Id.* art. 8(1).

64. *Id.* art. 8(2).

65. *Id.* art. 8(3).

66. *Id.* art. 8(4).

67. *Id.* art. 26.

68. *Id.* art. 28.

The problem for the foreign investor, particularly the U.S. investor, is not the prohibitions of the Act, but the fact that it has created so much confusion. At this stage, no one knows whether the Act is an indication of a trend towards increased economic nationalism or merely a rational preservation of certain basic industries for Thai nationals. The extent to which the law will be enforced is still a matter of doubt. Corruption is something which this comment cannot even begin to discuss. The 30 percent growth limitation for businesses in Lists B and C also presents a subject of confusion, since it gives an obvious advantage to a new business which receives a license over an old business whose growth is restricted.

The U.S. investor faces an even more confusing problem. Thailand and the United States have a treaty[69] under which U.S. businesses are to receive the same treatment as Thai businesses in the Kingdom. The status of the Act, vis-a-vis the treaty, is unclear as to what will happen to the U.S. businesses when the treaty expires in 1978.

It appears that the Alien Business Act was announced as a response to the large and burgeoning Japanese ownership of business in Thailand.[70] There is no doubt that prior to the legislation there had been public expression of resentment against the substantial Japanese involvement in the Thai economy. In 1972, there was a demonstration in front of a large Japanese department store and an abortive attempt to boycott Japanese products.[71] There was also a strike by Thai workers at a Japanese construction company protesting the strict Japanese work rules.[72] These actions are uncharacteristic of Thais, and indicate the extent of the fear of Japanese domination of the economy.

The foregoing suggests that the Act will not be as strictly enforced against U.S. businesses as against those of Japanese aliens. Nonetheless, U.S. investment has decreased substantially since the announcement of the Act.[73] Necessary changes and clarification of the Act will, almost certainly, be forthcoming.

In all, the Act is best seen as only a slight closing of the door to foreign investment, and one which is probably not intended to have a significant effect on the participation of U.S. investors in the Thai economy. Thailand is a country which still needs the infusion of foreign capital and which stands to benefit from the rapidly increas-

69. Treaty of Amity and Economic Relations with Thailand, May 29, 1966, [1968] 19 U.S.T. 5843; T.I.A.S. No. 6540.

70. BUSINESS WEEK, Dec. 9, 1972, at 44.

71. The New York Times, Nov. 25, 1972, at 41, col. 1.

72. BUSINESS WEEK, Dec. 9, 1972, at 44.

73. The Wall Street Journal, July 27, 1973, at 30, col. 1.

ing growth of Southeast Asia. It is difficult to imagine that xenophobia in the country will cause it to reject foreign investment.

IV. THE ALIEN OCCUPATIONS ACT

The Alien Occupations Act, which was announced on December 13, 1972 and became effective on March 14, 1973, prohibits aliens from working in any of 39 occupations, and requires all aliens to obtain a license from the Department of Labor. Like the Alien Business Act, it has contributed to the atmosphere of uncertainty concerning foreign investment in the Kingdom. However, the Act's importance is not nearly as great, nor is it intended to be, as that of the Alien Business Act.

The licensing provisions, which caused some confusion shortly after the Act became effective (some 370,000 aliens had to obtain licenses), were primarily administrative, and of little importance to the foreign investor. However, some of the proscribed occupations listed in the Act are currently being held by foreigners, and the prohibition against employing new aliens in these tasks could have an effect on foreign investors.

It should be noted that aliens already employed in one of the 39 prohibited jobs on March 14th were allowed to continue working in them. The list of proscribed occupations includes such unlikely tasks as the making of Thai musical instruments, cigarette making by hand and alms-bowl making.[74] Those prohibited occupations in which a foreign investor might find it necessary to employ aliens are construction and civil engineering, architecture, law, accounting and "brokerage." Aliens who work illegally in one of the 39 banned jobs are subject to five years imprisonment.[75] Foreign diplomats and their employees are exempted from the Act,[76] as are people performing temporary tasks and those who are "allowed by the Royal Thai Government to perform [duties] or execute [tasks] in the Kingdom."[77]

The banning of foreign participation in certain occupations is not a new event in Thailand, nor is it a new situation that most of the prohibited jobs are not highly paid. The interpretation given the Act by the Ministry of the Interior, which has the task of enforcing it, is still unsettled, as is the degree to which the law will be enforced. It is clear, however, that foreign investment has declined substantially since the inception of the Alien Business Act and the Alien Occupations Act.[78] The latter legislation must, therefore, be seen as a con-

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74. The Bangkok Post, March 15, 1973, at 1, col. 3.
75. Alien Occupations Act, *supra* note 8, art. 28.
76. *Id.* art. 2.
77. *Id.* art. 3.
78. Numerous projects have been either suspended or cancelled. The Wall Street Journal, July 27, 1973, at 30, col. 1.

tributing factor to the general atmosphere of uncertainty which exists in the Kingdom, although its real importance is not especially significant.

V. CONCLUSION

Taken together, the three pieces of legislation present the foreign investor with a situation which is confusing and uncertain. The Investment Promotion Act encourages private investment, while the Alien Business Act concurrently restricts foreign ownership of businesses in certain industries. The apparent contradiction is, however, not a contradiction at all, but rather an indication that, although Thailand still welcomes foreign investment, the government now believes that a more selective investment policy is in the country's best interest. Most of the businesses in which foreign control is prohibited are the kinds of basic activities which are properly reserved to local nationals. In any event, the extent of foreign participation in most of the restricted areas is minimal.

The problem is that while the government still desires an inflow of foreign capital, it has created an atmosphere of uncertainty which, until clarified, will dissuade new foreign investment. It is unfortunate that the Alien Business Act has caused this situation, and a speedy resolution of the uncertainty should be effected by the Thai government.

It is suggested that the legislation will not, ultimately, have a deleterious effect on either the status of the foreign investor in Thailand or upon the country's growth. In the future, the Thai government will probably continue to encourage private investment, including that of foreigners, and display a greater degree of selectivity with respect to both the existence of foreign investments and the extent to which they will be promoted. This selectivity will be manifested by the extent of foreign ownership granted under the Alien Business Act and by the more flexible incentives utilized under the new Investment Promotion Act. The latter Act will, almost certainly, be modified as time passes.

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