REGIONAL DEVELOPMENTS

Pacific Basin*

I. India

A. New Industrial Investment Measures

On May 31, 1990, the Minister for Industry, Ajit Singh, presented a new industrial policy for India, with the aim of facilitating industrial investment by reducing licensing requirements and other procedural formalities. Under the new policy, technology imports will be permitted without any prior clearance from the Indian Government, provided that royalty payments are not more than 5 percent of domestic sales and 8 percent of export sales. If, however, a lump sum royalty payment is to be made, prior government approval is required, and a decision on the application for such approval will be communicated by the Secretariat for Industrial Approvals within a thirty-day period.

Capital goods may be imported under this new policy up to a landed value of 30 percent of the total value of equipment and machinery required for the unit. Imports of raw materials and components will be permitted up to a landed value of the exfactory value of annual production. Although the import policy with respect to capital goods has been liberalized, licensing procedures will still be operative with respect to imports of raw materials and components.

The new policy raises the investment ceiling in plant and machinery for small-scale industries from the present limit of Rs. 350 million to Rs. 650 million. For ancillary units, the investment ceiling has also been raised from the present limit of Rs. 400 million to Rs. 750 million. Furthermore, in an effort to promote the export potential of small-scale industries, units that undertake to export 30 percent of annual production by the third year will be allowed to increase their investment in plant and machinery to Rs. 750 million.

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* Prepared by Anjana Bahl of Baker & McKenzie, Chicago, Illinois, in cooperation with the firm's offices in the Pacific Basin.

These measures are intended to improve industrial export competitiveness by increasing access to foreign technology resources and by encouraging investment in small scale rural and agricultural industries. The new policy also permits automatic clearance for investment projects with foreign equity participation of 40 percent, the maximum permissible level in India.

II. Indonesia

A. Enforcement of Foreign Arbitral Awards

Foreign judgments and foreign arbitration awards have remained unenforceable for many years in Indonesia, despite Indonesia's accession, in 1981, to the United Nation's Convention for the Reciprocal Enforcement of Foreign Arbitral Awards (the 1958 New York Convention). A proposed reason for this was that the Indonesian Supreme Court had not issued any implementing regulations facilitating the execution of foreign awards in Indonesia.

On March 1, 1990, the Chief Justice of the Indonesian Supreme Court issued a regulation that, apparently, permits a foreign award to be directly enforced in Indonesia. The regulation stipulates that certain basic requirements must be complied with to qualify for enforcement.

(1) The award must be granted by an arbitration body or arbitrator in a country that is a signatory to the 1958 New York Convention, or a country that has a bilateral agreement with Indonesia;
(2) the award must arise out of a "commercial" dispute; and
(3) the award must not be contrary to Indonesian public policy.

Enforcement proceedings are commenced by submitting various documents to the Central Jakarta District Court. These documents include translated and legalized copies of the arbitration award, which must also be authenticated; the agreement pursuant to which the award was granted, which must also be translated, legalized, and authenticated; and a statement from the Indonesian diplomatic representative in the foreign country where the arbitration award was granted, certifying that the foreign country has reciprocal arrangements with Indonesia for the enforcement of arbitral awards.

Within fourteen days from receiving the above documents, the Central Jakarta District Court will forward a completed application to the Indonesian Supreme Court. The Supreme Court will then issue an "exequatur," unless public policy considerations prevent the Court from doing so. The exequatur is an execution order that is subsequently carried out by the district court having jurisdiction. A separate proceeding may also be commenced, if necessary, to attach the assets of the party against whom the award was granted.

The regulation is in its incipient stages, and its practical application and success have yet to be determined. Nevertheless, it represents an important step towards encouraging the foreign investor to do business in Indonesia.

III. Malaysia

A. Enlarged Capitalizations: Approval Required for Foreign Interests

The Foreign Investment Committee (FIC) is a body that supervises foreign investments in Malaysia. FIC approval has been required for any acquisition by a foreign entity of 15 percent or more of the voting power in a Malaysian company, or any acquisition by a foreign entity that resulted in a total of 30 percent or more of the voting power in a Malaysian company being controlled by foreigners.

A circular dated April 7, 1990, has added to the above requirements by stating that FIC approval is now required for a foreign entity to subscribe for equity valued at more than M$5 million in a Malaysian company, even if there is a joint venture agreement or technical assistance agreement between the foreign entity and the Malaysian company. FIC approval will be required, even though the amount subscribed for is below the 15 percent level of voting rights.

IV. People's Republic of China

A. Shanghai: Methods for Resolving Foreign Investor Complaints

The Shanghai Municipality has recently enacted various measures that are intended to handle complaints made by foreign investors. The measures include procedures for foreign investment enterprises (including Chinese and foreign parties thereto) to register complaints with the coordinating authorities. These authorities are responsible for coordinating solutions for matters relating to construction, investment, liquidation, operation, and production. Furthermore, a coordinating center, which will oversee the work of the various coordinating authorities, is soon to be established.

Complaints may be submitted either by completing the requisite form or by sending a letter to one of the authorities. Materials pertaining to the complaint must also be submitted when filing the complaint. No anonymous complaints are accepted. Complainants outside China may appoint agents within Shanghai to register the complaint.

The coordinating authority responds with an answer based on facts, law, and the relevant "international practice." The authority is required to respond within one month of receiving the complaint, but this period may be extended, after notifying the complainant, for complex issues that require further consideration.

If a complainant is not satisfied with the authority's response, it may formally request the authority to reconsider the matter. The authority must then reply within twenty days after it has received a written request for the reconsideration of its initial response. If the complainant is still not satisfied with the authority's answer, it may, within seven days of receiving the reconsidered opinion from the relevant authority, file a written request with the coordinating center. The coordinating center must issue a response within twenty days after receiving this request.

Coordinating authorities are required to discontinue processing any complaint that is subsequently submitted by the complainant to an arbitration tribunal or a People's Court. Furthermore, cases concerning foreign investment enterprises that are being handled by administrative organs will not be handled by the coordinating authorities.

B. Stamp Tax

The State Taxation Bureau recently issued a circular that explained the categories of foreign economic contracts that are temporarily exempt from stamp tax. The exemptions apply to purchase and sale contracts for import and export commodities and transfer of technology contracts that are concluded between a legal person outside the PRC, which may include a foreign party to a joint venture agreement, and an authorized PRC foreign trade corporation or enterprise, provided that the contract is signed before January 1, 1991. Other foreign economic contracts are still subject to stamp tax under the Provisional Regulations.

The State Taxation Bureau also issued information to the Shanghai Municipal Tax Bureau, clarifying certain matters concerning stamp tax. The following is a summary of the principal issues.

(1) Foreign business entities that are exempt from Consolidated Industrial and Commercial Tax (CICT) under the appropriate regulations are also exempt from stamp tax on contracts and other documents executed by them.

(2) Transfer of technology agreements between foreign enterprises and Chinese users, which are subject to being stamped, will be subject to a stamp tax that is 0.05 percent of the proprietary technology transfer fee indicated in the agreement. The proprietary technology transfer fee includes fees for information, technical services, and personnel training in conjunction with the right to use the technology.

(3) Loan agreements between foreign governments or international organizations and the PRC Government or state financial organizations are not subject to stamp tax.

(4) Foreign companies are permitted to apply to the local tax authorities for a reduction in tax if the stamp tax is excessive on transfer of technology agreements, credit agreements, lease agreements, and purchase and sale contracts. Such reductions must be approved by the State Taxation Bureau.

V. Taiwan

A. New System of Investment Incentives

Taiwan's plans for encouraging business investment will be substantially improved at the end of 1990 when the Statute for Encouragement of Investment

(SEI) expires. In an effort to encourage investment and greater flexibility in the economy, in addition to achieving "developed country" status by the year 2000, the ROC Government has reviewed the entire framework concerning investment opportunities and has proposed new legislation—the Statute for Promoting the Standard of Productive Enterprises (SPSPE). The SPSPE is presently being considered by the Legislative Yuan, and has a proposed effective date of January 1, 1991 at which time it will replace the present SEI.

The SPSPE focuses on companies limited by shares. It is drafted to encourage local enterprises to open up to the public and to discourage the established, closely held, family companies. The SPSPE is not restricted to any particular products or industries, but is intended to promote investments in all productive enterprises. Enterprises engaged in research and development, training of personnel, and the international marketing of their own brand names will derive the maximum benefit from the proposed changes.

i. Tax Incentives Under the SPSPE. The following are tax incentives under the SPSPE:

(1) increasing the rate of depreciation on equipment used in research and development, quality control, and energy-saving materials;
(2) tax deductions on investments in pollution prevention, production automation, and research on promoting brand names overseas;
(3) maintaining the present tax-exempt status provided by the SEI on royalties and payments to those who license their patents or copyrights to local companies;
(4) permitting companies to maintain a provision for losses in connection with overseas investments in an effort to encourage such investments;
(5) offering tax relief on income earned by Chinese residing overseas who invest in Taiwan in accordance with the Statute for Investment by Overseas Chinese; and
(6) continuing to offer relief from transfer taxes for enterprises that merge with other entities, with the Ministry of Economic Affairs' approval, and relief for those enterprises that are compelled to relocate due to anti-pollution measures, town planning, or government directives.

ii. Development Fund. The Executive Yuan is permitted under article 21 of the SPSPE to maintain a fund to assist the development of various industries, obtain new technology, promote research and development, train personnel, and prevent and control pollution. A similar fund was maintained under the SEI, but article 21 specifically provides for a part of the fund to be allocated to small and medium-sized enterprises.

The SPSPE has several provisions that represent an effort to prevent land speculation and to control expenditure in establishing new factories. The new provisions provide for setting up industrial districts, and the authorities have stipulated that specific areas should be reserved for industrial development and should be leased to new enterprises. Moreover, provisions in the SEI concerning reinvestment of profits without including those profits when computing taxable income and other tax incentives will be maintained under the SPSPE.

B. Practical Application of the SPSPE

The SPSPE specifically addresses the need for raising the standard of production enterprises by expanding the methods by which this can be achieved. The SPSPE still needs refining, as many parts and terms are unclear. Also uncertain is whether the SEI incentives granted to companies will continue after 1990. The Ministry of Economic Affairs and Ministry of Finance currently have different views on this matter.

As a practical matter, there is some doubt about the SPSPE being enacted in time to replace the SEI. At present a backlog of approximately 300 statutes remains for consideration by the Legislative Yuan, several of which are extremely important. This uncertainty about the SPSPE's scheduled effectiveness may, in part, explain the urgency with which some investors are obtaining approval for their projects under the present investment structure.

VI. Thailand

A. Liberalization of Exchange Controls

On May 21, 1990, the Government of Thailand agreed to comply with article 8 of the IMF Agreement (the Agreement). Prior to this decision, Thailand had complied with article 14 of the Agreement, which provides for more stringent foreign exchange control policies.

Compliance with article 8 will result in a more liberal foreign exchange policy, namely:

(1) by avoiding restrictions on international currency transactions; and
(2) by permitting the movement of money in and out of the country in a flexible manner.

On May 22, 1990, the Bank of Thailand (the Central Bank) issued a notice that relaxed many foreign exchange regulations.

(1) Commercial banks are now permitted to authorize payment for all trade transactions and are not subject to previous restrictions.
(2) Commercial banks are now permitted to sell foreign currency up to U.S. $20,000 per trip to both tourists and businesspersons or civil servants travelling overseas. The earlier restrictions had provided for a limit of U.S. $4,500 for tourists and U.S. $9,000 for businesspersons and civil servants.
(3) Foreign families working in Thailand and Thai families travelling to Mecca for religious purposes are now entitled to U.S. $50,000 per year. The earlier restrictions had limited the amount to U.S. $500 per year per person.

(4) Expenses for overseas education have been raised to a maximum of U.S. $50,000 per year. Previously the limit had been amounts between U.S. $13,000 and U.S. $20,000 per year.
(5) Commercial banks are permitted to approve all service fees against supporting documents, up to a limit of U.S. $50,000. Previously they had been allowed to approve unlimited payments, but only for certain types of service fees, which had to be paid according to the agreement concerned.
(6) Commercial banks are permitted to approve remittances to relatives overseas of amounts up to U.S. $100,000 per year and up to U.S. $1,000,000 per year to Thais residing overseas. Previously, all remittances required approval.
(7) Commercial banks may approve remittances and process transactions of amounts up to U.S. $500,000 with respect to both remittances and dividends to foreign shareholders, provided that, in the case of dividends, supporting documentation is submitted. Previously, all repayments concerning interest on loans and foreign loan repayment on loans not registered with the Central Bank had required Central Bank approval.
(8) After deduction of the appropriate withholding tax, profits from a branch office may be remitted to the head office for amounts up to U.S. $500,000, provided that supporting documentation is submitted. Remittances of money from the winding-up of a business may be handled by a commercial bank, subject to the same restrictions that apply to remitting a branch office's profits.
(9) Commercial banks are also permitted to approve of transfers of baht currency from overseas of amounts up to a limit of five million baht per day.

VIII. Vietnam

A. Foreign Investment Law

The Foreign Investment Law (the Law) was passed by the National Assembly of Vietnam in 1987. The Law was further amended in June 1990 and has proved to be significant in the economic development of the country. The Law was prepared with the assistance of the United Nations' Development Program and is known to be very liberal, thereby demonstrating Vietnam's interest in reentering the international economic market.

The Law's primary intention is to attract foreign investment. Officials in Vietnam consider the modest preliminary results to be encouraging. United States investment is U.S. $1,041 million and is primarily concentrated in Saigon and the southern provinces. Oil exploration, thus far, has been the most viable industry. Furthermore, records reflect that by the end of May 1990, 157 business licenses had been approved.

The Law provides security against nationalization or compulsory acquisition. It promotes investment in all areas of the economy, but particularly encourages export-oriented and import-substitution projects, as well as high technology and labor intensive projects. It also provides for investment opportunities in the form of joint venture agreements, contractual business cooperation, and businesses that are wholly owned by foreign concerns.

B. Joint Venture Agreements

Foreign partners may contribute by foreign currency investments, supplying equipment and machinery, or supplying technical know-how. There is no maximum limit on foreign equity, but there is a minimum limit of 30 percent. The governing body for such agreements is the board of management, and the minority partner must have at least two members on the board. The joint venture business must be operated by the general manager and his deputies. In addition, either the general manager or the first deputy must be a Vietnamese citizen. If the enterprise is fully owned by foreign investors, the foreign investors can decide upon management, but the arrangements will be subject to Vietnamese law.

C. Finance

The Law authorizes bank accounts to be opened in both foreign currency and Vietnamese currency at authorized banks. The company's books and accounts must be maintained in accordance with current international practice, subject to the Ministry of Finance's approval. Furthermore, accounts should be maintained in Vietnamese and in Vietnamese currency units. If, however, the other partners in the agreement concur, and the State Committee for Cooperation and Investment approves, the accounts may be maintained in another language and in foreign currency units.

D. Incentives

Projects on a sufficiently large scale are given investment incentives. The incentives may include a tax holiday for the first two years of profits and a 50 percent reduction for the following two years. Further reductions may be awarded for longer periods of time, and projects that reinvest profits are reimbursed for the income tax paid on the amounts reinvested. The charter of the company determines the establishment, operation, transfer of capital, and dissolution of an enterprise that has foreign invested capital.

Foreign investors are permitted to repatriate their share of profits, invested capital, income legitimately obtained, and salaries of expatriates after income tax has been paid. Companies are required to maintain a reserve fund equal to 5 percent of profits and are also required to pay social insurance for their employees.