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Intelligence Report

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INSTITUTIONAL IMPEDIMENTS TO
PRIVATE US INVESTMENTS IN
SOUTHEAST ASIA

DEPARTMENT OF STATE

Office of Intelligence Research

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THIS IS AN INTELLIGENCE REPORT AND NOT A STATEMENT OF DEPARTMENTAL POLICY

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ABSTRACT

Even if U.S. investors find economically attractive opportunities in Southeast Asia, internal insecurity and the threat of Chinese Communist invasion weigh heavily against U.S. investments in the area. The countries of Southeast Asia have acknowledged a need for foreign capital but for the most part have not actively encouraged new investment from abroad. Indeed, the investment milieu they have established tends to impede large scale private U.S. investment.

The antipathy of the Governments of Burma and Indonesia toward foreign capital is based largely on nationalism and the desire to socialize important sectors of the economy (especially natural resources and utilities), and has resulted in constitutional and legislative limits on foreign investment or extralegal favoritism toward their own nationals. Thailand has encouraged U.S. investment but at the same time it has been rapidly nationalizing industry. Two dozen Government corporations compete with private capital in major Philippine industries. In the Federation of Malaya, the Crown colony of Singapore and the Associated States of Indochina, the Advantageous positions of private British and French capital handicap the potential U.S. investor. While U.S. capital is not officially precluded from those countries, British enterprise in Malaya and Singapore and the French in Indochina are insulated by administrative practices, established commercial patterns and the concern of metropolitan Governments over valuable exchange earners.

Foreign capital usually receives equal legal treatment in the economic activities it is permitted to enter. Investment from abroad is rarely the object of discriminatory taxation but taxes on all corporate enterprises are relatively high in several countries and nowhere in Southeast Asia in U.S. capital relieved from double taxation. Most of the countries of Southeast Asia have exchange control systems that could limit profit remittances as well as the withdrawal of capital. Thus far, however, only the Philippines has rigidly restricted the repatriation of earnings on foreign investments and disinvestment is relatively free.

The most favorable environment for private U.S. investment appears to exist in the Philippines and in Thailand. Close political and economic associations with the U.S., constitutional discriminations in favor of U.S. citizens and corporations and its insular position, favor the Philippines. Thailand has a background of independence, internal security, reasonable treatment to foreign investment and fiscal stability. In addition Thailand's political alignment with the West would be encouraging to U.S. investors.

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INSTITUTIONAL IMPEDIMENTS TO PRIVATE U.S. INVESTMENTS IN SOUTHEAST ASIA

I. THE ASSOCIATED STATES OF INDOCHINA

A. Political

Open warfare throughout the major part of the three Associated States of Indochina presently constitutes a decisive impediment to most foreign investment. There is no prospect that warfare will terminate in the near future. Even under these most unfavorable conditions there has been a limited amount of French investment, directed for the most part at reconstructing and expanding existing enterprises. This has been possible largely because of war damage payments allocated by France to French nationals. The French military effort has been directed at holding the most productive areas of Indochina, including almost all industrial installations and an important portion of mines and plantations. U.S. investments, which total at most about $US 2.8 million are represented almost entirely in petroleum installations which are subject to this same protection of French-Vietnamese troops.

B. Administrative

French mercantile policy has, in the past, precluded extensive investments by other than French nationals. This policy manifested itself not so much in terms of specific restrictions on foreign capital participation in the national economies of the three associated states (Vietnam, Laos and Cambodia are, in fact, characterized by an absence of such restrictions) as by privileges granted to French firms. The continued operation of these privileges is guaranteed by a number of provisions of the agreement between France and the Associated States and by the continued presence of French administrators in the governments of the three states. The ten year development program for Indochina (Monnet Plan) does not envisage the use of private foreign capital from non-French sources.

As for the Associated States themselves, Vietnamese officials, at least, have indicated their desire to see foreign capital other than French invested in the country. In his New Year's address on February 5, 1951, Bao Dai declared, "French and foreign technicians and capital will be welcomed....Capital will find in Vietnam a free field for its activities which will efficiently complement the Vietnamese efforts." He went on tostate that foreign capital would be subject to reasonable taxation and that transfers of profits would be facilitated.

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C. Legal

By terms of their agreements with France the Associated States are committed to give first call to French Union nationals whenever they require technicians or advisors. However, there is no indication that this requirement would apply to firms not under government contract.

Whereas French Union nationals and nationals of states with which France has special treaties (at present only China) are subject to the jurisdiction of mixed tribunals, other foreign nationals are subject to the regular Vietnamese courts.

Only companies incorporated in France or French colonies and in which three quarters of the directors and administrators are French nationals or Frenchsubjects may engage in mining enterprises.

D. Financial

Little local capital is available for investment, and an unrealistic official exchange rate inhibits the import of capital from the dollar area. Transfer of foreign exchange is severely restricted, especially outside the franc area. Exchange control is in the hands of an organ of the newly established Institute of Issue, which incorporates the public financial function formerly exercised by the Bank of Indochina. This body consists of representatives of the Associated States and France with decisions in most important matters, including the selection of its chairman, requiring mutual consent. Thus, France is in a position to provide protection to existing French interests.

E. Taxation

There is no tax discrimination against foreign investment, but U.S. investment is subject to double taxation.

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II. BURMA

A. Background

Private foreign investment in Burma has been relatively small in recent years and is probably diminishing. As of 1947 total foreign direct investment in Burma, mainly British owned, was estimated at $190 million. Two-thirds of foreign capital was invested in petroleum (production, refining and distribution) and in mining (lead, tin and silver). The remainder of the foreign capital was invested largely in transportation facilities (inland waterways and railways), banks and other commercial institutions, lumber (especially teak cutting and milling), and in agricultural plantations (especially rubber and tea). The current magnitude of foreign private investment is not known.

U.S. private investment in Burma has never been extensive and has declined during the postwar years. As of 1947, U.S. direct private investment was about $1.0 million and by the end of 1950 this sum had been reduced to a maximum of $0.8 million. U.S. firms have concentrated mainly in the distribution of U.S. products (e.g. petroleum, sewing machines, business machines). The gross receipts of the largest investor only averages about $1.5 million yearly. Since the business of U.S. firms is usually conducted through branch offices or agencies acting for U.S. principals, inventories are small and property holdings are of minor importance. None of the larger U.S. investors owns real estate in Burma. A survey of the five leading U.S. firms operating in Burma during 1950 showed only one resident U.S. national.

Foreign firms would operate under trying conditions in Burma. Low income levels and living standards have precluded the development of wide markets for processed goods. The lack of a skilled labor force, inadequate housing, a high incidence of disease, an underdeveloped and expensive transportation system and poor communication facilities represent additional obstacles to investment. For U.S. investors, the absence of an American business community, a history of British dominence among foreign investors, and a legal framework based upon British and Indian concepts, pose special problems.

B. Political

Insurgent warfare (with Communist and racial minority groups) in Burma is a persistent threat to lives, property, transportation and communication. Dacoity, a problem of long-standing in Burma, has been encouraged by the unsettled security conditions in the country. Reviewing the effects in insurgency upon the Burmese

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economy in 1950, the chairman of the Burma Chamber of Commerce noted that civil warfare had prevented the operation of the two largest mines in the country and had seriously reduced output in the oilfields, in timber cutting and milling, tin and wolfram production, and in cement production. In 1948, the unsettled conditions induced investors to petition the Government to hasten forest nationalization. Burma's continental proximity to Communist China is a deterrent to foreign investment scarcely less important than the continuous internal disorders. The near-future prospects for internal stability and the elimination of the external threats to Burma's security are not bright.

Since 1948, the Government of Burma has been committed to a policy of ultimate State ownership of extractive, public utility, and heavy manufacturing industries, and to the encouragement of cooperatives. Eventual government ownership and operation has been specified for railroads, inland water transport, the generation and transmission of electricity, commercial radio transmission, coal mining, large-scale timber enterprises, and the manufacture of iron, steel, paper, sulphuric acid and sugar.

Although it has been less explicitly stated, the Government intends to minimize the economic power of foreigners as rapidly as possible. Both nationalism and the Socialist doctrines supported by the political elite in Burma have generated suspicion of foreign economic interests. Burma's "neutral" foreign policy has enforced its opposition to any economic ties with the West that would support charges of pliancy to "Western capitalism". The Government is willing however to temporarily moderate its position and to permit foreign capital to operate in some sectors of the economy. A partnership with foreign private capital is considered to be the most preferable compromise position, with the expectation that the foreign capital would gradually be eliminated in much of the economy.

The government has extensive legal powers to nationalize enterprises (see Section C below), but it has sought to assure foreign investors that ruthless expropriation will be avoided. In an attempt to attract potential investors the Government has announced that it is prepared to guarantee private operation for a period sufficient to earn "a reasonable return on investment". To further mollify foreign investors, the Government has indicated its readiness to grant monopolies and to assist foreign firms in their marketing problems.

In the past four years, Burma has nationalized the Irrawaddy river transport system, almost all teak extraction and processing, The Rangoon Telephone Company and is acquiring one-half interest

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in the Burma Corporation and a one-third interest in the Burma Oil Company. In all cases compensation has been granted; however, negotiations have been slow and the awards have not matched the investors' expectations. The extent to which nationalization has been achieved is also apparent from data on the Government's role in the economy. Government enterprise accounted for 11 percent of gross national product in 1938 and 18 percent in 1949. In 1938, 24 percent of domestic investment was made by government agencies; between 1946 and 1950, 53 percent was from government sources. The possibility of even broader government investment in the future is indicated by the sizeable reserves being accumulated by public authorities and boards. According to Burmese official financial data, public savings between 1947 and 1950 far exceeded public investment, with the surplus to be used in part to finance a future nationalization program of about Rupees 640 million (U.S. $135 million at the official rate).

C. Legal

Burma's Constitution reserves the production of military items to the state, indicates that several other industries should be in Government ownership, and requires that local capital predominate in public utilities and important extractive industries. Foreign real property rights are severely restricted unless exceptions are authorized by law. Lesser restrictions apply against foreign personnel. Formal requirements for the organization and operation of business enterprises do not discriminate against foreigners.

1. Industries exclusively reserved to State ownership and operation include the production of atomic energy, arms, ammunition and all industries "solely connected with military defense".

2. Foreign investors cannot acquire new agricultural or mineral lands unless Parliament authorizes an exception to the Constitutional ban on land grants to aliens.

3. Real property cannot be held by non-Burmans for more than one year. This restriction includes sales, leases and mortgages. The legislation (Transfer of Immovable Property Act of 1947 and Amendments of 1949) permits the Government to waive this restriction in the public interest.

4. Public utilities and the exploitation of natural resources are to be nationalized.

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5. Pending complete nationalization, Burmese citizens must own at least 60 percent of the capital in companies or associations engaged in the following industries: public utilities, timber and mineral land, forests, fisheries, coal, and minerals. Modifying legislation (Union Mineral Resources Act of 1949) authorizes non-Burman mineral operations where Burmese enterprise is unable to exploit resources, non-exploitation is detrimental to the national interest, and foreign exploitation is compatible with the planned economic policy of the Government.

6. All private property rights are, by Constitutional provision, subject to limitation or expropriation when in the public interest. The restriction or elimination of private property rights must, however, be accomplished in accordance with law. Compensation for property is not mandatory and must be prescribed by legislation.

7. Unskilled labor may not be brought in by foreign enterprise unless Burmans are not available. Foreign enterprise must attempt to train Burmans for administrative and technical jobs. Foreign managers and technicians may remain in Burma for three years during which Burmese replacements must be trained. This restriction may be waived for key personnel. No quota system exists, but it has been proposed by Government officials that citizens of Burma comprise at least 25 percent of administrative-technical employees and 75 percent of the clerical labor work force in all enterprises.

8. Labor legislation is based upon British practice and does not discriminate against non-Burman enterprise. Foreign employers have found the Trade Disputes Act burdensome, in that appeals to the Court of Industrial Arbitration prevents dismissal of workers until a decision has been rendered.

9. Legislation pertaining to business organization and the regulation of business enterprises follows Indian law and does not discriminate against foreign corporations or partnerships. Incorporation and periodic registration fees are nominal. Laws regulating the operations of corporations are few and these are rarely enforced. Trade-mark and copyright laws exist but in practice there is no protection against infringement. Nevertheless, Burma's limited industrial and technical development makes the copying of inventions unlikely.

D. Administrative

Substantial handicaps to foreign capital arise because of extra-legal discriminations. These include the following:

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1. The declared policy of the Government that it will, where it sees fit, protect domestic enterprise against foreign competition.

2. Foreign businesses must adhere closely to regulations on commercial practices while those regulations are less rigidly applied against local businessmen.

3. Alien employment is controlled by an *ad hoc* system of entry visas and stay permits.

4. No legislation bars foreign professionals but the use of English in Burmese courts is limited and alien doctors cannot practice in government hospitals.

5. In principle, imports are licensed according to their importance to Burma. Actually considerable weight is given to domestic political pressure groups and to the revenue possibilities of custom duties.

6. The tax system is, in general, not discriminatory (see Section F below) but foreign businesses bear an inequitable burden because avoidance of taxes among Burmans is widespread.

E. Financial

All foreign exchange transactions are subject to complete Government controls which limit foreign investment and trade. The present policy permits free remittances of profits, dividends and other investment income if minor qualifications are met. Capital is more difficult to withdraw. According to a policy statement by the National Economic Council (an official sub-cabinet group), Burma intends to favor unhampered remittances in the future. Pertient financial regulations are as follows:

1. Foreign enterprises must be self-sufficient in their exchange requirements for capital purposes.

2. All transactions must be made at the official rate (buying: R4.75 = $1, selling R4.76 = $1) even though the Burmese open market rate is far more favorable to the dollar (R7.8 = $1).

3. All commodity exports are rigidly controlled. Most exports are made through Government monopoly, a few exports are prohibited and all other exports require licenses. Licenses are granted liberally but the exporter must agree to surrender foreign exchange earnings.

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4. Import controls prohibit "non-essentials" and restrict the entry of some goods (e.g. certain grades of cotton textiles) to Sterling Area countries and Japan. Other goods require license authorizations (Open General License) which are usually granted. Payments abroad on invisibles account require licenses and certification that tax obligations have been met. Transfers of capital from Burma must be approved. While the Government allows invisible and capital transfers, large-scale capital emigration would probably encounter stiff resistance.

5. The potential impact of Burmese financial controls is illustrated by the experience of U.S. motion picture distributors. For several years the earnings of U.S. distributors (suppliers of about 75 percent of all films shown in Burma), were blocked. After long negotiations, the Government of Burma agreed in late 1950 to permit conversion to dollars through free non-sterling countries at open market rates. The loss involved in the conversion from sterling to baht (most U.S. film firms are using the Bangkok money market) to dollars is estimated at about 9 percent. In addition to this monetary barrier, Indian and Pakistani films receive preferential custom treatment over U.S. and other film prints.

6. Burma is a "Scheduled Territory" in the Sterling Area and is required to deposit dollar earnings in the London pool. Since dollar earnings resulting from U.S. investment would not be directly available to Burma, there is less incentive to encourage U.S. capital.

F. Taxation

Discriminatory taxes have been imposed in postwar years by special legislation and this technique is still used by the Government. Among U.S. investors, the most noteworthy experience has been the gross receipts tax levied on exhibitors of U.S. films. A 1947 tax of 80 percent of gross receipts levied solely on U.S. films was changed (in 1950) to a tax of 33 1/3 percent against gross receipts from all foreign films. Receipts from Burmese films are taxed at 12½-25 percent.

The relatively high tax burden on all business would, especially in view of the difference in tax enforcement noted above (see Section D above), deter foreign investors. No agreement exists between Burma and the United States to relieve U.S. investors from the double taxation they now face on earnings.

Taxes imposed on a foreign corporation in Burma (along with domestic firms) include the following:

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1. A "business profits" tax of 16 2/3 percent of net income over R100,000 ($21,000).

2. Corporate income taxes totalling 50 percent of net income realized in Burma after deducting "business profits" tax payments.

3. A gross sales tax of 6.25 percent. Exemptions include food, fuel, clothing and the sales of small merchants.

4. A "luxury" tax of 6.25 percent is levied on extensive lists of goods when they first enter trade.

5. Stamp taxes on virtually all documents.

Non-residents are subject to a personal income tax on income arising or occurring within Burma. The rates are graduated and in 1950 reached 97% on taxable income over $300,000 ($63,000).

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III. THE FEDERATION OF MALAYA AND THE COLONY OF SINGAPORE[1]

A. Background

US direct private investment in Malaya is small but appears to be growing at a moderate rate. At the end of 1950 there was US $30.7 million of U.S. private capital in Malaya as compared with no more than US $24 million in 1945. This investment is concentrated in rubber plantations and tin mine holdings. U.S. interests also operate a wide variety of distributive enterprises including sewing machine outlets, motion picture firms, and business machine companies. US owned production facilities are, however, small compared to British holdings.

The Government strongly favors private investment and has publicly invited foreign capital. Although the economy is now subject to extensive controls, it is the declared policy of the Government to reduce or abolish them as soon as economic conditions permit.

Malaya is in a favored position with regard to basic service facilities and living conditions, as compared with other countries in Southeast Asia. Nevertheless it is deficient in skilled personnel, power, and railroad transportation. The transportation problem would be especially serious in the exploitation of new areas.

B. Political

Communist guerrilla groups have been active for more than three years and there is little hope that internal security can be restored in the near future. Guerrilla violence has been directed primarily against foreign-owned installations and has prevented expansion of rubber and tin operations.

Although other foreign investment is not specifically excluded, British capital is in a favored position because Malaya's laws and commercial practices are patterned after those of the UK and the leading administrators and economic advisors are British subjects. Malaya is Britain's largest dollar earner and it is unlikely that

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1. The attitudes, laws and regulations of the Federation of Malaya and Singapore regarding foreign investment are almost identical. Singapore is a Crown colony while the Federation of Malaya is a Britaish-protected state. In this discussion Malaya refers to both political units.

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Britain would be politically passive towards new large-scale U.S. investments in extractive or distributive industries even if security conditions were favorable to such investments.

Several public utility industries, including railways and water transportation are state owned and operated. All other industries are open to private investment. As of the beginning of 1951, no nationalization of foreign enterprises was being considered. There is little doubt that, if private foreign investment were nationalized in the future, compensation would be arranged.

C. Legal

Restrictions pertinent to foreign investment are:

1. No resident company can be sold to aliens without consent of the Government.

2. The sale of securities to persons residing outside the Sterling Area requires Government consent.

3. All foreign companies must register and furnish information as to their operations.

4. Every foreign banking company must be licensed.

5. Non-British insurance companies are required to make substantial deposits of approved securities.

6. All businesses must obtain government consent prior to the issuance of capital stock. All trust companies must deposit approved securities with the Government.

There is no restriction upon the percentage of foreign capital in any firm or industry. Foreign firms are not compelled to employ or train nationals. Non-Malayan investors are free to expand their holdings.

D. Administrative

There do not appear to be any overt administrative obstacles to foreign investment. In view of their commercial and national affiliations, it is likely that British investors receive more favorable consideration than other foreigners.

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E. Financial

The remittance of dividends, interest and current profit earnings is permitted without limitation as to the amount transferred. There are, however, two important restrictions on U.S. investment:

1. Original investment cannot be withdrawn by investors residing outside the Sterling Area.

2. Dollar earnings on exports must be deposited in the London pool of the Sterling Area and are subject to British control.

F. Taxation

There is no tax discrimination against foreign corporations. Individual non-residents, other than British subjects, however, are not permitted the personal deductions and allowances established under the personal income tax. Relief from double taxation has been arranged with the United Kingdom and can be obtained by other nationals if their governments reciprocate.

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IV. THAILAND

A. Background

The Thai Government has repeatedly emphasized that U.S. capital is particularly welcome in Thailand and that foreigners wishing to invest will be extended the same protection and rights as those given Thai nationals. Thailand's long history of independence, its political alignment with the West, and its past performance in respect to foreign investors are favorable indications that U.S. investors will be accorded fair treatment. Were industry nationalized, compensation would probably be arranged.

Principal foreign investors in Thailand are Chinese, British, and Australian. American investment has been small in value, but is increasing. Direct investments of U.S. private profit organizations amounted to $1.6 million in 1943 and an estimated $3.8 million at the end of 1950. The largest segment of this investment is in export-import trade, although Americans also share in the distribution of petroleum products and motion pictures, manufacturing, air transport, and mining.

Thailand is in a strong financial position and has sizeable foreign exchange reserves. Although eager for assistance under the various U.S. aid programs, the government has been financing its own development program, investing directly in business enterprises and also extending financial aid to Thai firms to encourage Thai participation in business.

Investment opportunities are probably confined to mining, the processing of agricultural and forest products, light industries serving the domestic market, and trading activities. Lack of adequate information on these opportunities handicaps prospective investors.

As in most undeveloped countries, Thailand has a shortage of trained local personnel, especially engineers and other technicians, and lacks adequate service facilities. Particular impediments are the lack of roads and power. Even around Bangkok, where electric power production is concentrated, a large new industrial user probably cannot be served from existing or proposed facilities for several years.

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B. Political

Thailand's proximity to China, the existence within the country of an economically powerful Chinese minority comprising 15 percent of the population, and thetraditional Government proclivity for "bending with the wind" constitute political hazards of some concern to foreign investors. Frequent changes in government in Thailand usually by unconstitutional means result from a jockeying for control on the part of individuals and cliques rather than from the existence of internal unrest. There is no insurgent activity. Political instability is a delaying and disturbing factor in negotiations by foreign investors, though probably not a serious impediment. Barring foreign invasion political changes are not likely to affect the Government's sense of responsibility toward foreign investors or its international commitments.

Private foreign investment opportunities in Thailand are being reduced by the increasingly rapid trend toward government particupation in, and control of, productive enterprise. For instance, nationalization of teak production, in which there is extensive British investment, is scheduled. Details on the fields of government control are given in Section C. Increased government participation is due to a desire to curb and counteract Chinese economic penetration, inability to mobilize private Thai capital, desire to lessen British and Australian investment in the teak and tin industries, and to increase opportunities for graft by politicians and the military clique. The prevalence of graft on a large scale is a handicap although Western firms are less subject to the "squeeze" than Thai or Chinese.

C. Legal

The following regulations limit the extent of foreign investment, management and employment in Thailand:

1. All mineral and forest resources are the property of the State but exploitation by foreigners has been permitted through leases. New foreign teak concessions are not being granted and present leases will not be renewed. The Government continues to close a reserve mining area in Northern Thailand to foreign investors. Wolfram mines will be nationalized after present concessions expire. Reports are conflicting as to the legal requirements for foreign participation in other mining enterprises in the unreserved areas. The present policy of issuing only short-term leases for most mining enterprises in a principal impediment to new foreign investment. The Government has hinted at nationalizing the tin industry but is probably technically and financially unable to carry out such a proposal.

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2. Government monopolies exist in the fields of: rail and internal air transport; telephone, telegraph, and radio communications; opium, tobacco, and alcohol and alcoholic beverage industries (a few private persons hold concessions for making spirits), and playing card manufacture. The operation of public highway transportation facilities is not legally closed to foreign investors but the policy is to issue no licenses to foreigners. Government agencies and semi-government corporations also engage in a large variety of transport, trade, manufacturing enterprises, and public utilities. Increased government participation is in prospect.

3. Certain occupations, chiefly not of interest to foreign investors, are restricted to Thai nationals.[1] Restriction of rubber trading to Thai nationals is currently being contemplated. Coastal shipping is limited to Thai nationals or to corporations with Thai capital in the amount of 70 percent.

4. The majority of directors of a savings institution must be Thai nationals, unless the institution is a branch of a foreign bank. All directors of a *credit foncier* (land bank) must be Thai nationals.

The 1937 Treaty of Friendship, Commerce and Navigation between the United States and Thailand enables U.S. investors to engage in commerce, manufacturing and trade. It specifically permits acquisition, ownership and lease of land and immovable property in Thailand by American citizens and corporations legally resident in states or territories of the U.S. which grant similar non-discriminatory property rights to Thai nationals. However, the Treaty does not adequately adjust to such modern developments as the increased use of the corporate form of business enterprise, the spread of exchange control systems, and growing state participation in economic activities. A revision of the Treaty is being negotiated to establish conditions more conducive to the flow of private investment capital, particularly by corporations.

D. Administrative

There is no central authority in Thailand responsible for formulating and implementing government policy on foreign investment.

1. Making of nielloware, lacquerware and images of Buddha; rice and salt farming, driving buses and pedicabs, barbering, and typesetting in the Thai language.

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Delays are encountered through the necessity of negotiating with the Department dealing with the enterprise in which the investment is to be made.

The Government has no clearly defined policy in regard to required Thai participation in foreign investment. Legally there are few limits to the extent of foreign ownership. However, the Government stated in January 1950 that "in certain businesses and industries the Government may participate as partners or shareholders if they see fit, and the details as to the percentage of shares for each contracting party and the composition of the staff will be mutually agreed upon. It is also the policy of the Government to encourage joint participation between foreign investors and private Thai individuals". Government officials have indicated a desire for Thai control of 51 percent of the capital of public service industries. Equal participation in joint mining ventures has also been proposed. In spite of professed eagerness for American capital, however, the vacillation of Thai officials with whom some American firms have dealt, the lack of a favorable government policy regarding Thai participation, and the red tape involved have been impediments to U.S. investment, particularly in mining.

Licensing and permit issuance are frequently complicated by obsolete procedures and overlapping jurisdiction of government agencies.

E. Financial

Profits and dividends may be remitted abroad freely and capital may also be exported. Thailand's exchange rate structure gives preferential treatment to government enterprises which are able to obtain foreign exchange for imports at the official rate (12.5 baht to US $1) as contrasted to private Thai and foreign firms, which must finance imports at the open market rate (22 baht to US $1). Thailand's foreign exchange regulations, which require tin exporters to surrender 40 percent of exchange earnings to the Government in local currency at the official rate, amount to a tax on tin investors.

F. Tax

Tax rates are not generally burdensome in Thailand and with one exception are the same for Thai and foreign firms. A recent revision changes the tax base applicable to foreign shipping and air transportation companies with the result that they now must pay the government 1 percent of their gross revenue. Thai companies pay a slightly lower tax based on their net income. This revision was made to minimize large-scale tax evasion by European companies and has not been contested by American firms.

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Corporate taxes range to a maximum of 20 percent on net income of over $50,000 per year. For individuals, taxes range to a maximum surtax of 50 percent of net income over $6,000.

Thailand has not entered into any international arrangements for double taxation relief.

Mining companies in Thailand have complained about high royalty rates for tin while high individual income taxes have been cited as an excessive burden on foreign firms who can secure foreign personnel only at very high salaries. Sufficient information is not available to evaluate adequately the tax impediments, but in the opinion of the US Embassy they are not onerous.

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V. INDONESIA[1]

A. Background

Impediments to private foreign investment in Indonesia should be viewed in the context of the recency of that country's attainment of sovereignty. Indonesia became a sovereign nation late in December of 1949, and, for the most part, the body of legal regulations promulgated by the former Netherlands East Indies Government legally continue in force until changed or replaced by Indonesian law. No significant changes in legal regulations concerning private foreign investment have been made thus far.

Indonesian political attitudes toward private foreign investment are conditioned by intense nationalistic feeling, as a reaction to Indonesia's former colonial status, and by the nineteenth century socialist ideas that color the views of many of its political leaders. These attitudes have resulted in some pressure for nationalization of foreign enterprises, but in general such pressures have been rejected by Indonesia's political leaders. The vice president, Dr. Hatta, has stated publicly that Indonesia has not the financial means to acquire, nor the skills to operate such investments. An influential local economic group has also rejected the idea as unsound.

In common with other Far Eastern countries, Indonesia in most areas, has no lack of manpower. There is, however, a great dearth of local personnel trained in technical and managerial skills. Service facilities such as harbours, transportation, storage facilities, banking and credit institutions had been established by the Dutch. Present power facilities, are generally inadequate. Other facilities including roads and railroads, are relatively well developed on Java and are developed to a lesser extent on Sumatra, but are almost completely lacking on the other islands. Development of some mineral resources on islands other than Java or Sumatra is hindered in some cases by intense jungle growth. Moreover, capital equipment, and in some cases, raw materials for development are not available locally. Housing, recreational and health and sanitation facilities for foreign personnel are poor. These facilities have to be provided generally by the investors themselves.

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1. The material pertaining to Indonesia was prepared by the Investment and Economic Development Staff, Office of Financial and Development Policy, Department of State. Minor changes in organization and text were made by the Division of Research for Far East, Office of Intelligence Research, Department of State (OIR/DRF).

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Businessmen without previous experience in Indonesia appear to be unfamiliar with Indonesia's laws, language, customs, and business opportunities. The Indonesians have developed an information service, but as yet publicity concerning investment opportunities is scant.

American investment in Indonesia at the present time amounts approximately to $120 million, chiefly in oil production and refining, automobile assembly, and rubber estates.

B. Political

1. It is probable that investors would regard Indonesia as being geographically within the orbit of possible physical expansionism on the part of Communist China. The influence of the latter is already being felt in Malaya. Indonesia's vulnerability lies not only in its nearness to Malaya, but also in the difficulties of its defense arising from its thousands of miles of coastline. Indonesia is not an area of overt contention between the East and the West, but could become so in any direct drives on the part of the Soviet orbit for sources of strategic raw materials such as rubber and tin.

2. The Indonesian government might well be regarded by investors as unstable. It is new, largely untried, and staffed by leaders of limited administrative experience. There have been three new governments in Indonesia in two years' time. Any lack of confidence in government politics that might arise in the minds of business men would result from factors which are discussed under (3) below, and from the lack of administrative experience of the Indonesians. Thus far, however, this factor appears not to have been serious since (a) the continuity of administrative policy affecting private investments has been maintained and (b) it is believed likely that the most important of these foreign investors now in Indonesia, especially the Dutch, have every intention of remaining. There had been previously, considerable dissatisfaction with the governments apparent inability to cope with widespread labor unrest. More recently, however, drastic measures have been instituted and the situation appears to have improved. The fact that the bulk of Indonesia's labor unions are communist controlled makes it probable that this will continue to be a serious problem. However, there is some evidence that communist influence in the labor union movement is declining.

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3. Despite the influence of 19th century socialist tradition in the thinking of Indonesian leaders, as yet no thoroughgoing socialist program exists. Such concrete programs that exist for government ownership or control of essential industries represent more accurately an extension of the policy of the former Dutch regime. The Indonesian government took over from that regime ownership of significant portions of the railroad and electric power industries. Its announced intention is to nationalize the remainding private interests in these industries in the near future.

The Indonesian constitution postulates a strong public interest in the exploitation of natural resources and in "branches of production of importance to the state", but contains no specific socialist program. In fact, the principles as stated could probably be interpreted as a description of the situation as it presently exists. Thus far, the only institution nationalized has been the Java Bank which has combined many functions of a central bank and bank of issue with its normal commercial banking activities. The repatriation of its ownership was accomplished by government purchase of the Bank's shares from the individual holders.

Apart from the Java Bank, the railroads and electric power industry, there are no known plans for nationalization.

C. Legal

1. There are no restrictions on foreign personnel with the exception of the usual regulations concerning foreign exchange transactions and the pressure on both present and new investors to train Indonesians for technical and managerial positions.

2. Incorporation in Indonesia is not required. However, because of certain restrictions on corporations not locally registered, most foreign firms consider it more advantageous to organize a limited liability company under the provisions of the Indonesian code of commerce. Conditions concerning local participation in the ownership of enterprise are discussed under D-3 below.

3. Apart from the fact that no non-Indonesian may own land, there is no discrimination before the law with regard to holding and conveying, contract enforcement, right to use local courts for redress, etc.

4. Present restrictions on the scope of foreign investments in Indonesia are largely those taken over from the Dutch. No non-Indonesian may acquire title to land in Indonesia. Land may be leased for stated periods depending on the type of usage involved.

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5. Mineral rights are in most cases regarded as the property of the state. Concessions for exploration or exploitation may be obtained from the state. At present such concessions contain provision for the payment of special taxes on gross production and for special levies on net income apart from the generally applicable corporate income taxes. An Indonesian parliamentary committee is now in the process of re-examining the mining laws with a view toward revising them. There is no information available concerning the nature of revisions contemplated.

6. Under the old Netherlands Indies Government law, the Government has the right to regulate new investment in industry in Indonesia. Thus far, however, the Government seems to be attempting to encourage (within the limits of the restrictions mentioned in Sections A and B above) investment in industry.

7. Apparently new foreign investment is effectively excluded temporarily from the field of inter-island air transport. The Indonesian Government is party to a ten-year monopoly contract with the Netherlands KLM on an equal share basis in the field of inter-island air transport. The operating company, Garuda, is scheduled to become completely Indonesian-Government owned at the end of the period. An Indonesian firm in which a United States investor has an interest was recently turned down in an attempt to acquire the right to establish inter-island air service. A *de facto* but not *de jure* monopoly on inter-island water transport is now held by the KPM, a Netherlands firm. In this field, the Indonesians are anxious to break the monopoly for several cogent reasons. Private foreign capital would probably be welcome on a shared ownership basis.

D. Administrative

1. On the whole Indonesians seem to be successful in implementing publicly stated policies regarding the role of private foreign enterprise. The statement should perhaps be in the obverse: thus far the Indonesians seem to have avoided taking on administrative burdens that they are incapable of carrying out, nationalization included.

2. The Indonesian Government has not established on a centralized basis any one agency responsible for foreign investment policy or information. Evidently, cabinet decisions are required in cases of any importance.

3. Impressed by a long history of a rather sizeable outflow of invisible payments to the Netherlands, the Indonesians have readily embraced the theory of the "colonial drain." This has resulted in

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firmly intrenched political pressure for the retention by Indonesia of a larger share of the earnings of foreign investment. This pressure has thus far found expression in a policy of expecting, but not requiring, new investors to provide for 51% Indonesian ownership wherever possible. Eventual repatriation of the remaining shares is regarded as a highly desirable, though not required goal. Moreover, new investors are expected to provide for the training of Indonesians to take over managerial and technical positions. Present investors are encouraged, though not required to do so. These requirements are a matter of declared policy, but not as yet a matter of law. In effect, they represent a basis for negotiation.

E. Financial

1. There are no limitations on remittances of profits after taxes earned since January 1, 1950, provided sufficient liquid funds are available for such transfer. For foreign investments made in Indonesia prior to the war, however, and rehabilitated after the war, profits made prior to January 1, 1950 are subject to special regulations and transfer can be made only after approval of the Foreign Exchange Control Board. Transferable depreciation is limited to 5% of the amount originally invested on the objects to which depreciation is applied. For new investments, however, a higher percentage may be allowed.

2. Indonesia has a managed multiple exchange rate system under which all exchange transactions are strictly controlled with the single exception of those of the foreign oil companies operating in Indonesia. While the system was originally instituted with the provision for management of the rates, no rate changes have been made since its inception in March 1950. The rate applied to exports in 7.60 rupiah to the United States dollar. That applied to imports and to all outward remittances is 11.40 rupiah to the United States dollar. The latter rate is applied to approved capital investment. While the structure is somewhat complicated, its operation has been speeded up to a point of reasonable efficiency. As far as is known, the 11.40 rate seems to be fairly realistic.

F. Taxation

1. There are no special taxes of foreign enterprises as such. All corporations, however, of which foreign enterprises are the most important, are required to pay a 40% tax on net profits after depreciation. Foreign enterprises are also subject to other forms of generally applicable excise taxes.

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2. There is no discrimination against foreign corporations in the enforcement of tax laws.

3. There is no double taxation treaty in effect between the United States and Indonesia. It is, therefore, probable that United States firms would be at a competive disadvantage with locally owned firms in competing for the local or world markets. The question has not arisen so far, however, since there is very little local private capital available for investment. Most of the significant large single investments in Indonesia are either foreign or governmentally owned. Foreign capital, on the whole, has not been in competition with local non-Chinese capital in Indonesia.

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VI. PHILIPPINES[1]

A. Background

Because of the close association of the U.S. and the Philippines during the past 50 years, U.S. investors are more familiar with laws, commercial customs and language than elsewhere in Southeast Asia. Such advantages have facilitated U.S. direct investment totalling a maximum of $190 million in 1950, the highest amount of U.S. investment among the countries in the area.

The potential U.S. investor is, however, faced with a shortage of skilled labor, insufficient port and warehousing facilities in the important ports of Manila, Cebu, Iloilo and Davao and a limited transportation system. Except for a short single-track railway line in Panay, all commercial railway operations are now confined to Luzon. Roads do not adequately serve many important productive portions of Northern Luzon and other potentially productive areas. Coastal and inter-island shipping facilities, almost completely destroyed by the war, have not been fully rehabilitated and the status of ships under charter from the U.S. Maritime Commission is uncertain. Power shortages make it almost impossible to introduce large industries into Manila and power is almost completely lacking in many others potentially productive areas. Banking facilities are severely limited outside Manila and a few other urban centers.

B. Political

1. Peace and order problems created by dissident groups, especially the Hukbalahaps, present a continuing menace to life and property, particularly on Luzon where most industry and commerce is concentrated.

2. Although the Philippine Government is relatively stable, there is complaint of inefficiency and corruption, and a lack of confidence in government policies.

C. Legal

1. No unequal treatment of foreigners exists before the law with respect to contract enforcement, right to use the local courts

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1. The material pertaining to the Philippines was prepared by the Far East Division, Office of International Trade, U.S. Department of Commerce. Minor changes in organization and text were made by OIR/DRF.

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for redress, etc. However, certain legal deterrents to foreign investment exist, and include:

a. Difficulty of bringing into the country foreign technical and administrative personnel permitted entry for "prearranged employment", with provisions of the law at present so rigidly interpreted as to seriously limit their entry. Assurances, however, have been given that a liberal interpretation will be given to this law in the future.

b. Import control law designed to Filipinize internal distribution and import trade. The law provides for a set-aside for new Filipino importers, and stipulates that non-producer importers shall reserve not less than 50 percent of imports for sale to bona fide Filipino merchants at the same markups granted to regular trade outlets. American merchants have equal rights in these connections.

c. No new banking institutions may be established unless 60 percent of the capital is held by, and two-thirds of the members of the board of directors, are Filipinos.

d. All deposits of foreign banking institutions received after July 24, 1948 must be invested in the Philippines.

e. From June 30, 1951, foreign insurance companies are required to deposit with the Insurance Commissioner securities with a market value of $125,000, 50 percent of which must be Philippine securities. Previously the legal requirement for reserves was $50,000, with the same percentage in Philippine securities. Insurance companies must "invest and keep" in the Philippines at least 30 percent of their reserves. As a result of these requirements 25 foreign insurance companies have withdrawn from the Philippines; 12 were American firms.

f. Under the corporation law of the Philippine, as amended, five or more persons - not exceeding 15 - a majority of whom are residents of the Philippines may form a private corporation. Articles of incorporation are filed with the Securities and Exchange Commission. Foreign corporations are not permitted to transact business in the Philippines or bring suit for recovery of a debt, claim, or demand without having obtained a license to do business from the Securities and Exchange Commission. Fees collected for articles of incorporation and for registration of foreign corporations are based on capital stock. The maximum fee is $150.

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2. Constitutional impediments to foreign investment:

a. Under the so-called "parity provision," American citizens and corporations are extended equal treatment with Philippine nationals as regards the disposition, exploitation, development, and utilization of natural resources, and the operation of public utilities. Other nationals do not have these privileges.

b. The size of private agricultural land acquired and held may be limited by law, subject to rights existing prior to the enactment of such law.

c. Congress may authorize, upon payment of "just" compensation, expropriation of lands for sub-division.

D. Administrative

1. Government direct and indirect participation in industry and internal distribution is an important competitor with private enterprise through 24 government-owned or controlled corporations and agencies. Of the total, 14 are completely government-owned organizations. As an example, the largest government-owned corporation, the National Development Company, operates textile mills, lumber and woodworking establishments, engineering and warehousing departments, a shipyard, machinery shops, coal mines and a shoe factory, and controls subsidiaries such as pulp and paper mills and a cement factory. This Government-owned corporation plays a major role in the field of internal distribution through the marketing of its manufactured goods. The Price Stabilization Corporation (PRISCO), also a Government-owned corporation, has duties and powers which reach out to almost all avenues of commercial trade and has numerous branch, wholesale and retail stores throughout the Philippines, which are frequently in direct competition with privately owned and operated enterprises.

2. Lack of clearly established policy with respect to present and future participation of the Government in functions normally conducted by private enterprise.

3. An avowed highly receptive attitude toward private foreign investment, particularly American capital, but a lack of proper implementation of such policy through centralization of responsibility for encouraging and dealing with prospective investors, elimination of red tape and establishment of proper channels for such investors to responsible officials.

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E. Financial

1. Remittance of profits and dividends from current earnings is limited by the following formula: 10 percent of net profits after taxes or 10 percent of capital stock, whichever is higher; plus 30 percent of foreign capital investment (fixed assets or capital stock, whichever is higher) as of December 31, 1949. Capital investment of firms which because of the nature of their operations do not have large fixed assets or may not have capital stock are calculated individually. The first amount (10%) may be remitted on a current basis; the second (30%) every six months. In no case may the amounts remitted under the formula exceed net profits after taxes for the year for which remittance is made. The 30% clause is considered sufficiently generous to cover amortization of capital.

All new investments involving remittances must have approval of the Monetary Board of the Central Bank which favors dollar producing and dollar saving enterprises. Schedules for remittances including amortization of capital investment are worked out on an individual basis. It is generally accepted that new investors will be accorded treatment at least as liberal as prescribed by the formula outlined above.

2. The Philippine peso is pegged by law to the United States dollar at the rate of 2 pesos to 1 dollar. In actual exchange transactions the rate varies slightly. Parities of currencies of members of the International Monetary Fund are established on the basis of their gold or U.S. dollar equivalent. With the approval of the Fund, and of the President of the United States as required by the Philippine Trade Act of 1946, a multiple currency practice was introduced in March 1951, by imposing a special excise tax on sales of foreign exchange for most payments and remittances. The tax amounts to 17%, calculated at the official selling rate of the peso and yielding an effective rate of 2.35755 pesos to U.S. $1. Black market activities at present are not extensive, and the black market exchange rate is less than 3 pesos to U.S. $1 in contrast to the peak of 4.20 pesos to U.S. $1.

F. Taxation

1. Foreign investors are subject to various forms of taxation including income and excise taxes (sales, compensating, specific, and exchange taxes for the mining industry, plus alien registration fees, and residence taxes) not payable by Philippine entities.

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2. The Philippines has no treaty with any country for avoidance of double taxation. Deductions or credits for taxes paid to foreign governments, however, are provided for the Philippine Internal Revenue Code. The U. S. Government is interested in undertaking the negotiation of income and estate tax conventions for purpose of avoiding double taxation.

3. It should be noted that as an inducement to private venture capital, entities which qualify under Philippine law as "new and necessary" are exempt from taxes payable directly by them for a period of 4 years from the date of organization.

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