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Uncle Sam Wants You: Foreign Investment and the Immigration Act of 1990

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This article examines some of the driving forces behind the immigrant investor category created by the Immigration Act of 1990 (1990 Act).¹ We take the position that, by enacting the investor/employment-creation visa provision of the 1990 Act, the United States government has demonstrated for the first time that immigration is an instrument of national economic policy.

A major motivating factor behind the 1990 Act was a desire to increase foreign investment, especially from Hong Kong. Stimulus for the investor provision was twofold: (1) a recognition that foreign investment is both beneficial and necessary to the U.S. economy, and (2) an awareness that America must resist stiff competition from other countries for the foreign investor dollar. Both stimuli have special relevance to the exodus of professionals and entrepreneurs leaving Hong Kong in anticipation of the Chinese takeover scheduled for 1997 — an exodus accelerated by the crackdown on the pro-democracy movement in China. To understand the investor provision of the 1990 Act, it is helpful to examine the provision's legislative history, as well as the forces responsible for its creation.

Section 121 of the 1990 Act creates an immigrant investor visa

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1. Immigration Act of 1990, Pub. L. No. 101-649, § 121(a), 104 Stat. 4978, 4987-90.

category for up to ten thousand individuals each year, to be filled by foreign investors,² their spouses, and their children.³ Under prior law, non-preference investor visas could be obtained only if visa allocations remained unused by the other six preference categories.⁴ In practice, however, no investors have come to the U.S. on that basis since 1977 because no unused visas have been available.⁵

The ten thousand visas created by this provision will be available to:⁶

[Q]ualified immigrants seeking to enter the United States for the purpose of engaging in a new⁷ commercial enterprise

- (i) which the alien has established
- (ii) in which such alien has invested (after the date of the enactment of the Immigration Act of 1990) [November 29, 1990], or, is actively in the process of investing capital in an amount not less than the amount specified in sub-paragraph (C) [between \$500,000 and \$3 million],⁸ and
- (iii) which will benefit the United States economy and create⁹ full-time employment for not fewer than 10 United States citizens or aliens lawfully admitted for permanent residence or other immigrants lawfully authorized to be employed in the United States (other than the immigrant and the immigrant's spouse, sons, or daughters).¹⁰

Neither jobs created for non-immigrant workers nor jobs taken by the investor and his or her immediate family will be included in the ten-job minimum requirement.¹¹ In general, the immigrant's investment must be one million dollars;¹² however, the Attorney General is given the authority to raise this amount.¹³ In rural areas or in areas with one and one-half times the national average rate of unemployment, an investor need invest only \$500,000. Applicants for this lower requirement are guaranteed three thousand of the ten thou-

2. Immigration Act § 121(a).

3. *Id.*

4. E. THOMPSON, *Employment Creation Vistas, in Understanding the Immigration Act of 1990*, AMERICAN IMMIGRATION LAWYERS ASSOCIATION, AILA NEW LAW HANDBOOK 105 [hereinafter E. THOMPSON].

5. *Id.*

6. Immigration Act § 121(a) (see E. THOMPSON, *supra* note 4, for fuller discussion).

7. It is uncertain what this means, and practitioners must await regulations. Query: What if an existing business is purchased and greatly expanded — does this qualify?

8. Roberts, *The Immigration Act of 1990 Analyzed: Part 3 — Employment - Based Immigrants*, 67 INTERPRETER RELEASES 1469, 1474 (Dec. 21, 1990) [hereinafter Dec. 21 IR].

9. The section does not specifically refer to "new" jobs, so it remains uncertain whether it would be enough to show that people would lose jobs absent investment. However, the answer is probably no.

10. There is no requirement that the investor develop or direct the investment, as for the E-2 visa. See E. THOMPSON, *supra* note 4, at 107. Nor is there any requirement that the employment be permanent. *Id.* at 111. It does appear, however, that some minimal degree of investor involvement will be required.

11. Dec. 21 IR, *supra* note 8, at 1474.

12. *Id.*

13. *Id.* (citing Immigration Act §§ 121(a), 203(b)(5)(C)(i)).

sand allotted visas.¹⁴ In high-employment areas, with unemployment significantly below the national average, the required investment is \$3 million.¹⁵

In order to deter entrepreneurial immigration fraud and respond to critics of the program, such as Senator Dale Bumpers (D-Ark.), the permanent-resident status granted by the provision is conditional for two years and can be terminated if the requirements of the status are not met.¹⁶ The concept of conditional status was borrowed from the Immigration Marriage Fraud Act.¹⁷

The INS has recently issued proposed regulations covering all of the employment-based immigrant visas issued under the 1990 Act, including the employment-creation visas.¹⁸ However, these proposed regulations frustrate legislative intent by inhibiting rather than facilitating foreign investment in the United States. A brief review of the sections of the proposed regulations dealing with employment-creation visas reveals that they contain "several points of departure from the language and spirit" of the 1990 Act.¹⁹ The major problem areas are described below.

The definition of "capital"²⁰ is too narrow because it excludes "intangible property, leases, and loans, or other forms of indebtedness."²¹ According to standard business practices and Generally Accepted Accounting Principles (GAAP), these assets are typically used to capitalize a commercial enterprise.²² The purpose of the employment-creation visa section of the 1990 Act was to attract entrepreneurs and job creators into the U.S. economy.²³ This purpose will be stifled by a restrictive definition of capital that requires foreign investors to "contort their proposed investments beyond the bounds of sound business practice simply to meet the narrow requirements" imposed by the INS.²⁴

14. Immigration Act § 203(b)(5)(B)(i) & (ii).

15. *Id.* § 203(b)(5)(C)(iii)(II).

16. *Id.* § 121(b).

17. The Immigration Marriage Fraud Amendments of 1986 (IMFA), Pub. L. No. 99-639, 100 Stat. 3537.

18. 56 Fed. Reg. 30,703 (1991) (to be codified at 8 C.F.R. pt. 204).

19. Letter from the American Immigration Lawyers Association to the Director, Policy Directives and Instruction Branch, INS, Washington, D.C., p. 31, August 6, 1991 [hereinafter AILA Letter].

20. 56 Fed. Reg. 30,713 (July 5, 1991) (to be codified at 8 C.F.R. § 204.6(e)).

21. AILA Letter, *supra* note 19, at 33.

22. *Id.*

23. *Id.* (referring to comments made to Sen. Paul Simon on the Senate floor)(136 CONG. REC. § 17105-18 (daily ed. Oct. 26, 1990)).

24. *Id.*

The definition of "commercial enterprise" excludes not-for-profit corporations, charitable institutions, and private, semi-private, or public utilities.²⁵ Each of these legal entities can create employment.²⁶ It is self-defeating to design provisions of the 1990 Act to encourage investment and job creation in the U.S. only to have the INS regulatory definitions limit the "flexibility that the free market demands to operate smoothly, effectively and creatively."²⁷

Furthermore, the requirement in the new proposed regulations that capital must be brought "from abroad" goes beyond the statute.²⁸ The rationale of the immigrant investor provisions of the 1990 Act is creation of employment, not necessarily infusion of foreign capital.²⁹ In effect, the regulation requires foreign investors who have already invested in the U.S. to withdraw their earnings from the U.S. economy and transfer them abroad only to bring them back again. This needless burden is likely to *lessen* the number of foreign entrepreneurs investing in the United States.

Another limitation is the INS's refusal to allow capital contributions for which the foreign investor receives a debt instrument from the new commercial enterprise rather than equity, such as stock or a partnership interest.³⁰ This requirement discriminates against sole proprietorships because these entities, by definition, would be unable to issue such "equity certificates."³¹ Such a limitation will narrow the options available to foreign entrepreneurs, thereby reducing the likelihood of job creation in the United States.

Finally, the 1990 Act requires only that the immigrant investors engage in a new commercial enterprise; it does not require that they engage in either direct management or policy-making activities" of the new commercial enterprise, as required by the new proposed regulations.³² Although the 1990 Act contemplates something more than passive investment, it does not go so far as to require the investor to "manage, develop, or direct the enterprise."³³

In sum, the proposed regulations are contrary to the spirit and letter of the employment-creation provisions of the 1990 Act because they will inhibit rather than encourage job creation by foreign entrepreneurs in the United States.

The Select Commission on Immigration and Refugee Policy, whose 1981 report formed the conceptual basis for the investor pro-

25. *Id.* at 34.

26. *Id.* at 34-35.

27. *Id.* at 35.

28. *Id.* at 36.

29. *Id.*

30. *Id.*

31. *Id.*

32. 56 Fed. Reg. 30714 (1991) (to be codified at 8 C.F.R. § 204.6(i)(4)(iii)).

33. AILA Letter, *supra* note 19, at 48.

vision of the 1990 Act, concluded that admitting investors into the United States was clearly in the national interest.³⁴ It also stressed the need to raise the monetary amount required to be invested and the number of U.S. workers to be employed in order to allow investors to immigrate to the United States.³⁵

More recently, Senator Edward Kennedy (D-Mass.), a co-sponsor of the investor provision in the Senate, emphasized that its main purpose was to create jobs.³⁶ Indeed, Senator Paul Simon (D-Ill.), an important advocate of the provision, predicted that it would attract more than \$8 billion in foreign investment in U.S. business and create up to one hundred thousand new jobs for Americans.³⁷

Criticism of the investor provision centered primarily on a perceived "cheapening" of the value of American society and an assumed loss of economic sovereignty. Father Theodore Hesburgh, President of Notre Dame University and Chairman of the 1981 Select Committee on Immigration, presented the classic (and minority) opposition to the investor-provision idea by deriding it as purchasing one's way into America.³⁸ Indeed, a decade later, Senator Dale Bumpers (D-Ark.), a vocal and eloquent opponent of the investor provision, voiced many of these same themes by charging that the provision put a price tag on American citizenship. Furthermore, he questioned the quality of immigrants our country would attract — in his opinion, mainly drug dealers.³⁹

Senator Bumpers, reflecting mass opinion, saw no need to promote foreign investment, because foreigners were already buying up American property as fast as possible.⁴⁰ Most state governors did not agree with Senator Bumpers. Forty-three states maintain a lobbyist in foreign capitals to attract foreign investment, according to the National Association of State Development Agencies.⁴¹ Unlike other nations, which have a cohesive national strategy to attract foreign investment, America delegates this function largely to the states. There are two main types of foreign investment. Foreign direct investment (FDI) is defined as direct foreign ownership of more than

34. SENATE & HOUSE COMMITTEE ON THE JUDICIARY, 97TH CONG., 1ST SESS., REPORT ON U.S. IMMIGRATION POLICY AND THE NATIONAL INTEREST 32 (Joint Comm. Print 1981) [hereinafter 1981 Report].

35. *Id.*

36. 134 CONG. REC. S7771 (daily ed. July 12, 1989) (statement of Sen. Kennedy).

37. 136 CONG. REC. S17112 (daily ed. Oct. 26, 1990) (statement of Sen. Simon).

38. 134 CONG. REC. S7769 (daily ed. July 12, 1989) (statement of Sen. Bumpers).

39. *Id.* at S7768.

40. *Id.* at S7769.

41. Reich, *The Real Economy*, ATLANTIC, Feb. 1991, 35, 44 [hereinafter Reich].

10% of the equity holdings of a U.S. domestic firm. Foreign portfolio investment (FPI) is defined as direct foreign ownership of less than 10% of the equity holdings of a U.S. domestic firm.⁴² Although 80% of all foreign investment in the United States is FPI,⁴³ it attracts few headlines.

A brief examination of the scope of foreign investment in the U.S. reveals that although it represents a small proportion of total U.S. investment, its growth in recent years has been beneficial to the U.S. economy and should be encouraged. Total foreign investment in the U.S. increased from less than \$500 billion in 1980 to more than \$1.5 trillion at the end of 1987,⁴⁴ to approximately \$1.7 trillion in 1988.⁴⁵ Foreign investment in America soared to a record \$2 trillion in 1989; this constitutes a 400% increase in ten years.⁴⁶ Foreign holdings of U.S. assets exceed American holdings of foreign assets by nearly \$500 billion.⁴⁷ In 1988 the negative balance was \$533 billion.⁴⁸ This process has transformed the United States from the chief creditor nation to the largest debtor nation.⁴⁹ From 1970 to 1988, FDI in the United States increased its share of total foreign assets from 12.4% to 18.4%.⁵⁰ It grew by nearly twenty-five times, from a meager \$13 billion in 1970 to \$329 billion in 1988.⁵¹ In 1988 and 1989 alone, more than \$108 billion of additional FDI was introduced into the United States.⁵²

However, it is important to place these figures into perspective. As of 1988, net foreign ownership in America equaled only about 4.1% of U.S. net reproducible wealth (NRW).⁵³ Economists define NRW as follows:

The total US net reproducible wealth consists of the value of government and private tangible assets (including land, structures, inventories and consumer durables) and the net US claims on foreigners. The net US claims on foreigners represent the difference between the total US assets abroad and

42. Mujamdar, *Foreign Ownership of America: A Matter of Concern?*, 25 COLUMBIA J. WORLD BUS. 15 (Fall 1990) [hereinafter Mujamdar].

43. 100TH CONG., 2D SESS., FOREIGN INVESTMENT IN THE UNITED STATES: HEARING BEFORE THE SUBCOMMITTEE ON INT'L ECON. POL'Y AND TRADE OF THE HOUSE COMM. ON FOREIGN AFFAIRS, 1 (Comm. Print 1988) (opening statement of Rep. James H. Bilbray) [hereinafter 1988 Hearings].

44. *Id.* See Mujamdar, *supra* note 42, at 14, 15 for an explanation of the overstated nature of these figures.

45. Mujamdar, *supra* note 42, at 15.

46. Reich, *supra* note 41, at 36.

47. See 1988 Hearings, *supra* note 43, at 1. *But see* Mujamdar, *supra* note 42, at 15.

48. See Mujamdar, *supra* note 42, at 15.

49. See 1988 Hearings, *supra* note 43, at 1. *But see* Mujamdar, *supra* note 42, at 15.

50. See Mujamdar, *supra* note 42, at 16.

51. *Id.*

52. *Id.*

53. *Id.*

the total foreign assets here. Similarly, the net US direct foreign investment is the difference between private investment to and from the US.⁵⁴

By June 1988, foreign ownership of U.S. securities, treasury bonds, and equities rose to \$691 billion; yet this represents only 11.7% of total U.S. securities.⁵⁵ Thus, as of 1988, total foreign investment in the U.S. (FDI and FPI), while massive, constitutes less than 6% of total investment in the U.S.⁵⁶ Furthermore, in 1986 foreign-owned businesses accounted for only 3.5% of total non-bank employment, and in 1987 foreign interests owned only 1% of the privately owned agricultural land in the U.S.⁵⁷ According to the General Accounting Office, in 1988 overseas owners held only about 2% of U.S. commercial real estate.⁵⁸

It would be a gross distortion to say that foreign money is buying up the United States. A dispassionate look at the record suggests that we remain the masters of our own economic destiny. While foreign direct investment amounted to some \$41 billion in 1987, direct investments abroad by American companies were roughly the same, \$38 billion. Foreign ownership of assets amounts to only 2-4% of total corporate assets. Moreover, direct investment is not susceptible, as is portfolio investment, to sudden withdrawal. Few corporate takeovers have been funded by foreign investment; of these, even fewer have been unfriendly. While overall foreign investment has risen sharply, the concentration from any one nation still remains low.⁵⁹ The shrill cries of alarm from economic nationalists are premature.

Examination of the Commerce Department's determination that the United States' "net international investment position," or "foreign debt," was minus \$412 billion for 1990⁶⁰ reveals that it is overstated and warrants further explanation to give it comparative meaning. A foreign debt of \$412 billion appears large; however, in comparison to the gross national product (GNP), it is quite small and much lower than those of other countries. In 1990, U.S. foreign

54. *Id.*

55. Schaeffer & Strongin, *Why All the Fuss About Foreign Investment?*, CHALLENGE, May-June 1989, at 32.

56. *Id.* at 35.

57. Little, *Foreign Investment in the United States: A Cause for Concern?*, NEW ENG. ECON. REV., July-Aug. 1988, at 54.

58. Cope, *GAO Debunks "The Selling of America"*, Am. Banker, July 22, 1991, at 1.

59. Solomon, *Checking the Spread of a New Xenophobia*, N.Y. Times, May 31, 1988, at A19, col. 1.

60. Samuelson, *The Great Global Debtor*, NEWSWEEK, July 22, 1991, at 40.

debt amounted to only 7.5% of our GNP of \$5.465 trillion.⁶¹ In 1989, Mexico's foreign debt was \$96 billion, 51% of its GNP.⁶² Argentina's foreign debt for 1989 was \$65 billion, or 120% of its GNP.⁶³

Since net international investment position is based on book value, or original cost, with positive rates of inflation these values can be far below market value.⁶⁴ Also, because of its greater age, the value of U.S. direct investment overseas is greatly understated in comparison with foreign direct investment in the United States.⁶⁵ When values are adjusted to compensate for this, U.S. net direct investment position for 1989 is found to be a positive \$345 billion, and at the end of 1988 the net international investment position, or foreign debt, is found to be only a negative \$118.5 billion.⁶⁶ By the same figures, foreign direct investment in U.S. assets comes to only 1.2% of total U.S. capital, tangible and intangible.⁶⁷

Thus, total foreign investment in the U.S. gives no reason for alarm. In fact, recent private indicators reveal that foreign investment in the U.S. actually decreased greatly in 1990.⁶⁸

Foreign investment benefits the U.S. economy. Foreign investors enlarge the nation's productive capacity.⁶⁹ Over a span of seven years (1982-89), foreign investors added roughly \$500 billion in productive assets to the nation's existing capital stock, assets that enabled business to grow through investment and modernization.⁷⁰ By contributing productive assets, investment money, and machines, foreign investors significantly enhanced America's industrial competitiveness.⁷¹ As an example, foreign-owned businesses were responsible for approximately 8% of business expenditures on new equipment and plants in 1986.⁷² Additionally, as of 1988, foreign-owned firms employed roughly 3 million workers and paid more than \$87 billion in wages and other compensation.⁷³ Moreover, as of 1988, foreign firms in the U.S. exported more than \$50 billion of goods into the world markets.⁷⁴ In 1988, firms in the U.S. with predominantly for-

61. *Id.*

62. *Id.*

63. *Id.*

64. Eisner & Pieper, *Real Foreign Investment in Perspective*, 516 ANNALS 25 (1991).

65. *Id.*

66. *Id.*

67. *Id.* at 26.

68. Sesit, *U.S. Investment by Foreigners Plunged in 1990*, Wall St. J., Apr. 4, 1991, at C1, col. 3.

69. See Mujamdar, *supra* note 42, at 19.

70. *Id.*

71. *Id.*

72. *Id.*

73. 1988 Hearings, *supra* note 43, at 15 (statement of Robert Ortner).

74. *Id.* at 15-16.

eign ownership paid approximately \$7-8 billion a year in federal, state, and local income taxes and roughly \$17 billion in sales, excise, property, and other taxes to every level of government.⁷⁵ Furthermore, in 1987 almost one half of all patents issued by the patent and trademark office were awarded to foreign companies.⁷⁶ Absent this large-scale infusion of foreign capital, some experts estimated that U.S. interest rates would rise 3-5%.⁷⁷

Foreign investors hold nearly 20% of the United States' \$2 trillion debt.⁷⁸ U.S. net indebtedness, as of 1988, represented 11% of this country's gross national product.⁷⁹ Thus, the huge U.S. federal budget deficit has been financed to an appreciable degree by attracting foreign capital.⁸⁰ Increasing this need for foreign capital has been the lagging domestic savings rate.⁸¹

Reliance on foreign investment to finance our trade deficit has allowed Americans to enjoy a high standard of living as more high quality goods become available at lower prices.⁸² This is in spite of the fact that huge budget deficits have forced the U.S. government into passive borrowing, thus driving up the cost of available capital that could otherwise be put to productive use. Foreign investment services our debt and subsidizes our lifestyle without large tax increases. Furthermore, foreign investment introduces new production techniques and new, more profitable management strategies into the U.S. economy.⁸³

In short, although in real terms it is a small part of the total U.S. economy, foreign investment plays an important role in stabilizing and supplementing it.

The investor/entrepreneur visa provision reflects an awareness of stiff competition between the U.S. and other countries for foreign investment, especially from Hong Kong. Although the Senate debate on the investor provision of the 1990 Act focused on job creation and

75. *Id.* at 16.

76. *Id.* at 1.

77. Richardson, *Why Foreign Investment Is Good for Us*, N.Y. Times, June 8, 1988, at A38, col. 4.

78. 1988 Hearings, *supra* note 43 (statement by Prof. Susan Tolchin).

79. See Mujamdar, *supra* note 42, at 19.

80. 1988 Hearings, *supra* note 43, at 51 (statement of Elliot Richardson).

81. *Id.* See also Graham, *Real and Imagined Dangers of U.S. Dependence on Foreign Capital*, 516 ANNALS 126 (1991).

82. See Mujamdar, *supra* note 42, at 19.

83. Ulan, *Should the U.S. Restrict Foreign Investments?*, 516 ANNALS 117, 120 (1991).

economic stimulation,⁸⁴ Senator Paul Simon (D-Ill.) recognized that other countries, especially Canada and Australia, already had investor provisions.⁸⁵

The shock waves from the Tiananmen Square massacre have profoundly shaped U.S. immigration policy. One consequence has been the creation of an immigrant category designed to attract nervous Hong Kong investors and business professionals who doubt that a capitalist system can coexist with a communist regime. As doubts grow about Deng Xiaoping's "One Country, Two Systems" concept, the desire for a hedge against the future grows also.

The value of winning the competition for these Hong Kong investment dollars should not be underestimated. With no minimum wage laws, unemployment insurance, sales tax, or import duties, and with a maximum tax rate of 15-17%, Hong Kong has, since World War II, become the third largest financial center in the world.⁸⁶ It is estimated that between five hundred and a thousand Hong Kong families control wealth valued at hundreds of millions of dollars. Tens of thousands of these families have an individual net worth of between \$5 million and \$15 million; it is this "middle class" that may be the most anxious to depart before 1997 arrives.⁸⁷

Rather than waiting until 1997, Hong Kong investment capital has already begun leaving in ever greater amounts. Since 1970, for example, Hong Kong investors have purchased more than \$2 billion in Vancouver real estate, about \$500 million per year. One in two multinational corporations with regional headquarters in Hong Kong plans to relocate;⁸⁸ and some financial experts predict that Hong Kong's decline will start well ahead of 1997. Right now, Singapore and Sydney, Australia, are competing to attract Hong Kong's corporate exiles.⁸⁹ Even before Tiananmen Square, there were signs of a downturn in economic activity. Hong Kong's real gross domestic product (GDP), which grew at an annual average of 7.8% between 1979 and 1986, fell from 13.8% in 1987 to 7% in 1988 to 2.5% in 1989.⁹⁰

The damage to business confidence in Hong Kong from Tiananmen Square is undeniable; an estimated net outflow of HK\$22.4 billion (U.S.\$2.8 billion) took place in 1989.⁹¹ One year

84. 134 CONG. REC. S7770-72 (daily ed. July 12, 1989).

85. 134 CONG. REC. S7772 (daily ed. July 12, 1989) (statement by Sen. Simon).

86. Ferrel, *Chinese Enclave in Canada*, *Christian Sci. Monitor*, Jan. 23, 1989, at 12, col. 2.

87. *Id.*

88. *Id.*

89. *Id.*

90. Weinberger, *Fears of the Future Threaten Hong Kong's Prosperity*, 145 *FORBES*, June 25, 1990, at 27.

91. *Capital Flight in Hong Kong*, *N.Y. Times*, June 14, 1990, at D6, col. 1.

after Tiananmen Square, Hong Kong and Taiwanese investors were transferring approximately \$100 million *each month* to Canada. British bankers predicted that by the end of 1990 their Chinese customers would transfer about \$770 million to Australia and four times that much to Canada.⁹² The hunt is on for overseas tax shelters and trust funds.⁹³

Half of Hong Kong's 5.7 million residents are Chinese immigrants, many of whom left behind homes and thriving businesses to escape the chaos and persecution that convulsed China in the 1950s and 1960s. They fear, perhaps with good reason, that Chinese authorities will seize Hong Kong's wealth, just as they did in Shanghai some forty years ago.⁹⁴ Between July and September 1989, the export of goods made in Hong Kong fell, in real terms, by 1% compared to the year before. The number of visitors to the Crown Colony declined by 20%. From school tuition to food to medicine, prices rose in excess of the 10% annual inflation. Hong Kong confronts both rising prices and diminished demand; stagflation is the legacy of Tiananmen Square.⁹⁵

To put the 1990 Act's investor provision in perspective, it is useful to look at the comparable laws of two other countries, Canada and Australia. The relative stringency of the 1990 Act provision then becomes readily apparent. It is no accident that Hong Kong investors perceive Canada and Australia as numbers one and two in encouraging foreign investment, with the United States and Britain bringing up the rear.⁹⁶

Responding to Canada's low birth rate and the refusal of foreign capital to invest, the government of progressive conservative Prime Minister Brian Mulroney established a program in 1986. This program allowed entrepreneurs to receive Canadian citizenship after three years if (i) proof of \$500,000 net worth and (ii) a pledge to invest half of it in a Canadian venture is made, or if a substantial investment is made in a new business that has hired at least one Canadian.⁹⁷ A foreign investor with a net worth of \$500,000 could

92. *Hong Kong Money Shifts*, N.Y. Times, June 14, 1990, at D21, col. 2.

93. *Id.*

94. Basler, *Capital Flees an Edgy Hong Kong*, N.Y. Times, June 15, 1989, at D1, col. 3.

95. *And Now, Hard Times*, 313 *ECONOMIST*, Dec. 2, 1989, at 39.

96. Gibson, *Hong Kong Buys into Vancouver*, L.A. Times, July 16, 1989, at A12, col. 3 [hereinafter Gibson].

97. Evans & Novak, *Hong Kong West*, Washington Post, Sept. 22, 1989, at A27, col. 3 [hereinafter Evans & Novak].

invest as little as \$150,000 in a new business with Canadian Province approval.⁹⁸ In 1986, Hong Kong ranked fourth as a source for immigration to Canada.⁹⁹ By September 1989, it ranked first, with ethnic Chinese making up 17% of Vancouver's population.¹⁰⁰ British Columbia, Alberta, and especially Vancouver have been targets for a large amount of Asian investment.¹⁰¹ Since its inception, the program has issued more than two thousand visas, mainly to Hong Kong residents.¹⁰²

Australia is also at the forefront in encouraging foreign investment by conferring immigration benefits. Its business immigration program (BIP) started slowly in 1981, but gathered pace after 1986 when the government of Prime Minister Bob Hawke cut tape and expanded the promotional budget. By 1987, the program had doubled the number of visas issued to 3,600 — roughly equal to Canada's program.¹⁰³ In 1990, about 30% of those issued visas were people from Hong Kong.¹⁰⁴ Australia's BIP allowed foreign entrepreneurs to obtain a permanent resident visa by satisfying the following conditions:¹⁰⁵ (1) By making an investment of Austl \$350,000 if thirty-nine years old or younger, Austl \$500,000 if forty to fifty-seven, and Austl \$850,000 if fifty-eight years or older; (2) by presenting a business track record (but not a full-fledged business plan); (3) by making a statement of intent; and (4) possessing Austl \$100-150,000 for presettlement. Significantly, on October 1, 1989, the minimum amount of investment for those under forty was lowered 30% to U.S. \$260,000, but the investment required of those fifty-eight plus was raised 70% to U.S. \$640,000.¹⁰⁶

Each major reform of our immigration laws has told much about the American character and the changing role that the United States has sought to play in the world. The McCarran-Walter Act,¹⁰⁷ enacted over President Truman's veto, was a child of the Cold War and its numerous grounds for ideological exclusion bore the unmistakable imprint of McCarthyism. The 1965 immigration

98. Gibson, *supra* note 96, at A13.

99. Evans & Novak, *supra* note 97, at A27.

100. *Id.*

101. Foster, *Hong Kong Visible in Vancouver*, *Christian Sci. Monitor*, Aug. 2, 1990, at 4.

102. Millman, *Visas For Sale?*, *FORBES*, April 29, 1991, at 40.

103. Scott, *Setting Up Shop in Australia*, *Christian Sci. Monitor*, May 19, 1988, at 8, col. 2.

104. Valeriano, *Green Card Law Means Business to Immigrants*, *Wall St. J.*, Feb. 21, 1991, at B2, col. 3.

105. *Australia Welcomes Business People*, *Business Migration Program*, Australia (loose leaf insert) (Apr. 1988).

106. Mathewson, *Moving to Australia*, *Wall St. J.*, Sept. 29, 1989, at A11, col. 5.

107. Act of June 27, 1952, Pub. L. No. 82-414, 66 Stat. 163.

amendments,¹⁰⁸ proposed the same year as the March on Washington and enacted the same year as the Voting Rights Act, abolished the national origins quota system and opened up America to non-European immigration for the first time.

The 1990 Act is the product of an uncertain superpower whose economic dominance is under increasing attack from friend and foe alike. When we look behind the law, the economic imperative of attracting foreign investment to fund future growth and rebuild a crumbling infrastructure becomes readily apparent. All Americans, lawyers and laypersons alike, should embrace this goal.

108. Act of Oct. 3, 1965, Pub. L. No. 89-236, 79 Stat. 911.

