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# THAILAND'S BOARD OF INVESTMENT: TOWARDS A MORE APPROPRIATE AND EFFECTIVE RURAL INVESTMENT PROMOTION POLICY

Michael L. Shain

*Abstract:* This Comment analyzes the role of Thailand's Board of Investment in the Thai Government's policy of decentralizing its economy. The Board of Investment is the administrative agency authorized to promote industrial development through the use of investment incentives. In response to the decentralization policy, the Board has created new categories of investment and a new set of upgraded incentives designed to encourage industrial investment in the country's rural provinces. The potential effectiveness of the Board's role, however, is limited. Recent changes in Thailand's tax and trade policy have seriously diminished the value of the Board's fiscal incentives, the backbone of its incentive scheme. The Board must overcome significant barriers to investment in rural areas, namely inadequate infrastructure and shortages of skilled labor. Moreover, fiscal incentives have numerous drawbacks, and evidence suggests that they are limited in their ability to attract investment. Thus, the Investment Promotion Act, the controlling legislation for the Board of Investment, should be amended to replace the fiscal incentives with new types of incentives which are both attractive to investors and have greater potential to benefit Thailand's rural areas.

## I. INTRODUCTION

The Board of Investment (BOI) is the administrative agency responsible for investment promotion in Thailand.<sup>1</sup> Using both fiscal and non-fiscal incentives, it encourages investment in sectors and locations that will help the country meet its economic and social goals. Since its establishment in 1959, the BOI's role has evolved along with the country's development

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<sup>1</sup> Kosol Chantikul, *Investment Promotion Laws*, 3 CHULALONGKORN L. REV. (Thail.) 97, 98 (1984). The Kingdom of Thailand (Thailand), formerly Siam, lies in the heart of mainland Southeast Asia. Thailand borders Myanmar (formerly Burma) to its west, Laos to its north, Cambodia to its east, and Malaysia to its south. Its coastal boundaries are the Gulf of Thailand which leads to the South China Sea and the Andaman Sea which connects to the Indian Ocean. With a land area of 514,000 square kilometers, it is roughly the size of France or slightly smaller than the state of Texas. THAILAND: A COUNTRY STUDY 60 (Barbara L. LePoer ed. 1989) [hereinafter COUNTRY STUDY]; TILLEKE & GIBBINS AND STANDARD CHARTER BANK, THAILAND BUSINESS BASICS § 1.1, 7 (Karen Gritzmacher Atkinson ed., Bangkok, Thailand, 1991), [hereinafter BUSINESS BASICS].

needs and industrialization policy.<sup>2</sup> The Investment Promotion Act B.E. 2520 (1977) establishes the BOI's authority and functions.<sup>3</sup>

Initially, the BOI designed incentives to help strategically designated industries overcome a high tax and tariff regime intended to raise government revenue and encourage domestic industry.<sup>4</sup> When the government changed its trade and investment policy to more outward oriented development in the 1970s, the BOI began to focus more on promoting export industries.<sup>5</sup> The government codified this new approach in the Investment Promotion Acts of 1972 and 1977, linking additional incentives to the sales of exports.<sup>6</sup>

This export promotion policy proved highly successful in the late 1980s as Thailand registered double-digit economic growth rates between 1988 and 1990.<sup>7</sup> A rapid expansion in manufacturing exports and private investment fueled this economic boom.<sup>8</sup> These events were due in a large part to increasingly high levels of foreign direct investment.<sup>9</sup> With currency values and wages rising in other East Asian countries, export-manufacturers, primarily from Japan and the newly industrializing economies, moved to low-wage countries like Thailand.<sup>10</sup> The number of

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<sup>2</sup> *Thailand's Board of Investment: Diminished Power as Government Policies Shift*, E. ASIAN EXECUTIVE REP., Dec. 15, 1992, at 18 [hereinafter *Diminished Power*].

<sup>3</sup> Investment Promotion Act B.E. 2520 (1977), as amended by the Investment Promotion Act (No. 2) B.E. 2534 (1991) [hereinafter Investment Promotion Act]. The Investment Promotion Act B.E. 2520 is published in Thai in the Government Gazette Volume 94, Part 38, dated May 4, B.E. 2520 (1977). The amended version is published in Thai in the Government Gazette Volume 108, Part 201, dated November 21, B.E. 2534 (1991). This Comment incorporates the amended version of the Act which is available in English in pamphlet form from the Office of the Economic Counselor (Investment), Five World Trade Centre, Suite 3443, New York, N.Y. 10048. In addition, all Board of Investment and Ministry of Commerce publications cited hereinafter may be obtained from this office.

<sup>4</sup> THAI UNIVERSITY RESEARCH ASSOCIATION & CANADIAN INTERNATIONAL DEVELOPMENT AGENCY, THAILAND'S NATIONAL DEVELOPMENT: SOCIAL AND ECONOMIC BACKGROUND 60 (Suchart Prasithrathsint ed., 1989 [hereinafter SOCIAL AND ECONOMIC BACKGROUND]; *Diminished Power*, *supra* note 2, at 18.

<sup>5</sup> DAVID ROBINSON ET AL., THAILAND: ADJUSTING TO SUCCESS: CURRENT POLICY ISSUES 7 (International Monetary Fund 1991) [hereinafter CURRENT POLICY ISSUES]; *Diminished Power*, *supra* note 2, at 18.

<sup>6</sup> See CURRENT POLICY ISSUES, *supra* note 5, at 7. See also Investment Promotion Act, *supra* note 3, § 36, at 11.

<sup>7</sup> UNITED NATIONS INDUSTRIAL DEVELOPMENT ORGANIZATION, THAILAND: COPING WITH THE STRAINS OF SUCCESS 1 (1992) [hereinafter COPING WITH THE STRAINS OF SUCCESS].

<sup>8</sup> CURRENT POLICY ISSUES, *supra* note 5, at 10.

<sup>9</sup> COPING WITH THE STRAINS OF SUCCESS, *supra* note 7, at 1.

<sup>10</sup> CURRENT POLICY ISSUES, *supra* note 5, at 10. See also *Diminished Power*, *supra* note 2, at 18.

businesses receiving BOI promotional privileges during this period increased significantly, primarily in export industries.<sup>11</sup>

Ironically, the BOI has become somewhat of a victim of Thailand's economic success. Thailand's high economic growth rates have made it attractive to investors irrespective of incentives, and the recent liberalization of the country's tax and tariff regime has diminished the value of the BOI's fiscal incentives.<sup>12</sup> Thus, over the last several years the BOI's role in the country's economic development scheme has been somewhat uncertain.

In early 1993, however, Prime Minister Chuan Leekpai's Government stated that the BOI would have an important role in the Government's new policy of economic decentralization. The benefits of high levels of economic growth have not been evenly distributed throughout Thailand.<sup>13</sup> The vast majority of investment has been geographically centered in and around Bangkok.<sup>14</sup> This concentration of industry and wealth in the country's capital has had numerous negative consequences, including pollution, infrastructure bottlenecks, and political alienation of the rural areas.<sup>15</sup> To remedy this situation, the Government instituted a policy of decentralizing the economy to spread wealth from Bangkok to the rural areas. As part of this policy, it will be the BOI's role to encourage industry to locate in the rural provinces.<sup>16</sup> Consequently, in April 1993, under the Prime Minister's direction and through authority derived from the Investment Promotion Act, the BOI significantly increased its fiscal and non-fiscal incentives for investment in the rural provinces.<sup>17</sup>

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<sup>11</sup> *Diminished Power*, *supra* note 2, at 18.

<sup>12</sup> *Id.* at 19. See also BOARD OF INVESTMENT, THE INVESTMENT ENVIRONMENT IN THAILAND 21 (Thail., 1992) [hereinafter INVESTMENT ENVIRONMENT]. The liberalization of Thailand's tax and tariff structure include the replacing of the business tax with a value-added tax and various tariff reductions. See *infra* text accompanying notes 126-128, 188-197.

<sup>13</sup> Rodney Tasker & Paul Handley, *Focus: Thailand Trade & Investment*, FAR EASTERN ECON. REV., Aug. 5, 1993, at 37, 46 [hereinafter *Focus*]. Natural geography divides Thailand into four regions: the North, the Northeast, the Central region, and the South. Bangkok, the capital and largest city, can be considered an additional region despite its location on the southern edge of the Central region at the head of the Gulf of Thailand. It is the center of trade, transport, and industrial activity. Outside of Bangkok and its surrounding provinces, Thailand is predominantly rural. COUNTRY STUDY, *supra* note 1, at 62-65. See also *Focus*, at 46, 48.

<sup>14</sup> *Focus*, *supra* note 13, at 42.

<sup>15</sup> *Id.* at 42, 46.

<sup>16</sup> *Distribution of Growth*, THAILAND INVESTMENT NEWS UPDATE, No. 26, Jan-Mar. 1993, at 1, 4 [hereinafter *Distribution of Growth*].

<sup>17</sup> See THAILAND'S BOARD OF INVESTMENT, BOARD OF INVESTMENT ANNOUNCEMENT NO. 1/1993: POLICIES AND CRITERIA FOR INVESTMENT PROMOTION (Apr. 9, 1993) [hereinafter ANNOUNCEMENT NO. 1].

This Comment analyzes the BOI's policy of industrial decentralization in the context of the current economic and political environment in Thailand. Specifically, it addresses whether the BOI's incentive scheme is sufficient and/or appropriate to successfully accomplish its facilitating role in the Government's policy of economic decentralization. This Comment finds that the incentives the BOI has the power to grant under the Investment Promotion Act are limited in their ability to channel significant amounts of investment away from Bangkok and further the goals of the decentralization policy. Accordingly, alternative incentive measures tailored to both the needs of investors and rural areas would be more appropriate and effective.

## II. BACKGROUND

### A. *The Investment Promotion Act B.E. 2520 (1977)*

Thailand began to recognize foreign investment as an important element in developing the country's economy in the 1950s.<sup>18</sup> In 1954, Thailand enacted its first investment promotion legislation, the Industrial Promotion Act.<sup>19</sup> The lack of an administrative agency limited this Act's effectiveness.<sup>20</sup> To solve this problem, the Industrial Promotion Act B.E. 2503 (1960) created the BOI.<sup>21</sup> The Industrial Promotion Act B.E. 2505 (1962) and the National Executive Council Announcement No. 227 B.E. 2515 (1972) followed.<sup>22</sup> These laws contained similar provisions for the administration and granting of incentives for both foreign and domestic investment.<sup>23</sup>

The Investment Promotion Act B.E. 2520 (1977) currently governs investment promotion in Thailand.<sup>24</sup> The Investment Promotion Act (No.2) B.E. 2534 (1991) slightly amended the Act; the only change being the

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<sup>18</sup> Chantikul, *supra* note 1, at 98.

<sup>19</sup> *Id.*

<sup>20</sup> Nitat Wattanakul, *Foreign Direct Investment and Laws of Thailand*, 16 HÖGAKU SEIJI RONKYŪ 1, 6 (1993).

<sup>21</sup> *Id.*

<sup>22</sup> Chantikul, *supra* note 1, at 98.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

elimination of business tax reductions and exemptions from the incentive provisions.<sup>25</sup>

The Act is composed of sixty sections divided into seven chapters.<sup>26</sup> Chapter 1 establishes the BOI, its administrative structure, and powers and duties.<sup>27</sup> Chapter 2 details the activities eligible for investment promotion by the BOI, the factors the BOI considers in granting promoted status, and the procedures used in applying for promoted status.<sup>28</sup> Chapter 3 sets forth the rights and benefits extended to recipients of BOI promoted status, specifically those relating to ownership of land, immigration, and taxes.<sup>29</sup> Chapter 4 describes the BOI's power to reduce or suspend the imposition of import or export duties on machinery, and raw and essential materials.<sup>30</sup> Chapter 5 details the guarantees and protections extended to those granted promoted status.<sup>31</sup> Chapter 6 describes the conditions under which the BOI may withdraw rights and benefits, once granted.<sup>32</sup> Chapter 7 integrates all previous Acts relating to investment promotion into the current Act.<sup>33</sup>

### 1. *The Board of Investment (BOI)*

The Investment Promotion Act grants in the BOI the authority over administration of all investment promotion in Thailand.<sup>34</sup> The BOI consists

<sup>25</sup> Investment Promotion Act, *supra* note 3. The amended Sections are: §§ 28-30, §§ 35-36, §§ 38-40, and § 48.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*, Chapter 1, §§ 6-15.

<sup>28</sup> *Id.*, Chapter 2, §§ 16-23. Promoted status entails receiving investment incentives from the BOI. Those seeking to be promoted must file an application for promotion with the Office of the BOI describing the investment project for which promotion is sought. To be eligible the promoted person must be a legally established company, foundation or co-operative. *Id.* § 17, at 5. When the BOI has resolved to promote the investment project and the project is ready to be commenced, the Secretary General issues a promotion certificate which officially confers promotional status. *Id.* §§ 21-23, at 7-8.

<sup>29</sup> *Id.*, Chapter 3, §§ 24-37.

<sup>30</sup> *Id.*, Chapter 4, §§ 38-42.

<sup>31</sup> *Id.*, Chapter 5, §§ 43-53.

<sup>32</sup> *Id.*, Chapter 6, §§ 54-56.

<sup>33</sup> *Id.*, Chapter 7, §§ 57-60.

<sup>34</sup> *Id.* § 6. This power extends to both foreign and domestic investment promotion. Although the Investment Promotion Act does not target foreign investment per se, attracting foreign investment is one of its major underlying policy goals. Chantikul, *supra* note 1, at 98. It is also important to note that BOI approval is not required for foreign investment in Thailand. *Investing in Thailand, Part I: Foreign Ownership, BOI Approval, Incentives*. E. ASIAN EXECUTIVE REP., Nov. 15, 1992, at 18, 19 [hereinafter *Investing in Thailand I*]. Foreign business organizations may be directly registered with the Department of Commercial Registration of the Ministry of Commerce. For a detailed explanation of the registration procedures and limitations on foreign business operations see DEPT OF COMMERCIAL REGISTRATION, THAILAND BUSINESS REGISTRATION HANDBOOK (Thail.).

of the Prime Minister as Chairman, the Minister of Industry as Vice Chairman, not more than 10 members appointed by the Prime Minister, and the Secretary General as both a member and secretary to the Board.<sup>35</sup> The BOI promotes and regulates foreign and domestic investment in areas that it considers most beneficial to the Thai economy.<sup>36</sup> It formulates industrial policy by determining priority areas for foreign investment, deciding what industries are eligible for promotional privileges, and granting those privileges to investors.<sup>37</sup>

In addition, the BOI operates the Office of the Board of Investment (Office) which performs the administrative functions of the Board.<sup>38</sup> The Office's responsibilities include: 1) publicizing potential investment opportunities and inducing investment in those activities;<sup>39</sup> 2) acting as an Investment Services Center that assists prospective investors in obtaining permissions and services related to investment;<sup>40</sup> 3) appraising projects applying for promotion;<sup>41</sup> 4) conducting research identifying investment opportunities and formulating investment promotion programs;<sup>42</sup> and 5) compiling investment data for Thailand.<sup>43</sup> The Office further supervises all projects currently receiving promotional status.<sup>44</sup>

## 2. *Investment Activities, Policies, and Criteria*

In order to be eligible for promotion, the investment activity must be important and beneficial to the economic and social development and security of the country.<sup>45</sup> Such activities include those which: 1) involve production for export; 2) have a high content of capital, labor, or service; or 3) utilize agricultural produce or natural resources as raw materials.<sup>46</sup> The BOI issues announcements that list the types and sizes of investment activity eligible for promotion as well as the conditions under which the

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<sup>35</sup> Investment Promotion Act, *supra* note 3, § 6.

<sup>36</sup> Chantikul, *supra* note 1, at 98.

<sup>37</sup> *Id.*

<sup>38</sup> Investment Promotion Act, *supra* note 3, § 13.

<sup>39</sup> *Id.* § 13(2).

<sup>40</sup> *Id.* § 13(3).

<sup>41</sup> *Id.* § 13(4).

<sup>42</sup> *Id.* § 13(5).

<sup>43</sup> *Id.* § 13(6).

<sup>44</sup> *Id.* § 14.

<sup>45</sup> *Id.* § 16.

<sup>46</sup> *Id.*

promotion will be granted.<sup>47</sup> The Act gives the BOI authority to add or delete activities from the list depending on whether they are beneficial.<sup>48</sup>

The BOI also considers several other criteria when deciding whether to promote a project. First, the project must be "economically and technologically sound."<sup>49</sup> With regard to this requirement, consideration is given to several factors including the existing production capacity in Thailand<sup>50</sup> and the suitability of production or assembly processes.<sup>51</sup> Second, the project must have appropriate measures to control and prevent any harmful effects to the environment.<sup>52</sup> Third, the BOI may stipulate any one of several conditions for receiving promotion including minimum capital requirements,<sup>53</sup> limits on foreign equity participation,<sup>54</sup> and the size of the project.<sup>55</sup>

### 3. *Investment Incentives*

#### a. *Land ownership and immigration*

The Act grants the BOI significant powers over both immigration and land ownership. Specifically, the Act empowers the BOI to grant foreign nationals permission to enter the country to study investment opportunities.<sup>56</sup> It further allows promoted companies to bring any skilled workers and experts needed for projects into Thailand, even in excess of any quotas or time period limitations prescribed by immigration law.<sup>57</sup> Additionally, these workers are automatically granted work permits for specific positions

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<sup>47</sup> *Id.* For a current list of activities eligible for promotion, see THAILAND'S BOARD OF INVESTMENT, BOARD OF INVESTMENT ANNOUNCEMENT NO. 2/1993: LIST OF ACTIVITIES ELIGIBLE FOR PROMOTION (April 9, 1993) [hereinafter ANNOUNCEMENT NO. 2]. For a current statement of the BOI's policies and criteria for investment promotion see ANNOUNCEMENT NO. 1, *supra* note 17. See *infra* text accompanying notes 158-186.

<sup>48</sup> Investment Promotion Act, *supra* note 3, § 16.

<sup>49</sup> *Id.* § 18.

<sup>50</sup> *Id.* § 18(1).

<sup>51</sup> *Id.* § 18(5). For a complete list of the relevant considerations see *id.* § 18(1)-(6).

<sup>52</sup> *Id.* § 19.

<sup>53</sup> *Id.* § 20(1).

<sup>54</sup> *Id.* § 20(2).

<sup>55</sup> *Id.* § 20(3). For a complete list of the conditions the BOI may stipulate see *id.* § 20(1)-(20).

<sup>56</sup> *Id.* § 24.

<sup>57</sup> *Id.* § 25. This provision represents a relaxation of the Immigration Act B.E. 2522 (1979). See BUSINESS BASICS, *supra* note 1, § 2.4.



as approved by the BOI.<sup>58</sup> Under the current Land Code, foreigners are prohibited from owning land in Thailand unless granted permission by the Minister of Interior.<sup>59</sup> The Act, however, grants the BOI power to permit those with promoted status to own land for the promoted activity as the BOI deems appropriate, "even in excess of the permissible limit under other laws."<sup>60</sup>

*b. Tax incentives*

The Act stipulates that promoted investments will receive numerous types of tax exemptions. Promoted investments are exempted from corporate income tax on net profits for a period of three to eight years.<sup>61</sup> There is a provision for carrying forward losses and offsetting them against net profits accrued after the tax holiday for up to five years.<sup>62</sup> Dividends derived from a promoted activity are exempted from corporate and personal income tax during the tax holiday period.<sup>63</sup> The BOI may also grant exemptions on fees for goodwill, copyrights or other rights from computation of taxable income for up to five years.<sup>64</sup>

Exemptions from payment of import duties on machinery may also be granted by the BOI provided comparable machinery is not being produced locally.<sup>65</sup> If the BOI believes such an exemption is inappropriate, it may grant a 50% reduction on machinery import duties instead.<sup>66</sup> Where the BOI deems suitable, it may also provide reductions on import duties of up to 90% on imported raw or essential materials if comparable items are not available locally.<sup>67</sup>

In order to promote exports, the BOI may grant exemptions from import duties on raw and essential materials used in producing items for

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<sup>58</sup> Investment Promotion Act, *supra* note 3, § 26. This provision represents a relaxation of the Alien Employment Act B.E. 2521 (1978) which requires all non-Thais working in Thailand to obtain a work permit issued by the Labor Department. See BUSINESS BASICS, *supra* note 1, § 2.4.

<sup>59</sup> Chantikul, *supra* note 1, at 104. With the Minister of Interior's permission, foreigners may own up to 10 rai (about 4 acres) of land for industrial or agricultural use. *Id.* at 104.

<sup>60</sup> Investment Promotion Act, *supra* note 3, § 27.

<sup>61</sup> *Id.* § 31.

<sup>62</sup> *Id.* Tax holiday is a term used to refer to the period of exemption from taxes.

<sup>63</sup> *Id.*

<sup>64</sup> *Id.*

<sup>65</sup> *Id.* § 28.

<sup>66</sup> *Id.* § 29.

<sup>67</sup> *Id.* § 30.

export<sup>68</sup> and on items imported for re-export.<sup>69</sup> The Act also provides for exemption from export duties on products or commodities produced or assembled.<sup>70</sup> Finally, promoted companies are permitted to deduct from corporate income tax an amount equal to 5% of the increased income over the previous year derived from exports.<sup>71</sup>

In order to promote investment in specific locations, the Act empowers the BOI to designate Investment Promotion Zones (IPZ) and grant extra privileges and benefits to companies locating their operations within these IPZs.<sup>72</sup> The BOI currently divides Thailand into three Zones.<sup>73</sup> Zone 1 includes Bangkok and five adjacent provinces, and Zone 2 consists of ten provinces relatively close to Bangkok.<sup>74</sup> Zone 3, which is composed of the remaining fifty-seven provinces, is officially designated the Investment Promotion Zone.<sup>75</sup> Additional IPZ benefits include: 1) a 50% reduction of corporate income tax for five years after the termination of the normal tax holiday;<sup>76</sup> 2) double deduction of costs of transportation, electricity, and water supply from the taxable corporate income;<sup>77</sup> and 3) deduction from net profit of up to 25% of installation or construction costs in the calculation of corporate income tax.<sup>78</sup> The BOI has discretion over the conditions, procedure, and time periods for the transportation and utility deductions.<sup>79</sup> In contrast, the promoted entity may deduct installation and construction costs during any one or several years within ten years from the time the project first derives income.<sup>80</sup>

*c. Repatriation of capital*

The Act authorizes foreign investors to take out or remit abroad foreign currency, including capital, profits, loan repayments, and interest.<sup>81</sup>

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<sup>68</sup> *Id.* § 36(1).

<sup>69</sup> *Id.* § 36(2).

<sup>70</sup> *Id.* § 36(3).

<sup>71</sup> *Id.* § 36(4).

<sup>72</sup> *Id.* § 35.

<sup>73</sup> ANNOUNCEMENT NO. 1, *supra* note 17, § 6.

<sup>74</sup> *Id.* §§ 6.1-6.2.

<sup>75</sup> *Id.* § 6.3.

<sup>76</sup> Investment Promotion Act, *supra* note 3, § 35(2).

<sup>77</sup> *Id.* § 35(3).

<sup>78</sup> *Id.* § 35(4).

<sup>79</sup> *Id.* § 35(3).

<sup>80</sup> *Id.* § 35(4).

<sup>81</sup> *Id.* § 37(1)-(3).

This power is limited, however, if the country has an adverse balance of payments that requires preservation of foreign currency. In such situations, the Bank of Thailand may temporarily restrict up to 20% per annum of the total remittance.<sup>82</sup>

#### 4. *BOI's Customs Powers*

Under the Act, the BOI is given the authority to order the Department of Customs to release all imported machinery, and raw or essential materials entitled to exemption or reduction of import duties, provided a bank guarantee is issued as a deposit against payment.<sup>83</sup> Additionally, the BOI's power includes the ability to amend conditions or exemptions from import duties on machinery, and to apply them retroactively to the date of import.<sup>84</sup> The Act further gives the BOI control over the mortgage, sale, transfer, lease, or use for other purpose or by other people of machinery receiving duty exemptions or reductions.<sup>85</sup>

#### 5. *Guarantees and Protections*

The Act provides those receiving promotional status with several guarantees. These include guarantees against: 1) nationalization;<sup>86</sup> 2) competition from the State;<sup>87</sup> 3) State monopolization of products or commodities similar to those of the promoted activity;<sup>88</sup> 3) imposition of price controls;<sup>89</sup> and 4) export bans on promoted products except when necessary for the economic and social development and the security of the country.<sup>90</sup>

Several measures also exist to protect the promoted industry against foreign dumping of imported goods in Thailand. The Act guarantees that the State will not allow the duty free importation of products similar to promoted products by government agencies, organizations, or enterprises.<sup>91</sup>

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<sup>82</sup> *Id.* § 37.

<sup>83</sup> *Id.* § 38.

<sup>84</sup> *Id.* § 39.

<sup>85</sup> *Id.* § 40-41.

<sup>86</sup> *Id.* § 43.

<sup>87</sup> *Id.* § 44.

<sup>88</sup> *Id.* § 45.

<sup>89</sup> *Id.* § 46.

<sup>90</sup> *Id.* § 47.

<sup>91</sup> *Id.* § 48.

Furthermore, the BOI may impose a special fee on similar imported goods at a rate of up to 50% for up to one year.<sup>92</sup> If the BOI decides this measure is inadequate for the protection of the activity, the Ministry of Commerce shall impose an import ban.<sup>93</sup>

Finally, when a promoted activity encounters a problem or obstacle, it may seek the BOI's assistance. The Act grants the Chairman the power to render assistance or order any related government agencies and organizations or state enterprises to assist with the problem.<sup>94</sup> The Chairman may also order such government entities to take remedial action where the structure, rates, or procedures for the collection of taxes and duties or other fees are an obstacle to a promoted investment.<sup>95</sup>

## B. *The Changing Policies and Roles of the BOI*

### 1. *Import Substitution to Export Promotion*

Since its establishment in 1959, the BOI's role has evolved as Thailand's industrialization policy has changed. In the 1960s, Thailand's investment promotion activities focused on the policy of import substitution.<sup>96</sup> The government used BOI incentives and tariff protection to encourage industrial investment in industries producing for the domestic market.<sup>97</sup> The BOI administered a package of incentives specifically targeting import-substituting industries.<sup>98</sup> Higher priority was given to large-scale, capital-intensive production.<sup>99</sup> As import taxes on raw materials, intermediate and finished products were high, BOI privileges were often determinative of whether a project was commercially feasible.<sup>100</sup> This import substitution policy supported by conservative fiscal policies resulted in soaring investment during the 1960s.<sup>101</sup>

The small size of Thailand's domestic market and a structural deterioration in the country's trade balance, however, exposed the limitations of

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92 *Id.* § 49.

93 *Id.* § 50.

94 *Id.* § 51.

95 *Id.* § 52.

96 SOCIAL AND ECONOMIC BACKGROUND, *supra* note 4, at 60-61.

97 *Id.*

98 CURRENT POLICY ISSUES, *supra* note 5, at 5.

99 SOCIAL AND ECONOMIC BACKGROUND, *supra* note 4, at 61.

100 *Diminished Power*, *supra* note 2, at 18.

101 CURRENT POLICY ISSUES, *supra* note 5, at 5-6.

the government's import substitution strategy.<sup>102</sup> Beginning in the late 1960s, there was a policy shift away from import substitution toward export promotion.<sup>103</sup> In 1972, the government amended the Industrial Promotion Act to give greater incentives to export industries.<sup>104</sup> Also included in the 1972 Act were provisions to decentralize industries to rural areas and to strengthen the BOI's exercise of power.<sup>105</sup> The Thai government continued to emphasize the export promotion and industrial decentralization policies throughout the 1970s and 1980s, codifying them in Sections 35 and 36 of the Investment Promotion Act of 1977.<sup>106</sup> Although this export-oriented policy contributed considerably to export growth, numerous factors, including the 1970s oil crisis and early 1980s world recession, limited the Thai economy's gains from this growth.<sup>107</sup>

## 2. *From Boom to Crisis*

The payoff came in the late 1980s as Thailand experienced an impressive economic boom, reaching double-digit economic growth rates for three consecutive years.<sup>108</sup> This growth resulted from increasing levels of investment. Private investment grew 25.5% in 1987, 33.6% in 1988, and 18.5% in 1989.<sup>109</sup> Foreign investment comprised a major portion of this investment.<sup>110</sup>

A significant portion of that investment received promotional privileges through the BOI. The total value of investment applications to the BOI increased from about \$2.5 billion (U.S. currency) in both 1985 and 1986 to \$8 billion in 1987, reaching \$20 billion in 1988.<sup>111</sup> During the period 1987-1990, both the number and value of applications for BOI promotion and the number and value of promotions granted remained at

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<sup>102</sup> *Id.* at 7.

<sup>103</sup> *Id.*

<sup>104</sup> *Id.*

<sup>105</sup> Wattanakul, *supra* note 20, at 312.

<sup>106</sup> SOCIAL AND ECONOMIC BACKGROUND, *supra* note 4, at 61.

<sup>107</sup> *Id.* at 23, 27.

<sup>108</sup> Overall annual gross domestic product growth rates were 13.2% in 1988, 12.0% in 1989, and 10.0% in 1990 respectively. INVESTMENT ENVIRONMENT, *supra* note 12, at 3.

<sup>109</sup> *Id.* at 7.

<sup>110</sup> In 1990, foreign countries with direct investments in Thailand included (figures in U.S. dollars): Japan, over \$1 billion; Hong Kong, \$607 million; Taiwan \$369 million; and the United States \$339 million. Japanese direct investment in Thailand in 1990 nearly doubled from the \$557 million invested in 1988. *Thailand-Country Marketing Plan*, MARKET REPORTS, Oct. 1991, available in LEXIS, Asiapc Library, Thai File [hereinafter *Thailand-Country Marketing Plan*].

<sup>111</sup> *Id.*

high levels.<sup>112</sup> Between 1988 and May 1991, over 50% of the applications involved export industries, those that export 80-100% of production.<sup>113</sup> In addition, a majority of BOI promoted projects had foreign involvement.<sup>114</sup> Thus, the BOI played a crucial role in Thailand's investment and export-led economic boom.

Rapid growth, however, leveled off in 1991. Global recession and tight capital markets resulted in decreasing levels of foreign direct investment.<sup>115</sup> Applications to the BOI dropped by 50% in 1991, mostly as a result of decreases in new investment from Japan, Hong Kong, and Taiwan,<sup>116</sup> and have remained relatively low up to the present.

It was during this period of decreasing investment that the future role of the BOI became questionable.<sup>117</sup> In November 1990, Prime Minister Chatichai Choonhavan threatened to dissolve the BOI.<sup>118</sup> He claimed that bureaucratic red tape, confusing regulations, and discriminatory treatment of investors had discouraged investment.<sup>119</sup> In addition, officials claimed that the tax privileges offered by the BOI lost the government more than 10 billion baht (approximately \$400 million) a year in revenue.<sup>120</sup> Following pressure from Thai business groups, however, Chatichai decided to diversify the BOI's activities to make it an industrial development body.<sup>121</sup>

### 3. *Political Uncertainty, Diminished Power, and New Roles*

In February 1991, a military coup toppled the Chatichai Government, bringing on a period of political instability which affected Thailand's commercial environment.<sup>122</sup> In an attempt to restore investor confidence in

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<sup>112</sup> See INVESTMENT ENVIRONMENT, *supra* note 12, at 7.

<sup>113</sup> *Diminished Power*, *supra* note 2, at 18.

<sup>114</sup> INVESTMENT ENVIRONMENT, *supra* note 12, at 7.

<sup>115</sup> *Id.*

<sup>116</sup> *Thailand-Country Marketing Plan*, Nov. 1992, *supra* note 110.

<sup>117</sup> See Salinya Mephokee, *Critical Times for Thai Board of Investment*, JAPAN ECON. J., Mar. 2, 1991, available in LEXIS, Asiapc Library, Allnws File. See also *Thailand Board of Investment: Growing Out of Controversy*, BUS. TIMES (Singapore), June 18, 1991, available in LEXIS, Asiapc Library, Allnws File [hereinafter *Growing Out of Controversy*].

<sup>118</sup> Mephokee, *supra* note 117. See also *Growing Out of Controversy*, *supra* note 117.

<sup>119</sup> Mephokee, *supra* note 117. See also *Growing Out of Controversy*, *supra* note 117.

<sup>120</sup> Mephokee, *supra* note 117. See also *Growing Out of Controversy*, *supra* note 117.

<sup>121</sup> *Growing Out of Controversy*, *supra* note 117. Subsequent to this decision, the BOI began focusing on additional activities such as promoting Thai industries abroad, developing local subcontractors, improving its service-oriented activities, and promoting rural development.

<sup>122</sup> *Thailand-Country Marketing Plan*, Nov. 1992, *supra* note 110. Following the coup, the military coalition that toppled the Chatichai government appointed Federation of Thai Industries President Anand

Thailand, interim Prime Minister Anand Panyarachun continued the process of economic liberalization started by the Chatichai government.<sup>123</sup> Over the next several years, the Thai government revamped its tax and tariff scheme and eliminated some trade-related investment measures to conform to its GATT obligations.<sup>124</sup> These changes in the Thai tax structure and government investment and trade policy seriously diminished the BOI's fiscal incentive granting powers.<sup>125</sup>

Rationalization of the import tax structure to liberalize trade weakened the BOI's tariff reductions which are considered one of the most important incentives.<sup>126</sup> Furthermore, the 1992 replacement of the business tax with a value-added tax nullified the BOI's power to grant business tax breaks.<sup>127</sup> Also, the government's removal of exchange controls effectively eliminated the BOI's power to grant promoted investors' repatriation privileges.<sup>128</sup> Finally, Thailand is now attractive to investors because of its high economic growth rate, irrespective of BOI incentives.<sup>129</sup>

At the same time, BOI began exploring several new investment promotion policies. In August 1991, the BOI launched an investment policy aimed at helping Thai industries establish themselves abroad.<sup>130</sup> It also began promoting local subcontracting by encouraging foreign firms to assist local subcontractors improve their services.<sup>131</sup> Furthermore, the BOI concentrated more on its service-oriented activities, working to improve its

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Panyarachun interim Prime Minister. In April, 1992, a newly elected coalition government dominated by the military appointed Suchinda Kraprayoon as Prime Minister. Suchinda, a former general and Supreme Commander of the Armed Forces, had not been an elected member of Parliament. In May, pro-democracy demonstrators clashed with the military, leaving 50 confirmed dead and several hundreds missing. Suchinda resigned on May 24, and on June 10, the King of Thailand appointed Anand once again as Prime Minister to an interim government which held power until the September 1992 elections. These events had a dampening effect on several sectors of the economy. *Id.*

<sup>123</sup> See *id.* See also INVESTMENT ENVIRONMENT, *supra* note 12, at 20.

<sup>124</sup> *Diminished Power*, *supra* note 2, at 19.

<sup>125</sup> *Id.*

<sup>126</sup> *Id.* In October 1990, and July 1991, the Thai government significantly reduced import duties on certain products. The government is also considering simplifying the overall duty system according to a tier system which would result in a substantial reduction in overall duty rates. See *Thailand-Country Marketing Plan*, Nov. 1992, *supra* note 110. These changes and their consequences for the BOI are discussed in more detail in Section III. See *infra* text accompanying notes 188-197.

<sup>127</sup> *Diminished Power*, *supra* note 2, at 19.

<sup>128</sup> *Id.*

<sup>129</sup> *Id.*

<sup>130</sup> COPING WITH THE STRAINS OF SUCCESS, *supra* note 7, at 27.

<sup>131</sup> *Thai Tariffs Tumble As BOI Works to Deregulate Industry*, BUS. ASIA, May 27, 1991, available in LEXIS, Asiapc Library, Allnws File [hereinafter *Thai Tariffs Tumble*]. See also COPING WITH THE STRAINS OF SUCCESS, *supra* note 7, at 27.

processing of applications, assistance to firms already granted promotion, and investment-related publications and databases.<sup>132</sup> Finally, the BOI continued its emphasis on promoting industry in Thailand's rural provinces.<sup>133</sup>

### C. *Economic Decentralization and the New Incentive Package*

#### 1. *Previous Decentralization Efforts*

Successive Thai governments since the mid-1970s attempted without success to decentralize industry away from Bangkok.<sup>134</sup> The policy of industrial decentralization first appeared in the third National Economic Development Plan (1972-1976) and has been included in the various economic Plans up to the present.<sup>135</sup> Accordingly, the 1972 Investment Promotion Act contained additional incentive provisions for firms locating upcountry.<sup>136</sup> The general incentives available to firms regardless of location, however, were generous enough such that these additional incentives had little impact.<sup>137</sup> The 1977 Investment Promotion Act continued these provisions in Section 35.<sup>138</sup> In 1987 and 1989, the BOI made policy changes to provide additional incentives for regional investors.<sup>139</sup> In addition, the BOI established regional offices to distribute investment promotion data as well as identify and recommend ways to overcome local barriers to investment.<sup>140</sup> Despite this apparent emphasis on decentralization, the policy met with little success as the BOI was not fully committed to it and used few concrete measures beyond additional fiscal incentives that were inherently biased against up-country firms.<sup>141</sup>

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<sup>132</sup> *Thai Tariffs Tumble*, *supra* note 131. See also *COPING WITH THE STRAINS OF SUCCESS*, *supra* note 7, at 27.

<sup>133</sup> *COPING WITH THE STRAINS OF SUCCESS*, *supra* note 7, at 27.

<sup>134</sup> See *SOCIAL AND ECONOMIC BACKGROUND*, *supra* note 4, at 45, 60-61, 92. See also *COPING WITH THE STRAINS OF SUCCESS*, *supra* note 7, 69-70.

<sup>135</sup> *SOCIAL AND ECONOMIC BACKGROUND*, *supra* note 4, at 61.

<sup>136</sup> *WORLD BANK, THAILAND: TOWARD A DEVELOPMENT STRATEGY OF FULL PARTICIPATION: A BASIC ECONOMIC REPORT 15 (1978)* [hereinafter *FULL PARTICIPATION*].

<sup>137</sup> *Id.*

<sup>138</sup> Investment Promotion Act, *supra* note 3, § 35.

<sup>139</sup> *COPING WITH THE STRAINS OF SUCCESS*, *supra* note 7, at 70.

<sup>140</sup> *Id.*

<sup>141</sup> *SOCIAL AND ECONOMIC BACKGROUND*, *supra* note 4, at 45, 60; Harry W. Richardson, *Towards A National Urban Development Strategy for Thailand*, in *REGIONAL DEVELOPMENT* 139, 157-158 (R.P. Misra ed., 1982).



## 2. *Current Economic Situation*

Despite an economic growth rate respectable by world standards, Thailand is currently experiencing a lull in investment and economic growth relative to its five-year economic boom.<sup>142</sup> With rapid growth and successive governmental administrations focusing mainly on short-term issues, numerous obstacles to long-term economic growth have materialized.<sup>143</sup> Thailand now faces problems of inadequate infrastructure, a shortage of skilled labor and energy, traffic and port congestion, environmental pollution, and a rising disparity in income distribution.<sup>144</sup> Faced with the transition from an agricultural to an industrial and service-based economy, the country must make difficult economic, legal, and social changes in order to sustain growth.<sup>145</sup>

## 3. *Policy of Economic Decentralization*

Thailand's rapid economic development failed to distribute investment and wealth equally within the country.<sup>146</sup> The vast majority of industrial development still centers around Bangkok and the Bangkok Metropolitan Region.<sup>147</sup> The Bangkok Metropolitan Region produces approximately one-half of the country's gross domestic product, and Bangkok's economic growth rate continues to outpace all regions of the country, except for the Eastern Seaboard.<sup>148</sup> The geographic distribution of the BOI's activities reflects this imbalance. Between 1960 and 1992,

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<sup>142</sup> *Focus*, *supra* note 13, at 38.

<sup>143</sup> *Id.*

<sup>144</sup> COPING WITH THE STRAINS OF SUCCESS, *supra* note 7, at 9.

<sup>145</sup> CURRENT POLICY ISSUES, *supra* note 5, at 11-13.

<sup>146</sup> *Focus*, *supra* note 13, at 38.

<sup>147</sup> COPING WITH THE STRAINS OF SUCCESS, *supra* note 7, at 69.

<sup>148</sup> *Thailand-Foreign Economic Trends*, MARKET REPORTS, June 16, 1993, available in LEXIS, Asiapc Library, Thai File. The high economic growth rate of the Eastern Seaboard is due largely to the Eastern Seaboard Development Plan. Begun in the early 1980s, the Eastern Seaboard Development plan is an integrated project to locate numerous chemical, fertilizer, gas, and petroleum plants in the region to the southeast of the capital. It also includes a new port at Laem Chabang. Originally intended to disperse economic activity away from Bangkok, the Plan has instead turned the Eastern Seaboard into an extension of greater Bangkok. See *Focus*, *supra* note 13, at 48. For a detailed discussion of the Eastern Seaboard Development Plan see THAI UNIVERSITY RESEARCH ASSOCIATION & CANADIAN INTERNATIONAL DEVELOPMENT AGENCY, THAILAND'S NATIONAL DEVELOPMENT: POLICY ISSUES AND CHALLENGES 104-134 (Suchart Prasith-rathsindt ed., 1987).

investment projects promoted in Zone 3 accounted for only 20% of the 3,400 projects nationwide.<sup>149</sup>

This concentration of industry and wealth in the country's capital has numerous negative consequences. While rural areas remain relatively poor, Bangkok is overcrowded and polluted, and infrastructure is strained.<sup>150</sup> Serious traffic congestion continually prevents timely transportation of goods from manufacturing sites to ports.<sup>151</sup> Rural people flock to Bangkok in search of work, exacerbating the problem.<sup>152</sup> Moreover, this rural/urban dichotomy is a source of political instability.<sup>153</sup>

Prime Minister Chuan Leekpai recognizes this economic inequality as one of the most serious problems facing Thailand. Consequently, when his Government took office in September 1992, it initiated a policy of decentralizing the economy to spread wealth from Bangkok to the rural areas.<sup>154</sup> This policy has several components. Infrastructure projects currently in progress include turning all main national arteries into four-lane highways, double-tracking the State Railroad Authority's network, and constructing more provincial airports.<sup>155</sup> The Government also set economic themes for each region of the country and formulated a plan to ensure cheap credit for rural areas.<sup>156</sup> Finally, the BOI, under the Prime Minister's direction, reformulated its policy, giving priority to the objective of decentralizing industry to the rural provinces.<sup>157</sup>

#### 4. *BOI's New Policies, Criteria, and Activities*

On April 9, 1993, the BOI issued two Announcements which together comprised its new policy. The first Announcement<sup>158</sup> states the policies and

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<sup>149</sup> *BOI Enroute Upcountry*, THAILAND INVESTMENT NEWS UPDATE, Jan.-Mar. 1993, at 8 [hereinafter *BOI Enroute Upcountry*].

<sup>150</sup> COPING WITH THE STRAINS OF SUCCESS, *supra* note 7, at 69.

<sup>151</sup> STEVEN SCHLOSSSTEIN, ASIA'S NEW LITTLE DRAGONS 144-146 (1991).

<sup>152</sup> *Focus*, *supra* note 13, at 42.

<sup>153</sup> *Id.* at 46. Thai political parties have largely catered to the interests of the Bangkok elite due to the concentration of wealth and power in the capital. In the process, they have failed to develop strong ties with the rural electorate. As the majority of the country's population lives in rural areas, such a visible concentration of power in Bangkok risks alienating the rural poor. See SCHLOSSSTEIN, *supra* note 151, at 181.

<sup>154</sup> *Distribution of Growth*, *supra* note 16, at 1. See also *Focus*, *supra* note 13, at 38, 46-48.

<sup>155</sup> *Distribution of Growth*, *supra* note 16, at 6. *Focus*, *supra* note 13, at 48.

<sup>156</sup> *Distribution of Growth*, *supra* note 16, at 5. *Focus*, *supra* note 13, at 48.

<sup>157</sup> *BOI Enroute Upcountry*, *supra* note 149, at 8. *Focus*, *supra* note 13, at 48.

<sup>158</sup> ANNOUNCEMENT NO. 1, *supra* note 17.

criteria for investment promotion and the second<sup>159</sup> contains the new list of activities eligible for investment promotion. While maintaining some export promotion provisions, these Announcements contain a significant strengthening of incentives for Zone 3 investment,<sup>160</sup> representing the policy shift toward industrial decentralization.

*a. Policies and criteria for investment promotion*

The BOI has relaxed its foreign ownership criteria for manufacturing projects locating in Zone 3, the Investment Promotion Zone.<sup>161</sup> Where production is primarily for the domestic market, Thai nationals must own at least 51% of the registered capital, except for projects located in Zone 3 which are considered by the BOI on a case-by-case basis.<sup>162</sup> The other exception to the 51% rule states that where at least 50% of total sales is for export, a majority of foreign ownership is allowed. Furthermore, where 80% of sales is for export, full foreign ownership is permissible.<sup>163</sup> The foreign ownership requirements for transportation systems, public utilities, environmental conservation and restoration, and direct involvement in technological development, however, are established by the responsible ministries.<sup>164</sup>

The incentives for new projects locating in Zone 3 have been significantly upgraded. The former 50% reduction of import duty on machinery is now a complete exemption.<sup>165</sup> The corporate income tax holiday is now eight years instead of six.<sup>166</sup> The BOI retains the exemption of import duty on raw or essential materials used in export products for a period of five years for projects exporting at least 30% of sales.<sup>167</sup> Newly added, however, is a five-year 75% reduction of import duty on raw and essential

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<sup>159</sup> ANNOUNCEMENT NO. 2, *supra* note 47.

<sup>160</sup> Zone 3, currently comprised of 57 rural provinces, is the designated Investment Promotion Zone. Section 35 of the Investment Promotion Act authorizes the BOI to grant additional incentives to projects locating in the Investment Promotion Zone. *See supra* text accompanying notes 72-80.

<sup>161</sup> Prior to Announcement No. 1/1993, the BOI did not link foreign ownership limits to project location. *See* OFFICE OF THE BOARD OF INVESTMENT, A GUIDE TO THE BOARD OF INVESTMENT 8-9 (1993) [hereinafter GUIDE]. For a description of the BOI's policies prior to Announcement No. 1/1993, *see id.* at 8-10.

<sup>162</sup> ANNOUNCEMENT NO. 1, *supra* note 17, § 4.2.

<sup>163</sup> *Id.* § 4.3.

<sup>164</sup> *Id.* § 4.4.

<sup>165</sup> *Id.* § 6.3.1.

<sup>166</sup> *Id.* § 6.3.2.

<sup>167</sup> *Id.* § 6.3.3.

materials used in production for domestic sales.<sup>168</sup> The BOI can also grant the special privileges enumerated under Section 35 of the Investment Promotion Act.<sup>169</sup>

In Announcement No. 1, the BOI identifies five priority areas for projects: 1) basic transportation systems; 2) public utilities; 3) environmental protection and/or restoration; 4) direct involvement in technological development; and 5) basic industries.<sup>170</sup> Each of these types of projects receive special privileges. They receive a corporate income tax exemption for eight years regardless of location.<sup>171</sup> Machinery imported for these projects in Zones 1 and 2 receives a 50% reduction on import duty if the machinery is subject to an import duty of at least 10%.<sup>172</sup> For projects in Zone 3, import duties on machinery are fully exempted.<sup>173</sup>

Included in the Announcement is a new policy for relocating existing industries from Zone 1 to Zone 2, or from Zones 1 or 2 to Zone 3.<sup>174</sup> Projects required by the Ministry of Interior to relocate for environmental reasons must relocate to an industrial estate or promoted industrial zone.<sup>175</sup> Other types of operations must have at least 100 employees to be eligible.<sup>176</sup> Relocating operations receive the standard non-tax privileges.<sup>177</sup> Except for activities not eligible for corporate income tax exemptions, factories relocating to Zone 2 receive an exemption of corporate income tax for three years or seven years if they relocate to industrial estates or promoted industrial zones.<sup>178</sup> Those operations relocating to Zone 3 receive the same tax incen-

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<sup>168</sup> *Id.* § 6.3.4.

<sup>169</sup> *Id.* § 6.3.5. See Investment Promotion Act, *supra* note 3, § 35. See *supra* text accompanying notes 72-80.

<sup>170</sup> ANNOUNCEMENT NO. 1, *supra* note 17, § 7.1.

<sup>171</sup> *Id.* § 7.2.1.

<sup>172</sup> *Id.* § 7.2.2.

<sup>173</sup> *Id.* § 7.2.3.

<sup>174</sup> *Id.* § 8.1.

<sup>175</sup> *Id.* § 8.3.1.1. Industrial estates are specially designated areas which provide infrastructure and utilities necessary for industrial operations. Initially they were established and administered through the Industrial Estate Authority of Thailand. Now there are nearly 20 privately run industrial estates in the country and two run by the government. See INVESTMENT ENVIRONMENT, *supra* note 12, at 28. See also *Investing in Thailand, Part II: Taxes, Intellectual Property, Capital Markets, Employment, and Other Policies and Practices*, E. ASIAN EXECUTIVE REP., Dec. 15, 1992, at 8, 17 [hereinafter *Investing in Thailand II*]. Promoted industrial zones refer generally to any area in which the government promotes industrial activity through special incentives. These include the BOI's Zone 3 as well as special export processing zones.

<sup>176</sup> ANNOUNCEMENT NO. 1, *supra* note 17, § 8.3.2.1.

<sup>177</sup> *Id.* § 8.4, at 6. The standard non-tax privileges include the guarantees and protections provided by the Investment Promotion Act as well as the easing of immigration, land ownership, and capital repatriation restrictions. See *supra* text accompanying notes 56-60, 81-82, 86-95.

<sup>178</sup> *Id.* § 8.4.1, at 6.

tives as promoted activities in Zone 3 with the exception of the import duty exemptions and reductions.<sup>179</sup>

*b. Activities eligible for investment promotion*

Using its authority under Section 16 of the Investment Promotion Act of 1977, the BOI abolished the old categories of investment and introduced a new categorization system.<sup>180</sup> The BOI designed the new system to be in line with "the Thailand Standard Industrial Classification System,<sup>181</sup> national economic and social development goals, and international trade and investment agreements...."<sup>182</sup> The new investment categories are: 1) agriculture and agricultural products; 2) minerals, metals, and ceramics; 3) light industry; 4) manufacture of metal products, machinery, and transport equipment; 5) electronics and electrical industry; 6) chemical industry, paper, and plastics; and 7) services and public utilities.<sup>183</sup> Under each broad category are specific activities eligible for promotion along with any conditions tied to promoted status.<sup>184</sup>

The new list of activities gives great emphasis to the redistribution of industries to the provinces, representing a marked shift from the previous list's export promotion focus.<sup>185</sup> Of the 127 specific types of activities in categories 1 through 6, fifty-eight will be promoted only on the condition that they be located in Zone 3.<sup>186</sup> Noticeably absent are the numerous export requirements of the previous list.

The Services and Utilities category<sup>187</sup> contains no such location requirements. Its activities include utilities, industrial support services, and infrastructure projects which are needed throughout the country. Most noticeable for infrastructure and utilities investments is the requirement that the project must be approved by the concerned government agencies.

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<sup>179</sup> *Id.* § 8.4.2, at 6.

<sup>180</sup> ANNOUNCEMENT NO. 2, *supra* note 47, at 1.

<sup>181</sup> The Thailand Standard Industrial Classification System is the system used by the Ministry of Industry.

<sup>182</sup> ANNOUNCEMENT NO. 2, *supra* note 47, at 1.

<sup>183</sup> *Id.* at 2.

<sup>184</sup> For a detailed list of specific activities under each category and any conditions relevant to those activities, see *id.* at 3-15.

<sup>185</sup> See GUIDE, *supra* note 161, at 23-37. This section of the pamphlet describes the previous list of activities eligible for promotion.

<sup>186</sup> ANNOUNCEMENT NO. 2, *supra* note 47, at 3-10.

<sup>187</sup> *Id.* at 10-15.

### III. ANALYSIS

The BOI has a key role in the Thai Government's policy of economic decentralization, dispersing industrial investment into the country's rural provinces. It is unlikely, however, that the BOI's new incentive package or any incentive package the BOI has power to grant under the Investment Promotion Act will be able to achieve the policy's goals. The power of the BOI and its fiscal incentives have been diminished by liberalization of the country's tax and trade policies. Yet with this diminished power it must lure investment into rural areas which have significant barriers to investment, namely poor infrastructure and shortages of skilled labor. Moreover, the general problematic nature and limitations of fiscal incentives make them an undesirable method of luring investment and achieving broader social goals. Thus, the BOI currently has neither the power nor types of incentives necessary to channel significant amounts of investment away from Bangkok and further the goals of the decentralization policy.

#### A. *The BOI's Diminished Power*

The most advantageous benefits of BOI-promoted status have been the tax benefits.<sup>188</sup> Yet the recent changes in the Thai tax structure and government investment and trade policy have significantly reduced the importance and effectiveness of these incentives.<sup>189</sup> These changes, along with certain drawbacks to receiving BOI incentives, make promoted status less desirable.<sup>190</sup>

##### 1. *Trade Liberalization*

In October 1990, the Government reduced import duties on most machinery items from 20-40% to a uniform rate of 5%. It is now finalizing plans to lower import taxes on raw materials and intermediate and finished goods. The import tax structure will also be simplified from more than

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<sup>188</sup> *Investing in Thailand I*, *supra* note 34, at 21.

<sup>189</sup> *Thai Tariffs Tumble*, *supra* note 131. See also INVESTMENT ENVIRONMENT, *supra* note 12, at 21. See also Chad Leechor & Jack Mintz, *Taxation of International Income by a Capital-Importing Country: The Perspective of Thailand*, in TAX POLICY IN DEVELOPING COUNTRIES 100, 101 (Javad Khalilzadeh-Shirazi and Anwar Shah, eds., The World Bank, 1991).

<sup>190</sup> *Diminished Power*, *supra* note 2, at 19.

thirty categories to six. These changes in the import structure to liberalize trade have effectively abolished one of the BOI's most important investment promotion tools: tariff reductions.<sup>191</sup>

## 2. *Value-Added Tax*

In January 1992, a 7% value-added tax (VAT) replaced the multi-tiered business tax.<sup>192</sup> Previously, the BOI had the power to grant exemptions and reductions in the business tax, but the 1991 amendments to the Investment Promotion Act nullified that power. The Investment Promotion Act does not delegate to the BOI an analogous power to grant exemptions and reductions to the VAT.<sup>193</sup>

## 3. *Liberalization of Foreign Exchange Controls*

The BOI's power to facilitate repatriation of capital under Section 37 of the Investment Promotion Act is now useless.<sup>194</sup> This power was significant under the previous scheme of highly regulated capital transfers.<sup>195</sup> In April 1991, however, the Bank of Thailand eliminated almost all foreign exchange controls. It removed most restrictions on the amount of foreign exchange and Thai currency that can be brought into the country.<sup>196</sup> Investment funds, dividends and profits, as well as loan repayments, including interest, may now be freely repatriated.<sup>197</sup>

## 4. *Drawbacks to Promoted Status*

With the diminished value of the BOI's incentive package, investors will be increasingly less inclined to seek promoted status, considering certain drawbacks to such status.<sup>198</sup> First, the BOI requires disclosure of

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<sup>191</sup> CURRENT POLICY ISSUES, *supra* note 5, at 29. Such reductions are generally one of the most attractive fiscal benefits to investors. George E. Lent, *Tax Incentives in Developing Countries*, in READINGS ON TAXATION IN DEVELOPING COUNTRIES 363, 370-371 (Richard M. Bird & Oliver Oldman eds., 3rd ed. 1975).

<sup>192</sup> INVESTMENT ENVIRONMENT, *supra* note 12, at 20.

<sup>193</sup> *Diminished Power*, *supra* note 2, at 19.

<sup>194</sup> *Id.*

<sup>195</sup> *Id.*

<sup>196</sup> COPING WITH THE STRAINS OF SUCCESS, *supra* note 7, at 17.

<sup>197</sup> *Id.*

<sup>198</sup> *Diminished Power*, *supra* note 2, at 19.

company trade information and closely monitors operations under Section 14 of the Investment Promotion Act.<sup>199</sup> Such provisions are adverse to the element of control which multinational enterprises value so highly.<sup>200</sup>

Second, BOI benefits may actually be a liability for certain producers.<sup>201</sup> Several U.S. manufacturers have charged that BOI incentives constitute a government subsidy to domestic producers, necessitating the application of countervailing duties in the U.S. to Thai products that receive them.<sup>202</sup> Indeed, in the mid-1980s, Thai garment manufacturers conceded BOI privileges in order to settle such a case.<sup>203</sup>

Third, bureaucratic uncertainties are another drawback to seeking promoted status. Several studies stress that tax incentives are disregarded by multinational enterprises because these incentives tend to be plagued by bureaucratic uncertainty.<sup>204</sup> Specifically, the BOI has been accused of having excessive bureaucratic red tape as well as confusing and discriminatory regulations.<sup>205</sup> In addition, the BOI's power is discretionary, and it is not required to grant all the privileges requested by eligible firms.<sup>206</sup> This broad discretion often results in ad hoc determinations not in line with the official policy.<sup>207</sup> Indeed, one company hoping to locate a plant in the rural South complained that the BOI would only grant it incentives on stricter conditions than those in the official policy.<sup>208</sup> Apparently, the BOI feared that similar existing companies in Bangkok would suffer from unfair competition.<sup>209</sup>

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199 *Id.*

200 Kojo Yelapaala, *In Search of Effective Policies for Foreign Direct Investment: Alternatives to Tax Incentive Policies*, 7 *NW. J. INT'L L. & BUS.* 208, 249-250 (1985) [hereinafter Yelapaala, *In Search of Effective Policies*].

201 *Diminished Power*, *supra* note 2, at 19.

202 *Id.*

203 *Id.*

204 Yelapaala, *In Search of Effective Policies*, *supra* note 200, at 208, 249-250.

205 Mephokee, *supra* note 117; *Growing Out of Controversy*, *supra* note 117.

206 *Investing in Thailand, Part I*, *supra* note 34, at 21.

207 THE WORLD BANK, THAILAND: MANAGING PUBLIC RESOURCES FOR STRUCTURAL ADJUSTMENT 188 (1984) [hereinafter MANAGING PUBLIC RESOURCES].

208 *Regional Development in Thailand: Slow Train Coming*, *BUS. ASIA*, Sept. 13, 1993, available in LEXIS, Asiapc Library, Allnws File [hereinafter *Slow Train Coming*].

209 *Id.*



### 5. *Corporate Income Tax Exemption*

In 1992, a new tax law unified corporate tax rates at 30% of net profits for all firms.<sup>210</sup> Prior to this measure, companies not listed on the Stock Exchange of Thailand paid a 35% marginal rate.<sup>211</sup> With a rate of 30%, the corporate income tax exemption is the only powerful fiscal policy tool the BOI has left in its incentive scheme.<sup>212</sup> Thus, the relative decline in the value of the BOI's important fiscal incentives has seriously compromised its ability to lure investment.

#### B. *Barriers to Upcountry Investment*

The development of industry in rural areas faces numerous obstacles over which the BOI has very little control. A shortage of skilled labor and inadequate infrastructure is often cited as major obstacles to future economic expansion.<sup>213</sup> These problems are substantial in the rural provinces comprising Zone 3.<sup>214</sup> The Government is aware that investment incentives alone will not be sufficient to lure investors away from Bangkok.<sup>215</sup> Thus it plans to upgrade and expand rural infrastructure over the next several years.<sup>216</sup> Considering the problems the Government has faced in coordinating and implementing previous large infrastructure projects, its ability to complete these new projects in a timely fashion is questionable. Furthermore, educational programs take years to implement,<sup>217</sup> and luring skilled workers involves the development of social infrastructure such as better schools, hospitals, and entertainment facilities.<sup>218</sup> With the diminished value of its incentives and lack of control over these barriers to investment, the BOI's ability to effectively implement its policy of industrial decentralization is limited.

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<sup>210</sup> *Investing in Thailand II*, *supra* note 175, at 8.

<sup>211</sup> *Id.* at 8, 16.

<sup>212</sup> *Diminished Power*, *supra* note 2, at 19.

<sup>213</sup> CURRENT POLICY ISSUES, *supra* note 5, at 11. See also SOCIAL AND ECONOMIC BACKGROUND, *supra* note 4, at 40-41.

<sup>214</sup> Moving "Up-Country" To Avoid Bangkok's Infrastructural Woes, BUS. ASIA, May 28, 1990, available in LEXIS, Asiapc Library, Allnws File [hereinafter *Moving "Up-Country"*].

<sup>215</sup> *Slow Train Coming*, *supra* note 208.

<sup>216</sup> *Id.*

<sup>217</sup> *Coping with Economic Success: Shortage of Skilled Workers Threatens Continued Growth*, E. ASIAN EXECUTIVE REP., Feb. 15, 1993, at 6 [hereinafter *Shortage of Skilled Workers*].

<sup>218</sup> *Slow Train Coming*, *supra* note 208.

### 1. *Inadequate Infrastructure*

One of the main barriers to developing industry in rural areas is insufficient infrastructure. In the areas comprising BOI's Zone 3, investors complain of insufficient roads, telecommunications, water supply, and electricity.<sup>219</sup> Industrial estates which provide necessary utilities are limited in Zone 3, and transport costs to and from Bangkok are high.<sup>220</sup> Aware of these problems, the Government plans to upgrade and expand its highways, rail networks, and airports in rural areas.

The Thai government's handling of previous infrastructure projects, however, raises serious doubts about its ability to follow through with rural infrastructure development. The first attempt at economic decentralization, the Eastern Seaboard Development Plan, began in 1981 in order to encourage economic activity to the region just southeast of Bangkok.<sup>221</sup> The project is only now beginning to show results and its infrastructure is still incomplete.<sup>222</sup> Its shortage of water and electricity, unreliable telecommunications, and clogged highways are deterrents to potential investors.<sup>223</sup> These problems are the result of the numerous government bodies failing to communicate and cooperate,<sup>224</sup> and of bureaucratic inefficiency.<sup>225</sup> The development of mass transit in Bangkok involves similar problems. The government awarded three concessions for elevated rail systems, each project under a different agency and in competition with the others.<sup>226</sup>

In addition, private consortia finance most big infrastructure projects, and the Thai Government's recent problems with a Bangkok expressway contract are likely to shake investor confidence.<sup>227</sup> Bangkok Expressway Co. Ltd., a construction consortium led by Kumagai of Japan, signed a thirty-year contract to build and operate an elevated expressway with the state-owned Expressway and Rapid Transit Authority in 1988.<sup>228</sup> After a

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219 *Moving "Up-Country"*, *supra* note 214.

220 *Focus*, *supra* note 13, at 48.

221 *See supra* note 148.

222 *Focus*, *supra* note 13, at 48.

223 Vichai Phuphatana, *Thai Industrial Complex Loses Steam: Infrastructure Delays Scare Off Foreign Investors*, THE NIKKEI WEEKLY, July 26, 1993, available in LEXIS, Asiapc Library, Allnws File.

224 *Focus*, *supra* note 13, at 48; BUSINESS BASICS, *supra* note 1, § 2.3, at 28.

225 Phuphatana, *supra* note 223.

226 *Focus*, *supra* note 13, at 46.

227 Paul Handley, *Road Less Traveled*, FAR EASTERN ECON. REV., Sept. 16, 1993, at 18 [hereinafter *Road Less Traveled*].

228 William Barnes & Victor Mallet, *Thais Make a Mess of Their Muddling-Motorway Contract Row Unsettles Investors*, FIN. TIMES, June 22, 1993, available in LEXIS, Asiapc Library, Allnws File.

dispute over the toll for the expressway stalled its opening, a senior minister forced it to open through a hastily issued court order.<sup>229</sup> This dispute has unsettled international bankers and will make it harder to finance planned infrastructure projects worth at least \$30 billion.<sup>230</sup>

## 2. *Shortage of Skilled Labor*

Thailand has a shortage of skilled labor including engineers, technicians, and managers.<sup>231</sup> This shortage is indicative of Thailand's relatively underdeveloped higher education, training, and research infrastructure.<sup>232</sup> The problem is likely to continue for the rest of this decade because the redirecting of educational resources requires considerable lead time.<sup>233</sup> The shortage is especially acute in provincial areas because the concentration of industry around Bangkok attracts most of the country's skilled labor to that region. Moreover, up-country areas lack the social amenities needed to lure skilled workers such as international schools, leisure and entertainment facilities, and good medical care.<sup>234</sup>

### C. *The Appropriateness of the BOI's Incentives*

Considering certain problems inherent in the nature of tax incentives, the BOI's heavy reliance on such incentives calls into question their appropriateness for successfully implementing the policy of industrial decentralization. In using tax incentives, policy makers assume that they are beneficial to the country and that they are causally related to investment.<sup>235</sup> Among other problems, however, tax incentives are costly, may be inequitable, and have been attacked as inefficient.<sup>236</sup> They may be a

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<sup>229</sup> *Road Less Traveled*, *supra* note 227, at 18.

<sup>230</sup> Barnes & Mallet, *supra* note 228.

<sup>231</sup> Paul Taylor, *Thailand: Stage Two Begins-Industrialization*, FIN. TIMES, Dec. 5, 1990, available in LEXIS, Asiapc Library, Allnws File [hereinafter *Stage II Begins*].

<sup>232</sup> *Id.*

<sup>233</sup> *Shortage of Skilled Workers*, *supra* note 217, at 6.

<sup>234</sup> *Slow Train Coming*, *supra* note 208.

<sup>235</sup> Kojo Yelapaala, *The Efficacy of Tax Incentives Within the Framework of the Neoclassical Theory of Foreign Direct Investment: A Legislative Policy Analysis*, 19 TEX. INT'L L.J. 365 (1984), at 369-370 [hereinafter Yelapaala, *Efficacy of Tax Incentives*].

<sup>236</sup> *See id.* *See also* Yelapaala, *In Search of Effective Policies*, *supra* note 200. *See also* Stanley S. Surrey, *Tax Incentives as a Device For Implementing Government Policy: A Comparison With Direct Government Expenditures*, 83 HARV. L. REV. 705 (1970).

marginal factor in determining investment decisions<sup>237</sup> and may not address the motivational concerns of multinational enterprises (MNEs).<sup>238</sup>

1. *Drawbacks to Tax Incentives*

a. *Costliness*

Tax incentives are costly. Because they are not transparent like direct government expenditures there is a tendency to think that money is not being spent.<sup>239</sup> Government funds, however, are effectively being spent because tax incentives reduce government revenue.<sup>240</sup> Unless they generate sufficient new revenue to pay their way, tax incentives keep tax rates higher by constricting the tax base.<sup>241</sup> Moreover, they are usually open-ended, placing no limit on the benefit a taxpayer can earn and making it difficult to limit how much is being spent.<sup>242</sup> Estimates of government revenue forgone on account of BOI tax exemptions between 1973 and 1981, indicated increasing costs.<sup>243</sup> More recently, officials claimed BOI privileges cost the government more than \$400 million a year in revenue.<sup>244</sup> In addition, relative to the amount of forgone revenue, studies show that Thailand's tax holidays have been inefficient investment promotion tools.<sup>245</sup> Considering developing countries' heightened need for revenue to provide needed government services, the revenue implications of tax incentives must be considered carefully.<sup>246</sup>

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<sup>237</sup> JACK HELLER & KENNETH M. KAUFFMAN, *TAX INCENTIVES FOR INDUSTRY IN LESS DEVELOPED COUNTRIES* 57 (1963) [hereinafter HELLER & KAUFFMAN].

<sup>238</sup> Yelapaala, *In Search of Effective Policies*, *supra* note 200.

<sup>239</sup> Surrey, *supra* note 236, at 725-26.

<sup>240</sup> HELLER & KAUFFMAN, *supra* note 237, at 78, 83.

<sup>241</sup> Surrey, *supra* note 236, at 725-26.

<sup>242</sup> *Id.* at 726. See also S.M.S. Shah & J.F.J. Toye, *Fiscal Incentives for Firms in Some Developing Countries: Survey and Critique*, in *TAXATION AND ECONOMIC DEVELOPMENT* 269, 288 (J.F.J. Toye ed., 1978).

<sup>243</sup> *MANAGING PUBLIC RESOURCES*, *supra* note 207, at 188. In 1981, BOI granted tax exemptions amounting to almost 13% of the government's cash deficit as compared with 5.5% in 1973. *Id.*

<sup>244</sup> *Growing Out of Controversy*, *supra* note 117.

<sup>245</sup> THE WORLD BANK, *THE EAST ASIAN MIRACLE* 231 (1993) [hereinafter EAST ASIAN MIRACLE].

<sup>246</sup> HELLER & KAUFFMAN, *supra* note 237, at 83-84.

*b. Inequities*

Tax incentives are often inequitable. They do not benefit companies equally since those with higher profits receive a substantially larger benefit.<sup>247</sup> Any loss of revenue from tax benefits shifts the burden of providing funding for government services to other sectors of society representing a transfer of income from taxpayers in general to investors.<sup>248</sup> Moreover, tax incentives in developing countries can create inequities by inducing a reverse subsidy to capital-rich developed countries that tax the foreign income of their companies.<sup>249</sup> They are also open to abuse insofar as income from related companies can be transferred to those currently receiving tax holidays.<sup>250</sup> Illustrating such inequities, one study of seven BOI-promoted projects found that three projects which were lucrative for investors actually had negative social returns.<sup>251</sup> Thailand's skewed internal income distribution and economic position relative to developed countries makes these inequities unacceptable.

*c. Bureaucratic inefficiencies*

Tax incentive programs are prone to bureaucratic inefficiencies.<sup>252</sup> Needing just as much bureaucracy to implement as do direct expenditures, they are nevertheless inefficient because they divide and complicate the administration of government programs.<sup>253</sup> The problem is one of coordination, in that the program is implemented by the administrative agency and the taxes controlled by a revenue service.<sup>254</sup> The BOI experiences coordination problems in that it must work with both the Internal Revenue Service and Customs Department in conjunction with its fiscal incentives. Indeed, according to the World Bank, the complex nature of Thailand's system of tax incentives and lack of bureaucratic capacity have hindered implementa-

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<sup>247</sup> *Id.* at 128-129.

<sup>248</sup> EAST ASIAN MIRACLE, *supra* note 245, at 231. See also Yelapaala, *Efficacy of Tax Incentives*, *supra* note 235, at 386.

<sup>249</sup> Yelapaala, *Efficacy of Tax Incentives*, *supra* note, at 387. For a detailed explanation this process see Leechor & Mintz, *supra* note 189.

<sup>250</sup> Leechor & Mintz, *supra* note 189, at 117. See also Mark Gersovitz, *The Effects of Domestic Taxes on Foreign Private Investment*, in THE THEORY OF TAXATION FOR DEVELOPING COUNTRIES 615, 633 (David Newbery & Nicholas Stern eds., The World Bank, 1987).

<sup>251</sup> EAST ASIAN MIRACLE, *supra* note 245, at 231.

<sup>252</sup> Surrey, *supra* note 236, at 728-730.

<sup>253</sup> *Id.* at 717, 728.

<sup>254</sup> *Id.* at 729.

tion.<sup>255</sup> Furthermore, the fact that tax incentives rarely require budgetary recognition contributes to lack of bureaucratic accountability.<sup>256</sup>

## 2. *The Limited Effectiveness of Fiscal Incentives*

These drawbacks to the use of tax incentives might be justified if they were in fact effective at luring investment. The evidence, however, suggests that tax incentives are either ineffective or marginally effective at luring investment. In general, they are only one of the many variables guiding the decision-making of investors.<sup>257</sup> In addition, they are ineffective at luring foreign direct investment (FDI) because they do not address multinational enterprises' motivational concerns.<sup>258</sup> Finally, the BOI's fiscal incentives are biased against the location of firms in rural areas of Thailand.<sup>259</sup>

### a. *General limitations*

Surveys and studies in both developing and developed countries have generally concluded that tax incentives are limited in their ability to attract investment.<sup>260</sup> The assumption behind tax incentives is that they are causally related to investment decisions.<sup>261</sup> Yet, tax incentives are only one of the numerous and mutually reinforcing variables that influences investment behavior.<sup>262</sup> Indeed, one study found that 70% of all BOI-promoted projects would have been undertaken even without incentives.<sup>263</sup> Other important factors such as political and monetary stability, the underlying tax system, infrastructure, labor costs and efficiency, and size of the domestic market play a considerable role in the decision-making process.<sup>264</sup> Thus, investment incentives cannot necessarily compensate for the business risks inherent in an unfavorable economic and political environment.<sup>265</sup>

<sup>255</sup> EAST ASIAN MIRACLE, *supra* note 245, at 228-230.

<sup>256</sup> HELLER & KAUFFMAN, *supra* note 237, at 84. *See also* Shah & Toye, *supra* note 242, at 288.

<sup>257</sup> HELLER & KAUFFMAN, *supra* note 237, at 57.

<sup>258</sup> *See generally* Yelapaala, *In Search of Effective Strategies*, *supra* note 200.

<sup>259</sup> *See* Richardson, *supra* note 141, at 157-158.

<sup>260</sup> Lent, *supra* note 191, at 370-371. *See also* Yelapaala, *Efficacy of Tax Incentives*, *supra* note 235, at 396-413. *See also* Shah & Toye, *supra* note 242, at 284.

<sup>261</sup> Yelapaala, *Efficacy of Tax Incentives*, *supra* note 235, at 369-370.

<sup>262</sup> HELLER & KAUFFMAN, *supra* note 237, at 57.

<sup>263</sup> EAST ASIAN MIRACLE, *supra* note 245, at 231.

<sup>264</sup> HELLER & KAUFFMAN, *supra* note 237, at 58, 63. *See also* Lent, *supra* note 191, at 369-370.

<sup>265</sup> Lent, *supra* note 191, at 370.

Statutes that directly link the amount of benefits an investor receives to such factors as project location exemplify this oversimplistic assumption of the causal connection between tax benefits and investor response.<sup>266</sup> The Investment Promotion Act contains exactly this type of provision in Section 35, providing additional benefits for projects in Investment Promotion Zones. Moreover, in using the maximum level of tax incentives provided for under Section 35, the BOI appears to base its new policy on the assumption that investors will decide to locate in rural areas based primarily on the increased value of the incentives. Yet such incentives play only an additional, marginal role in investment decisions in rural areas.<sup>267</sup> Infrastructure and key support services may be much more crucial.<sup>268</sup> Tax deductions, even for utility and transportation costs, are useless if they do not overcome the high costs of infrastructure deficiencies.

*b. Limitations with respect to FDI*

The causal relationship between tax incentives and foreign direct investment (FDI) appears to be doubtful. Tax incentive policies are based on the capital arbitrage theory of FDI.<sup>269</sup> Yet this theory is no longer considered an adequate explanation for the FDI process.<sup>270</sup> Contrary to the assumption that a MNE simply moves its capital from one country to another depending on differential rates of return, a parent MNE and its foreign affiliates are linked together in a complex system.<sup>271</sup> Investment decisions are more of a function of how each country fits into the MNE system than of a tax incentive scheme.<sup>272</sup> Tax incentives, being of a short term nature, cannot address such long term investment decisions.<sup>273</sup> Consequently, tax incentive policies based on the capital arbitrage theory

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<sup>266</sup> HELLER AND KAUFFMAN, *supra* note 137, at 57.

<sup>267</sup> COPING WITH THE STRAINS OF SUCCESS, *supra* note 7, at 70.

<sup>268</sup> *Id.*

<sup>269</sup> Yelapaala, *Efficacy of Tax Incentives*, *supra* note 235, at 371-372. "The theory states that capital will move from a capital rich country to capital scarce country in response to higher rates of return until such rates are equalized. The MNE as an exporter of international capital is in a sense simply an arbitrageur of capital. It pursues profits by moving equity capital from countries with low rates of return to countries with high rates of return. Thus, the profits made result from arbitrage activity." Yelapaala, *In Search of Effective Policies*, *supra* note 200, at 211 n.7. For a more extensive explanation, see R. CAVES, *MULTINATIONAL ENTERPRISE AND ECONOMIC ANALYSIS* 31-35 (1982).

<sup>270</sup> Yelapaala, *Efficacy of Tax Incentives*, *supra* note 235, at 371-377.

<sup>271</sup> Yelapaala, *In Search of Effective Policies*, *supra* note 200, at 218-219.

<sup>272</sup> *Id.* at 219.

<sup>273</sup> D.C.M. WILDE, *INVESTMENT IN SOUTH AND EAST ASIA* 10 (Committee For Economic Development Of Australia 1972).

are likely to be both misplaced and ineffective.<sup>274</sup> Indeed, a 1990 Bank of Thailand report supports this point, finding that of the top ten factors influencing foreign investors' decisions to invest in Thailand, BOI privileges ranked eighth.<sup>275</sup>

*c. Limitations with respect to rural investment*

Fiscal incentives are further limited in their ability to attract investment to rural areas in Thailand due to their inherent bias against such types of investment. The tax deduction incentives used by the BOI are of a short term nature, providing initial benefits to help offset startup costs.<sup>276</sup> The costs of setting up a new firm in rural Thailand, including high transport and utility rates as well as costs associated with infrastructure and labor shortages, mean that up-country firms usually take longer to generate net profits.<sup>277</sup> Tax incentives which provide a profit rebate thus discriminate against such firms.<sup>278</sup> In addition, the tariff waivers and reductions are of limited utility to the most common type of rural firm, agro-based industries, which tend to use domestic as opposed to imported inputs.<sup>279</sup> Thus, fiscal incentives are not generally an appropriate policy instrument for luring up-country investment in Thailand.

*D. Alternative Incentive Strategies*

Within the larger context of the Thai Government's policy of economic decentralization, the assumption is that increased investment in rural areas will lead to a more equitable distribution of income and opportunities. Yet the costly, inequitable, and ineffective nature of tax incentive schemes makes this assumption questionable. The critiques presented above suggest that alternative strategies might be more effective at achieving both the economic and social goals of the BOI's policy.

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<sup>274</sup> Yelapaala, *In Search of Effective Policies*, *supra* note 200, at 211.

<sup>275</sup> *Diminished Power*, *supra* note 2, at 19.

<sup>276</sup> Richardson, *supra* note 141, at 157. *See also* Gersovitz, *supra* note 250, at 632.

<sup>277</sup> Richardson, *supra* note 141, at 157-158.

<sup>278</sup> *Id.*

<sup>279</sup> *Id.* at 158.



### 1. *Direct Subsidies*

When compared to tax incentives with their numerous drawbacks, direct subsidies are generally superior as a means of achieving social goals.<sup>280</sup> Considering tax incentives' lack of transparency and accountability, administrative difficulties, and inherent inequities, much is lost when they are used.<sup>281</sup> The idea that businesses respond to tax credits but not other types of government incentives is illusory as there is evidence that they respond just as well to direct expenditures.<sup>282</sup> Furthermore, tax incentives can be restructured into direct expenditures.<sup>283</sup> For example, tax credits to employers for employee training could be structured as grants or contract payments to employers.<sup>284</sup> Thus direct government expenditures, such as grants, loans, interest subsidies, and loan guarantees appear to offer promise as more efficient, accountable, and equitable means of achieving social goals.

There are several areas where the BOI could use subsidies as opposed to tax incentives. Deductions for transportation and utility as well as installation and construction costs for Zone 3 projects under Section 35 of the Investment Promotion Act could easily be converted into subsidies. Considering rural infrastructure deficiencies, subsidies for local, project-specific infrastructure might be another policy option. Moreover, shortages of skilled labor suggest the possibility of subsidizing worker training for promoted projects.

### 2. *Worker Training Programs*

An alternative theory of MNE behavior critical of the capital arbitrage theory suggests the use of worker training programs as incentive measures. The intangible assets theory states that central to the MNE's motivation to engage in foreign operations is the possession of some proprietary knowledge or intangible assets.<sup>285</sup> Once developed, MNEs can

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<sup>280</sup> See Surrey, *supra* note 236. See also Gersovitz, *supra* note 250, at 632-33.

<sup>281</sup> Surrey, *supra* note 236, at 732. Gersovitz, *supra* note 250, at 632. See *supra* text accompanying notes 239-256.

<sup>282</sup> Surrey, *supra* note 236, at 733.

<sup>283</sup> *Id.* at 714.

<sup>284</sup> *Id.*

<sup>285</sup> Yelapaala, *In Search of Effective Policies*, *supra* note 200, at 220. For a detailed explanation of the intangible assets theory see *id.* at 220-233. See also Gruber, Mehta, & Verno, *The R & D Factor in International Trade and International Investment of United States Industries*, 75 POL. ECON. 20 (1967);

exploit such assets abroad with relatively minimal costs.<sup>286</sup> They choose FDI because it is most profitable relative to other alternatives and allows them to control the manufacturing process using their technology.<sup>287</sup> This theory thus suggests that an effective policy would be for Thailand to subsidize the training of skilled domestic workers, along with complementary policies such as improving the country's education system.<sup>288</sup>

There appears to be much evidence supporting the theoretical underpinnings and potential effectiveness of using worker training programs as an investment incentive. The efforts of Japanese MNEs to standardize their worker training programs worldwide suggests that they are indeed interested in training their workers in order to maintain control over their intangible assets.<sup>289</sup> Japanese companies, which provide the bulk of foreign investment in Thailand, might thus be responsive to training subsidies for their Thai workers. Moreover, several countries and their constituent states effectively use worker training subsidies as part of their incentive schemes. Singapore has used a worker training fund to upgrade the skills of its workers and attract significant amounts of investment since 1979.<sup>290</sup> Supporting their use in regional development, the Malaysian state of Terengganu uses worker training subsidies as part of an incentive scheme which has attracted significant amounts of investment.<sup>291</sup> In the United States, several southeastern states have been successful at luring FDI in their rural areas with incentive schemes that include subsidies for worker training.<sup>292</sup>

Johnson, *The Efficiency and Welfare Implications of the International Corporation*, in *THE INTERNATIONAL CORPORATION* 35 (C. Kindleberger ed., 1970).

<sup>286</sup> Yelapaala, *In Search of Effective Policies*, *supra* note 200, at 220.

<sup>287</sup> *Id.* at 225.

<sup>288</sup> *Id.* at 229, 233.

<sup>289</sup> See *Worker Skill Becomes Next Globalization Goal: Manufacturers Standardize Training Worldwide*, *THE NIKKEI WEEKLY*, Oct. 5, 1991, available in LEXIS, Asiapc Library, Allnws File.

<sup>290</sup> See *Singapore's Quality Carries a Price*, *BUS. ASIA*, Apr. 20, 1992, available in LEXIS, Asiapc Library, Allnws File. Both Malaysia and Indonesia have looked to Singapore as a model with respect to worker training programs. See *KL's, Jakarta's Skills Development Fund To Mimic That of Singapore*, *BUS. ASIA*, Sept. 17, 1990, available in LEXIS, Asiapc Library, Allnws File.

<sup>291</sup> Zarina Tahir, *Malaysia: 'Go and Get' Terengganu's New Marketing Concept*, *BUS. TIMES (Malaysia)*, Jan. 24, 1994, available in LEXIS, Asiapc Library, Allnws File.

<sup>292</sup> Several states have lured large investments by foreign automobile manufacturers. In 1988, Kentucky lured \$1.1 billion in investment from Toyota with an incentive package that included state and federal subsidies for worker training. See *Japan Comes to Kentucky: Toyota Gears Up To Open U.S. Factory In May*, *L.A. TIMES*, Apr. 7, 1988, at Part 4, 6. In 1993, BMW decided to build a plant in rural

In addition to their potential effectiveness at luring investment, worker training subsidies would provide Thailand with long-term, tangible benefits in the form of human capital. According to the World Bank, training and education were crucial factors in the economic success of eight Asian countries in the 1980s.<sup>293</sup> Indeed four of the more successful economies, Japan, South Korea, Taiwan, and Singapore, assist their high-tech companies with worker training subsidies.<sup>294</sup> Thus, alternative measures such as worker training which create conditions conducive to economic growth appear to be of more importance in developing countries than tax relief.<sup>295</sup>

### 3. *Ownership and Control of Operations*

Two additional theories of FDI lead to the conclusion that Thailand might use the issues of ownership and control of operations to induce foreign investment. The industrial organization theory states that MNEs derive their advantage from being in oligopolistic industries with differentiated products based on protected technology or some other firm-specific advantage.<sup>296</sup> Compared to options like licensing, FDI allows the firm to directly transfer and control these firm-specific advantages

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South Carolina, citing the state's superior technical education system and hospitable business climate as the two major factors in its decision. Frank Swoboda & Warren Brown, *Cutting Edge, Cutting Costs: A New Idea for Making Cars — and Cheap U.S. Labor — Bring BMW to South Carolina*, WASH. POST, July 18, 1993, at H1. Alabama attracted a \$300 million Mercedes-Benz assembly plant with an incentive package that included a state training program for workers. *Mercedes to Build Plant in Alabama*, WASH. TIMES, Sept. 30, 1993, at B7.

<sup>293</sup> EAST ASIAN MIRACLE, *supra* note 245, at 198-203.

<sup>294</sup> Paul Blustein, *Asia's Mixed Results on Industrial Policy: Virtues, Pitfalls Hold Lessons for U.S.*, WASH. POST, Mar. 7, 1993, at H1.

<sup>295</sup> HELLER & KAUFFMAN, *supra* note 237, at 63.

<sup>296</sup> Yelapaala, *In Search of Effective Policies*, *supra* note 200, at 234-235. Oligopolistic industries are those characterized by seller concentration. With few firms operating in a specific industry, product differentiation is an effective tool for developing and controlling market power as well as excluding competitors from both the domestic and foreign market. The size, financial resources, and marketing expertise of MNEs allow them to more easily bear the significant marketing and advertising costs associated with product differentiation. Furthermore, their marketing expertise gives them a comparative advantage over competitors. Finally, because of the legal protection afforded their industrial property rights in the form of brand names, trademarks, and patents, MNEs can limit the market access of firms without similar advantages. Consequently, MNEs seek monopoly profits abroad by exploiting their protected advantages in industries structurally similar to those in the domestic market. Thus, the industrial organization theory stresses the role of market structures in determining FDI. *Id.* at 236-237. For a detailed explanation of the industrial organization theory see *id.* at 234-253. See also JOHN DUNNING, INTERNATIONAL PRODUCTION AND THE MULTINATIONAL ENTERPRISE (1981).

abroad.<sup>297</sup> Rather than risking imperfections in the markets for leasing firm-specific advantages, MNEs reap higher rents by directly competing with host country firms.<sup>298</sup> Consequently, ownership and control is essential to MNEs' maintenance of their competitive advantages.

The internalization theory, on the other hand, stresses ownership and control based on the need for efficiency.<sup>299</sup> Distortions or imperfections in the external goods and factor markets such as intangible assets, human skills, knowledge, and semi-finished product markets motivate firms to internalize these markets.<sup>300</sup> Such internalization can be achieved through ownership and control of the MNE's foreign operations. Thus, despite differences in motivation, these two theories lead to the conclusion that using ownership and control as an inducement to FDI might be effective.<sup>301</sup>

Accordingly, allowing at least majority-owned and possibly wholly-owned MNE subsidiaries could play a role in attracting FDI to Thailand's rural areas because these situations would give MNEs both legal and effective control over their operations.<sup>302</sup> The BOI recognizes the potential effectiveness of this policy tool as it directly links ownership to export of production.<sup>303</sup> Yet, the linkage is uncertain with respect to investment in rural areas as the BOI makes ownership decisions on Zone 3 projects on a case-by-case basis.<sup>304</sup>

Since allowing companies effective control of operations appears to be important, limiting government agencies' monitoring or controlling of MNE operations might also be an appropriate policy.<sup>305</sup> Hence the BOI's power to inspect promoted projects and require disclosure of company information should be limited.<sup>306</sup> Where there are concerns about foreign economic dependence, appropriate incentive strategies include the use of fade-out, production sharing, service, or management contracts.<sup>307</sup> For example, a fade-out policy whereby the MNE is allowed to control the

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297 ROBERT GILPIN, *THE POLITICAL ECONOMY OF INTERNATIONAL RELATIONS* 237-238 (1987).

298 *Id.* at 237.

299 Yelapaala, *In Search of Effective Policies*, *supra* note 200, at 254. For a detailed explanation of the internalization theory see *id.* at 254-262. See also Mark Casson, *Internalization Theory and Beyond*, in *NEW DIRECTIONS IN INTERNATIONAL BUSINESS* 4 (Peter Buckley ed., 1992).

300 Yelapaala, *In Search of Effective Policies*, *supra* note 200, at 254-55.

301 *Id.* at 249, 262.

302 *Id.* at 243.

303 See ANNOUNCEMENT NO. 1, *supra* note 17, § 4.3.

304 See *id.* § 4.2.

305 Yelapaala, *In Search of Effective Policies*, *supra* note 200, at 248-50, 261-63.

306 See Investment Promotion Act, *supra* note 3, § 14.

307 Yelapaala, *In Search of Effective Policies*, *supra* note 200, at 249.

operations, but phases out this control to local management would satisfy both the MNE's desire for control and the Thai government's fear of foreign economic dependence.<sup>308</sup>

#### 4. *Bureaucratic Decentralization and Automatic Incentives*

A more decentralized approach might be more effective with respect to the ultimate goal of equalizing income distribution. The basic needs theory of development argues that the traditional, macro-economic approach to development using increased investment is ineffective.<sup>309</sup> Increased investment favors those who can use capital most efficiently, namely those already well off.<sup>310</sup> As the goal of development is seen to be satisfying individual human needs, government policy initially focuses on analyzing the specific needs of economically and socially disadvantaged groups.<sup>311</sup> It should result in a decentralized planning process based upon local participation in addressing local problems.<sup>312</sup> In fact, regional development programs require decentralization of government bureaucracy and economic decision-making, especially in the form of stronger regional representation of key industry-related agencies.<sup>313</sup> The flexibility inherent in such decentralized decision-making, however, appears to conflict with the need for the more automatic granting of incentives.

Investment promotion legislation which grants its enabling agency excessive administrative control serves as a deterrent to seeking promotion no matter how attractive the promised incentives.<sup>314</sup> Broad discretionary power tends to lead to ad hoc determinations with regard to privileges conferred.<sup>315</sup> Thus, effective investment promotion legislation should contain provisions for the automatic granting of incentives based on sectoral guidelines rather than a case by case discretionary method.<sup>316</sup>

These apparently conflicting needs for decentralized yet less discretionary decision-making could be reconciled with respect to the BOI.

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308 *Id.* at 249-250.

309 P.T. Muchlinski, "Basic Needs" Theory and "Development Law," in INTERNATIONAL LAW OF DEVELOPMENT: COMPARATIVE PERSPECTIVES 237, 238-239 (Fancis Snyder & Peter Slinn eds., 1987).

310 *Id.* at 239.

311 *Id.* at 238.

312 *Id.*

313 COPING WITH THE STRAINS OF SUCCESS, *supra* note 7, at 70-71.

314 WILDE, *supra* note 273, at 5.

315 MANAGING PUBLIC RESOURCES, *supra* note 207, at 188.

316 *Id.* at 189.

Regional BOI offices could be granted the power to set specific policy guidelines for promoted projects in their respective locales. For example, they would determine the types of industry eligible for promotion as well as other specific criteria relating to eligibility such as minimum capital investment required. Projects that meet these locally designated criteria would automatically be granted a package of incentives. Regional offices might also have discretion over the types of incentives granted. Infrastructure-oriented incentives would be especially suitable for such decentralized decision-making as regional offices would be more familiar with local infrastructure deficiencies.

*E. Policy Recommendations: A New Incentive Scheme*

The focus of the BOI has changed significantly since the Investment Promotion Act of 1977. Diverging from its role in export promotion, the BOI now has a crucial role in the Thai Government's policy of decentralizing the economy. Considering the current economic and political situation in Thailand, however, the Investment Promotion Act does not delegate sufficient power to the BOI to carry out the economic and social objectives of the policy. Uneven geographical development is one of the most pressing problems facing Thailand. Regional development is no longer just an equity issue; it is necessary for maintaining Thailand's economic growth.<sup>317</sup> The Government realizes that the BOI, an agency with over thirty years of investment promotion experience, can play an important role in attacking this problem. It should now give the BOI the power and appropriate incentives to effect the policy of decentralization by amending the Investment Promotion Act.

The purpose of investment incentives and guarantees is to overcome both natural and artificial barriers to investment.<sup>318</sup> Natural barriers relate to the lack of work force skills and undeveloped industrial support services and facilities.<sup>319</sup> Artificial barriers include distorted tariff and exchange control structures and apparent economic and financial instabilities.<sup>320</sup> The BOI's fiscal-based incentive scheme was designed primarily to compensate

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<sup>317</sup> COPING WITH THE STRAINS OF SUCCESS, *supra* note 7, at 69.

<sup>318</sup> THOMAS ALLEN, POLICIES OF ASEAN COUNTRIES TOWARD DIRECT FOREIGN INVESTMENT (The Asia Society pub., paper presented at the Southeast Asia Development Advisory Group Ad Hoc Seminar, Dec. 12-14, 1973), at 48.

<sup>319</sup> *Id.*

<sup>320</sup> *Id.*

for Thailand's high tariffs and other trade-distorting policies. Yet the Thai Government has made significant progress toward eliminating such artificial barriers through its trade liberalization and tax reform measures. As such it has undermined the *raison d'être* of the BOI's incentives and diminished their relative value. Consequently, the Government can now afford to eliminate the BOI's costly and inefficient tax incentives. As many natural barriers remain, however, there is still a need for incentives to lure investment.

Considering the significant barriers to investment in rural Thailand, the BOI needs a new, more appropriate incentive scheme. Incentives should be designed to overcome the types of impediments specific to rural areas such as infrastructure and skilled labor deficiencies. Subsidies for skilled labor training and infrastructure development will do much toward eliminating these barriers while achieving the social goals of the decentralization policy. Moreover, allowing foreign investors greater ownership and control over their operations would significantly enhance an incentive scheme's attractiveness. Finally, decentralized administration would lead to more appropriate projects and incentive packages while the more automatic granting of incentives would ease investors' concerns about bureaucratic uncertainty.

### *1. Elimination of Tax Incentives*

The fiscal incentives authorized by Chapters III and IV of the Investment Promotion Act, including all corporate income tax exemptions and deductions as well as import duty reductions and exemptions, should be eliminated. Their potential inequities and bureaucratic inefficiencies along with their costliness and marginal effectiveness make them an undesirable policy instrument. Furthermore, Thailand's liberalized tax and tariff scheme seriously compromises the lure of the BOI's fiscal incentives. Given a corporate tax rate of thirty percent, one could argue that income tax exemptions should be excepted. Yet the aforementioned drawbacks to tax incentives counsel against keeping any such measures. The money saved by eliminating these incentives might be better spent by using direct expenditures to remove disincentives to investment such as infrastructure and skilled labor shortages.

## 2. *Worker Training Subsidies*

Providing subsidies to promoted projects for the purpose of training skilled labor appears to be a more desirable policy alternative. The budget for such subsidies could come from resources reallocated from the elimination of tax-based incentives. Worker training subsidies would serve to ease investors' fears about shortages of skilled labor while providing companies with a work force whose skills are tailored specifically to their needs. Moreover, by augmenting the overall skill level of Thailand's work force, this type of incentive would provide a more sound basis for future long-term economic growth. Individual workers would also benefit by receiving valuable skills which would increase their income earning potential, thereby contributing to the income distribution goals of the decentralization policy. With such an incentive tool available, the BOI might also be able to provide guarantees of skilled workers as well. Thus, the BOI should be empowered to grant direct subsidies to promoted projects for the purpose of technical training for employees.

## 3. *Infrastructure Powers and Subsidies*

Infrastructure development is another area where the BOI should be given more power. The availability of adequate infrastructure is essential to support the development of industry in rural areas. With little power over this important variable, the success of the BOI's industrial decentralization policy may be jeopardized by the type of bureaucratic gridlock that has hampered infrastructure projects in and around Bangkok. Thus, the BOI should be given more power over the decision-making and implementation process with regard to infrastructure projects in rural areas to avoid such a potential scenario.

Such a power might be specifically manifested at two different levels. At the national level, the BOI could be given a greater participatory role in upcountry infrastructure planning and development. Although the BOI may recommend provincial infrastructure projects to the Cabinet,<sup>321</sup> it has no concrete power over this important investment input. The Investment Promotion Act gives the BOI power over other agencies such as the Customs Department and Ministry of Commerce with regard to incentives.

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<sup>321</sup> *Thai Agency's Role in Infrastructure Budget*, BUS. TIMES (Singapore), Dec. 3, 1991, available in LEXIS, Asiapc Library, Allnws File.



Amendments to the Act should include the granting of similar powers with respect to infrastructure development in rural areas which directly affects promoted projects. Locally, the BOI might be authorized to grant direct subsidies for the development of project-specific, small-scale infrastructure and be allocated a budget for that purpose. Because of the potential time delays associated with infrastructure development, the BOI should also have the power to grant firms locating in Zone 3 immediate subsidies for transportation, electricity, and water supply costs.

#### 4. *Ownership and Control Incentives*

The industrial organization and internalization theories suggest that the ownership and control of operations could be effectively used by the BOI as an investment incentive. Many investors find it less worthwhile to seek BOI-promoted status because the Board requires disclosure of company trade information. Furthermore, the foreign ownership limits on promoted projects serve as a disincentive to many multinational enterprises which highly value control over their technology and operations. Consequently, the Act should authorize the BOI to give promotions without the requirement of rigid operational monitoring, and to relax foreign ownership laws for promoted projects.

Specifically, Section 14 of the Act which authorizes BOI officials to inspect the premises of projects and examine any document relating to the activity "as may be necessary," should be amended.<sup>322</sup> Changes should include specific limitations on the types of information and conditions under which it must be disclosed. Furthermore, the Act should delineate stricter conditions with respect to inspection of premises and notification thereof.

As the BOI already uses foreign ownership requirements, it should focus on making its joint venture criteria more lenient with respect to rural investment. Specifically, rather than considering Zone 3 foreign ownership on a case-by-case basis as Announcement No. 1 stipulates, majority and possibly full foreign ownership should be automatically granted to investors in rural areas. The previous use of such an incentive in the case of export promotion gives an indication of this policy instrument's potential for

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<sup>322</sup> See Investment Promotion Act, *supra* note 3, § 14.

success.<sup>323</sup> Government fears about foreign economic domination and investor fears about misuse of technology could be quelled through fade-out policies gradually transferring more control to Thai investors.

### 5. *Administrative Reforms*

Administrative decentralization would also be beneficial to the successful implementation of the policy of economic decentralization. A more localized approach to industrial development will have a greater chance of achieving the social goals of the economic decentralization policy. The BOI already has four regional offices in the North, the Northeast, the South, and the Eastern Seaboard. As they are more familiar with local economic conditions, regional offices are better able to determine what types of industry, infrastructure, and worker training programs are appropriate for the area. Thus, more such regional offices should be established, and they should be delegated greater responsibility for determining project eligibility criteria and appropriate incentives.

The Act should also provide for less discretionary and more automatic granting of incentives. It might thus stipulate that once a project meets the policy criteria established by the regional BOI office, a set incentive package would be granted. Any variations in the level of incentives granted would be directly linked to clearly defined differences between types of projects. Such provisions would make the granting of privileges more consistent with policy objectives. Furthermore, they would ease investor concerns about bureaucratic uncertainty by avoiding ad hoc decisions on incentives and allowing investors to more easily determine if their projects are eligible.

## IV. CONCLUSION

From a national macroeconomic perspective, Thailand's investment promotion through the Board of Investment is a tremendous success story. Since its inception in 1959, the BOI's role has evolved along with

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<sup>323</sup> The Investment Promotion Act gives the BOI the power to use foreign equity participation as one of the criteria for investment promotion. *Id.* § 20(2). The BOI's joint venture requirements for projects in export industries have been relatively lenient, allowing majority ownership where 50% of sales is for export and full ownership where the figure is 80%. See ANNOUNCEMENT NO. 1, *supra* note 17, § 4.3. See also GUIDE, *supra* note 161, at 8-9. The government's export promotion policy contributed significantly to Thailand's economic boom in the late 1980s. See *supra* text accompanying notes 103-114.

Thailand's overall development strategy. As the government moved from import substitution to export promotion, the BOI adjusted its policies accordingly. Most indicative of this success was the BOI's role in the export-driven economic expansion of the late 1980s.

Despite this success, however, the BOI has failed to promote significant amounts of investment in rural areas. The fiscal-based incentive scheme of the Investment Promotion Act was conceived with the notion of promoting the country's overall economic growth, and it served as a useful counterbalance to strategically designed high tariff and tax rates. Absent in the Act are the types of incentives needed to overcome the significant barriers to upcountry investment. Thus, for the BOI to play an effective role in the Government's policy of economic decentralization, a revamped Investment Promotion Act is needed.

This new approach must work from the bottom up, designing incentives which are geared to both the needs of its investors and the economic conditions of the rural areas. Such incentives must also be consistent with the Government's new emphasis on removing disincentives to investment as opposed to granting incentives to overcome barriers to investment. A new Investment Promotion Act amended along these lines would enable the BOI to play an important role in Thailand's transition from an agricultural to an industrial and service-based economy with a more equitable distribution, and ultimately greater amount, of wealth.