

ABSTRACT

Thesis Title : The Legal Obstacle Causing Uncertainty on Foreign
Investment in Thailand: Case Study on Nationalization
of Alien Business

Student's Name : Mr. Jongruk Ponsongcram

Degree Sought : Master of Laws

Academic Year : 2001

Advisory Committee :

1. Assoc. Prof. Dr. Poom Chokmoh Chairperson
2. Dr. Chanvitaya Suvarnapunya

The study of "the Legal Obstacle Causing Uncertainty on Foreign Investment in Thailand: Case Study on Nationalization of Alien Business" is carried out for the purpose of understanding the generality, relevant laws and legal obstacles relating to nationalization of alien businesses. This is because there are legal obstacles in various aspects which we overlook and such legal obstacles should be solved. Regarding the generality of the nationalization of alien businesses, the author seeks to explain the meaning, concept and history of the nationalization including the meaning of alien investors and criteria on determination of nationality of alien investors in Thailand. This is to provide the fundamental understanding at the first stage in relation to the nationalization of alien businesses.

Concerning the relevant laws, the author studied the laws on nationalization of alien businesses both under Thai and foreign laws. From such a study it was found that under Section 43 of the Investment Promotion Act, B.E. 2520, the security and protection for alien businesses are given in the manner that the state shall not nationalize the private business. Despite this, there may be a chance for nationalization

of the private business by other legal means such as, expropriation of immovable properties under Section 49 of the Constitution of the Kingdom of Thailand B.E. 2540, or the Act on control and management of businesses or properties of certain alien in an emergency case, B.E. 2584. In this respect, there may be some cases that a foreign investor holding a nationality of the country having a bilateral agreement concerning promotion and protection of investment with the Kingdom of Thailand shall be prevented from the enforcement of such a bilateral agreement. This is an unfair treatment among investors, thus causing uncertainty on foreign investment in Thailand, especially in the case of nationalization of the private business. These legal obstacles should be solved by amending Section 43 of the promotion Investment Act, B.E. 2520 and a bilateral agreement concerning promotion and protection of investment between the Kingdom of Thailand and foreign countries so that such law and agreement are made on an equal basis. In addition, the amendment should be extended to the issue of compensation in the case of nationalization of businesses under the rules and regulations concerning facilities for foreign investors which has not been mentioned in such rules and regulations. This would help comply with the proposal for an amendment of law as aforesaid and would make the Investment Promotion Act, after having been amended, beneficial to both alien investors and Thailand.