FIFTH SESSION

3 September 1977 (morning session)

MANUFACTURING AND TRADING/TRANSFER OF TECHNOLOGY

Chairman: Augustine Tan

Warren Khoo, "Singapore's Foreign Investment Laws and Labour Legislation: A Search for Fairness"

Charles Stevens, "Japanese Investment in Singapore — Legal Aspects"

Discussion

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Chairman: Philip N. Pillai

Lee Bian Tian, "Some Aspects of an Investment Guarantee in Singapore"

S. Khattar, "Current Issues and Problems Affecting Taxation"

William Hui, "Regulatory Aspects of Offshore Lending to Indonesian Corporate Entities"

Discussion

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Chairman: Let me introduce Mr. Warren Khoo from the Attorney-General's Chambers. He will speak on "Singapore's Foreign Investment Laws and Labour Legislation: A Search for Fairness".

SINGAPORE'S FOREIGN INVESTMENT LAWS AND LABOUR LEGISLATION: A SEARCH FOR FAIRNESS

by

WARREN KHOO

What is "Investment Law" in the Singapore Context

It is debatable whether Singapore has an investment law in the sense of a more or less comprehensive code which some other countries have. We have very little legislation which in terms is directed to the regulation of foreign investment. Our legislation even seems to eschew using the words "foreign investment" and making a distinction in the treatment of foreigners investing in Singapore and our own nationals. The only law which expressly deals with the subject of foreign investment is the Arbitration (International Investment Disputes) Act of 1968, enacted to give effect to the World Bank Convention on the Settlement of Investment Disputes of 1965.

On the other hand, it is plain that there are laws which were enacted with the avowed object of attracting foreign investment. The prime examples are the Economic Expansion Incentives (Relief from Income Tax) Act of 1967, and its predecessors, the Pioneer Industries (Relief from Income Tax) Ordinance and the Industrial Expansion (Relief from Income Tax) Ordinance.

The Arbitration (International Investment Disputes) Act of 1968 and the Economic Expansion Incentives (Relief from Income Tax) Act of 1967 are, therefore, the only laws which, if one is pressed to do so, one can call Singapore's foreign investment laws.

But the net should perhaps be cast wider. The numerous investment guarantee agreements which Singapore has entered into with various countries in recent years can quite legitimately also be considered to be part of Singapore's legal framework for foreign investment. These are, however, the subject of another paper at this Seminar.

If one were to define investment laws as those which the foreign investor should know about in fair detail when deciding to set up plant in Singapore and which impinge upon the day-to-day operation of his business, the demarcation line at once becomes hazy. The Employment Act and the Industrial Relations Act immediately come to mind. But other labour legislation, like the Trade Unions Act, the Workmen's Compensation Act, the Factories Act, to name but a few, is of equal importance. Most of these laws came into being more as a response to internal demands than to the needs of the foreign investor, although in providing the legal basis for social stability, these laws have no doubt contributed to Singapore's attraction to the foreign investor.

It is no coincidence that an investor should know about our labour and social legislation. Such legislation, as I shall attempt to show represents the other side of the equation by which Singapore attempts to balance the need to attract foreign capital and the need to give its own population a fair share of the benefits derived therefrom,

Legislative History

Singapore began to take an interest in foreign investment in the last years of the 1950s. The Pioneer Industries (Relief from Income Tax) Ordinance and its twin, the Industrial Expansion (Relief from Income Tax) Ordinance, were enacted together in 1959. This was followed by a period of uncertainty, arising from the problem of merger with Malaya, the difficulties in the establishment of a common market with Malaya, the withdrawal from the Federation, and, finally, the British run-down east of the Suez.

The British withdrawal was largely responsible for fresh legislative activity in the general area of foreign investment.

The two pioneer pieces of legislation mentioned above were repealed and replaced by one single Act, the Economic Expansion Incentives (Relief from Income Tax) Act. This updated all the main

provisions of the 1959 ordinances. In addition, a substantial part (Part IV) of the Act is devoted to provisions intended to encourage manufacture for export. With no more hope for a common market with Malaysia, it became clear that the whole world must be regarded as our market.

These provisions to encourage production for export also met a need for some investors from the high cost countries who had substantial foreign outlets, to set up a plant in Singapore to take advantage the lower costs here, and thereby to improve their competitive position. Additional incentives are given to foreign investors by the provisions, in Part V, for complete relief from tax otherwise payable on interest on approval loans from foreign sources. The Act also introduced, for the first time, provisions to encourage the transfer of technology, by giving tax relief on approved royalties, technical assistance fees, and contributions to research and development.

The Arbitration (International Investment Disputes) Act, as noted earlier, was passed in the following year, 1968.

Of labour legislation, The Employment Act was passed in 1967. This Act remains the code governing the rights and obligations of employers and employees. This Act and the Industrial Relations Act of 1959, to which important amendments were made in 1968, have played a not insignificant part in the economic and social progress of Singapore.

Of the other pieces of legislation which have been referred to, the Trade Unions Act dates from before the War. The Workmen's Compensation Act, re-enacted in 1975, was first introduced into Singapore in 1955. The Factories Act was first enacted in 1960.

The centre-piece of Singapore's social legislation, the Central Provident Fund Act, became part of our law in 1955.

A brief survey of some of the laws referred to above follows:—

The Economic Expansion Incentives (Relief from Income Tax) Act

This Act allows incentives, in the form of income tax relief or exemption, to be given to industries which the Government desires to attract.

Exemptions and concessions are available in respect of the following:—

(1) Pioneer industries;

(2) Expansion of established enterprises;

(3) Income from export;

(4) Interest on foreign loans for the purchase of productive equipment;

(5) Royalties, technical assistance fees and research and development costs.

Pioneer Industries

Section 4(1) of the Act provides that the Minister (meaning the Minister for Finance in the context):—

> "may, if he considers it expedient in the public interest to do so, by order declare an industry, which is not being carried on in Singapore on a scale adequate to the economic needs of Singapore and for which in his opinion there are favourable prospects for development, to be a pioneer industry and any specific product of that industry to be a pioneer product."

Section 5(2) of the Act provides that where the Minister is satisfied that it is expedient in the public interest to do so and in particular having regard to the production or anticipated production of the pioneer product from all sources of production in Singapore, he may approve a company desirous of producing such a pioneer product, as a *pioneer enterprise,* and issue a pioneer certificate to the company.

By Section 13 of the Act, the whole amount of the income of a pioneer enterprise is exempt from tax.

The tax relief period, before September 1975, was fixed at a maximum of 5 years. By an amendment effective from 1st September 1975, this period was raised to 10 years in order to encourage the establishment of more sophisticated industries like machine tools, diesel engines, precision instruments, aircraft components, specialised electrical equipment and industrial machinery, which require a longer "gestation period".

A "fixed capital expenditure" requirement of S$l million previously required as a condition for the grant of a pioneer certificate was also abolished as from 1st September 1975. This is to encourage the growth of small but essential specialised supporting industries to supply parts and components to the larger manufacturing plants.

The income tax relief given to the pioneer enterprise is transmitted to the shareholders of the company, and the amount of dividend paid out of exempt pioneer income is exempt from tax in the hands of the shareholder.

Expansion of Established Enterprises

Section 16 of the Act provides that where the Minister is satisfied that the increased manufacture of the product of any industry would be of economic benefits to Singapore, he may declare that industry to be an "approved industry" and the product to be an "approved product".

By Section 17, a company intending to incur new capital expenditure of at least S$10 million in the purchase of productive equipment for the manufacture or increased manufacture of an approved product, may be granted "expanding enterprise" status.

Upon the grant of such status, the company is entitled to tax relief in respect of its "expansion income", which is an outright exemption from tax on the difference between the "post-expansion" and "pre-expansion" income of the enterprise. The tax relief period is 5 years.

Dividend income in the hands of shareholders is, again, exempt from tax.

Export Incentives

The 1967 Act brought in these incentives for the first time. An enterprise which is given an "export enterprise" certificate enjoys concessions in accordance with Part IV of the Act. The main concessions can be summarised as follows: —

(1) An enterprise with export sales of at least S$100,000 and comprising not less than 20% of its total sales, may qualify for export tax relief for 5 years;

(2) The tax relief consists of a concessionary rate of 4% on profits, instead of the normal 40% company tax;

(3) If an enterprise has been granted pioneer status, it can enjoy this export concession for 3 years in addition to the tax relief it enjoys by virtue of the pioneer certificate;

(4) Tax relief periods of up to 15 years may be granted to an export enterprise which has incurred, or intends to incur, a fixed capital expenditure of S$1,000 million or more. The 15-year relief period may also be granted where the capital expenditure is less than this amount, but this is available only to companies in which local residents hold a controlling interest;

(5) The amount of any dividend paid out of income of a pioneer industry is exempt from tax in the hands of the shareholder.

The other incentives available under the Economic Expansion Incentives (Relief from Income Tax) Act, are approved royalties, technical assistance fees and contributions to research and development costs payable to non-residents which are taxed at 20% instead of the usual non-resident tax of 40%, and in special cases, they are exempted from tax altogether. Section 44 of the Act provides that the exemption and relief can be given only if it does not result in an increase in the tax liability of the non-resident person in his country of residence.

The Arbitration (International Investment Disputes) Act

As noted earlier, this Act was to enable Singapore to ratify the Convention on the Settlement of Investment Disputes. Under this Act, the Government accepts the jurisdiction of the International Centre for Settlement of Investment Disputes, situated at the World Bank.

Article 25 of the Convention gives the centre jurisdiction in: —

> "… any legal dispute arising directly out of an investment, between a Contracting State (…) and a national of another Contracting State, which the parties to the dispute consent in writing to submit to the Centre."

Article 4 of the Act provides for the registration of awards rendered by the Centre, and Section 5 gives a registered award the same enforceability as a judgment of the High Court. Section 3

provides that these two sections shall bind the Government, but adds the rider that they shall not make an award enforceable against the Government in a manner in which a judgment would not be enforceable against the Government. The first mentioned provision of Section 3 is to meet the normal interpretation rule that no Act of Parliament binds the Government except expressly provided for or by necessary implication. The second provision in Section 3 is to preserve those provisions in Section 31 of the Government Proceedings Act which regulate the manner in which a judgment against the Government is satisfied, no execution in the normal way being available against the Government. An award against the Government is further protected by Article 88 of the Constitution, which provides that all moneys required to satisfy any judgment, decision or award against the Government by any court or tribunal are charged on the Consolidated Fund.

Employment Act

This is an important part of the package of legislation designed to regulate the rights and obligations of employers and employees. It was not presented as, and is not, an employers' or an employees' charter. It seeks to achieve a balance by taking account of the need, on the one hand, to make Singapore an attractive place for investors and, on the other hand, to ensure that the workers, who are expected to play an important part in the industrialisation process, such benefits as the employers, and the country as a whole, can afford. The Act lays down certain minimum or standard terms and conditions of service for employees earning below the ceiling of $750/- a month in such matters as rest days, annual leave, sick leave, and retirement and retrenchment benefits. Part X of the Act, which was amended in 1973, makes detailed provisions concerning the employment of women, particularly in regard to the subject of maternity leave.

Section 8 of the Act provides that a condition of service less favourable to an employee than prescribed by the Act is illegal, null and void to the extent that it is so less favourable.

Bonuses and Wage Increases

The subject of bonuses was dealt with rather sketchily in the original Section 46. Following the formation of the National Wages Council in 1972, however, a national wages policy, reviewable every year, began to emerge. In 1972, Section 46 of the Act was amended and replaced by provisions incorporating the first recommendations to come out of the National Wages Council. Certain technical terms like "annual wage supplements" and "annual wages increases" were introduced into the Act for the first time, the notion of annual bonuses being retained. The amendments imposed ceilings on the amount of such payments, and trade unions and employers were left free to negotiate within these general guidelines. It was made an offence for a trade union to invite negotiation for any wage increases (using the word in the general sense, as opposed to the technical sense in which it is used in the Act) beyond the limits prescribed. There was nothing to prohibit employers from voluntarily paying more.

In 1975, however, this section was further amended by providing such sanction against the employer.

The 1975 amendments must represent the height of legislative intervention in the freedom of contract between employer and employee. The justification was the paramount need to promote orderly industrial wage increases. There was the fear that if any employer and union were allowed to bargain for more, they would set precedents for other employers and unions. Even an employer voluntarily paying more could set such a precedent. The Minister for Labour said when introducing the bill, that Singapore could not afford to allow undisciplined and chaotic wage increase demands to hamper its efforts in achieving maximum development in a period of comparatively reduced growth.

Industrial Relations Act

Enacted as the Industrial Relations Ordinance in 1959 in fulfilment of an electoral pledge to bring industrial peace with justice to Singapore, this Act forms the legal basis for industrial peace in Singapore. Employers and labour are expected to settle trade disputes between themselves as much as possible. The State intervenes to help settlement through conciliation only if the parties fail to reach agreement by themselves. In the event that conciliation fails, the dispute can be taken to the Industrial Arbitration Court, whose award is final and conclusive and no recourse to the ordinary courts is allowed,

By an important amendment introduced in 1968, the following matters cannot be the subject of negotiation between union and employer; they are regarded as within the prerogative of management.

(1) the promotion of an employee;

(2) the transfer of any employee within the organization of an employer's profession, business, trade or work where the transfer does not operate to the detriment of the employee's terms of employment;

(3) the filling of any vacancy arising in the employer's establishment:

(4) termination of employment by reason of redundancy or by reason of reorganization;

(5) the allocation of duties or specific tasks to an employee consistent or compatible with his terms of employment.

Other amendments to the Industrial Relations Act introduced in 1968 allow the Industrial Arbitration Court to set aside or vary collective agreements as well as its own awards containing terms and conditions in excess of the wage increase limits laid down in the Employment Act referred to above.*

To further promote stability in industrial wage structure and general industrial relations, the minimum duration of collective agreements was also raised from 1½ years to 3 years.

* Consequent upon the 1975 amendment of section 46(5) (b) of the Employment Act, the reference thereto in section 34(1) (b) of the Industrial Relations Act appears to require amendment.

The beneficial result of these measures is reflected in the fact that there have been no more than 10 work stoppage a year since 1969, and most of these have been for less than 2 weeks.

Workmen's Compensation Act

First enacted in 1955 as the Workmen's Compensation Ordinance, this Act was extensively amended in 1971. All manual workers earning up to $750/- per month (previously $400/-) came under the protection of the Act. The most important amendments, however, related to the quantum of compensation raised, in fatal cases, for instance, from $7,500 or 36 months' earnings to $21,600 or 72 months' earnings, whichever was the less.

Many serious difficulties in the implementation of the Act remained, chief of which was the cumbersome machinery for the settlement of cases. In 1975, a new Act was passed to simplify and expedite the processing of cases. On the application of the claimant, the Commissioner for Labour can immediately assess the compensation payable. The employer is required to deposit the amount of compensation assessed with the Commissioner within 21 days of the service of the notice of assessment. If he objects to the notice, he must do so within 14 days, and the Commissioner is empowered to hear the objection and make a final order. The Arbitrator of the old Act has been done away with, and his function has been taken over by the Commissioner. Furthermore, the Commissioner's order is enforceable by a District Court as if it was a judgment, the formality of registration and enforcement by the High Court having also been dispensed with.

Appeal to the High Court on a point of law is preserved, but no appeal at all lies where the amount in dispute is $1,000/- or less.

The amounts of compensation payable have again been raised and a more sophisticated method of their assessment was introduced, taking into account the age of the deceased or injured workman — a very rough "multiplier" concept, borrowed no doubt from the practice in common law claims.

Furthermore, in recognition of the fact that it is the insurance company that is the real respondent in these cases. Section 32 allows the claims for compensation to be asserted against the insurance company direct as if it was the employer. This is an important innovation.

The 1975 Act also extends to accidents sustained outside the territorial limits of Singapore, provided the workman is a resident of Singapore employed by an employer in Singapore and is required in the course of his employment to work outside Singapore. One class of persons who would benefit from this provision are workers on oil rigs situated outside the territorial waters. Seamen on board Singapore-registered ships continue to enjoy the protection of the Act as they have always done.

Central Provident Fund Act

The Central Provident Fund is the nearest Singapore equivalent to the state pension of developed countries. In the course of years

since the Fund was first established, not only the number of contributors but also the maximum amount of contribution has increased. Since the employer is, very roughly speaking, responsible for paying half of the contribution, these increases represent a net gain by the working population of this country at the expense of their employers.

Concluding Remarks

It is my submission that when dealing with the matter of foreign investment as with anything else, the host Government's primary responsibility is to its own electorate. The task of any democratically elected Government must be to promote the material and spiritual well-being of the people it governs. Foreign investment is a means towards that end and not an end in itself.

The incentives given to foreign investors under our laws represent a cost to the country and that cost can only be balanced by benefits to be received by the population. It involves imaginative cooperation between the host country and the investor.

I suggest that labour legislation has been one of the means by which Singapore has attempted to achieve this balance.

The relationship between Singapore as the host country and foreign investors is largely reflected in the relationship between the foreign investors as employers and the people of this country as employees.

It is perhaps only natural that labour legislation should be used, as I suggest it has been used, in our attempt to achieve a balance between the interests of the investor and our national interests.

A massive foreign presence in any country's economy can be accepted only so long as the people of that country feel that they derive a fair and reasonable share of the fruits of cooperation.

That Singapore has been able to co-exist so well with multinational corporations, in contrast with the experience of some other countries, is due, in my submission, to the very active part the Government plays in maintaining this balance. It is my submission that a laissez-faire attitude has no place in this context, and may even be said to be a prescription for disaster, as has happened in other countries.

The Government here has, in my view, demonstrated its readiness to shoulder this responsibility. The amount of legislative activity which is evident in the various areas I have referred to in this paper, testifies to this. The Singapore experience shows I believe, that given imagination and a will to act, the conflicting expectations of investors and the host country can be happily reconciled.

As Singapore enters an era with emphasis on capital intensive industries, it may be worth speculating whether we will see new ways by which these interests are reconciled.

Chairman: May I now call upon Mr. Charles Stevens, attorney from Coudert Brothers New York and he is also teaching at Columbia University. He will speak on "Japanese Investment in Singapore — Legal Aspects".

JAPANESE INVESTMENT IN SINGAPORE — LEGAL ASPECTS

by

CHARLES STEVENS

Historical Investment Patterns

Until this summer's flurry of activity surrounding the visits of Prime Ministers Lee and Fukuda to Japan and Singapore, respectively, and Prime Minister Fukuda's visit to the ASEAN Summit Conference in Kuala Lumpur, the pattern of Japanese investment in Singapore had not differed remarkably from that of other industrialized countries, such as the United States.

Singapore Economic Development Board statistics [1] show that as of July 31, 1976 approximately 50 per cent of the fifty-three Japanese investment projects at that time and 50 per cent of the fifty-eight American investment projects at that time were relatively small investments where the gross fixed assets of each investment (excluding land) were worth S$5,000,000 or less. In the case of both Japanese investments and American investments, the next largest grouping of investments in terms of numbers of investment projects was in the S$5,000,000-S$20,000,000 range, with nineteen Japanese projects (26 per cent of all projects) and twenty American projects (25 per cent of all projects) in this range. In 1976 the investment pattern of Japan and the United States differed significantly only in the three large American refinery projects (Amoco, Mobil, and Exxon), each of which has gross fixed assets (excluding land) of over S$ 150,000,000. In 1976 Japan had no similar huge investment projects, but this situation has, of course, recently been radically changed by the inauguration of the Japan-Singapore Petrochemicals Co. US$800,000,000 joint venture between a Japanese investment company led by Sumitomo Chemical Co. Ltd. and the Singapore Government.

In terms of industries invested in, both Japanese and American investments show heavy concentration in a number of the same industries, including electronics, precision tools, and plywood. Special Japanese investment interest in Singapore is evidenced in the shipbuilding industry, with three projects all in the S$51,000,000-S$150,000,000, range. This shipbuilding interest probably corresponds to the special American investment interest in the oil service industry.

Since 1973 Japan has been the leading foreign investor of new money in Singapore, although its share of foreign direct investments (until the new petrochemical joint venture) has remained about 14 per cent. According to the Japanese Chamber of Commerce in Singa-

[1] *Major International Companies Manufacturing in Singapore* (Singapore Economic Development Board 1976).