

Dissertation Tutor's Opinion

Title of the Dissertation

Protection of Investments under the Bilateral Investment Treaty between Thailand and the Czech Republic, in total: 307 pages, incl. Appendices)

Ph.D. Candidate:

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Topicality

Mr. Tanchinwuttanakul has chosen a topic that is important for building up the confidence in trade and investment relations between Thailand and the Czech Republic. Although, there are some sceptical voices denying importance of investment protection treaties in such a relations, it is generally thought that investment protection treaty can bring some positive impetus and serve as a convenient tool in persuading business people to open their business abroad, especially in those countries in which they can rely on strengthened protection in case of some irregularities in the behaviour of the host state or its governing bodies. The legal tool that is to fulfil such a role in the Thai/Czech relations is to be bilateral investment treaty entered into between Thailand and the Czech Republic in early nineties. One can call this agreement as BIT of the first or perhaps second generation treaty. Since then, many things has changed and it is time to adjust the legal institutions anchored in this treaty to a new circumstances so the treaty reflected recent developments in given area of international law of foreign investment. The reason, why Mr. Tanchinwuttanakul chose the topic is to analyse and propose convenient changes and/od adjustments that would help the treaty better serve its purpose, i.e. to protect investors and investment interests vis-à-vis host states in a more balanced way.

To sum up, the topic chosen is not only interesting one, but it is also very topical and many particular issues touched upon in this thesis are generally broadly discussed by the doctrine and in the practice as well.

Structure of thesis

Approach to the topic is rather complex and Mr. Tanchinwuttanakul tries to deal with all relevant substantive law as well as procedural issues. This unfortunately makes the thesis even too descriptive in some places, but it is the license of the author to do so. The thesis is structured into 6 Chapters (including introductory chapter and Conclusions). Chapter 1 deals with introduction and methodology and overview of historical development of the protection of foreign property, the author submits his research hypothesis, chapter 2 follows with the object and purpose of the BIT and author proceeds with the definitions of crucial terms, chapter 3 is dedicated to the substantive standards of investment protection, i.e. and author provides the reader with concise explanation of the content of particular absolute and relative standard, chapter 4 deals with protection of the property from expropriation and apart from issues related to the expropriation as such including explanation of various forms of taking the property and its consequences, the author adds also issues such as discrimination and non-discrimination and the tutor would like to know, what led him to include this particular topic in this chapter. Procedural aspects of the analyzed BIT are dealt with in Chapter 5, first in general and in the second part with particular attention to the particular BIT between Thailand and the Czech Republic. The author deals with several interesting issues, including establishment of jurisdiction and also points to one interesting point, which is finding that the dispute settlement mechanism of the analyzed BIT still remains inoperable. Conclusions are provided in chapter 6 of the thesis and author attempts to synthesize his findings and provide some recommendations.

Assesment of formal criteria and contents of the thesis

I find the given thesis to be well - written, well - structured and its topic to be sufficiently discussed. The author demonstrates deeper theoretical knowledge of the

international law of foreign investment, sufficient knowledge of the international framework in the area analysed in the thesis and also knowledge of the relevant case law.

As a partial weakness of the thesis in tutor's opinion is the fact, already mentioned above, the rather descriptive nature of the thesis, work would deserve at least one more in depth analysis of particular issue.

To sum up, in my opinion, the submitted thesis satisfied all the requirements as for the choice of the topic, logic structure, methodology and amount of the literature cited.

For the defence of Ph.D. thesis I suggest to answer the following questions:

- 1) Why have you decided to deal with discrimination and non-discrimination in the part dealing with expropriation and why you did not consider to leave it in part dealing with other substantive standards of protection that deals with the issue in general?
- 2) Why you consider transparency and umbrella clause as part of substantive standards of protection?
- 3) In the introduction of the thesis you have mentioned, what is the importance of BITs for the fostering mutual economic cooperation between contractual parties. My question is, what is current level of mutual economic cooperation including placement of investments of Thai investors in Thailand and vice versa? Do you consider this economic exchange satisfactory? Can this situation be still enhanced?

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