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A bibliography of relevant books and articles, mainly in English but also in other languages, would have been a most necessary appendage. Laudably, the texts on India, Israel, Japan and Sri Lanka are well footnoted with academic writing and judicial decisions. Only case citations accompany the essay on the Philippines, and one textbook is quoted on Egyptian law, but there are no significant references on Indonesia, Iran and Thailand. The lack of an index also definitely diminishes the usefulness of this book.

On the positive side, it must be admitted that a total of 350 pages cannot be adequate to accommodate complete exposition and analysis of the law of contract in nine countries, allowing an average of less than 40 pages. The longest essay extends to seventy pages, the shortest one only to fourteen. Although there should be no direct correlation between quantity and quality, more space would have permitted a more satisfactory presentation.


Reviewed by A. A. Fatouros*

The decades after the Second World War have witnessed the growth of the "foreign investment statute," the legislative instrument designed to encourage, protect and regulate private foreign investment, principally but not exclusively in developing countries. An early example of such an instrument was the Greek Legislative Decree 2687/1953, followed a little later by Law 4171/1961. Their several years of application have received until now little systematic legal scrutiny. The book under review is the first major effort in this direction.

The book's structure betrays its origin as the author's doctoral dissertation at the University of Paris: in classic form, it is divided in two parts, each of which has two chapters. The book focuses on the two major pieces of pertinent legislation: Legislative Decree 2687/1953, addressed solely to foreign capital, and Law 4171/1961 (reenacted with amendments as Legislative Decree 916/1971), aimed at all "important productive investments," of foreign or local capital. In the first chapter, after a brief survey of pertinent legislation, the author studies the doctrinal disputes concerning the legal nature of L.D. 2687/1953. He then proceeds to review the conditions for access to the special status granted by the two acts (definition of "foreign capital," of "productive investment," etc.) and the procedure leading to the issuance of an instrument of approval. In the third chapter, he studies the substantive

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provisions of L.D. 2687/1953: grant of “national treatment” and of “most-favored-enterprise treatment,” guarantee against expropriation, arbitration provisions, tax and foreign exchange privileges. This study is rounded out by an examination of the administrative practice under the statute. The last chapter reviews in similar manner Law 4171/1961, focusing on the issues arising because of that law’s reliance on a contractual relationship between state and investor.

The principal peculiarity of L.D. 2687/1953 is its special constitutional status. It was enacted in implementation of a novel clause in the 1952 Greek Constitution to the effect that “a law issued once and for all shall provide for the protection of funds imported from abroad for investment in the country.” The established view is that such a law, once enacted, cannot be amended, except through the strict procedures for constitutional amendment. Dr. Mavrias challenges this view from a doctrinal as well as a practical standpoint. He shows that any attempt to provide doctrinal sanction to an instrument enacted by Parliament like a statute but subject to constitutional amendment procedures leads to contradictions and to untenable and extreme conclusions. More persuasively, he points to several later enactments which, one way or another, have in reality amended L.D. 2687/1953, in the guise of “authentic interpretations” or of administrative implementation of its provisions. Yet the myth of the “special constitutional status” persists. The courts have consistently followed the official, established, view of the matter and the 1975 Constitution purports, in cryptic and perhaps circular style, to uphold the “enhanced formal validity” of related legislation.

Reviewing in detail the core provisions of the statute, Mr. Mavrias offers abundant illustration of its numerous ambiguities, contradictions, and fictions—the consequence not only of the haste in which the law was drafted (with the help, apparently, of foreign “technical assistance” experts) but also of the desire to provide “full protection” to the investors while retaining necessary discretion for the government. Some ambiguities were probably intentional: “foreign capital” was broadly defined to mean all “imported capital” presumably in order to encourage the repatriation of the funds of Greek residents, which were, lawfully or not, out of the country. Others seem the result of focusing attention in one direction, while neglecting others: the reference to “productive” investment may have been primarily meant to exclude investment in commercial operations, without much regard for the conceptual problems Mr. Mavrias properly evokes. Courts and executive have combined to disregard such contradictions and, while upholding the irrevocable character of instruments of approval, to leave the government’s discretion unencumbered when initially approving an investment. The author persuasively argues that the law’s provision for “most favored-enterprise” status for all approved enterprises has been consistently disregarded where it would limit the exercise of the government’s discretion.

Law 4171/1961 differs in some respects from L.D. 2687/1953—although they may both be, and often are, applied to the same (foreign)
investment. The later law applies only to "important" investments, whether of foreign or domestic funds, and involves necessarily the conclusion of a contract. Dr. Mavrias takes the opportunity to enter the by now classical dispute concerning the "legal nature" of state contracts with foreign investors. He briefly reviews the controversy, without pretending to exhaust its entire range or plumb its depths. He rejects several of the proposed doctrinal approaches, but does not offer any clear alternative of his own. He insists on the need to take into account the investor's close link (his "allegiance") to his home state—but he does not make clear what should be the consequences of such emphasis. Nor does he appear fully to appreciate the complexities of a finding that formal or informal contractual aspects are present in state-foreign investor legal relationships of various types and the manner and extent in which such a finding may affect traditional conceptions of "contract."

An investment statute like the Greek one, principally a framework for a state action, is meaningless without reference to subsequent administrative practice in implementation. Dr. Mavrias is well aware of this and he usefully supplements his discussion of the major laws with reference to their application over the years both by the courts and by the competent administrative agencies. His discussion of the caselaw is extensive, even if in a manner which would not fully satisfy a common law jurist. The study of administrative practice (issuance and contents of instruments of approval, subsequent supplementation or amendment, relationship to other administrative action, etc.) is less exhaustive. His references are indicative—to provide illustrations or convey impressions. A properly systematic study of the twenty-some years of application of L.D. 2687/1953 (and of the fifteen years of Law 4171/1961) and the changing governmental moods and policies reflected in the administrative practice remains to be done. Yet, even partial study is valuable: Mr. Mavrias brings out the problems arising out of the lack of any serious supervision of foreign investments, after they have been made, and the ineffectiveness of the sanctions uniformly provided for in the instruments of approval.

This is a valuable legal analysis of an important topic. As the author suggests, its lessons go far beyond the Greek case. The author openly states at the very start his own political assumptions, referring to them later occasionally in support or explanation of his arguments. Such disclosure helps the reader better to understand the arguments and their context, although it would be too much to expect that in such a hotly disputed area, the mere statement of assumptions and positions would be persuasive for those not already convinced of their validity.