

"Foreign Investment Law in the Commonwealth of Independent States" by Butler, W.E.

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This book, issued under the aegis of Phoenix Law Associates CIS, based in Moscow, belongs to the pen of the noted Western specialist on the law of Russia, as well as other countries in the CIS, engaged for many years in the study of Soviet Law. The author is widely known also as one of the greatest specialists on public international law. In his works Butler extensively uses the comparative method to investigate, justly regarded as the most complex method of the legal sciences. In Butler's works of the last decade there is a noticeable imprint of the fact that he as a partner in a number of leading international law firms has engaged for an extended period in practical activities, especially commercial matters arising between, on one side, juridical persons of Western countries and, on the other, Russian juridical persons, as well as juridical persons of other CIS countries.

The author of the book under review, however, is by no means a passive observer of the development of the legal systems of Russian and other countries of the CIS. W. E. Butler is an active participant in working out a number of draft laws adopted in Russia and in certain other CIS countries. He has made a noted contribution in assisting the European Commission in effectuating law reforms in Russia, Ukraine, Kazakhstan, Belarus, and other CIS countries. The Western legal community is indebted to Butler for the systematic publication in the English language of translations done by him of all important laws of Russia and other CIS countries.

The author also publishes in the English language the journal *Sudebnik*, devoted to a scholarly analysis of a vast range of legal problems arising in Russia and other CIS countries.

Butler has over an extended period also studied the investment legislation of Russia and other CIS countries (and earlier, the Soviet Union). Among the results are several large books. However, this

domain is distinctive for its dynamism. Therefore, one should note the great timeliness of the appearance of this new publication, devoted to foreign investments.

In many respects the book under review is a unique study. Structurally it is divided into two parts: a monographic study of the law of CIS countries devoted to foreign investing (pp. 1-151). The last part contains the texts of all basic normative acts concerning foreign investments in force in all countries within the CIS. The normative acts of Russia are presented, as well as of Armenia, Azerbaidzhan, Belarus, Georgia, Kazakhstan, Kirgyzia, Moldavia, Tadzhikistan, Turkmenistan, Ukraine, and Uzbekistan. In addition, this part of the book finishes with two normative acts of the Soviet Union.

Such a group of normative acts of the various countries in and of itself has significant value since it seriously facilitates the making of comparison on a broad range of issues.

It must be stressed that enactments difficult to access are included in the book. Such countries as Georgia, Armenia, and Azerbaidzhan either have completely ceased to publish official texts of their laws in the Russian language or have seriously limited such publication. The translations made in certain CIS countries of their laws into the English language leave much to be desired and are therefore unreliable. Electronic data banks either are lacking completely or of an embryonic nature. In such countries as Kazakhstan and Kirgizia such databases exist; however, even they are not always reliable. In Tadzhikistan the official texts of laws contain mistakes and even omissions. This alone makes this book irreplaceable both when resolving practical issues and undertaking scholarly research.

The first, monographic, part of the book is devoted to a comparative analysis of the legal norms regulating foreign investing in Russia and other CIS countries. The author notes that in this domain

there exist three generations of legislation. Six States still retain in force (with changes) the initial laws on foreign investments. Russia, Kazakhstan, Georgia, and Kirgizia adopted laws which replaced the initial acts, and Ukraine and Uzbekistan adopted laws of the third generation. It should be emphasized that the work under review contains the first analysis in any language, including Russian, of the entire complex of normative material.

The first part of the book is distinguished for a structure well conceived. It opens with a chapter where the purposes of the legislation of CIS countries on foreign investments are illuminated as formulated in the preambles to the respective laws. Then follows a chapter devoted to one of the key problems, namely the concept of a foreign investor. Here, in particular, it is noted that Russian legislation creates difficulties for Western juridical persons when they act as foreign investors (p. 10). On the pages devoted to natural persons the problems arising for the partnership created in accordance with Anglo-Saxon law is noted. An individual chapter is devoted to an analysis of the concept of foreign investments, and also to the principle of free investing and the process of investing.

Significant attention is given in the book to the legal regime of foreign investments. The author singles out two types of normative acts in force in the CIS countries. One creates the most-favored-nation regime in such countries, whereas the other, on the contrary, establishes limitations for investors.

Special attention is given to guarantees which legislation of the CIS countries gives to foreign investors. The guarantees are individually examined with respect to changes of legislation, nationalization, and also other forms of seizure to the benefit of the State.

An analysis of the legal status of an enterprise with foreign investments has an important place in the book. On a comparative basis such questions

are considered as the creation of such enterprises (forming the charter fund, drawing up the charter, registration, and so on), the structure of the enterprise (management organs, their competence, and so on), and also liquidation of the enterprise. Material attention is given to the regulation of labor relations in such enterprises, including the conclusion and dissolution of labor contracts and settlement of labor disputes. Illuminated too are questions of social insurance, as well as the legal status of foreign personnel of an enterprise with foreign investments.

Also considered are such vital issues for an enterprise with foreign investments as taxation, book-keeping, and the archiving of business documentation.

At the international level the representatives of the CIS often act as exporters of raw material (especially oil, gas, as well as metals, timber, precious stones, and so on). Therefore, the author is absolutely right to devote a significant place in this book to the legal regulation of foreign investments which are linked with the use of natural resources of the CIS countries. One chapter is devoted to an analysis of questions which arise in connection with the acquisition of the right to use natural resources, whereas another treats problems of concession contracts. Considerable space is given to issues linked with free economic zones.

The first part of the book is completed by sections devoted to means of settling disputes (chapter 21) and international treaties with regard to foreign investments (chapter 22).

The book under review deserves the very highest assessment. It will be of interest not merely to lawyers (practitioners and legal scholars) working in the field of the legal regulation of foreign investment, but also by those representatives of the business world who are interested in making investments in the vast region which enjoys the name Commonwealth of Independent States. □