

## *Recent Amendments to Foreign Investment Related Laws in the DPRK (Summary)*

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In 1984, the Democratic People's Republic of Korea (hereafter the DPRK) enacted the Law on Equity Joint Ventures, which is the country's first foreign investment-related law open to countries other than socialist ones. Although the law was intended to open the country to investors in the west and Japan, its main market in the 1980s was the socialist market. Therefore, the targets of joint ventures in Japan were limited to Koreans living in Japan and the scale was rather small.

At the beginning of the 1990s, the DPRK lost its main market, the socialist market, due to the collapse of the Soviet Union and eastern European socialist regimes. Since then, the DPRK has had to struggle in the world market. One of its responses was to establish the Rajin-Sonbong Free Economic and Trade Zone (FETZ) in late 1991, the first special economic zone in its history.

In April 1992, the DPRK amended its constitution, changing its foreign policy from comradeship with other working class nations to Independence, Peace, and Solidarity. The change in the legal arena continued between 1992 and 1995; it established a series of foreign investment-related laws and established or revised basic laws, i.e. the Civil Law, Nationality Law, Civil Proceedings Act, Construction Law, Attorney Law, Notary Public Law, Insurance Law, and the Foreign Exchange Control Law, which regulate the whole of society.

After the amendment of the constitution in 1992, the DPRK tried to encourage foreign investment in the country, especially in the Rajin-Sonbong FETZ. It also changed its economic policy in 1993, to shift the focus from heavy industry to agriculture, light industry and trade. In spite of some of the action it took, the DPRK was unable to bring about the recovery of its economy to the level that it occupied before the loss of the socialist market.

In 1998, the DPRK amended its constitution again. This was mostly because of the structural change of its government as a result of Kim Il Sung's death. It was also due in part to changes in the country during the course of the economic hardship it endured during the 1990s, when its economic system fell into disorder and the leaders of its economy changed.

On February 26, 1999, major amendments to foreign investment-related laws took place. The list contained the Law on Foreign Investment, which is the basic law relevant to foreign investment, and the Law on the Rason Economic and Trade Zone, which established the principle behind the only special economic zone in the country. The Law on Equity Joint Ventures, the Law on Contractual Joint Ventures, and the Law on Wholly Foreign-Owned Enterprises, which established modes of investment, were also revised. This was the third major change in the history of the DPRK's foreign investment laws. The list of recent foreign investment-related laws is as follows:

**[Table 1] List of Current Foreign Investment-Related Laws of the DPRK**

No.	Name of laws/regulations	Date*
1	The Law of the DPRK on Foreign Investment	26-Feb-99
2	The Law of the DPRK on Equity Joint Ventures	26-Feb-99
3	Implementation Regulations for the Law on Equity Joint Ventures	11-Mar-00
4	The Law of the DPRK on Contractual Joint Ventures	26-Feb-99
5	Implementation Regulations for the Law on Contractual Joint Ventures	11-Mar-00
6	The Law of the DPRK on Foreign Exchange Control	26-Feb-99
7	The Law of the DPRK on Foreign Investment Banks	26-Feb-99
8	The Law of the DPRK on the Leasing of Land	26-Feb-99
9	Regulations on the Financial Management of Foreign-Invested Enterprises	04-Dec-99
10	The Law of the DPRK on Foreign-Invested Businesses and Foreign Individual Tax	17-May-01
11	Customs Law of the DPRK	28-Jan-99
12	The Law of the DPRK on the Protection of the Environment	04-Mar-99
13	Insurance Law of the DPRK	04-Feb-99
14	External Economic Arbitration Law of the DPRK	21-Jul-99
15	The Law of the DPRK on External Civil Relations	10-Dec-98
16	The Notary Public Law of the DPRK	02-Feb-95
17	The Civil Proceedings Act of the DPRK	25-May-94
18	Processing Trade Law of the DPRK	26-Dec-00
19	Regulations on Introduction of the Latest Technologies by Foreign-Invested Enterprises	24-Aug-01
20	Regulations on the Naming of Foreign-Invested Enterprises	13-Mar-99

21	Regulations on the Registration of Foreign-Invested Enterprises	21-Mar-99
22	Labor Regulations on Foreign-Invested Enterprises	08-May-99
23	Bankruptcy Law of the DPRK for Foreign-Invested Enterprises	19-Apr-00
24	The Law of the DPRK on the Rason Economic and Trade Zone	26-Feb-99
25	The Law of the DPRK on Wholly Foreign-Owned Enterprises	26-Feb-99
26	Regulations for the Implementation of the DPRK Law on Wholly Foreign-Owned Enterprises	27-Oct-00
27	Regulations on Resident Representative Offices of Foreign Enterprises in the Rason ETZ	27-Oct-00
28	Regulations on Entrepot Trade in the Rason ETZ	27-Oct-00
29	Regulations on Contract Construction in the Rason ETZ	27-Oct-00
30	Regulations on Forwarding Agencies in the Rason ETZ	21-Mar-99
31	Regulations on Statistics in the Rason ETZ	06-Mar-99
32	Regulations on Tourism in the Rason ETZ	29-Apr-00
33	Regulations on Financial Management of Foreign-Invested Enterprises in the Rason ETZ	13-May-00
34	Regulation on Foreigners' Immigration and Residence in the Rason ETZ	19-Feb-00
35	Customs Regulations for the Rason ETZ	23-Sep-00
36	Fine Regulations for the Rason ETZ	08-Dec-00

\*Date means the date of most recent revision or the date of enactment.

This paper makes a comparison of the five basic laws on foreign investment revised in 1999 and five laws/regulations newly enacted after Feb. 26, 1999. The former are the Law of the DPRK on Foreign Investment, the Law of the DPRK of on Equity Joint Ventures, the Law of the DPRK on Contractual Joint Ventures, the Law of the DPRK on Wholly Foreign-Owned Enterprises and the Law of the DPRK on the Rason Economic and Trade Zone, with a Japanese translation of both the old and new texts. The latter are the External Economic Arbitration Law of the DPRK, the Processing Trade Law of the DPRK, the Bankruptcy Law of the DPRK for Foreign-Invested Enterprises, Regulations on the Introduction of the Latest Technologies by Foreign-Invested Enterprises and Fine Regulations for the Rason ETZ with a Japanese translation of each law/regulation.

The next paper will deal with Implementation Regulations of the three laws regulating modes of investment and will detail the DPRK's foreign investment procedure.

## *Recent Amendments to Foreign Investment Related Laws in the DPRK (2) (Summary)*

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The Democratic People's Republic of Korea (hereafter the DPRK) revised major foreign investment related laws on February 26, 1999. Amendments were made to the Law of the DPRK on Equity Joint Ventures, the Law of the DPRK on Contractual Joint Ventures and the Law of the DPRK on Wholly Foreign-Owned Enterprises, all of which regulate modes of foreign direct investment (FDI) in the DPRK. On March 11, 2000, Implementation Regulations for the Law on Equity Joint Ventures and Implementation Regulations for the Law on Contractual Joint Ventures were amended. The Regulations for the Implementation of the DPRK Law on Wholly Foreign-Owned Enterprises were also modified on October 27, 2000.

On December 4, 1999, the Regulations on the Financial Management of Foreign-Invested Enterprises were enacted. The Regulations on the Financial Management of Foreign-Invested Enterprises in the Rason Economic and Trade Zone (ETZ), which was the Rason version of the aforementioned regulations, were also passed on May 13, 2000. These two sets of regulations are important in the sense that they regulate the financial management of foreign-invested companies in the DPRK.

This article will focus on the modes of investment which the new laws and regulations control, the meaning of these amendments, and the points which were altered.

The DPRK has three modes of foreign direct investment (FDI). One is Equity Joint Ventures, another is Contractual Joint Ventures and the other is Wholly Foreign-Owned Enterprises. In the DPRK, they are generally referred to as foreign-invested enterprises.

Equity Joint Ventures denotes joint investment and joint management while Contractual Joint Ventures are characterized by joint investment but production and management by the DPRK partner. All three types of foreign-invested enterprises may be established in Rason ETZ; however, Wholly Foreign-Owned Enterprises must only be based in the Rason ETZ.

The means of settlement of disputes differs according to the mode of investment. In the case of Equity Joint Ventures, it is possible to choose a court or arbitration body in the DPRK or one in a third country. Under the Law on Contractual Joint Ventures, Contractual Joint Ventures are not permitted to make use of arbitration in a third country. However, the Implementation Regulations do permit that. This means that there is a discrepancy between the law and its implementation regulations.

Logically, the law governing Wholly Foreign-Owned Enterprises allows a foreign investor the most extensive freedom in management because the right of management is wholly in the hands of the investor. However, the criteria governing the establishment of such enterprises are the strictest of all. This mode of investment is more likely to incur prohibitive and restrictive measures.

Amendments common to all the relevant laws were as follows: (1) foreign direct investment became based in Rason ETZ; (2) the competence to approve the establishment of foreign-invested enterprises was centralized, although the authority in

charge of the Rason Free Economic Trade Zone had previously had some rights in this direction; (3) coordination with related authorities in the DPRK became a prerequisite for establishing foreign-invested enterprises; and (4) due to the renaming of or structural change in some governmental institutions in conjunction with the amendment of the Constitution in 1998, some spellings and names were altered.

The significance of these amendments is that the text of the laws regulating foreign direct investment became more complete and inclusive as a result. However, the system of laws related to foreign investment should include more laws and regulations dealing with matters in relation to foreign direct investment.

## *Recent Amendments to Foreign Investment Related Laws in the DPRK (3) (Summary)*

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The Democratic People's Republic of Korea (hereafter the DPRK) revised its major foreign investment related laws on February 26, 1999. Amendments were made to the Law of the DPRK on Equity Joint Ventures, the Law of the DPRK on Contractual Joint Ventures and the Law of the DPRK on Wholly Foreign-Owned Enterprises, all of which regulate modes of foreign direct investment (FDI) in the DPRK. On March 11, 2000, Implementation Regulations for the Law on Equity Joint Ventures and Implementation Regulations for the Law on Contractual Joint Ventures were amended. The Regulations for the Implementation of the DPRK Law on Wholly Foreign-Owned Enterprises were also modified on October 27, 2000.

This article will focus on a comparison of modes of investment in the DPRK and China. Both have the same modes of foreign direct investment: equity joint ventures, contractual joint ventures and wholly foreign-owned enterprises. This is mainly because the DPRK referred to Chinese laws during the process of formulating its own legislation. Whilst it has similar laws to the DPRK, the condition of foreign direct investment in China is far more advanced than in the DPRK.

China has already enacted most of the laws required for regulating the society. Almost all laws and regulations in China are open to public scrutiny and case law is increasingly available. In contrast, in the DPRK, laws are very inaccessible to the people. During the 1990s, much legislation was enacted, but there are many laws and regulations that are not open, while case law is almost entirely hidden from the public.

Although there are many differences in the background of the laws in the DPRK and China, there are many common points between the laws and regulations that regulate the three modes of FDI. In both the DPRK and China, the laws regulating modes of FDI are simple, while the implementing regulations for these laws are long and complicated. It should however be noted that the regulations are not actually laws, just regulations established by administrative organs.

Equity joint ventures are the longest-established mode of FDI in both countries. In China, where the market is comparatively open to foreign investors, they have a long list of the industries in which foreign investment is recommended, restricted or prohibited. The DPRK simply regulates the same thing in the laws of equity joint ventures and relevant practical regulations.

Contractual joint ventures are a comparatively new mode of FDI, having begun in the DPRK in 1992 and in China in 1988. In the DPRK, a contractual joint venture enterprise must be a corporate body, whereas this is not compulsory in China.

The DPRK has very strict regulations governing wholly foreign-owned enterprises. It is only permitted to found this kind of enterprise in the Rason Economic Trade Zone, whereas they can be established anywhere in China as long as they meet the relevant requirements.

As stated above, China's open-door policy is in full bloom while that of the DPRK is still in bud. To turn this bud into a beautiful blossom, it is recommended that the DPRK

establish a legal environment in which foreign investors can estimate the legal risks they may incur.

## *Recent Amendments to Foreign Investment Related Laws in the DPRK (4) (Summary)*

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The Democratic People's Republic of Korea (hereafter the DPRK) revised major foreign investment related laws on February 26, 1999. The last three articles have provided a brief description of investment climate, as well as details of modes of foreign direct investment (FDI), and a comparison between the FDI systems in the DPRK and in the People's Republic of China (hereafter China).

Among the foreign investment related laws in the DPRK, the law of the DPRK on Equity Joint Ventures and various tax related laws were enacted in the mid-1980s. Most of the others began to be put in place just after the establishment of the Rajin-Songbong Free Economic and Trade Zone (FETZ) in 1991.

This article comments on the following laws: the Law of the DPRK on Foreign Exchange Control, the Law of the DPRK on Foreign Investment Banks, the Law of the DPRK on the Leasing of Land, the Law of the DPRK on Foreign-Invested Businesses and Foreign Individual Tax, and the Law of the DPRK on the Protection of the Environment.

Enacted in Jan. 1993 and revised in Feb. 1999, the Law of the DPRK on Foreign Exchange Control, which is a basic law on foreign exchange control, aims to "contribute to constant development of the national economy by increasing the foreign exchange revenue of the country and ensuring the efficient use of foreign exchange by the country, and to expand and develop the external economic relations of the country". This law prohibits circulation of a foreign currency in cash. A foreign-invested business may open an account at a domestic bank, with the approval of the body that controls foreign exchange. Offshore banking is only permitted in Rason Economic and Trade Zone (ETZ). There are no limits on the amount of a foreign currency or precious metal that may be brought into the DPRK. The amount taken out of the country must be equal to or less than the amount brought in, as declared to a bank or customs office at the time of entry. A foreign individual working for a foreign-invested business may remit abroad or take out of the territory of the DPRK up to 60% of his/her salary earnings and any other legitimate foreign currency earnings.

The Law of the DPRK on Foreign Investment Banks was enacted in Nov. 1993 and revised in Feb. 1999. The objective of this law is to "contribute to expansion and development of cooperation with different countries in the world over in the area of finance". The definition of 'foreign investment bank' includes joint venture banks, wholly foreign-owned banks and branches of foreign banks. Only joint venture banks may be established throughout the DPRK; others may only be established in the Rason ETZ. A foreign-invested bank may engage in some or all of the following transactions: (a) accepting deposits of foreign currencies by foreign-invested enterprises, foreign enterprises and foreigners; (b) granting loans in foreign currencies, providing current account overdrafts and discounting foreign currency bills; (c) dealing in foreign exchange; (d) investing in foreign currencies; (e) providing guarantees against liabilities in foreign currencies and defaults on contractual obligations; (f) remitting foreign currencies; (g) clearing of importers' and exporters' bills of exchange; (h) offshore

banking; (g) undertaking transactions of securities in foreign currencies; (j) trust banking; and (k) carrying out credit surveys and consultations, among other activities.

The Law of the DPRK on Leasing of Land was enacted in Oct. 1993 and revised in Feb. 1999. The purpose of this law is “to contribute to the establishment of a proper system for the leasing of land needed for foreign investors and foreign-invested enterprises and for the use of leased land”. This law is valid not only in the Rason ETZ but also in the other regions of the DPRK. The Law of the DPRK on Foreign Investment prescribes that the length of land leases is to be up to 50 years. This law further elaborates upon that regulation. The leasing of land is to be undertaken through consultation, while tenders and auctions of leases are also permitted in the Rason ETZ. The fee payable for the rent and use of land includes charges for renting the leased land and the cost of land development. The latter includes the costs of land-leveling, road construction, and installing infrastructure for water supply and drainage, electricity, telecommunications and heating. When comparing costs with those of setting up in other countries, careful inspection should be made of the costs of developing the land .

The two laws on foreign-invested businesses and foreign individual tax were integrated into the Law of the DPRK on Foreign-invested Business and Foreign Individual Tax in Jan. 1993. Revised in Feb. 1999 and May 2001, this law acts as the basic law on the taxation of foreign-invested businesses and foreigners. This law prescribes enterprise income tax, personal income tax, property tax, inheritance tax, turnover tax, business tax and local taxes.

The DPRK enacted the Law of the DPRK on the Protection of the Environment in Apr. 1986. Revised in Mar. 1999, this law regulates the fundamental principles of environmental protection in Chapter 1, the preservation and improvement of the natural environment in Chapter 2, the prevention of environmental pollution in Chapter 3, and the guidance and management of environmental protection in Chapter 4. Pollution prevention is recognized as the principal means of environmental protection. It is particularly notable that exchange and cooperation with other countries and international organizations in this field is prescribed in this law.

Through the current revisions of foreign investment related laws in the DPRK, it can be observed that a trend has taken root in the DPRK to revise laws on foreign investment according to changes in the investment climate. This is a positive trend. However, implementing regulations for many of the laws that were enacted in the mid-1990s are missing at the moment. The issues that are most important to the investor are often found in such detailed regulations. Therefore, it is strongly recommended that the DPRK make more attempt to publicize information about its investment climate to foreign countries.