

# *Recent Amendments to Foreign Investment Related Laws in the DPRK (5) (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. The last four articles have dealt with brief descriptions of the investment climate and modes of foreign direct investment (FDI), and drawn comparisons

between the systems of FDI in the DPRK and the People's Republic of China (hereafter China).

This article will focus on the following laws and regulations[m1]: Customs Law of the DPRK, Regulations on the Financial Management of Foreign-Invested

Enterprises, Regulations on the Naming of Foreign-Invested Enterprises, Regulations on the Registration of Foreign-Invested Enterprises and Labour [o3]Regulations for Foreign-Invested Enterprises.

Enacted in 1983 and revised in 1987, 1990, 1993 and 1999, the Customs Law of the DPRK is intended to ensure order and discipline in foreign trade. The existing law consists of five chapters and 51 articles. Chapter 1 regulates the general provisions, Chapter 2 customs formalities, Chapter 3 customs inspections, Chapter 4 customs duty, Chapter 5 sanctions and petitions. This law is based on the principle that "the state shall apply either zero or low tariffs to materials whose import and export are encouraged and high tariffs to materials whose import and export are discouraged." (Art. 4) In the field of cooperation with other countries and international organizations, Article 6 has a provision that promotes exchange and cooperation with foreign countries and international organizations in the area of customs operations. As for customs inspections, there is an interesting stipulation that "household goods and inherited property can be brought into or taken out of the DPRK without any permission", if they are not controlled articles. (Art. 27) About customs duty, "the standard price [o4]on which customs duty is levied shall be the price of delivery at the border in the case of exported goods and the retail price in the case of those which are not imported or exported." (Art. 32) The tariff is to be set by the cabinet; however, it is not publicized.

The Regulations on the Financial Management of Foreign-Invested Enterprises were newly enacted on Dec. 4, 1999. These administrative regulations were formulated "in order to ensure accurate operational accounting of foreign-invested enterprises and establish a system and order for their financial management." (Art. 1) The term "financial management" in this regulation signifies the creation and efficient utilization of funds required for business operations and the distribution of profits and repayment of investment. Before these regulations were drawn up, the financial management of foreign-invested enterprises was mainly regulated by means of the implementing regulations for the Law on Equity Joint Venture and those for the Law on Contractual Joint Venture. Provisions in the 1999 regulations are duplicated in the implementing regulations, an issue which has yet to be resolved. In Article 30, there is a provision that the capital of an enterprise is protected in the event that an investment protection agreement has been concluded between the governments of the DPRK and the enterprise's country of origin. Japan does not have such agreement with the DPRK.

Established on Feb. 14, 1996 and revised on Mar. 13, 1999, the Regulations on the Naming of Foreign-Invested enterprises regulates the names of joint venture enterprises, whether equity or contractual and wholly foreign-owned

enterprises. The name of a foreign-invested enterprise shall include the following: a) a trade name indicative of either the name of the investor or the name of a place, b) the principal content of its business activities/line of business, c) the business category, and d) the limit of the enterprise's liability. The name should be expressed in the Korean language. The following types of name are prohibited: a) names that may undermine the sound life-style of the state and society, b) names that may overlap or be confused with that of any other enterprise, c) names consisting of numerals, d) names that are apt to deceive or mislead public opinion, e) names that are identical to that of another country or region, f) names that are identical to that of any political or military organization, or international agency, and g) names that are identical to that of any enterprise whose business registration was cancelled less than a year previously. Use of the name "Korea" is no longer prohibited since the revision.

The Regulations on the Registration of Foreign-Invested Enterprises were enacted on Feb. 14, 1996 and revised on Mar. 21, 1999. These regulations are intended to provide for a regime governing the registration of foreign-invested enterprises. They also stipulate that foreign enterprises must designate a resident representative office in the country.

Enacted on Dec. 30, 1993 and revised on May 5, 1999, the Labour Regulations for Foreign-Invested Enterprises is an important piece of legislation that effectively stipulates the labor laws by which foreign-invested enterprises are governed. These regulations consist of 8 chapters and 45 articles. Chapter 1 regulates the general provisions, Chapter 2 the employment of labor, Chapter 3 technical training, Chapter 4 working hours and holidays, Chapter 5 remuneration, Chapter 6 labour protection, Chapter 7 social insurance and social security, and Chapter 8 penalties and the settlement of disputes. These regulations are applied to foreign-invested enterprises that are registered as a body corporate of the DPRK and may be also applied to foreign enterprises incorporated in the territory of the DPRK. A foreign-invested business must hire workers through the labor exchange office; this is not the case in countries such as China[m6], and this provision should be removed in order to promote investment in the DPRK. A foreign-invested business must conclude a labor contract with the trade union representing its employees (Art. 8) and employees may not be dismissed without the consent of the union. As for remuneration, the central labor organ fixes the standard monthly wage of employees. The standard of labour protection must [o8]be higher than that of domestic enterprises in the DPRK (Art. 35). The regulations also state that a foreign-invested enterprise must contribute to the government's social insurance and social security schemes in order for DPRK nationals employed by it to receive benefits from those schemes

# *Recent Amendments to Foreign Investment Related Laws in the DPRK (6) (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. The last five articles have dealt with brief descriptions of the investment climate and modes of foreign direct investment (FDI), drawn comparisons between the systems of FDI in the DPRK and the People's Republic of China (hereafter China), and introduced each law and regulation that has recently been revised or enacted.

This article will focus on the following laws and regulations: Insurance Law of the DPRK, Regulations on Resident Representative Offices of Foreign Enterprises in Rason Economic and Trade Zone, Regulations on Entrepot Trade in Rason Economic and Trade Zone, Regulations on Contract Construction in Rason Economic and Trade Zone, Regulations on a Forwarding Agency in Rason Economic and Trade Zone, Regulations on Statistics in Rason Economic and Trade Zone, Regulations on Tourism in Rason Economic and Trade Zone, Regulations on Financial Management of Foreign-Invested Enterprises in Rason Economic and Trade Zone, Regulations on Foreigners' Immigration and Residence in Rason Economic and Trade Zone and Custom Regulations for the Rason Economic and Trade Zone. Some of these regulations, mainly focusing on Rason Economic and Trade Zone, have undergone significant revision. This is mainly because of the advance of the open-door policy and of the development of methods for dealing with foreign-related business.

The Insurance Law of the DPRK was enacted on April 6, 1995 and revised on February 4, 1999. This law is the basic law governing insurance in the DPRK. In the DPRK, insurance is classified into two categories: personal insurance and property insurance. Other than in Rason ETZ, the state insurance body conducts insurance business in the DPRK. In Rason ETZ, foreign investors and "overseas Korean compatriots" may also engage in insurance business.

The Regulations on Resident Representative Offices of Foreign Enterprises in Rason Economic and Trade Zone were enacted on February 21, 1994 and revised on October 27, 2000. In the Rason ETZ, the term of residence of a representative office is up to three years and the number of officers shall not exceed five, except for administrative, technical or service staff such as interpreters, typists, bookkeepers and drivers.

The Regulations on Entrepot Trade in Rason Economic and Trade Zone were enacted on July 15, 1995 and revised on October 27, 2000. The definition of entrepot trade was expanded by adding the provisions of "repackaging" and "some processing" in the most recent revision. A provision that prohibits businesses labeling

goods with a DPRK certificate of origin or its trademark was also added.

The Regulations on Contract Construction in Rason Economic and Trade Zone were enacted on July 15, 1996 and revised on October 27, 2000. After the revision, a chapter regulating the planning (of buildings) and provisions that should be regulated by contracts were deleted. In the DPRK, the guarantee period of a structure built under contract is one year.

The Regulations on a Forwarding Agency in Rason Economic and Trade Zone were enacted on July 13, 1995 and revised on March 21, 1999. In these regulations, the activities of forwarding agents are defined as "acceptance, dispatch, arrangements for cargo handling and storage, customs clearance, inspection and quarantine, settlement of costs, dealing with mishaps, arrangement of transport and the like, for transit cargoes in a foreign shipper's consignment." An external transportation body in the Rason ETZ may engage in these activities. When a shipper intends to transship cargoes under this regulation, it must notify one of the forwarding agencies of the information needed to fill in the bill of landing or the invoice five days before transshipment. In the case of transshipment to/from railroads, prior notice to the railroad organization should be made by the 20<sup>th</sup> day of the previous month.

The Regulations on Statistics in Rason Economic and Trade Zone were enacted on March 6, 1999. These new regulations were formulated "with a view to taking proper statistics on social and economic situations and establishing a proper order for the management and use of statistical data." (Art. 1) Statistics, defined in this regulation, includes "data with respect to the level of economic and cultural development, information related to natural resources, population and livelihoods and so on." (Art. 2) The statistical data relating to operational activities are to be compiled through statistical reports, while those relating to social and economic situations, population, livelihoods and prices are to be gathered through statistical research. (Art. 13) In this regulation, statistical data are treated as secret documents. This is not to protect foreign invested enterprises but to protect the secrets of the Rason ETZ.

The Regulations on Tourism in Rason Economic and Trade Zone were enacted on July 15, 1996 and revised on April 29, 2000. These regulations are intended to regulate sightseeing in the Rason ETZ by foreigners and overseas Korean compatriots. Sightseeing is defined as "tours for the proposes of sightseeing, education, recuperation, study, entertainment and so on." In the event that a foreigner or an overseas Korean enters the Rason ETZ directly from a foreign country for sightseeing purpose, she or he does not need to obtain a visa. Instead, she or he must obtain a

document of approval of sightseeing, such as a tourist certificate, etc. In principle, sightseeing tours must be arranged in groups. Before the revision, there was an article allowing tourists to bring with them a camping car or a tent, but this has been deleted from the new regulation.

The Regulations on Financial Management of Foreign-Invested Enterprises in Rason Economic and Trade Zone were enacted on May 13, 2000. These form a kind of basic law in the field of the financial management of foreign-invested enterprises in the Rason ETZ. The DPRK also has the Regulations on Financial Management of Foreign-Invested Enterprises for areas other than the Rason ETZ. Compared with these, the Regulations for the Rason ETZ have more specific and effective measures relating to the creation and utilization of capital, financial planning, assets, the calculation of production costs, financial settlements, profit distribution and fund management. Regarding financial liquidation, the Implementing Regulation for the Law on Equity Joint Venture, the Implementing Regulation for the Law on Contractual Joint Venture and the Regulations for the Implementation of the DPRK Law on Wholly Foreign-Owned Enterprises have provisions for setting up orders for claims to be paid. The three implementing regulations give priority to state levies,

while these regulations prioritize the remuneration of employees for their labor. This discrepancy may lead to a conflict when a foreign-invested enterprise in the Rason ETZ is dissolved.

The Regulations on Foreigners' Immigration and Residence in Rason Economic and Trade Zone were revised on February 19, 2000, when the two related regulations were merged. In this regulation, the stay of a foreigner is divided into two types; short stays (up to 90 days) and long stays (more than 90 days). A foreigner should report his or her arrival by the day following entry to the zone, except for those who will leave the day after they arrive in the zone. A revision in 2000 led to this regulation being supplemented with exhaustive provisions for landing/exiting and residential formalities.

The Custom Regulations for the Rason Economic and Trade Zone were enacted on June 28, 1995 and revised on September 23, 2000. These are the only regulations adopted by the Decree of the Central People's Committee. They originally comprised sixty articles, but this increased to seventy-four after the revision. The provisions concerning customs registration and clearance, and customs inspection and control were thoroughly revised.

## *Recent Amendments to Foreign Investment Related Laws in the DPRK (7 - final) (Summary)*

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The Democratic People's Republic of Korea (hereafter the DPRK) established the Rajin-Sonbong Free Economic and Trade Zone (FETZ), its first special economic zone, in December 1991. No special economic zones were then established until the Sinuiju Special Administrative region came into being following a decree by the Presidium of the Supreme People's Assembly of the Democratic People's Republic of Korea. The Presidium of the DPRK Supreme People's Assembly adopted the basic law on the Sinuiju special administrative region on September 12, 2002. After Sinuiju, the Mt. Kumgang Tourist Zone was established on October 23, 2002, while the Kaesong Industrial Zone was established on November 13, 2002.

The Basic Law of the Sinuiju Special Administrative Zone (Sinuiju SAR) seems similar to China's Basic Law of the Hong Kong Special Administrative Zone (HKSAR). While this is true to a certain extent, it must be realized that the principles upon which the two laws are based differ qualitatively because of the way the two zones were built. Hong Kong was a colony of the United Kingdom for a long time and has enjoyed autonomous legal economic and social systems for many years. The objective of the basic law of HKSAR is to incorporate a very different system into China against a constitutional background (Art. 31 of Chinese constitution). In contrast, the objective of the basic law on the Sinuiju SAR is the foundation of a new system and the separation of the zone from the DPRK. Sinuiju was just a part of the DPRK before the establishment of the Sinuiju SAR.

The basic law of the Sinuiju SAR specifies provisions that seem to guarantee basic human rights; however, they are not equivalent to the rights guaranteed in constitutions and basic laws in Japan, the Republic of Korea or Western countries. They seem to have been inserted in order to make the area seem more civilized, and therefore more attractive to potential investors. This is something that the DPRK has learned through its interaction with those Western European countries that normalized their diplomatic relationships with the DPRK between 2000 and 2002.

With regard to Kaesong Industrial Zone, the Law of the DPRK on the Kaesong Industrial Zone was enacted on Nov. 20, 2002, followed by Regulations on Developing the Kaesong Industrial Zone and Regulations on Business Operation in the Kaesong Industrial Zone, both of which were passed on Apr. 24, 2003.

According to the law, Kaesong Industrial Zone was established as an international industrial, trade, commercial, financial and tourist zone managed and run under the law of the DPRK. Development of the zone will follow the pattern of a developer preparing a site,

conducting infrastructure construction on leased land and attracting investment.

Koreans in the Republic of Korea (hereafter the ROK), overseas Koreans, foreign corporate bodies and individuals and economic organizations can invest in the zone. Investment in infrastructure construction, light industry and high-tech science and technology in particular are to be encouraged. The designated developers, appointed by the central institution guiding the industrial zone, shall undertake the development of the zone.

The leases on land in the zone shall last for 50 years. The industrial zone shall be managed by the industrial zone management institution under the control of the central institution guiding the industrial zone, and the institution managing the industrial zone shall be composed of members recommended by the developers as well as those who are recommended by the central institution. Enterprises in the industrial zone shall hire workers from the DPRK.

Disputes shall be settled through the procedures for settling business disputes agreed by the North and the South or through arbitration and trial. The content of the agreement reached between the North and the South as regards the Mt. Kumgang Tourist Zone shall have the same validity as this law.

In relation to the Mt. Kumgang Tourist Zone, the Law of the DPRK on the Mt. Kumgang Tourist Zone was enacted on Nov. 13, 2002, followed by Regulations on Developing the Mt. Kumgang Tourist Zone and Regulations on Business Operation in the Mt. Kumgang Tourist Zone, both of which were passed on Apr. 24, 2003.

According to the law, Mt. Kumgang Tourist Zone is an International Tourist Center managed and operated under DPRK law. Koreans in the ROK and abroad, and foreigners in the zone can conduct tourism-related business there. Tourism-related and other business should be conducted in the zone according to the law and rules for its observation. Developers can exercise their rights to develop the zone and conduct tourism-related business until the end of the period designated by the central institution guiding the tourist zone, and may also transfer or lease some of their rights to other investors. The developer should work out a general plan for the development of the tourist zone. The institution managing the tourist zone under the guidance of the central institution guiding the tourist zone shall manage the tourist zone. Investment is not allowed in projects that may change or pollute the natural ecological environment of Mt. Kumgang.

The same provisions for the settlement of disputes and the validity of the agreement reached between the North and the South apply here as those in the law for Kaesong

Industrial Zone.

As mentioned above, among the recently enacted laws and regulations, the author found two kinds of change in the external economic policy of the DPRK. One is that establishment by the DPRK of a special economic zone other than the Rajin-Sonbong Economic and Trade Zone. The other is the DPRK's placing of a higher priority on

inter-Korean economic cooperation. Both Kaesong Industrial Zone and Mt. Kungang Tourist Zone have more favorable investment conditions than other areas in the DPRK. Since both are zones intended mainly as sites for inter-Korean economic cooperation, it can be said that the DPRK has provided favorable conditions for its compatriots in the ROK.

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