

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