

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.