

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.