

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.