

Recent Amendments to Foreign Investment Related Laws in the DPRK (4) (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. The last three articles have provided a brief description of investment climate, as well as details of modes of foreign direct investment (FDI), and a comparison between the FDI systems in the DPRK and in the People's Republic of China (hereafter China).

Among the foreign investment related laws in the DPRK, the law of the DPRK on Equity Joint Ventures and various tax related laws were enacted in the mid-1980s. Most of the others began to be put in place just after the establishment of the Rajin-Songbong Free Economic and Trade Zone (FETZ) in 1991.

This article comments on the following laws: the Law of the DPRK on Foreign Exchange Control, the Law of the DPRK on Foreign Investment Banks, the Law of the DPRK on the Leasing of Land, the Law of the DPRK on Foreign-Invested Businesses and Foreign Individual Tax, and the Law of the DPRK on the Protection of the Environment.

Enacted in Jan. 1993 and revised in Feb. 1999, the Law of the DPRK on Foreign Exchange Control, which is a basic law on foreign exchange control, aims to "contribute to constant development of the national economy by increasing the foreign exchange revenue of the country and ensuring the efficient use of foreign exchange by the country, and to expand and develop the external economic relations of the country". This law prohibits circulation of a foreign currency in cash. A foreign-invested business may open an account at a domestic bank, with the approval of the body that controls foreign exchange. Offshore banking is only permitted in Rason Economic and Trade Zone (ETZ). There are no limits on the amount of a foreign currency or precious metal that may be brought into the DPRK. The amount taken out of the country must be equal to or less than the amount brought in, as declared to a bank or customs office at the time of entry. A foreign individual working for a foreign-invested business may remit abroad or take out of the territory of the DPRK up to 60% of his/her salary earnings and any other legitimate foreign currency earnings.

The Law of the DPRK on Foreign Investment Banks was enacted in Nov. 1993 and revised in Feb. 1999. The objective of this law is to "contribute to expansion and development of cooperation with different countries in the world over in the area of finance". The definition of 'foreign investment bank' includes joint venture banks, wholly foreign-owned banks and branches of foreign banks. Only joint venture banks may be established throughout the DPRK; others may only be established in the Rason ETZ. A foreign-invested bank may engage in some or all of the following transactions: (a) accepting deposits of foreign currencies by foreign-invested enterprises, foreign enterprises and foreigners; (b) granting loans in foreign currencies, providing current account overdrafts and discounting foreign currency bills; (c) dealing in foreign exchange; (d) investing in foreign currencies; (e) providing guarantees against liabilities in foreign currencies and defaults on contractual obligations; (f) remitting foreign currencies; (g)

clearing of importers' and exporters' bills of exchange; (h) offshore banking; (g) undertaking transactions of securities in foreign currencies; (j) trust banking; and (k) carrying out credit surveys and consultations, among other activities.

The Law of the DPRK on Leasing of Land was enacted in Oct. 1993 and revised in Feb. 1999. The purpose of this law is "to contribute to the establishment of a proper system for the leasing of land needed for foreign investors and foreign-invested enterprises and for the use of leased land". This law is valid not only in the Rason ETZ but also in the other regions of the DPRK. The Law of the DPRK on Foreign Investment prescribes that the length of land leases is to be up to 50 years. This law further elaborates upon that regulation. The leasing of land is to be undertaken through consultation, while tenders and auctions of leases are also permitted in the Rason ETZ. The fee payable for the rent and use of land includes charges for renting the leased land and the cost of land development. The latter includes the costs of land-leveling, road construction, and installing infrastructure for water supply and drainage, electricity, telecommunications and heating. When comparing costs with those of setting up in other countries, careful inspection should be made of the costs of developing the land.

The two laws on foreign-invested businesses and foreign individual tax were integrated into the Law of the DPRK on Foreign-invested Business and Foreign Individual Tax in Jan. 1993. Revised in Feb. 1999 and May 2001, this law acts as the basic law on the taxation of foreign-invested businesses and foreigners. This law prescribes enterprise income tax, personal income tax, property tax, inheritance tax, turnover tax, business tax and local taxes.

The DPRK enacted the Law of the DPRK on the Protection of the Environment in Apr. 1986. Revised in Mar. 1999, this law regulates the fundamental principles of environmental protection in Chapter 1, the preservation and improvement of the natural environment in Chapter 2, the prevention of environmental pollution in Chapter 3, and the guidance and management of environmental protection in Chapter 4. Pollution prevention is recognized as the principal means of environmental protection. It is particularly notable that exchange and cooperation with other countries and international organizations in this field is prescribed in this law.

Through the current revisions of foreign investment related laws in the DPRK, it can be observed that a trend has taken root in the DPRK to revise laws on foreign investment according to changes in the investment climate. This is a positive trend. However, implementing regulations for many of the laws that were enacted in the mid-1990s are missing at the moment. The issues that are most important to the investor are often found in such detailed regulations. Therefore, it is strongly recommended that the DPRK make more attempt to publicize information about its investment climate to foreign countries.