

The Present Conditions and Prospects of Foreign Investment Laws in North Korea *

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I. Introduction

Sixty years have passed since the Korean Peninsula was divided along the 38th Parallel. The North and the South exerted themselves to reconstruct the country from the ashes of the Korean War. While South Korea was able to achieve the "Miracle of the Han River" based upon the outward looking development strategy, North Korea is still suffering shortage in food, energy and foreign exchange, in spite of the self-sustaining socialist economy.

What caused such different consequences between the North and the South? Does the ideology of capitalism or communism make difference? Does it stem from the different leadership of the late Park Chung Hee or the late Kim Il Sung? Or did the population and resources play a significantly different role in the North and the South? The correct explanation lies in the discrepancy in the development strategy: South Korea has made the most of foreign capital, while North Korea has disregarded it on account of the so-called *juche* spirit.

This article examines the 60-year history of North Korean legislation on foreign investment and looks into the current laws and regulations in this regard. The prospect of future legislation would be of interest for the promotion of the

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full-fledged Inter-Korean economic cooperation. In the conclusion, the current status of North Korean legislation and the on-going economic cooperation between the North and the South in the aftermath of 6·15 Inter-Korean Summit Meeting could satisfy the financial needs for foreign capital in North Korea will be analyzed.

II. History of Foreign Investment Legislation in North Korea

The economic realities given a certain period of time often define the scope and nature of legislation. It was true that South Korea had to establish foreign investment-friendly laws and regulations when it was in great need of foreign capital in the 1960s and 1970s. So did the North Korean regime, the Democratic People's Republic of Korea ("DPRK" or the "Republic"), to survive the economic and social changes and, in particular, to make a successful precedent of China.

From 1945 to 1960s: In pursuit of Self-sustaining Economy

The communist regime, which occupied the northern part of the Korean Peninsula, introduced socialistic ownership and a centrally controlled planned economy. The North Korean government implemented a heavy industry-oriented development strategy, with an eye towards military power, assisted by plentiful natural resources and foreign aid from the Soviet Union and China. The foreign trade was regarded as supplementary to the self-sustaining economy on the basis of national monopoly, *autarky* and reciprocal equality with foreign countries.¹⁾

In the 1970s: Impending Crisis upon Socialist Economy

Until the first half of the 1970s, when oil shock shook the world, North Korea continued to expand foreign trades with Japan and other Western countries. The expanded trade helped promote economic growth that had been ignored by military buildup. Also, the Pyongyang regime was spurred by the successful economic development of South Korea led by the export-oriented policy.

But the two oil crises made an insurmountable impact on the North Korean

1) Baik-Kyu Lee, "The North Korean Foreign Investment Act and the Processing Trade Act," *Major Legal Issues of the North Korean Foreign Trade and Economic Cooperative Laws and Regulations (1)*, Ministry of Court Administration, 2001, pp. 37-38.

economy. Foreign aid from the Soviet Union and China were drastically curtailed and largely changed into imports on credit. A sharp increase of the prices of international commodities and the interests on foreign loans endangered North Korea's foreign exchange holdings. Since 1975, North Korea has often failed to settle the payments of foreign trade. As a result, North Koreans were increasingly shunned and avoided by foreign traders.

From 1980s to early 1990s: Trial and Error of External Economic Policies

The North Korean leaders paid close attention to the open-door policy of China in the 1980s. Accordingly, in September 1984, the standing committee of the Supreme People's Assembly passed the Equity Joint Venture Act (*Hap-yeong-beop*) after the model of a Chinese law with the same name, which was intended to encourage foreign direct investment in North Korea. But the Act achieved almost nothing, and North Korea changed its course. In December 1991, North Korea established the Rajin-Sunbong Free Trade Zone, a special economic zone modeled after those in China.

From 1992 to early 2000s: Restoration of Socialist Economy

In 1992, the North Korean Parliament made an epoch-making amendment to the DPRK Constitution by allowing partly the private ownership of properties, and encouraging the equity/contractual joint venture by North Korean institutions, enterprises and associations. In this connection, the North Korean legislature established or amended over 50 foreign trade and economic cooperative laws and regulations including the Foreign Investment Act in 1992. The change of policy toward foreign investment resulted from the limited effect of the existing Equity Joint Venture Act. North Korean leaders had been greatly impressed by the transition economies in the Eastern Europe and China.

As a result, North Korea introduced such other partnerships as a contractual joint venture and a foreign-owned enterprise. Also, detailed legal frameworks were formulated to operate efficiently the free trade and special economic zones.

In 1998, the DPRK Supreme People's Assembly adopted the Socialist Constitution. Further, a number of foreign trade and economic cooperative laws and regulations were revised or newly made in the following years.

Since 2002: Reinforcing the Inter-Korean Economic Cooperation

Until 2002, foreign investments had been restricted to the Rajin-Sunbong Free Trade Zone as a matter of fact, but produced few significant results. So the North Korean government expanded the special economic zone to Kumgang and Sinuiju. Mt. Diamond (*Kumgang-san*) tourism, which started in November 1998, has been quite impressive in generating stable revenues, and inducing hundreds of thousand tourists.²⁾

The year of 2002 was remarkable for a series of economic reforms:

- On July 1, 2002, the North Korean government proclaimed the Economic Management Improvement Measures ("7·1 Reformative Measures")³⁾ which included the sharp increase of laborers' wages, realization of commodity prices, partial abolition of the necessity distribution system, introduction of the self-supporting accounting system, among others; and
- The Pyongyang regime designated the Sinuiju Special Administrative Region on September 12, the Kumgang Tourist Zone on November 23, and the Gaeseong Industrial Zone on November 27, in accordance with the newly enacted special economic zone laws. These acts allegedly provide for various favorable incentives, in particular, for South Korean entrepreneurs. For example, the Kumgang Tourist Zone and the Gaeseong Industrial Zone were constructed by South Korean companies including Hyundai Asan.

The progressive attitude of the Pyongyang regime and the competitive wage rate as implemented in the Gaeseong Industrial Zone have changed the more or less negative attitude of the South Korean business community regarding investment in North Korea. The on-going Inter-Korean economic cooperation is sure to create great potential for mutually beneficial relations and a vast market to

2) On June 7, 2005, after six and a half years of operation, the Kumgang tour greeted its one-million tourist. Since September 2003, the Kumgang tour by land has started saving time and cost. Accordingly, the number of tourists is on the increase with more than 3 thousand people staying in the Kumgang Tourist Zone every day.

3) Initially 7·1 Reformative Measures were intended to increase the commodity prices and laborers' wages, and thus, to facilitate the supply of food and goods despite the breakdown of the distribution system of the North Korean economy. However, the consequences were one-sided, inflationary and less effective than expected because of an insufficient supply of goods and the shortage of foreign exchange. Young-Hoa Jung, "The Analysis and Prospects on the Special Economic Zones of North Korea", *Studies on North Korean Law* Vol. 6, North Korea Law Society, 2003, p. 124.

South Korean companies.

While South Korean investors are experiencing unexpected difficulties in China, South Korean investors in North Korea will have better-than-expected results by combining capital from the South and cheap labor force of the North.⁴⁾

Prospects of Special Economic Zones

As explained before, the Equity Joint Venture Act and the Rajin-Sunbong Free Trade and Economic Zone have changed the nature of operation of the socialist economy and foreign investment laws.

North Korea has designated a number of special economic zones modeling Chinese special economic zones such as Guangdong and Hainan. The Chinese special economic zones were constructed in the late 1970s, as an effective window toward the rapidly changing world, and a test bed for the experiment of combining of Western capital and technology with the local labor and resources. At present, China has successfully expanded the special economic zones even to remote inland areas.

The Pyongyang regime established Chinese-style legislation regarding special economic zones, the first case of which was the Rajin-Sunbong Free Trade Zone, and delegated the authority to build Sinuiju Special Administrative Region under the model of Hong Kong or Shenzhen to a Chinese Dutch entrepreneur, Yang Bin. But this master plan fizzled out when Yang Bin was abruptly arrested on charges of tax evasion and violation of laws regarding real estate development in China.

On the other hand, special economic zones at Kungang and Gaeseong initiated by South Korean industrialists have been constructed as scheduled with the financial and technological assistance of the South Korean public corporations, i.e., the Korea National Tourism Organization and Korea Land Corporation. These special economic zones have been developed to invite not only South Korean citizens but also Korean residents in foreign countries and foreigners in general.

Though North Korean special economic zones are characteristically aiming at building up social overhead capital with the help of external capital and resources, when compared with the Chinese precedents, it remains to be seen whether North Korean special economic zones could absorb external investments to some extent.

4) Hee-Doo Sohn, *How to Improve Inter-Korean Exchange and Cooperation Laws regarding the North Korean Special Economic Zones*, Korea Legal Research Institute, Nov. 2004, p. 113.

Whether the North Korean special economic zones are successful will depend on how the administrative organization of special economic zones will function on the self-regulatory basis adjusting to between the investment efficiency required by the North Korean authorities and the highly expected income by South Korean investors.⁵⁾ The key must be well-organized infrastructure of special economic zones, including relevant laws and regulations with fairness and transparency, which ensures safe investment and operation by foreign investors.

III. Current Status of Foreign Investment in North Korea

Overview

At present, over sixty laws and regulations are implemented with regard to foreign trade and external economy in North Korea. From South Korea's legal point of view, it is almost impossible to categorize North Korean statutes by hierarchy or nature as public or private law, and civil or commercial law. Undoubtedly the Socialist Constitution⁶⁾ is at the top of the hierarchy of DPRK legal system.⁷⁾

For example, the Foreign Investment Act seems to be the basic law or general law in the area of foreign trade and external economy in North Korea.⁸⁾ So the Equity Joint Venture Act, the Contractual Joint Venture Act and the Foreign-owned Enterprise Act are, respectively, the special act in view of the

5) *Ibid.*, pp. 140-143.

6) DPRK's Socialist Constitution was amended and adopted on September 5, 1998 by the first session of the 10th Supreme People's Assembly. Among others, foreign trade and external economy-related provisions are as follows: <<http://www.geocities.com/dprknews/dprkconst.htm>>

Article 16. The DPRK shall guarantee the legal rights and interests of foreigners in its region.

Article 36. In the DPRK, the State and social cooperative organizations shall conduct foreign trade activities. The State shall develop foreign trade on the principles of complete equality and mutual benefit.

Article 37. The State shall encourage institutions, enterprises or associations of the DPRK to establish and operate equity and contractual joint venture enterprises with corporations or individuals of foreign countries within a special economic zone.

7) In North Korea, law is operative not for the rule of law but as an instrument to realize the purpose and goals of the Communist Party. In reality, the instructions of Kim Il Sung and Kim Jong-Il are of supreme authority above the law. Jae-Ryul Kwon et al, *The Legal System of North Korea - Its Structure and Characteristics*, Jipmoondang, 2004, p. 420.

8) Article 2 of the Foreigner Investment Act provides "This Act is a basic law with regard to the general principle and system to protect foreigner's investments and to ensure the lawful rights and interests of foreign-owned enterprise."

types of foreign investors under the Foreign Investment Act. In this regard, the Foreign Investment Bank Act belongs to a different kind of law in terms of the specific nature of banking business.

We can count some individual laws such as the Foreign-owned Enterprise and Tax Law, the Act on External Contract, the Land Lease Act, the Foreign Exchange Control Act, the Act on External Civil Relations, the Notary Act, the Customs Act, the Insurance Act, the Foreign Trade Law, and so on. At the level of regulations, there are the Regulation for the Registration of Foreign-owned Enterprise, the Labor Regulation, the Corporate Naming Regulation, the Corporate Accounting Regulation, the Corporate Accounting Examination Regulation, the Real Estate Investment Regulation, etc.

Within the Rajin-Sunbong area, the Act on the Rajin-Sunbong Free Trade and Economic Zone and other regulations are applicable e.g., the Foreigner Immigration Regulation, the Regulation on Foreigner's Stay and Habitation, the Regulation on the Transfer and Mortgage of Buildings, the Processing Trade Regulation, the Frontier Quarantine Regulation and the Intermediate Trade Regulation.

Recent Developments⁹⁾

Foreign investment was initially realized through an equity joint venture in accordance with the Equity Joint Venture Act of 1984. In order to promote foreign investment within the Rajin-Sunbong area, tax incentives were provided and, foreign individuals and South Korean businessmen were allowed to invest in an equity joint venture, a contractual joint venture or a foreign-owned enterprise. These types of foreign investment are regulated by the Equity Joint Venture Act, the Contractual Joint Venture Act and the Foreign-owned Enterprise Act, respectively.

It should be noted that since the latest amendment to the Socialist Constitution in September 1998, foreign investment-related laws and regulations have been revised in line with the rapidly changing economic environment. And such features

9) Wan-Jin Choi, "On the Foreign Investment-related Legislation in North Korea," Seminar on the Unification of Korea at Sookmyung University, November 11, 2005; Kwon, *op.cit.*, p. 420. North Korean laws and regulations are available at the web sites of the Ministry of Unification <<http://unibook.unikorea.go.kr>>, KOTRA <<http://www.kotra.or.kr/main/trade/nk/law/lawsub1.jsp>> and Yonhap News Agency <<http://www.yonhapnews.co.kr/ynafile/2000/nk/law201.html>>. North Korea published a statute book for overseas distribution in 2004.

as capital investment, managerial autonomy and profit sharing, which were unthinkable in the socialistic economy, are reflected to some extent upon the revision of legislation. The North Korean government, which has operated a closed economic system, seems to be gambling with its future.

▷ The Foreign Investment Act

The Foreign Investment Act was revised in 1999 following the amendment to the Constitution:

- to separate Korean residents in foreign countries from other foreign investors under this Act;
- to limit the venue of investment to the Rajin-Sunbong area;
- to reinforce the supervision and guidance of the central government toward the foreign investors; and
- to allow direct and appropriate employment of workers including variable wage rates rather than through an indirect mandatory employment agreement.

It is understood that foreign investment conducted by South Korean companies are regulated by the Inter-Korean Basic Agreement of 1991 rather than the DPRK foreign investment-related laws.

Under the Foreign Investment Act, a foreign-invested enterprise means a company established in the territory of North Korea as one of the equity joint venture, contractual joint venture or foreign-owned enterprise. As exemplified in China, the equity joint venture is a company, invested and operated jointly by a foreign investor and its North Korean partner, whose profit is distributed in proportion to the investors' equity. The contractual joint venture is a company co-invested by a foreign investor and a North Korean partner. But its management is solely up to the local North Korean partner and its profit is distributed in accordance with the investment agreement. The foreign-owned enterprise is a company that is invested solely, and managed independently, by a foreign investor. In this regard, a foreign-invested enterprise is allowed to establish children companies, i.e., subsidiaries.

Both the equity joint venture and the contractual joint venture can be established anywhere in North Korea, while the foreign-owned enterprise is allowed only in special economic zones. This restriction on foreign-owned

enterprise is to bring in badly needed foreign capital while limiting the influence or potential influence of foreign investors upon North Korean citizens to a certain district. But it is noteworthy that the Pyongyang regime is considering introducing the Western-style stock company and financial system on the basis of market mechanism. It signified a further step from a simple open-door policy.¹⁰⁾

<Table> Comparative Analysis of Foreign-Invested Enterprises

In China	In North Korea	Invested	Managed	Distributed	
				Profit	Loss
Equity JV	Equity JV	Jointly	Jointly	<i>pro rata</i> Equity	<i>pro rata</i> Equity
Contractual JV	Contractual JV	Jointly	Solely by Local Partner	by Agreement	Solely by Local Partner
Foreign- owned Enterprise	Foreign- owned Enterprise	Solely by Foreigner	Solely by Foreigner	Solely by Foreigner	Solely by Foreigner

Source: Woong-Shik Shin and Sung-Joe Ahn, *The Foreign Investment Act in North Korea*, Korea Trade Federation, 1999, p. 105.

▷ The Foreign Exchange Control Act

The Foreign Exchange Control Act was first established by the standing committee of the Supreme People's Assembly¹¹⁾ in January 1993, and amended in February 1999 and in February 2002.

The recent amendment to this Act include the following:

- The government control is enhanced in such a downstream as the cabinet → the central fiscal administration → provincial people's committees → institutions, enterprises or associations;
- The foreign exchange control within special economic zones is regulated in a different manner;
- The centralization of foreign exchange is reinforced while individual possession

10) Woong-Shik Shin and Sung-Joe Ahn, *The Foreign Investment Act in North Korea*, Korea Trade Federation, 1999, p. 104.

11) The Supreme People's Assembly is the parliament of DPRK. It consists of 687 members, who are popularly elected to serve five year terms. During the recess, the standing committee functions in its place. So it is the *de jure* highest organ of state power. The chairman of the Presidium of the Supreme People's Assembly represents the state.

of foreign exchange is strictly prohibited;

- Letters of credit are added to the remittance, demand for payment and committed payment for the external payment;
- Over-earned foreign exchange exceeding the planned revenue is entrusted to the meritorious institution or enterprise; and
- Foreign exchange banks are required to keep the deposit confidential and to reserve fund for withdrawal, and allowed to extend foreign currency loans subject to the consent of the central fiscal administration and the approval of the cabinet.

The latest amendment to the Foreign Exchange Control Act apparently demands institutions, enterprises and associations to timely execute the foreign exchange revenue plan and to pay preferentially to the state the foreign exchange allocations regardless of their operation results. It allegedly aims at fulfilling the pre-designated target of foreign exchange revenue in a state level.

On the other hand, the violation of the Act results in punitive sanctions such as penalty, confiscation as well as administrative and criminal punishment. Those sanctions might be utilized to keep citizens who make frequent contacts with foreigners under tight control.

▷ The Foreign-invested Enterprise and Foreigner Tax Law

The Foreign-invested Enterprise and Foreigner Tax Law was initially established by the standing committee of the Supreme People's Assembly in January 1993, and amended in 1999, 2001, and most recently in November 2002.

A foreign-invested enterprise is required to pay the business income tax (equivalent to the corporation tax in South Korea) for the income generated from business activities within the territory of North Korea and other income such as interest, rent, sales income, capital gains and royalty on intellectual property rights. Before the passage of the Foreign-invested Enterprise and Foreigner Tax Law, they were required to pay only corporation income tax, personal income tax, property tax, inheritance tax, transaction tax and local taxes.

In 2002, the Pyongyang regime started to levy the business tax (equivalent to VAT in South Korea) on foreign direct investment. The taxpayer is a foreign-invested enterprise engaged in the business of service and construction.

Therefore 2~10 percent of the revenue generated from transportation, utilities, commercial activities, foreign trade, insurance, tourism, advertisement, food and beverage, recreation and sanitary services is collected as business tax. When the foreign-invested enterprise is engaged in various kinds of services, the taxable income is calculated by each service on a monthly basis. The foreign-invested enterprises within the Rajin-Sunbong region are given 50 percent deduction of business tax.

▷ The Foreign Investment Bank Act

The Foreign Investment Bank Act was first established by the standing committee of the Supreme People's Assembly in November 1993, amended in 1999, and most recently in November 2002.

The latest amendment to this Act includes the following:

- The establishment of a foreign-owned bank and a foreign bank branch is allowed only within the Rajin-Sunbong Free Trade and Economic Zone;
- The registered capital of a foreign-owned bank or an equity joint venture bank is greatly increased to 2,250 million NK Won, while the operation fund of a foreign bank branch should be more than 600 million NK Won of convertible foreign currencies.

The sharp increase of registered capital of a foreign investment bank was intended to secure sufficient foreign capital. In other words, at least 50 percent of US\$15 million is necessary for a foreign-owned bank to start banking business in North Korea.

▷ The Bankruptcy Act for a Failed Foreign-invested Enterprise

It is also noteworthy that, in April 2000, the Bankruptcy Act for a Failed Foreign-invested Enterprise was established for the first time in North Korea, regardless of its doubtful implementation. This Act provides for the bankruptcy proceedings supervised and presided over by the North Korean court when a foreign-invested enterprise fails to repay its debt, turns out to have more liabilities than assets, or suffers excessive loss. If the enterprise proves hard to dissolve in due course, the court shall declare it to be bankrupt. And the bankruptcy proceedings cease to continue when creditors and the debtor company agree to the

composition.

Characteristics of North Korean Foreign Investment Laws

North Korea seems to have imitated the relevant laws of China including foreign investment-related laws, and established more progressive provisions than those of China and Vietnam in the area of tax incentives. However, there are significant problems in the fundamental and overall operation of legal systems.¹²⁾

First, the nature of North Korean policy toward foreign investment is highly passive. It is because the communist regime does not want to see its North Korean citizens exposed to foreign investors' influence. As far as the Pyongyang leaders continue to restrict foreign investment within the special economic zones, it is unlikely that the overall economic situation of North Korea will improve.

Second, the government control and surveillance in the form of approval, authorization, taxation, etc., are universal and routine, from the establishment of a company to its dissolution.¹³⁾ The policy is a result of deep-rooted concerns of North Korean political leaders who are eager to bring in the market economy and partially the capitalist way to North Korea while keeping intact the conventional socialist system. Obviously, the most efficient way to introduce the market economy and capitalism is to reduce the excessive intervention of the North Korean government in the operation of foreign-invested enterprises.

Third, the legal wording of provisions is limited to basic regulatory matters with regard to foreign investment. It is short on detailed criteria to regulate the interests of concerned parties leaving its interpretation to the North Korean authorities, inevitably to the detriment of foreign investors.¹⁴⁾ Also the definition of

12) Choi, *op.cit.*

13) It is said that the rule of law does not prevail in North Korea because the words and instructions of Kim Il Sung and Kim Jong-Il are of supreme authority. For example, their words is primarily the standard of construction of laws.

14) There are a number of provisions of the proclamatory nature. For example, Paragraph 2 Article 3 of the Foreign-invested Enterprise Act provides, "No enterprise, which might cause the instability of the Republic or lags behind in technology, shall be established." Article 5 of the same Act also provides, "A foreign investor shall not undermine the development of the people's economy of the Republic." Those vague terms of the above provisions are usually construed based upon undisclosed policy or intention of the North Korean authorities. So foreign investors cannot be sure of the outcome of legal disputes taking place in North Korea. Hyun-Yoon Shin, "Systemic Study on the Equity Joint Venture Act, the Contractual Joint Venture Act and the Foreign-invested Enterprise Act," *Major Legal Issues of the North Korean Foreign Trade and Economic Cooperative Laws and Regulations (1)*, Ministry of Court Administration, 2001, p. 109.

legal terms is often unclear, and the applicable standard of law is sometimes vague and even incorrect. For example, Paragraph 2 Article 19 of the Foreign Investment Act says, "When the Republic expropriates or nationalizes the properties acquired by a foreign investor for an unavoidable reason, it shall pay appropriate compensation." There is not any informative construction of the "unavoidable reason," or applicable standard with regard to the "appropriate compensation." As mentioned before, the hierarchy of laws and regulations is unclear. There is no clear-cut standard regarding which one is new or special in terms of legal effect.

Fourth, the North Korean legal structure is incomplete in that the communist regime does not acknowledge the commercial law regulating business transactions. There is little understanding of global standards and international practices among the North Korean government officials. Thus, foreign investors are not sure of the legal effects and relations of business activities, and accordingly, the outcome of any legal disputes. At present, any detailed information regarding the operation of the courts or arbitration panels is not available to foreign investors in this closed community.

IV. Bottlenecks in North Korean Laws

Overview

Despite the overall efforts to improve the troublesome systems, the North Korean laws to promote foreign investment seem to have some problems owing to insufficient experiences of market economy and awkward legislative techniques. Moreover, the Socialist Constitution of 1998 has mandated the authoritative regulation and centrally controlled supervision of foreign investment for fear of unexpected negative influences of economic reforms upon North Korean citizens. Also there are numerous ambiguous provisions of relevant laws from the point of view of South Korean businessmen.

Scope of Foreign Investors

The recent amendments to the acts regarding joint ventures have enlarged the scope of North Korean partners to institutions and associations, thus, enabling state institutions to participate in large-scale projects. Nevertheless, an individual

investor is ruled out from the planning stage because he or she cannot join any equity joint venture or contractual joint venture in North Korea.

On the other hand, foreign investors include government agencies, corporations, associations or individuals regardless of the type of joint ventures. In this context, it is questionable whether South Korean companies are within the definition of a "foreign investor." For example, Article 5 of the Foreign Investment Act is unclear whether South Korean businessmen are included in the subject of the provision governing investment in the Republic by South Korean people outside the North Korean territory. At the moment, South Koreans could be treated like Korean people living in Japan or the United States.

It is not clear that Korean people out of the North Korean territory could be awarded various incentives that Chinese people out of the Chinese territory enjoy. So it is advisable that each of the foreign investment-related laws should stipulate such incentives in an explicit manner. Otherwise, such incentives might be withdrawn at any time.

Investment

According to Act 12 of the Foreign Investment Act, a foreign investor may invest in cash, real properties, industrial property rights, or technical know-how, regardless of the nature of investment object. The value of invested properties is negotiated and agreed to by joint venture partners in view of the prevailing international commodity prices at the moment.

However, North Koreans are not yet accustomed to concepts such as "price of real estate," "industrial property rights," "copyrights" or "trade secret." Thus, appraisal of such assets could be determined capriciously by the parties concerned, in view of the prevailing international commodity prices at the moment.

Labor Administration and Wage

A foreign invested enterprise is required by the Foreign Investment Act to consult with the Central Trade Advising Institution in Pyongyang. Also, an employment agreement shall be made and entered into by and between the employer and an intermediate labor agency. As a result, the employer is faced with a lot of difficulties in that it cannot know the skill and education level of each worker, and that it cannot employ directly specifically necessary workers

with requirements.¹⁵⁾

But there is a positive aspect in labor administration that laborers employed by foreign-invested enterprises are exempted from other obligatory work under a socialist campaign such as the *Cheolima* Movement¹⁶⁾ except in the event of a natural disaster.

It should be noted that there is an applicable minimum wage in North Korea. Foreign-invested enterprises are required to pay a worker US\$80 to US\$150 a month on average. So foreign investors should be given much more discretionary power to treat the wage rate, bonuses and working hours in order to enhance their competitiveness.

Use of Land

The socialist regime in North Korea allows a foreign investor to choose among three alternatives: First, to contact directly the North Korean government for a long-term lease agreement; second, to enter into a lease agreement with the present land user; and, third, to collaborate with a North Korean partner who invests in kind with the right to use land. It should be noted that the prior approval of the concerned authorities is required for the registration of change of names when assigning or taking mortgage of the right to use land. Accordingly, optional assignment between the private parties or the change of line of business in using the land is almost impermissible.

It is considered a principle for the lessee of land to return a building and fixture for free, and even to remove the building and accessory fixture on demand of the lessor at the lessee's expense. So the costs and expenses of a foreign investor who is about to withdraw its investment will increase sharply depending upon the arbitrary decision of the government officials.

According to the Land Lease Act and its enforcement regulation, the lessor of land has a right to first refusal when the lessee is going to dispose of its right to use land. The construction cost to build in road, water supply, electricity, communication and other SOC facilities is incorporated in the rental fee.

15) Myong-Chull Cho and Ick-Pyo Hong, *The Policy and Climate for Foreign Investment in North Korea*, Korea Institute of Economic Policy, 1998, pp. 183-86.

16) The Pyongyang regime once demanded North Korean people to work harder and longer than required under the flag of the *Cheolima*, a horse that can run hundreds of miles a day.

Banking and Foreign Exchange

Foreign investors have an incentive to take advantage of foreign currency loans extended by banks. Also foreign-invested enterprises are preferentially eligible for bank loans, if necessary, provided by banks in foreign countries subject to the prior consultation with the foreign exchange administration office. However, in view of the foreign exchange shortage in North Korea, these incentives are unrealistic. Otherwise, foreign-invested enterprises are likely forced to borrow foreign currency loans on behalf of other North Korean enterprises.

The Foreign Exchange Act of North Korea allows foreign investors to keep the North Korean Won currency accounts in which they may deposit local currency revenues, but could not demand to convert the NK Won currency-denominated deposit into foreign currencies. Even though foreign investors are entitled to convert and remit their income and other revenues generated from the operation of business, in fact, the tight foreign exchange situation of North Korea could not permit such legitimate conversion into hard currencies.

IV. Prospects

In implementing the current open-door policy, what should the Pyongyang regime know in order to enhance the country's competitiveness? First of all, North Korea has to marshal its legal terms and usages in a proper manner consistent with global standards, and to ensure the legal stability of foreign investment. It is advisable to gradually abolish the Republic-first provisions, which could thwart the investment mind of foreign businessmen, and to minimize the government intervention in the business operation of foreign-invested enterprises.

It is arguable whether South Korean investors are governed by foreign investment-related laws and regulations of North Korea owing to the vague words contained therein. At the moment, the Kungang Tourist Zone and the Gaeseong Industrial District welcome South Korean businessmen, but investment in North Korea is subject to the approval of the South Korean government. Since the 6·15 Inter-Korean Summit Meeting in 2000, the South Korean government has been very active in providing economical and financial assistance to North Korea.

Accordingly, North Korea has sufficient reasons to pass a special act to encourage and promote investment by South Korean entrepreneurs by curtailing

state control and intervention in foreign investment, and enhancing the transparency of administration and the rule of law.

A series of amendments to foreign investment-related laws show the extraordinary efforts of the "world's last socialist economy." In spite of progressive endeavors made by the Pyongyang regime since the early 1990s, the outcome remains to be seen in the midst of an uncertain and tumultuous world economy. Not only the content of legislation, but also the attitude and posture of government officials toward the open-door policy are of great importance. In short, by ensuring the rights to properties, fair settlement of legal disputes and the rule of law and reasonableness, the socialist regime could expect the "rush of foreign capital" into the Republic as China experienced in the 1980s and 1990s. It is impossible to induce foreign investors as far as the instructions of Great Leaders prevail over the laws and global standards.¹⁷⁾

Also, a trust base should be established to induce foreign investors. In this regard, North Korea's admission to the supranational financial institutions like the Asian Development Bank and overall restructuring of the North Korean economy seem to be inevitable. It is true that North Korea cannot depend on the special economic zones because they could expect less powerful source of funds or wealth accumulated by Korean residents abroad than the Chinese emigrants.¹⁸⁾

Against this backdrop, what the South Korean delegates at the negotiation table should bear in mind a long-term perspective towards preparing for the

17) During the course of international intercourse of politics and commerce, North Korea seemed to have learned the importance of international rule. For example, in connection with the latest financial clash with the United States over North Korea's alleged counterfeiting of US\$100 bills. Christopher Hill, the U.S. diplomat to the six-party nuclear talks, stated at a meeting in Beijing in the middle of January 2006. Kim Gye-Gwan, his North Korean counterpart, said Pyongyang was prepared to follow international rules on money laundering and was also willing to cooperate internationally. Hill allegedly replied, "We're not looking here for words. We're more interested in actions." Foreign Minister Bank Ki-Moon of South Korea also said, "Through this clash, North Korean would have learned about things that it should do and should not do." JoongAng Daily, Jan. 27, 2006 and Korea Herald, Jan. 9, 2006.

18) In the initial stage economic reform, foreign capital flew into China primarily through special economic zones like Shenzhen. As the transition economies in the Central and Eastern Europe experienced, the supranational financial institutions like IBRD and EBRD functioned as a main pipeline of foreign funds. But, currently, North Korea largely depends on the humanitarian aid from international communities and foreign investment carried out by the South Korean companies. Accordingly, it is necessary for the North Korean government to reinforce international cooperation and to diversify the source of foreign funds to foreign direct investment, portfolio investment, as well as international commercial loans.

unification of the peninsula. South Korean lawyers should discuss and cooperate with North Korean officials for the buildup of stable legal infrastructure in the special economic zones where a number of South Korean companies are doing business. Also, it is important to devise and establish a legal system,¹⁹⁾ which is appropriate and compatible in the unified Korea.

Source: *Studies on North Korean Law*, Vol.9, pp.279-299, the North Korean Law Society, November 2006

19) Establishing a consolidated legal system in the area of private law, including contract law, corporation law, collateral law and bankruptcy law, to regulate the life cycle of businesses is urgently needed in North Korea. Whon-Il Park, *How to Establish Collateral Law in North Korea for the Enhanced Inter-Korean Economic Cooperation*, Jipmoondang, 2004, p. 52.

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Ministry of Unification <<http://unibook.unikorea.go.kr>>

Korea Trade-Investment Promotion Agency

<<http://www.kotra.or.kr/main/trade/nk/law/lawsub1.jsp>> available also in English

Yonhap News Agency <<http://english.yna.co.kr/Engservices/4300000000.html>> or

<<http://www.yonhapnews.co.kr/ynafile/2000/nk/law201.html>> regarding the Foreign Investment Act of DPRK

Internet encyclopedia <<http://www.geocities.com/dprknews/dprkconst.htm>>

【국문 초록】

北韓 外國人投資法制의 현황과 전망

한반도가 분단된 지 60년이 지났다. 그 동안 남한은 1960년대 이후 對外指向的 경제개발정책을 펴 세계 굴지의 경제강국으로 성장한 반면 自力更生の 사회주의 경제를 고수하였던 북한은 대외경제활동이 거의 정지된 채 주민의 절대다수가 기아선상에 허덕이고 있다. 무엇이 남과 북을 이렇게 갈라놓았는가? 이는 무엇보다도 남한은 외국자본을 적절히 활용하였던 반면, 북한은 ‘주체’ 사상의 울무에 얽매인 나머지 외자를 도외시한 자립경제를 추구한 데 기인한다.

이에 북한은 외자유치의 필요성을 절감하고 중국의 성공사례를 본받아 1990년대 들어 대외경제법제를 서둘러 정비하였다. 라진·선봉에 경제특구를 조성하고 외국인투자를 유치하려 하였으나 별 성과가 없자 북한당국은 이를 신의주, 금강산, 개성 등지로 확대하고, 2002년 7월 1일에는 획기적인 경제관리개선조치를 실시하는 등 남한 기업을 비롯한 외국인투자에 전향적인 자세를 취하고 있다.

북한에서는 현재 외국인투자법을 비롯한 60여 개의 대외경제법령이 시행되고 있으나 근본적으로 ‘법의 지배’가 적용되지 않는 데다 공·사법이나 신·구법 등의 위계가 불분명하여 법의 효력이나 법적 안정성을 보장받기 어렵다. 북한당국은 1999년부터 외자유치를 활성화하기 위해 외국인투자법, 자유경제무역지대법, 외국인기업법, 합작법, 합영법, 외국인투자기업 및 외국인세금법, 외국인투자은행법, 토지임대법 등 외국인투자관련법규를 개정, 시행하고 있다. 여기에는 종래 상상할 수도 없었던 자본투자, 경영자치 및 이윤배분의 개념을 수용하는 등 제한적이기는 하지만 자본주의의 기업경영방식을 도입하고 있다.

북한이 외국인투자를 제대로 유치하려면 지금까지 모호하게 사용되어온 기본적인 법개념을 정립하고, 구체성이 결여되거나 상호 충돌되는 법규범을 정비하는 등 외국인투자의 법적 안정성을 보장하는 등의 노력이 선행되어야 한다. 이와 함께 외국인 투자기업의 경영활동에 대한 개입과 간섭을 최소화하는 방향으로 법률을 개정하고, 남한기업들이 좀더 투자를 많이 할 수 있도록 관련 특별법을 제정하여야 할 것이다. 북한은 법률만 많이 만들어서는 아니되며 진정한 재산권 보장, 공정한 분쟁해결 등 법치주의를 시행하여야 한다. 이러한 방향으로 제도정비가 이루어지지 않는다면 중국과 같은 ‘外資의 러시’를 기대할 수 없을 것이다.

무엇보다도 외자를 원활히 유치하기 위해서는 신뢰(trust)의 토대가 마련되어야 한다. 개혁·개방 초기에 중국과 같은 경제특구 방식만으로는 한계가 있으므로 경제사회 전반에 대한 구조개혁 프로그램을 이행하면서 국제공적자금을 지원 받는 것이 훨씬 현실적이다. 남측으로서도 장기적으로 한반도 통일을 내다보고 통일시대에 법제의 정합성을 도모할 수 있는 남·북한 법령의 정비를 모색하여야 할 것이다.