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# Development of North Korea's Legal Regime Governing Foreign Business Cooperation: A Revisit Under the New Socialist Constitution of 1998

*Eric Yong-Joong Lee\**

*Abstract:* A primary purpose of this article is to examine the formation of North Korea's legal regime governing foreign business cooperation and its evolution in the post-Kim Il Sung era. Since initiating its open-door policy in the early 1990s, North Korea has developed the legal framework for external economic cooperation. The Law of the Democratic People's Republic of Korea ("DPRK") on Foreign Investment of 1992 and its 1999 revision has especially represented North Korea's legal and policy direction towards inducing foreign capital investment, as well as establishing a legal basis for the following laws and regulations in this field. The main focus of this research is on the Foreign Investment Law and its relevant legislation, including the Equity Joint Venture Law, the Contractual Joint Venture Law and the Foreign Enterprises Law. The Law of the DPRK on Joint Venture of 1984, which is the original model of lawmaking in external economic cooperation, will be also examined. A constitutional perspective, meanwhile, is maintained throughout the article. In conclusion, the future of North Korean foreign business laws and their implications in inter-Korean economic cooperation will be discussed.

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I. INTRODUCTION: NORTH KOREA'S OPEN-DOOR POLICY AND FORMATION  
OF NEW FOREIGN BUSINESS LAWS

The last decade of the 20th century began with optimism for all Koreans. Moving beyond their previously hostile relations, the two Koreas entered a new stage of cooperation. In particular, North Korea has gradually opened its doors to the outside and has begun to formulate legal and regulatory measures to effectuate its new national policies. Since the early 1990s, the government of North Korea has passed laws and regulations that establish a framework for foreign business cooperation. The origin of North Korea's legal development in this field, however, dates back to the mid-1980s. In September 1984, North Korea promulgated the Joint Venture Law, its first legal measure regarding external economic relations.<sup>1</sup> North Korea, in default and thus unable to attain additional foreign loans or credits, wanted to bring in foreign capital and technology with this legislation. With the Joint Venture Law, the North Korean government sought to open its doors cautiously and induce foreign capital investment, while maintaining a self-reliant socialist system. Regrettably, the 1984 Joint Venture Law did not result in the favorable outcome intended.

Attracting foreign investment demands adopting laws that define property, govern contracts, stipulate taxes, and in other ways make economic development predictable enough for foreign firms to comfortably participate.<sup>2</sup> In the early 1990s, the North Korean government recognized this and began to develop an advanced legal infrastructure in order to attract the foreign investment that it desired. Accordingly, progressive legal measures were adopted to encourage foreign economic cooperation; this included the Constitution, which permitted increasing openness of its doors to investment. The most significant piece of legislation was the Law of the DPRK on Foreign Investment of 1992 ("FIL").<sup>3</sup> As the basic law governing North Korea's external economic relations, the FIL provided concrete principles and methods for foreign economic cooperation in the territory of North Korea. The 1992 Foreign Investment Law was further strengthened by three important laws concerning the establishment and management of foreign business in North Korea: the Law of the DPRK on Equity Joint Venture, the Law of the DPRK on Contractual Joint Venture, and the Law of the DPRK on Foreign Enterprise. In addition, under the FIL system, North Korea enacted the Law on Free Economic and Trade Zone ("LFETZ"), a basic legal document for the free economic and trade zone that was established in the

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<sup>1</sup> Law of the DPRK on Joint Venture (adopted Sept. 8, 1994) [hereinafter JVL], *translated in North Korean Joint Venture Laws*, 19 CAL. W. INT'L L.J. 175 (1988-1989).

<sup>2</sup> See KENNETH LIEBERTHAL, *GOVERNING CHINA: FROM REVOLUTION THROUGH REFORM* 150 (1995).

<sup>3</sup> See T. J. O'Brien, *An Outline of the Foreign Investment Laws of North Korea*, available at <http://darkwing.uoregon.edu/~felsing/kstuff/o'brien1.html>, at §1.02 (as of Nov. 12, 2000).

Rajin-Sonbong area in the early 1990s.<sup>4</sup> The basic principles of the LFETZ have also been supplemented by relevant laws and detailed regulations, which together form a special legal regime for the free economic and trade zone.<sup>5</sup>

Recent amendments to this legal regime for foreign business cooperation have been made to the Socialist Constitution of DPRK and other laws and regulations for foreign investment, which were revised in 1998 and 1999, respectively. However, this legislation continues to represent a new direction for North Korea's open-door policy in the post-Kim II Sung era, and guides its stance for managing external economic cooperation in the foreseeable future.

This Article will explore the formation and evolution of North Korea's legal framework for foreign business cooperation. First, in Part II, the 1984 Joint Venture Law will be examined, because it is considered the origin of North Korea's lawmaking in foreign business cooperation. Part III analyzes the current legal regime governing three forms of foreign investment in North Korea. The main focus in this Part is on the 1992 Law of the DPRK on Foreign Investment and its relevant laws. The 1999 Revised Version of each law will also be examined. As the fundamental legal instrument of North Korea's external economic cooperation policies, the Foreign Investment Law and each of its provisions have been significant for those investing in North Korea. For a better understanding of the FIL, Part III also examines the constitutional principles of foreign economic cooperation laid down in the DPRK Constitution of 1992 and its 1998 revision. As to the constitutional foundation, general and practical legal applications to other laws and regulations as they relate to the constitutional principles will also be addressed. Finally, the Evaluation and Conclusion sections will discuss the future of North Korea's foreign business laws and their implications for inter-Korean economic cooperation.

## II. THE LAW OF THE DPRK ON JOINT VENTURE OF 1984

As a symbol of opening its market, North Korea promulgated the Law of the DPRK on Joint Venture ("JVL") on September 8, 1984.<sup>6</sup> Originally

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<sup>4</sup> Law of the DPRK on Free Economic and Trade Zone, Decision No. 28 (adopted on Jan. 31, 1993 and revised on Feb. 26, 1999) [hereinafter LFETZ], at <http://members.aol.com/gorbytim/fetz.htm> (as of Dec. 7, 2000), translated in CPEEC, GOLDEN TRIANGLE, RAJIN-SOBONG: COLLECTION OF LAWS AND REGULATIONS 23-7 (vol. 1, 1996).

<sup>5</sup> Special legal and investment systems under LFETZ, in particular those relating to the Rajin-Sonbong Free Economic and Trade Zone, are beyond the scope of this Article.

<sup>6</sup> Prior to the JVL, the only measurable investment in North Korea came from Japanese companies run by members of *Chosen Soren*, the association of North Korean residents in Japan. Most of the *Chosen Soren* investments were small. See Kongdan Oh, *The Problem and Promise of Inter-Korean Economic Cooperation*, in KOREAN BRIEFING TOWARD REUNIFICATION 25, 31 (D.R. McCann ed. 1997).

adopted on January 26, 1984, at the Third Session of the Seventh Supreme People's Assembly, the Joint Venture Law of 1984 resulted from the new foreign economic policy of the North Korean government, which was based on "strengthening south-south cooperation and external economic activities and further developing foreign trade."<sup>7</sup> In order to promote North Korea's new and growing economic contacts with the outside, the JVL seemed tailored to the particular needs of North Korea at that time. North Korean policy-makers attempted to maintain their policy of a socialist planned economy, while at the same time reinforcing their economy with the JVL's innovations.<sup>8</sup>

Composed of 26 articles within five chapters,<sup>9</sup> the JVL helped North Korea to open its doors initially to foreign business.<sup>10</sup> Article 1 stated that the primary goal of the JVL was to encourage joint ventures between its companies and enterprises with foreign companies, enterprises and individuals within its boundary on the principle of equality and reciprocity. Pursuant to that objective, each provision of the JVL was designed to invite direct foreign investment by providing explicit legal protection for foreign assets and income related to joint ventures in North Korea.<sup>11</sup> North Korea suggested various business areas for foreign joint ventures<sup>12</sup> and guaranteed all legal rights in connection with the management activities of such joint ventures.<sup>13</sup>

With regard to the establishment of joint ventures, Article 6 of the JVL provided that a joint venture could be organized when the parties concerned signed a contract and registered it with the External Economic Organ of the Administration Council ("EEOAC").<sup>14</sup> The registration process is ex-

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<sup>7</sup> *On the Promotion of South-South Cooperation*, RODONG SHINMUN, Jan. 27, 1984, at 2.

<sup>8</sup> See Yim Yong-soon, *Strategy for Promoting Inter-Korean Economic Exchanges*, 17 KOREA OBSERVER 4, 425 (1996).

<sup>9</sup> These five chapters are: Chapter I : Basis of Joint Ventures; Chapter II : Organization of Joint Companies; Chapter III : Council and Management Activities; Chapter IV: The Account Settlement and Income Division; Chapter V: Dissolution of Joint Companies and Settlement of Disputes. See JVL, *supra* note 1, at 205.

<sup>10</sup> The JVL was followed by Detailed Regulations for the Joint Venture Law (Mar. 20, 1985), the Joint Venture Company Income Tax Law (Mar. 7, 1985), and the Alien Income Tax Law (Mar. 7, 1985). For an English translation of these laws, see generally 44 NORTH KOREA QUARTERLY 215-20 (1986).

<sup>11</sup> JVL, *supra* note 1, Art. 3, at 205.

<sup>12</sup> See e.g., industry, construction, transportation, science, technology and tourism. *Id.* Art. 2, at 205.

<sup>13</sup> See *id.* Art. 4, at 205.

<sup>14</sup> *Id.* Art. 6, at 206. The functions of the EEOAC relating to foreign investment have been committed to the Central Trade Guiding Organ ("CTGO") under the new foreign investment law system. See Law of the DPRK on Rajin-Sonbong Free Economic and Trade Zone (adopted on Feb. 26, 1999), Arts. 8, 9, 13, and 14, available at <http://www.kotra.or.kr/nk>.

plained in more detail later in this Article. The ownership of shares of investment would be decided by agreement between the parties.<sup>15</sup>

The JVL specified that the board of directors, as the highest decision-making body, would discuss and decide important questions related to decision-making and the management activities of a joint venture business.<sup>16</sup> Income tax would be paid according to the DPRK Law on Income Tax of Joint Companies for the net income at each period of account settlement.<sup>17</sup> A joint venture was required to settle the accounts of its management at least once a year.<sup>18</sup> Tariffs, however, were exempted under Article 14, paragraph 2 of the JVL.<sup>19</sup>

Disputes that arose in the course of the operation of a joint venture company were to be resolved by agreement or by filing a lawsuit before a court or arbitration organ of North Korea.<sup>20</sup> In addition, Article 23 stipulated that a joint company could be dissolved either at the expiration of the period of its existence, as agreed in the contract, or for continuous budget deficit or some other reason, such as failing to honor its duty or being under unavoidable circumstances.<sup>21</sup>

#### A. A Comparison to the Chinese Joint Venture Law of 1979

The Law of the DPRK on Joint Venture was modeled after China's successful Law on Joint Ventures Using Chinese and Foreign Investments ("Chinese JVL")<sup>22</sup> adopted in 1979.<sup>23</sup> China's JVL was a watershed in its economic reform process<sup>24</sup> that was initiated after the death of its leader,

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<sup>15</sup> See JVL, *supra* note 1, Art. 7, at 206.

<sup>16</sup> *Id.* Arts. 10, 11, at 206-07.

<sup>17</sup> Net profits would be exempt from taxes for three years and taxed at 25% thereafter. See Law of the DPRK on Taxes on Foreign-Invested Enterprise and Foreigners (adopted on Jan. 31, 1993 and revised on Feb. 26, 1999) [hereinafter TFIEL], at <http://members.aol.com/gorbytim/taxlaw.htm> (as of Dec. 7, 2000), translated in INVESTMENT CLIMATE: RAJIN-SONBONG FREE ECONOMIC AND TRADE ZONE 179-201, Art. 12 (1995) [hereinafter INVESTMENT CLIMATE]; JVL, *supra* note 1, Art. 21, at 208.

<sup>18</sup> See JVL, *supra* note 1, Art. 18, at 208.

<sup>19</sup> *Id.* art 14, at 207. Art. 14, para. 2 of the JVL states that "[w]hen a joint venture company imports materials from foreign markets, it does not pay a tariff." See *id.*

<sup>20</sup> See *id.* Art. 26, at 209. In order to solve disputes in external economic relations and protect the rights and interests of the parties concerned, North Korea recently adopted the Law of the DPRK on External Economic Arbitration, translated in *The People's Korea Homepage*, at <http://www.korea-np.co.jp/pk> (as of Feb. 20, 2000).

<sup>21</sup> See *id.* Arts. 23 and 24, at 209.

<sup>22</sup> The Law of the People's Republic of China on Joint Ventures Using Chinese and Foreign Investment was adopted in July 1, 1979, and amended on April 4, 1990 [hereinafter Chinese JVL]. See Law of the People's Republic of China on Sino-Foreign Joint Equity Enterprise, in CHINA LAWS FOR FOREIGN BUSINESS: BUSINESS REGULATION 6-500; see also Sino-Foreign Equity Joint Venture Law, available at <http://www.qis.net/chinalaw/prclaw11.htm> (as of Nov. 13, 2000). Originally adopted at the Second Session of the Fifth National

Mao Tse-Tung in 1976.<sup>25</sup> A primary goal of the Chinese JVL was to expand international economic cooperation and to establish foreign equity joint ventures with Chinese companies.<sup>26</sup> In order to ensure smooth implementation of the legal rules set out in the Chinese JVL, the government of the People's Republic of China ("PRC") passed a series of laws and administrative regulations on joint ventures between Chinese and foreign investors.<sup>27</sup> This remarkable economic and legal reform, initiated by Deng Xiaoping-led reformers, had a great influence on North Korean initiative in encouraging foreign economic cooperation. This is especially apparent in the 1984 Joint Venture Law of North Korea in which many provisions from the Chinese JVL were transplanted.<sup>28</sup> Although North Korea's JVL seemed in many ways to be a revised duplicate of the Chinese JVL and its Implementing Regulations, it had some modifications in the following areas: establishment of equity joint ventures, capital investment, management, dissolution, and dispute resolution.<sup>29</sup>

With regard to establishing equity joint ventures, North Korea's JVL differed from the Chinese JVL in three critical features. First, North Korea's JVL required domestic partners to receive approval from the Ministry

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People's Congress on July 1, 1979, the Chinese JVL was revised on April 4, 1990, in accordance with the decision of the Third Session of the Seventh National People's Congress.

<sup>23</sup> See Preston M. Torbert, *China's Joint Venture Law: A Preliminary Analysis*, 12 VAND. J. TRANSNAT'L L. 819-20 (1979). On the legal framework of China joint venture law, see generally, A.K.L. HO, JOINT VENTURES IN THE PEOPLE'S REPUBLIC OF CHINA: CAN CAPITALISM AND COMMUNISM COEXIST? (1990).

<sup>24</sup> On the process of the reform during this period, see NICHOLAS R. LARDY, FOREIGN TRADE AND ECONOMIC REFORM IN CHINA 1978-1990 (1992).

<sup>25</sup> The post-Mao economic reform started with Deng Xiaoping's liberal program inaugurated at the Third Plenum of the Eleventh Party Congress in December 1978. See Lowell Dittmer, *Socialist Reform and Sino-Soviet Convergence*, in REFORM AND REACTION IN POST-MAO CHINA 18, 20 (R. Baum ed., 1991).

<sup>26</sup> Chinese JVL, *supra* note 22, Art. 1.

<sup>27</sup> Particularly important laws and regulations include: The Law of the PRC on Chinese-Foreign Joint Ventures; Rules for the Implementation of the Income Tax Law of the PRC concerning Chinese-Foreign Joint Ventures and the Individual Income Tax of the PRC; Regulations for the Implementation of the Law of the PRC on Chinese-Foreign Joint Ventures; Procedures of the PRC for Registration and Administration of Chinese-Foreign Joint Ventures; Provisions of the PRC for Labour Management in Chinese-Foreign Joint Ventures; Interim Regulations on Foreign Exchange Control of the PRC; Rules for Implementation of the Income Tax Law of the PRC Concerning Chinese-Foreign Joint Ventures. See *The Chinese Academy of Social Sciences*, 1 INFORMATION CHINA 435 (1989).

<sup>28</sup> For details, see E.G. HINKELMAN, CHINA BUSINESS: THE PORTABLE ENCYCLOPEDIA FOR DOING BUSINESS WITH CHINA 43-52 (1995).

<sup>29</sup> For a comparison between the JVL and the Chinese JVL, see Chin Kim, *North Korean and Chinese Joint Equity Venture Laws: A Comparison*, 2 TRANSNAT'L L. 531-87 (1989).

of External Economic Affairs,<sup>30</sup> while the Chinese JVL was silent on this issue. Second, North Korea's JVL did not include a provision for conclusion of a joint venture agreement, which was optional in the Chinese JVL.<sup>31</sup> Third, the Chinese JVL prescribed two important time limits for the creation of joint ventures,<sup>32</sup> while North Korea's JVL did not impose such limits.<sup>33</sup>

With regard to capital investment, North Korea's JVL provided for the total amount of investment to be determined by the joint venture contract. No definition or total investment was provided. In contrast, the Chinese JVL clearly distinguished between the total amount of investment and registered capital.<sup>34</sup>

For management of joint venture businesses, the two laws differed regarding the board of directors,<sup>35</sup> purchase of materials and sale of products,<sup>36</sup> labor management,<sup>37</sup> foreign exchange control,<sup>38</sup> and audit and distribution.<sup>39</sup> The Chinese JVL also contained provisions for the dissolution of a joint venture enterprise, including preferred persons as liquidators,<sup>40</sup> priority payment for expenses involving liquidation,<sup>41</sup> and the liquidators' ability to sue and be sued.<sup>42</sup> Moreover, the Chinese JVL stated that Chinese participants in the joint venture were to become custodians of the dissolution-related documents when the dissolution was completed.<sup>43</sup>

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<sup>30</sup> See Detailed Regulations of the Joint Venture Law of the DPRK (adopted on Mar. 20, 1985) [hereinafter JVL Regulations], translated in Chin Kim, *North Korean Joint Venture Laws*, 19 CAL. W. INT'L L.J., 175, 212 (1988).

<sup>31</sup> See Regulations Governing the Implementation of the Law of the People's Republic of China on Joint Venture Using Chinese and Foreign Investment (adopted on Sept. 20, 1983) [hereinafter Chinese JVL regulations], translated in Ho, *supra* note 23, Art. 9, at 121-53.

<sup>32</sup> See *id.* Art. 10, at 125.

<sup>33</sup> See Kim, *supra* note 29, at 546-52.

<sup>34</sup> See Chinese JVL Regulations, *supra* note 31, Arts. 21, 22, at 128-29. In addition, North Korea's JVL of 1984 was different from the Chinese JVL of 1979 on the capital management issues with respect to: forms of capital investment, ratio of foreign capital contribution, and transferability of shares of registered capital. See JVL, *supra* note 1, Arts. 7-8.

<sup>35</sup> The Chinese partner should appoint a Chinese citizen Chairman. See Chinese JVL Regulations, *supra* note 31, Art. 34.

<sup>36</sup> See *id.* Arts. 58-65, at 138-40.

<sup>37</sup> China demonstrated more concern over limiting alien employment. See Provisions for the Implementation of the Regulations on Labor Management in Joint Ventures Using Chinese and Foreign Investment (promulgated on Jan. 14, 1984) [hereinafter Chinese LM Regulations], translated in CHINA LAW FOR FOREIGN BUSINESS 6-522, Art. 3.

<sup>38</sup> Chinese regulation on this subject was far more concrete than North Korean regulation. See Chinese JVL Regulations, *supra* note 31, Art. 75.

<sup>39</sup> Chinese law required a formulated auditing scheme for foreign joint ventures. See *id.* Art. 80.

<sup>40</sup> See *id.* Art. 104.

<sup>41</sup> See *id.*

<sup>42</sup> See *id.* Art. 105.

<sup>43</sup> See *id.* Art. 108.



Finally, on the question of dispute resolution, the Chinese JVL was considerably more transparent than the North Korean JVL. The Chinese JVL established a three-step approach to resolving disputes arising over the interpretation or execution of agreements, contracts or articles of incorporation between the parties to a joint venture.<sup>44</sup>

Although North Korea's JVL helped open North Korea's doors and attracted scores of foreign companies in its first year term,<sup>45</sup> the overall international response to the law was not significant.<sup>46</sup> Only 144 joint ventures were established between 1984 and 1993 under North Korea's JVL, mostly by small North Korean companies in Japan, with total investment estimated at only \$150 million.<sup>47</sup> One reason given for such unfavorable results was reportedly that North Korea's JVL fell short of the level of transparency that most foreign investors desired.<sup>48</sup>

Despite its poor results, North Korea's JVL seems to have had a favorable influence on promoting inter-Korean economic talks. Particularly illustrative of this shift towards increased dialogue was a statement made by Kim Il Sung during a meeting with a Japanese businessman. He stated that "North Koreans and Japanese should be careful in promoting economic cooperation not to irritate South Koreans and other countries."<sup>49</sup> Whether or not his remarks directly suggested North Korea's future economic policy towards South Korea, they marked a turning point in resuming economic cooperation between the two Koreas.<sup>50</sup>

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<sup>44</sup> See Chinese JVL, *supra* note 22, Art. 14; Chinese JVL Regulations, *supra* note 31, Art. 110.

<sup>45</sup> During the first 12 months after the promulgation, North Korea induced 40 companies to form joint ventures, 26 of which were with Western countries (18 joint ventures came from Japan; 3 from France; others from Germany, Hong Kong, Thailand and India) and the rest from Socialist countries. See Lee Hy-Sang, *Economic Talks Between the Two Koreas*, 17 KOREA OBSERVER 401, 421 (1986). For details, see *Implementation of Joint Venture Laws*, 42 NORTH KOREA QUARTERLY 8 (1985). See also A.F. Carter, *Crisis Mismanagement*, FAR EAST. ECON. REV., Aug. 14, 1986, at 102.

<sup>46</sup> See FOREIGN BROADCAST INFORMATION SERVICE (FBIS), *Daily Report, East Asia* 94-188, 54 (Sept. 28, 1994).

<sup>47</sup> See *id.*

<sup>48</sup> See Oh, *supra* note 6, at 30-31.

<sup>49</sup> The remarks were uttered at the meeting between the North Korean President, Kim Il Sung and Den Kawakstsu, Chairman of the Nankai Electric Railway Company in Japan in September 1985. See *Great Leader Kim Il Sung Meets a Japanese Businessman*, Kawakstsu, RODONG SHINMUN, Sept. 16, 1985, at 1.

<sup>50</sup> Immediately after the promulgation of the JVL, the first round of inter-Korean economic talks took place on November 15, 1984. See MINISTRY OF NATIONAL UNIFICATION (ROK), PEACE AND COOPERATION: WHITE PAPER ON KOREAN UNIFICATION (PEACE AND COOPERATION) 94 (1996).

### III. THE LAW OF THE DPRK ON FOREIGN INVESTMENT OF 1992 AND ITS DEVELOPMENT

In the early 1990s, North Korea made a stronger effort to open its doors to the outside. In order to attain this objective, North Korea passed a series of business laws designed to attract foreign investors from neighboring countries, who under the new laws could establish either joint ventures or wholly-owned enterprises. Among them, the basic legal measure is the Law of the DPRK on Foreign Investment (heretofore referred to as "FIL").<sup>51</sup> As noted above, a primary reason that North Korea adopted the FIL was to attract foreign capital.<sup>52</sup> It was an important legal initiative for North Korea's open-door policy, as well as a basic pillar of its legal regime governing foreign business cooperation. The objectives of North Korea's external economic cooperation under its Socialist Constitution were substantiated through both the FIL and several lesser laws and regulations, including the three basic laws directly addressing foreign business cooperation. In 1999, following revisions to North Korea's Constitution in 1998, the FIL was amended. These amendments may reflect the changing policy of the North Korean government under the Kim Jong-Il regime. Reconsideration of this revision is necessary to better understand the new legal and policy stance of North Korea's foreign business cooperation in the post-Kim Il Sung era.

The FIL contains the general legal provisions for establishing and managing foreign enterprises in its 22 articles. In the following sections, this Article explores several aspects of the FIL. First, the relationship between the FIL and Article 37 of the DPRK Constitution, which functions as the constitutional basis for North Korea's external economic policy, is analyzed. Second, the main differences between the 1992 version and the 1999 revision of the FIL are examined. Third, the laws governing three different forms of foreign investment under the FIL are discussed. Explicit changes to the provisions of the 1999 revised FIL will be reviewed with a focus on the practical implications to foreign investment within the new business environment in North Korea.

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<sup>51</sup> The Law of the Democratic People's Republic of Korea on Foreign Investment (adopted on Oct. 5, 1992 and revised on Feb. 26, 1999) [hereinafter FIL], *translated in* CPEEC, *supra* note 4, at 27-9.

<sup>52</sup> Contrary to the view that by adopting foreign business laws, North Korea has opened its doors to the western capitalist countries, the statistics of North Korea's foreign trade and external economic cooperation indicate that the target and scope of foreign business is limited to neighboring countries. See Yoon Sang-Jick, *Critical Issues on the Foreign Investment Law of North Korea for Foreign Investment*, 15 WIS. INT'L L. J. 325 (1997). For the statistics, see *Country-Wise Breakdown of Contract & Actual Foreign Investments in Rajin-Sonbong*, *The People's Korea Homepage*, available at <http://www.korea-np.co.jp/pk/061st%sfissue/98091703.htm> (as of Oct. 20, 1999).

A. Constitutional Basis of the Foreign Investment Law: Article 37 of the  
DPRK Constitution

The fundamental legal principle for North Korea's external economic cooperation was first laid down in the Socialist Constitution of DPRK of 1992 ("1992 DPRK Constitution").<sup>53</sup> Pursuant to Chapter II of the 1992 DPRK Constitution,<sup>54</sup> the basic principle of North Korea's national economic system is "a socialist independent and planned economy" on the basis of its main state doctrine, *Juche* Ideology.<sup>55</sup> In the area of foreign investment and external economic cooperation, however, the 1992 DPRK Constitution in Article 37 presented a progressive transformation of the orthodox Marxist-Leninist legal theory, which had been maintained in North Korea prior to 1992.<sup>56</sup> Article 37 of the 1992 DPRK Constitution states: "[T]he State shall encourage institutions, enterprises and organizations in our country to joint ventures and cooperation of enterprise with foreign corporations and individuals."<sup>57</sup> As a recent addition to the 1992 DPRK Constitution,<sup>58</sup> Article 37 aims to provide a legal bridge for establishing active relations with foreign countries and inducing foreign capital investment from them.

Originally, North Korea's principle of friendly foreign relations was based on the "socialist pacifism"<sup>59</sup> substantiated in Lenin's<sup>60</sup> foreign pol-

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<sup>53</sup> Socialist Constitution of the Democratic People's Republic of Korea (adopted Dec. 27, 1972, amended Apr. 9, 1992 and Sept. 5, 1998) [hereinafter DPRK Constitution]. For a simple and official statement of the DPRK Constitution, see Chae Gum-Sun, *A Constitution for the People*, 12 KOREA TODAY (1992) at 26.

<sup>54</sup> *Id.* Arts. 19-38.

<sup>55</sup> DPRK Constitution, *supra* note 53, Arts. 19, 26, 34, 38. *Juche* is translated as self-reliance." See CHO SUNG-YOON, LAW AND LEGAL LITERATURE OF NORTH KOREA 17 (1988). As a creative application of Marx-Leninism to North Korean reality, the *Juche* Ideology, based on the concept of self-reliance, has been a governing idea of North Korea since it was first laid down in Article 4 of the 1972 Socialist Constitution of the DPRK. For a legal interpretation of the 1972 Socialist Constitution of North Korea, see FLPH, *On the Socialist Constitution of the Democratic People's Republic of Korea* (1975). See also Chin Kim, *The 1972 Socialist Constitution of the Democratic People's Republic of Korea*, 11 TEX. INT'L L. J. 113-35 (1976).

<sup>56</sup> For a discussion of Marxist-Leninist legal theory, see HUGH COLLINS, MARXISM AND LAW (1982); PAUL PHILLIPS, MARX AND ENGELS ON LAW AND LAWS (1980); PASHUKANIS: SELECTED WRITINGS ON MARXISM AND LAW (P. Beirne & R. Sharlet eds., 1980); and CHRISTINE SYPNOWICH, THE CONCEPT OF SOCIALIST LAW (1990).

<sup>57</sup> DPRK Constitution, *supra* note 53, Art. 37.

<sup>58</sup> There was no such provision in the 1972 Socialist Constitution of North Korea.

<sup>59</sup> See Igor Kavass & Gary Christian, *The 1977 Soviet Constitution: A Historical Comparison*, 12 VAND. J. TRANSNAT'L L. 533, 539-62 (1979) (Socialist pacifism has the following principles: sovereign equality; mutual renunciation of the use or threat of force, inviolability of frontiers; territorial integrity of states; peaceful settlement of disputes; non-intervention in internal affairs; respect for human rights and fundamental freedoms; the equal rights of peoples and their right to decide their own destiny; cooperation among states and

icy.<sup>61</sup> This was the basic principle of the Socialist countries' foreign relations since the 1918 Constitution of the "USSR,"<sup>62</sup> and had been maintained in Article 28 of the 1977 Constitution (Basic Law) of the USSR.<sup>63</sup> Since the 1980s, such traditional thinking has gradually changed in former socialist countries. For example, in the 1980s, the PRC began to reform its business laws under the principles laid down in Article 18 of its Constitution, which permit foreign enterprises to invest in China.<sup>64</sup> The success of socialist business law proved that Marxist-Leninist rhetoric was no longer an insurmountable obstacle to doing business with foreign [capitalist] investors.<sup>65</sup> This lawmaking of the PRC provided a new model for linking the socialist planned economy with external economic cooperation.<sup>66</sup>

The 1992 DPRK Constitution was amended and supplemented at the First Session of the Tenth Supreme People's Assembly ("SPA") held on September 5, 1998.<sup>67</sup> The 1998 DPRK Constitution consists of 7 chapters with 166 articles. The new Constitution does not make any fundamental changes, but basically inherits the general concepts of the old Constitution with some minor alterations to meet the demands of the changing condi-

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fulfillment in good faith of obligations arising from the generally recognized principles and rules of international law and from the international treaties signed by the USSR).

<sup>60</sup> See E.A. Korovin, *INTERNATIONAL LAW* 15 (1961); see also V.I. LENIN, *THE NATIONAL-LIBERATION MOVEMENT IN THE EAST* 240 (1957). On the Leninist perspective to international legal regimes at the time of the Socialist revolution, see *id.* at 60-61. See also V.E. GRABAR, *THE HISTORY OF INTERNATIONAL LAW IN RUSSIA: 1647-1917* 277 (W.E. Butler trans., 1990).

<sup>61</sup> On Lenin's foreign policy, see MARCEL LIEBMAN, *LENINISM UNDER LENIN* 366-71 (Brian Pearce trans., 1975).

<sup>62</sup> On the historical evolution of the constitution of the USSR, see generally Kavass & Christian, *supra* note 59.

<sup>63</sup> Article 28 of the 1977 Constitution (Basic Law) of the USSR states that

[t]he USSR steadfastly pursues a Leninist policy of peace and stands for strengthening of the security of nations and broad international cooperation. The foreign policy of the USSR is aimed at ensuring international conditions favorable for building communism in the USSR.

For the English text of the 1977 Constitution of the USSR, see Kavass & Christian, *supra* note 59 at 597-662.

<sup>64</sup> Article 18 of the PRC Constitution states that

[t]he PRC permits foreign enterprises to invest in China and to enter into various forms of economic cooperation with Chinese enterprises in accordance with the law of PRC. All foreign enterprises and other foreign economic organizations in China shall abide by the law of PRC.

P.R.C CONST., Art. 18. For a detailed discussion of this provision, see WILLY KRAUS, *PRIVATE BUSINESS IN CHINA: REVIVAL BETWEEN IDEOLOGY AND PRAGMATISM* (Erich Holz, trans., 1991).

<sup>65</sup> See *Joint Ventures in the People's Republic of China*, in *ADVANCES IN CHINESE INDUSTRIAL STUDIES* 4 (Sally Stewart ed., 1994).

<sup>66</sup> On the reform of China's law-making and legal system, see Lieberthal, *supra* note 2, at 150-51.

<sup>67</sup> See DPRK Constitution, *supra* note 53. This newly revised Constitution has been in effect in North Korea since September 5, 1998, when the Tenth SPA endorsed it with unanimous approval.

tions in the post-Kim Il Sung era.<sup>68</sup> Compared to the 1992 Constitution, the 1998 Constitution contains a number of changes to Chapter II, which deals with the area of external economic cooperation. First, a provision concerning the introduction of a cost accounting system has been adopted in Article 33, paragraph 2.<sup>69</sup> Second, in Article 36, "social cooperative organizations"<sup>70</sup> have been included as organs of conducting foreign trade activities.<sup>71</sup> Third, in Article 37, the regional scope of foreign business activities has been confined "within a special economic zone," which means the Rajin-Sonbong free economic and trade zone.<sup>72</sup> Despite these minor changes, such amendments reflect North Korea's new policy for foreign business cooperation by clarifying the methods, region and participants.<sup>73</sup> Table III-1 compares the New Constitution with the Old Constitution, highlighting the provisions added in support at NK new economic policies.<sup>74</sup> See Table III-1, *infra*.

At the same time it was revising the Constitution in 1998, the North Korean government acted to strengthen its domestic socialist economic policies by enacting the Law of the DPRK on the Plan of the National Economy ("EPL").<sup>75</sup> The EPL, which consists of 48 articles in six chapters,

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<sup>68</sup> The most noteworthy feature of the 1998 Constitution is the elimination of the State Presidency and alterations to the duties, authority, functions or existence of the state organs. These changes are described in the newly added preamble and in the largely revised Chapter VI, which deletes some president-related state organs that existed under the 1992 Constitution. No changes have been made to Chapter I (Politics), Chapter III (Culture), Chapter IV (National Defense), or Chapter VII (National Emblem, Flag, National Anthem and Capital). See *Comparison of New Constitution with Old Constitution, The People's Korea Homepage, available at* <http://www.korea-np.co.jp/pk1062nd%5Fissue/98092412.htm> (as of Oct. 24, 2000).

<sup>69</sup> The article states "the State shall introduce a cost accounting system in the economic management according to the demand of *Taean* work system, and utilize such economic levers as prime costs, prices and profits," 1998 DPRK Constitution, *supra* note 53.

<sup>70</sup> *Id.* Arts. 22, 36. The introduction of new terms and social cooperative organizations may mean that the range of those who can possess such property as land, agricultural machinery, ships, medium-sized factories and enterprises is expanded. With this amendment, such property owners may enjoy equal property rights with the cooperative organizations that consist of farm, production, fishery, and service organizations. Moreover, they are able to manage a trading company by economic or cultural organizations. See *Review of DPRK's Revised Constitution, The People's Korea Homepage, available at* <http://www.korea-np.co.jp/pk/072nd%5Fissue/98120203.htm> (as of Oct. 24, 2000).

<sup>71</sup> See 1998 DPRK Constitution, *supra* note 53, Art. 36.

<sup>72</sup> See *id.* Art. 37.

<sup>73</sup> On the new economic policy of North Korea under the new Constitution, see Ri Chang Gun, *Economic Development is Most Urgent Task for Building Powerful Socialist State, available at* [http://www.korea-np.co.jp/pk/100th\\_issue/99062304.htm](http://www.korea-np.co.jp/pk/100th_issue/99062304.htm) (as of Dec. 7, 2000).

<sup>74</sup> See Chin Gil Sang, *Review of the 1998 Constitution, translated in The People's Korea Homepage, available at* <http://www.korea-np.co.jp/pk/072nd%5Fissue/98120203.htm> (as of Apr. 22, 2000).

<sup>75</sup> The Economic Plan Law was adopted by the Second Session of the Tenth Supreme People's Assembly in April 9, 1998 [hereinafter EPL]. See Law of the DPRK on the Plan of

Table III-1: Comparison between the 1992 Constitution to the 1998 Constitution

Provision	The 1992 Constitution	The 1998 Constitution
Article 33 (2)	It has no paragraph 2.	The State shall introduce a cost accounting system in economic management according to the demands of the <i>Taean</i> work system, and utilize such economic levers as prime cost, price and profits.
Article 36	In the DPRK, foreign trade shall be conducted by the State or under its supervision.	In the DPRK, the State and <u>social cooperative organizations</u> shall conduct foreign trade activities.
Article 37	The State shall encourage institutions, enterprises and organizations in our country to form joint ventures and cooperate with enterprises with foreign corporations and individuals.	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.

regulates procedures for deliberating, adopting and managing the people's economic plan, as well as its implementation.<sup>76</sup> Based on the new constitutional principles,<sup>77</sup> the EPL is designed to consolidate the success gained in the people's prior economic plans, and improve and strengthen them so as to meet new requirements for building a powerful socialist nation.<sup>78</sup>

These amendments to the constitutional bases for foreign economic activities might symbolize the change of the dogmatic socialist legal paradigm maintained in North Korea for more than 40 years. Under the new constitutional principles adopted in those provisions, North Korea began to further its open-door policy, as well as develop a special legal regime for external economic cooperation. The FIL is at the center of this regime.<sup>79</sup>

#### B. General Principles of the Foreign Investment Law of 1992 and its 1999 Revision

The Law of the DPRK on Foreign Investment of 1992 was adopted to encourage investment by foreign investors based on the principles of complete equality and mutual benefit in the territory of North Korea.<sup>80</sup> Article 1

National Economy, translated in *The People's Korea Homepage*, available at <http://www.korea-np.co.jp/pk> (as of Nov. 11, 1999).

<sup>76</sup> See *id.* Art. 1, para. 2.

<sup>77</sup> See 1998 DPRK Constitution, *supra* note 53, Arts. 34 and 35.

<sup>78</sup> See Kang Il Chon, *Recent Economic Tendency in DPRK*, translated in *The People's Korea Homepage*, available at <http://www.korea-np.co.jp/pk> (as of Nov. 11, 1999).

<sup>79</sup> See Damon Darlin, *North Korea Opens Cautiously to West*, *ASIAN WALL ST. J.*, Mar. 3, 1992, at 1.

<sup>80</sup> See FIL, *supra* note 51, Art. 1. Article 1, paragraph 2 of the FIL outlines the basic policies of North Korea, stating that "[t]he State encourages foreign investors to invest in the territory of the DPRK on the principle of complete equality and mutual benefit." *Id.*

of the FIL incorporates these basic purposes. Article 2 refers to the guidelines for the forms and management of foreign joint ventures established in the territory of North Korea, as well as the status of foreign investors.<sup>81</sup> In particular, Article 2, paragraph 3 of the FIL provides three forms of foreign investment:<sup>82</sup> equity joint venture enterprises,<sup>83</sup> contractual joint venture enterprises,<sup>84</sup> and wholly foreign-owned subsidiaries.<sup>85</sup> These three investment forms assume the status of legal persons under the law.<sup>86</sup>

Under the FIL, the status of a foreign investor is given to a corporate body or an individual from a foreign country that invests in the territory of North Korea.<sup>87</sup> Their legal rights and interests are guaranteed by the state.<sup>88</sup> In addition, the legal profits and other revenues earned by business activities may be repatriated or remitted abroad according to the laws and regulations of North Korea on foreign exchange control.<sup>89</sup>

Article 5, paragraph 1 of the FIL permits institutions, companies, enterprises and other economic bodies of foreign countries to invest within the territory of North Korea. Foreign investment enterprises may open branch offices, representative offices or agencies in North Korea or outside the country.<sup>90</sup> Pursuant to Article 5, paragraph 2, the FIL, unlike the 1984 JVL, allows South Korean investors to take part in the foreign business opportunities in North Korea.<sup>91</sup>

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<sup>81</sup> See *id.* Art. 2.

<sup>82</sup> Article 2, paragraph 3 of the FIL states that a "foreign-invested enterprise is a contractual or equity joint venture enterprise or a wholly foreign-owned enterprise that is set up in the territory of the DPRK." *Id.* Art. 2, para. 3.

<sup>83</sup> An equity joint venture enterprise is a business activity in which investors from the host side and from a foreign country invest and operate jointly, and profits are distributed to the investors in accordance with the share of their investment. See *id.* Art. 2, para. 5.

<sup>84</sup> A contractual joint venture enterprise is a business activity in which investors from DPRK and a foreign country jointly invest, the management is assumed by the partner from the host country, and the portion of the investment made by the foreign investor is redeemed, or the share of the profits to which the foreign investor is entitled is allotted. See *id.* Art. 2, para. 4.

<sup>85</sup> A wholly foreign-owned subsidiary is a business enterprise in which a foreign investor invests and which the foreign investor manages on his own account. See *id.* Art. 2, para. 6.

<sup>86</sup> See FIL, *supra* note 51, Art. 14. For a definition of juridical persons in North Korea, see THE CIVIL LAW OF THE DEMOCRATIC PEOPLE'S REPUBLIC OF KOREA [CIVIL LAW], pt. 1, ch. 1 (Foreign Languages Publishing House 1994).

<sup>87</sup> See *id.* Art. 2, para. 2.

<sup>88</sup> See *id.* Art. 3.

<sup>89</sup> See *id.* Art. 20. Law of the Democratic People's Republic of Korea on Foreign Exchange Control (adopted Jan. 1, 1993 and revised on Feb. 26, 1999) [hereinafter FECL], translated in INVESTMENT CLIMATE, *supra* note 17, at 198-214.

<sup>90</sup> See *id.* Art. 13. However, branch or representative offices set up in North Korea will not have a legal personality under North Korean law. See *id.* Art. 14, para. 2.

<sup>91</sup> Article 5, paragraph 2 of the FIL states that "Korean nationals living outside the territory of the DPRK shall also be allowed to invest, subject to this law." FIL, *supra* note 51, Art. 5, para. 2. The Joint Venture Law of 1984 prevented South Koreans from investing in

The business areas available for foreign investment consist of industry and financial services.<sup>92</sup> Foreign-invested enterprises that operate in sectors such as high tech, natural resources, international trade or infrastructure will be given preferential treatment by the state in taxation, land use and bank loans.<sup>93</sup> Foreign investment in these fields may be introduced in the form of currency and property in kind, industrial property rights, technical know-how and other assets, and other property rights.<sup>94</sup> In addition to investment sector-preferences, Article 9 of the FIL provides for special regional-preference to those foreign enterprises that operate in the free trade and economic zone ("FETZ").<sup>95</sup> Article 11 of the FIL clarifies the investment projects that are prohibited and restricted.<sup>96</sup>

The FIL governs practical business matters such as taxation, real property leases, and labor management. In relation to taxation, Article 17 of the FIL provides that foreign investors are subject to income, business, property and other taxes according to North Korean law.<sup>97</sup> Article 15 of the FIL allows foreign investors to lease land necessary for their enterprises for a maximum period of 50 years. Labor management requirements are laid down in Article 16 of the FIL. According to Article 16, paragraph 1, foreign-funded enterprises must employ North Korean labor forces according to the recommendation of the relevant labor service agency.<sup>98</sup> It is permitted, however, to bring in special human resources, such as management personnel, technicians or skilled workers under agreement with the EEOAC.<sup>99</sup> Profits and other income earned by foreign investors in their business activities may be either reinvested or remitted abroad pursuant to

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North Korea through confining the scope of foreign investors to Korean overseas traders and manufacturers in Japan. JVL, *supra* note 1, Art. 5.

<sup>92</sup> The sectors referred to in Article 6 of the FIL are as follows: industry, agriculture, construction, transportation, telecommunication, science and technology, tourism, commerce and financial services. See FIL, *supra* note 51, Art. 6. Compared to the 1984 JVL, the investment sectors have been expanded to include circulation and banking markets. For the sectors permitted by the 1984 JVL, see JVL, *supra* note 1, Art. 2.

<sup>93</sup> See FIL, *supra* note 51, Art. 7.

<sup>94</sup> See *id.* Art. 12.

<sup>95</sup> On preferential treatment, see *id.* Arts. 9, 10.

<sup>96</sup> Article 11 restricts projects that may hinder the development of the national economy, threaten national security or as may be technically obsolete and harmful to the environment. See *id.* Art. 11.

<sup>97</sup> See *id.* art. 17. These regulations were supplemented by the DPRK Law on Taxes on Foreign-invested Enterprises and Foreigners, which was adopted on January 31, 1993. See TFIEL, *supra* note 17.

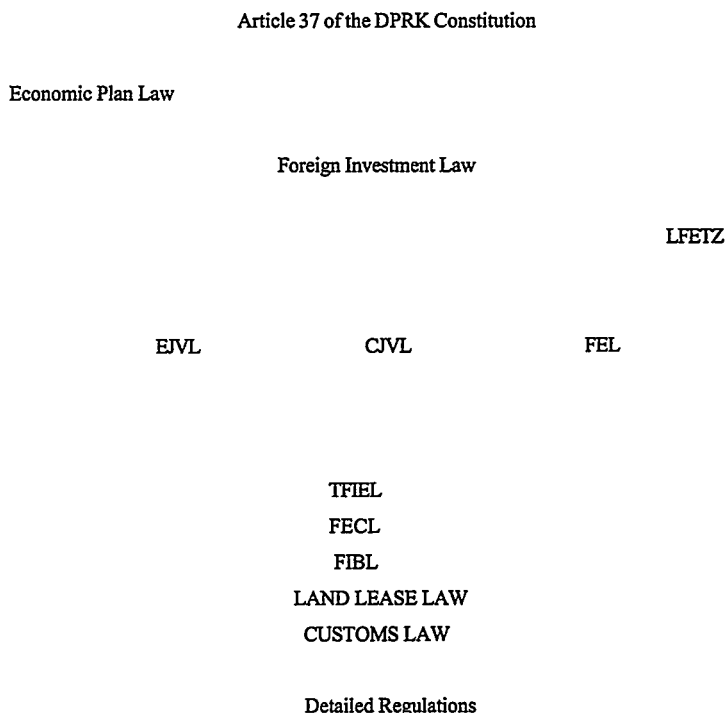
<sup>98</sup> See *id.* art. 16.

<sup>99</sup> The External Economic Organ of the Administration Council has been changed into the External Economic Committee of the Cabinet ("EXEC") under the Socialist Constitution of 1998. See 1998 DPRK Constitution, *supra* note 53, Art. 117.



Articles 18 and 20 of the FIL.<sup>100</sup> Chart 1 demonstrates the legal structure of North Korea's laws that make up its foreign investment legislation.

Chart 1: Legal Structure of North Korea's External Economic Affairs



The FIL was revised on February 26, 1999, along with eight other laws relating to foreign business.<sup>101</sup> The revision was apparently aimed at making adjustments in connection with the amendment of the Constitution in

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<sup>100</sup> On the general principles of the FIL, see Arno Wohlgemuth, *The Law on Foreign Investment in North Korea*, 1 INT'L BUS. L.J. 452 (1993).

<sup>101</sup> The following revisions of the laws on foreign business cooperation were adopted by the Decision 484 of the Standing Committee of the Supreme People's Assembly on February 26, 1999: 1) Law on Free Economic and Trade Zone; 2) The Foreign Investment Law; 3) The Foreign Enterprise Law; 4) The Contractual Joint Venture Law; 5) Law on Foreign-invested Enterprises and Foreigners' Tax; 6) The Law on Foreign Exchange Control; 7) The Land Lease Law; 8) Law on Foreign-invested Bank; and 9) The Equity Joint Venture Law. See Chin Gil Sang, *DPRK Revises 9 Foreign Investment Laws*, PEOPLE'S KOREA, Sept. 25, 1999, at 1, 8.

1998. An explicit change in the FIL was the introduction of the term “foreign enterprise” as a new form of foreign investment in North Korea.<sup>102</sup> A foreign enterprise in this law may mean a foreign organization, enterprise, individual or economic organization that derives income in the territory of North Korea.<sup>103</sup> This foreign enterprise is regarded as an independent corporate body [*sic*].<sup>104</sup> The new FIL adds a regulation to guarantee the condition of business activities for foreign invested enterprises.<sup>105</sup> The following are also amended in the FIL of 1999. In Article 5, overseas Koreans have replaced the Korean nationals living outside the territory of the DPRK.<sup>106</sup> Article 15 of the 1992 FIL, concerning the transfer and inheritance of the leased land, has been eliminated in the revised FIL of 1999.<sup>107</sup> Pursuant to Article 16, North Korean citizens can be employed or dismissed on a voluntary basis.<sup>108</sup> The old and the new FIL are compared in Table III-2.

Table III-2: Comparison between the old and the new FIL

Provision	Old FIL	1999 Revised FIL
Article 2	A foreign-invested enterprise is a contractual or equity joint venture enterprise, or wholly foreign-owned enterprise that is set up in the territory of the DPRK.	A foreign-invested enterprise includes a foreign investor’s enterprise covering a contractual or equity joint venture enterprise, or wholly foreign-owned enterprise, and a <u>foreign enterprise</u> that is set up in the territory of the DPRK. <u>A foreign enterprise may mean a foreign organ or an enterprise, individual, or economic organization that derives income in the territory of the DPRK.</u>
Article 4	The State . . . shall guarantee the legal rights and interests of foreign investors and foreign-invested enterprises.	The State . . . shall guarantee the legal rights, interests and <u>conditions for business activities</u> of foreign investors and foreign-invested enterprises.
Article 5	Korean nationals living outside the territory of the DPRK shall also be allowed to invest, subject to this law.	<u>Overseas Koreans</u> shall also be allowed to invest, subject to this law.
Article 14	Those branch and representative offices and agencies of foreign-invested enterprises that are set up within the territory of the DPRK shall not become bodies corporate of the DPRK.	Those branch and representative offices and agencies of foreign-invested enterprises, and <u>foreign enterprises</u> that are set up within the territory of the DPRK shall not become bodies corporate of the DPRK.
Article 15	The leased land may, with the approval of the relevant department, be transferred or inherited, within the term of the lease.	<u>Deleted.</u>
Article 16	When employing or dismissing citizens of the DPRK, a contract must be made with the relevant labor service agency.	When employing or dismissing citizens of the DPRK, a contract <u>may</u> be made with the relevant labor service agency.

<sup>102</sup> See 1999 Revised FIL, *supra* note 51, Art. 2

<sup>103</sup> See *id.* The difference between the foreign enterprises and the foreign subsidiaries is shown at Table III-7.

<sup>104</sup> See *id.* Art. 14.

<sup>105</sup> See *id.* Art. 4.

<sup>106</sup> See *id.* Art. 5.

<sup>107</sup> See *id.* Art. 15.

<sup>108</sup> See *id.* Art. 16.

C. Laws Governing the Three Forms of Foreign Investment Mandated under the FIL

Since the promulgation of FIL, North Korea has adopted a series of laws and regulations relating to foreign investment, which have formed an important legal framework for North Korea's external economic cooperation policies. In particular, between 1992 and 1994 the North Korean government developed specific laws for the three forms of investment allowed under Article 2, paragraph 3 of the FIL. (See Table III-3.) These include the Law of the DPRK on Equity Joint Venture, the Law of the DPRK on the Contractual Joint Ventures, and the Law of the DPRK on Foreign Enterprises, each of which are examined in the following sections.<sup>109</sup>

Table III-3: The Three Forms of Foreign Investment in North Korea under the FIL<sup>†</sup>

	Equity Joint Venture	Contractual Joint Venture	Foreign Subsidiaries
Registered Capital Ratio	50:50.	According to the contract between the host and the foreign partner.	Wholly foreign-owned entities are allowed.
Preferred Sector	High tech, infrastructure development, scientific research or internationally competitive products.	Exportable goods, using advanced technology, tourism and service.	Electronics, automation, machine-building, food-processing, clothing, daily necessities, etc.
Allowed Region	Mainly in Rajin-Sonbong area. If necessary, other regions in North Korea.	Anywhere in North Korea.	Only in Rajin-Sonbong FETZ.

<sup>†</sup> See CPEEC, *supra* note 4.

1. The Law of the DPRK on Equity Joint Venture and its 1999 Revision

The Law of the DPRK on Equity Joint Venture ("EJVL"),<sup>110</sup> promulgated in 1994, governs the rights and obligations for establishing and managing joint ventures in the territory of North Korea. As a revised and supplemented version of the 1984 JVL, the purpose of EJVL is "to contribute to expanding and developing economic and technical cooperation and exchange between the DPRK and other foreign countries."<sup>111</sup> Compared to the 1984 JVL, which governed the same subject, the 1994 EJVL adopted

<sup>109</sup> See O'Brien, *supra* note 3, at §1.02.

<sup>110</sup> Law of the Democratic People's Republic of Korea on Equity Joint Venture (adopted on Jan. 20, 1994 and revised on Feb. 26, 1999) [hereinafter EJVL], *translated in CPEEC, supra* note 4, at 37-40, 2 (1994).

<sup>111</sup> *Id.* Art. 1. Most of the laws and regulations relating to foreign investment contain similar statements. This law may play a role in the development of North Korea's policy on economic cooperation with other countries.

more detailed and feasible regulations on the management of an equity joint venture (“EJV”) enterprise.<sup>112</sup> The differences are set out below in Table III-4.

In its general provisions, the 1994 EJVL has broader descriptions of the parties to an EJV than the 1984 JVL.<sup>113</sup> Concerning the participation of South Korean investors, the EJVL opens its doors to them with a provision that includes “Koreans living outside the territory of the DPRK,” while the old JVL confined such investors potential to only “the Korean traders and manufacturers in Japan.”<sup>114</sup>

Table III-4: Differences between the 1994 EJVL and the 1984 JVL<sup>‡</sup>

	EJVL (1994)	JVL (1984)
Parties to the EJV	Various countries of the world.	Foreign companies, enterprises and individuals.
South Korean Investor	Koreans living outside the territory of the DPRK.	Korean traders and manufacturers in Japan.
Registered Capital	30-70% of total investment.	No such mandatory statute.
High Decision Makers	Director and Vice-director.	President and Vice-president.

<sup>‡</sup> Kim Chin, *North Korean Joint Venture Laws*, 19 CAL. W. INT’L L. J. 177-87 (1988).

In order to establish and operate an EJV, a joint venture contract should be made between an institution, enterprise, or association of North Korea, and a corporate body or individual of a foreign country doing business in the territory of North Korea.<sup>115</sup> Regarding a joint venture-establishment, the newly revised EJVL of 1999 confines the geographic region available for such EJVs to the Rajin-Sonbong Free Economic and Trade Zone.<sup>116</sup> This regional concentration, in the opinion of North Korea government authorities, might be due to the success of the Rajin-Sonbong development plan.<sup>117</sup> An EJV under this law may be established to do busi-

<sup>112</sup> The number of articles in the 1994 EJVL is 47, while that of the 1984 JVL was 26. See EJVL, *supra* note 110.

<sup>113</sup> According to Article 1 of the EJVL, an EJV shall be established between the DPRK and various countries of the world. *Id.* Art. 1. Article 1, paragraph 2 of the JVL had detailed language on the parties, including foreign companies, enterprises, and individuals. JVL, *supra* note 1, Art. 1, para. 2.

<sup>114</sup> EJVL, *supra* note 110, Art. 2, para. 2; JVL, *supra* note 1, Art. 5.

<sup>115</sup> See EJVL, *supra* note 110, Art. 2. For the original text, see *Equity Joint Venture Law on Joint Venture*, THE PEOPLE’S KOREA, Feb. 12, 1994, at 4, 8.

<sup>116</sup> It may be established in other regions, if necessary. See 1999 Revised EJVL, *supra* note 110, Art. 2, para. 2.

<sup>117</sup> As of December 1997, business agreements were reached in the Rajin-Sonbong area for 111 projects valued at about US\$750 million, while actual investments were made in 77 projects amounting to US\$57.92 million. See *Update of Foreign Investment Situation in Rajin-Sonbong*, *The People’s Korea Homepage*, available at [http://www.korea-np.co.jp/pk/061st\\_issue/98091701.htm](http://www.korea-np.co.jp/pk/061st_issue/98091701.htm) (as of Oct. 20, 1999).

ness in the science and technology, industry, construction, and transportation sectors. Projects involving high, internationally competitive products, infrastructure development, or scientific research and technological development are especially encouraged by the state.<sup>118</sup> Article 6, paragraph 2 of the EJVL ensures the protection of the legal rights and interests of the EJV enterprise.<sup>119</sup> In order to establish an EJV, the parties must submit an application to the EEOAC or the FETZ authorities for approval after making the EJV contract.<sup>120</sup> The EJV contract should contain all data essential for its activities.<sup>121</sup> Once the application has been received, the authorities must decide whether to approve or to refuse the application within 50 days.<sup>122</sup>

With regard to capital investment, Article 15 of the EJVL requires that the "registered capital" of an EJV be between 30% and 70%<sup>123</sup> of the total amount of capital required.<sup>124</sup> The 1984 JVL did not have a similar capital requirement. Any increase of registered capital must be agreed to by the authority approving the establishment of the EJVL. Capital may be contributed to the EJV in the form of cash, property in kind, industrial property rights, technical know-how, land rights or in other forms.<sup>125</sup>

The top decision making body of an EJV enterprise is the board of directors, which is responsible for deciding major issues concerning the enterprise.<sup>126</sup> The 1984 JVL stated that the president and vice-president were the highest decision makers on the board of directors. In comparison, the 1994 EJVL names the director and vice-director. The managerial personnel on the board of directors include a director, a vice-director and accountants.<sup>127</sup> For carrying out its business activities, pursuant to Article 22 of the EJVL, an EJV enterprise should obtain a business license, issued by either the EEOAC or the appropriate authority of the FETZ. An EJV's business activities are confined to the types of business in which it has been specifically allowed to engage.<sup>128</sup> In relation to managing and using labor forces, Article 27 of the EJVL provides that an EJV enterprise should be in com-

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<sup>118</sup> See EJVL, *supra* note 110, Art. 3.

<sup>119</sup> Article 6, paragraph 2 of the EJVL states that the "state shall protect the legal rights and interests of equity joint venture enterprises." *Id.* Art.6.

<sup>120</sup> See *id.* Art. 9, para. 1.

<sup>121</sup> For example, a memorandum, a copy of the joint contract, a feasibility study report, etc. See *id.*

<sup>122</sup> See *id.* Art. 9, para. 2.

<sup>123</sup> The actual ratio depends on the size of the enterprise. See *id.* Art. 15.

<sup>124</sup> It is open to question whether third party debt financing, local or foreign, will be available in any substantial amount, and it can be expected that most projects will proceed on a wholly equity-funded basis. See O'Brien, *supra* note 3, § 1.04.

<sup>125</sup> See EJVL, *supra* note 110, Art. 11, para. 2.

<sup>126</sup> See *id.* Arts. 16, 17.

<sup>127</sup> See *id.* Art. 18.

<sup>128</sup> See *id.* Art. 25, para. 1.

pliance with labor law and regulations regarding foreign-invested businesses in North Korea.<sup>129</sup>

The mechanisms of accounting and profit distribution are set out in Articles 34 and 37 of the EJVL. An EJV enterprise must determine its annual profit by subtracting costs from the gross revenue in each year.<sup>130</sup> The remaining amount of profit should be distributed to the joint venture partners in proportion to their subscriptions.<sup>131</sup> Income tax is paid by an EJV enterprise pursuant to Article 38, paragraph 2 of the EJVL.<sup>132</sup> This amount may be reduced or exempted for a certain period of time from the first profit-making year.<sup>133</sup>

If an EJV enterprise is unable to continue operations for some reason,<sup>134</sup> Article 43 of the EJVL allows the board of directors to dissolve the EJV enterprise before the termination period set by the contract. It may also dissolve itself either with the permission of the body approving its establishment, or by court decision.<sup>135</sup> In such an event, the board of directors must appoint liquidators to a liquidation committee.<sup>136</sup> Detailed regulations implementing the EJVL were promulgated in July 1995.<sup>137</sup>

The EJVL was amended on February 26, 1999. The 1999-revised EJVL is considered to reflect the factual needs and the practical perspective of North Korea for further economic cooperation with foreign investors.<sup>138</sup> This also shows that North Korea has considerably improved its legislative techniques during this period. The following are the major revisions of the 1999 EJVL. First, pursuant to Article 2, the EJVL is mainly applied to the EJV established within the Rajin-Sonbong Free Economic and Trade Zone. This law, however, may be applicable outside within the territory of the DPRK.<sup>139</sup> Under the new EJVL, a partner's share can be transferred or inherited with the consent of the opposite party and through the discussion of

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<sup>129</sup> *Id.* Art. 27. An example of such labor laws is the Labor Regulations on Foreign-Invested Enterprise in FETZ (Dec. 1993).

<sup>130</sup> The financial year of an EJVL shall be the period between January 1 and December 31. *See* EJVL, *supra* note 110, Art. 33.

<sup>131</sup> *See id.* Art. 37, para. 2.

<sup>132</sup> *Id.* Art. 38.

<sup>133</sup> Article 38, paragraph 2 of the EJVL states "income tax, however, may be reduced or exempted for a certain period of time from the first profit-making year." *Id.*

<sup>134</sup> For example, termination of the contract, insolvency, contractual default by either partner, or natural calamities. *See id.* Art. 43.

<sup>135</sup> *See id.* Art. 44, para. 1.

<sup>136</sup> *See id.* Art. 44, para. 2.

<sup>137</sup> *See* Implementing Regulation for the Law on Equity Joint Venture, (adopted on July 13, 1995), *translated in* CPEEC, *supra* note 4, at 44-58 (Vol. 5, 1996).

<sup>138</sup> *See* Chan Woo Lee, *Revision of North Korea's Laws on Foreign Investments* (available only in Korean), *The KOTRA Homepage*, available at <http://www.kotra.or.kr/nk> (as of May 30, 2000).

<sup>139</sup> *See* 1999 revised EJVL, *supra* note 110, Art. 2.

the board of directors.<sup>140</sup> An EJV is permitted to combine with other foreign enterprises.<sup>141</sup> Table III-5 shows the differences between the old and the new EJVL.

Table III-5: Comparison between the old and new EJVL

Provision	Old EJVL	1999 Revised EJVL
Article 2	Institutions, enterprises or associations of the DPRK are allowed to establish and operate an equity joint venture enterprise with corporations or individuals of foreign countries within the territory of the DPRK as well as Korean compatriots living outside the territory of the DPRK. Establishment of an equity joint venture enterprise outside the territory of the DPRK shall not be governed by this law.	Institutions, enterprises or associations of the DPRK are allowed to establish an equity joint venture with corporations or individuals of foreign countries. <u>An equity joint venture shall be established mainly within the Rajin-Sonbong Free Economic and Trade Zone. It may be established in another region, if necessary.</u>
Article 12	A joint venture partner may transfer his or her share to his or her heir or to a third party.	A joint venture partner may transfer his or her share to his or her heir or to a third party <u>with the consent of the opposite party and the discussion at the board of directors.</u>
Article 13	An equity joint venture enterprise may, with the consent from the external economic body of the Administrative Council, open its branches either in the DPRK or in other countries.	An equity joint venture enterprise may, with the consent from the Cabinet, open its branches, agencies and representative offices either in the DPRK or in other countries, and <u>conduct joint operations with companies in other countries.</u>

## 2. *The Law of the DPRK on the Contractual Joint Venture*

The Law of the DPRK on Contractual Joint Ventures ("CJVL") of 1992<sup>142</sup> governs the rights and obligations of concerned parties for establishing and managing a contractual joint venture ("CJV"). A purpose of the CJVL is to contribute to the expansion of economic cooperation and technical exchange between North Korea and the rest of the world.<sup>143</sup> Under the CJVL, a CJV means:

[A] business activity in which investors from the DPRK and from foreign a country invest jointly, with production and management being assumed by the host partner, and the portion of the investment made by the foreign partner is redeemed or the portion of profit to which the foreign partner is entitled is allotted in accordance with the provisions of the joint venture contract.<sup>144</sup>

<sup>140</sup> See *id.* Art. 12.

<sup>141</sup> See *id.* Art. 13.

<sup>142</sup> The Law of the DPRK on Contractual Joint Venture of 1992 (adopted on Oct. 5, 1992 and revised on Feb. 26, 1999) [hereinafter CJVL], translated in INVESTMENT CLIMATE, *supra* note 17, at 161-63.

<sup>143</sup> See *id.* Art. 1.

<sup>144</sup> *Id.* Art. 2.

The North Korean government prefers to establish CJVs primarily in sectors producing exportable goods using advanced technology and also in the tourism and service sectors.<sup>145</sup> For the establishment of a CJV, Article 6 of the CJVL requires the enterprises to (1) consult with their governing bodies, (2) execute a joint venture contract, and (3) submit an application to the EEOAC.<sup>146</sup> The EEOAC must decide whether to approve or reject the application within 50 days after its receipt.<sup>147</sup> If approved, the contractual joint venture should be registered within 30 days with the administrative economic committee of the province where the CJV will be located.<sup>148</sup> In compliance with the phrase in Article 5, "Korean nationals living outside the territory of DPRK," South Korean parties may participate in a CJV as foreign investors.<sup>149</sup>

A CJV should pursue the business activities specified in the application at the time of its approval. Other pursuits require further approval from the EEOAC.<sup>150</sup> In order to draw a wider range of investors, the CJVL in Article 10 provides the possibility of a third party's participation with the permission of the EEOAC. If a third party is involved with the bilateral CJV contract, an agreement should be reached between the two original partners which concedes all or part of one partner's rights or duties to the third party.

Article 11 of the CJVL permits the foreign partner of a CJV to employ technicians from its own country or a third country by contract.<sup>151</sup> In addition, a CJV contract may specify the governance procedures of the business, including the establishment of a non-permanent body for joint consultation in key decision-making.<sup>152</sup>

The accounts of a CJV may be settled on a monthly, quarterly or yearly basis.<sup>153</sup> After the accounts have been settled, any profits or other revenue earned by the foreign investor may be remitted abroad subject to the laws

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<sup>145</sup> See *id.* Art. 3.

<sup>146</sup> See *id.* Art. 6, para. 1. The application should be accompanied by all other relevant documents, including the deed of contract and a feasibility study report. See *id.* Art. 6, para. 2.

<sup>147</sup> See *id.* Art. 7.

<sup>148</sup> See *id.* Art. 8, para. 1. The day of registration is the date of the establishment of the joint venture. See *id.* Art. 8., para. 2.

<sup>149</sup> See *id.* Art. 5. The DPRK government has not yet clarified whether South Korea's investors are included in the Korean compatriots residing outside the territory of the DPRK. In interpreting this provision, there is no definite evidence to deny that South Korean investors can participate in the projects of the RSFETZ. In practice, moreover, many South Korean enterprises have been participating in investment in the RSFETZ.

<sup>150</sup> See CJVL, *supra* note 142, Art. 9.

<sup>151</sup> *Id.* Art. 11.

<sup>152</sup> See *id.* at Art. 16, para. 1. The non-permanent body for joint consultation could examine such matters concerning the operation of the venture, the introduction of new technology, the improvement of quality or reinvestment. See *id.* Art. 16, para. 2.

<sup>153</sup> See *id.* Art. 17.



and regulations of North Korea on foreign currency control.<sup>154</sup> When the profit is distributed under the contract, according to Article 18 of the CJVL, a CJV enterprise must pay tax as prescribed by the relevant law of the DPRK.<sup>155</sup>

A CJV may be dissolved when the period of its contract expires.<sup>156</sup> If any of the CJV partners fail to fulfill its duties as stipulated in the contract, the enterprise may be terminated before the expiration of the contract with the approval of the EEOAC.<sup>157</sup> In this event, the enterprise must settle its debts and credit accounts, as well as go through the relevant formalities for canceling its registration. Any losses incurred from this process are to be sustained by the partner that failed in his duties.<sup>158</sup> Detailed regulations have been issued to better implement the CJVL.<sup>159</sup>

The CJVL received some alterations on February 26, 1999. As stipulated in Article 5 of the revised CJVL, the main regional scope of establishing a CJV is the Rajin-Sonbong Free Economic and Trade Zone. It could be expanded outside within the territory of the DPRK, however.<sup>160</sup> In addition, Article 8 of the revised CJVL provides for the tax registration of a CJV.<sup>161</sup> Table III-6 shows the differences between the old and the new CJVL.

Table III-6: Comparison between the old and new CJVL

Provision	Old CJVL	1999 Revised CJVL
Article 5	Korean nationals living outside the territory of the DPRK may also take part in contractual joint venture, as stipulated under this law.	<u>A contractual joint venture shall be established mainly within the Rajin-Sonbong Free Economic and Trade Zone. It may be established in another region, if necessary.</u>
Article 8	A contractual joint venture should be registered within 30 days of its approval with the administrative and economic committee of the province (or city under direct jurisdiction) where the venture is to be situated.	A contractual joint venture should register tax affairs within <u>20</u> days of its approval at the <u>financial organization</u> under direct jurisdiction.

<sup>154</sup> See *id.* Art. 15.

<sup>155</sup> *Id.* Art. 18. The most pertinent tax law for CJVLs is the TFIEL, *supra* note 17, at 179-89.

<sup>156</sup> See CVJL, *supra* note 142, Art. 20.

<sup>157</sup> See *id.* Art. 19.

<sup>158</sup> See *id.*

<sup>159</sup> See Implementing Regulations for the Law on Contractual Joint Venture (adopted on Dec. 4, 1995), translated in CPEEC, *supra* note 4, at 26-37 (Vol. 6, 1996).

<sup>160</sup> Article 5 of the Revised CJVL provides that “[a] contractual joint venture shall be established in other region[s] of [North Korea], if necessary.” See 1999 Revised CJVL, *supra* note 142, Art. 5.

<sup>161</sup> *Id.* Art. 8.

### 3. *The Law of the DPRK on Foreign Enterprises*

The Law of the DPRK on Foreign Enterprises of 1992 ("FEL")<sup>162</sup> provides the basic rules for the creation of wholly foreign-owned entities (Foreign Subsidiaries) within FETZ.<sup>163</sup> Article 2 of the FEL defines a foreign subsidiary as "an enterprise which a foreign investor establishes by investing the whole amount of capital needed for founding and running it independently."<sup>164</sup> As mentioned above, the revised FIL of 1999 introduces a new term, "foreign enterprise," to North Korea's legal regime.<sup>165</sup> Compared to foreign subsidiaries (wholly foreign-owned enterprises), a foreign enterprise is generally defined as "an institute, enterprise, individual, or other economic body from foreign countries with a proper source of income in the territory of DPRK."<sup>166</sup> North Korea's definition of a foreign enterprise is a little different from the generally recognized one. In North Korea, a foreign enterprise is a business entity that is established in accordance with the law of a foreign country and manages its business activities with approval by a host country. Foreign enterprises maintain their own nationalities even within North Korea. Thus, their home countries retain jurisdiction over their personnel, while North Korea has territorial jurisdiction.<sup>167</sup> The sectors in which foreign subsidiaries are permitted to operate are listed in Article 3 of the FEL.<sup>168</sup> While under the 1984 JVL South Koreans could not invest in North Korea, the 1994 FEL defines them as "overseas Koreans," so that they are allowed to establish and run foreign enterprises within the FETZ.<sup>169</sup> Table III-7 compares the Foreign Subsidiary with Foreign Enterprise under the North Korea's foreign business law system.

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<sup>162</sup> The Law of the DPRK on Foreign Enterprises (adopted on Oct. 5, 1992 and revised on Feb. 26, 1999) [hereinafter FEL], translated in INVESTMENT CLIMATE, *supra* note 17, at 164-67.

<sup>163</sup> The foreign-owned subsidiaries can only be established within the RSFETZ. *See id.* Art. 1.

<sup>164</sup> *Id.* Art. 2.

<sup>165</sup> Article 2, paragraph 3 of the 1999 revised FIL states that a "foreign invested enterprise is a contractual or equity joint venture enterprise, or a wholly foreign-owned enterprise that is set up in the territory of the DPRK." 1999 Revised FIL, *supra* note 51, Art. 2, para. 3.

<sup>166</sup> *Id.* Art. 2.

<sup>167</sup> *See* Chin Gil Sang, *Difference between Foreign-Owned Enterprise and Foreign Enterprise, The People's Korea Homepage*, available at <http://www.korea-np.co.jp/pk> (as of Oct. 20, 1999).

<sup>168</sup> Important sectors in which foreign subsidiaries are permitted are as follows: 1) electronics, automation, machine tool and power industries; 2) food processing, garment and everyday consumer goods; 3) building materials, pharmaceuticals and chemicals; and 4) construction, transportation, service sectors and others deemed necessary. *See* FEL, *supra* note 162, Art. 3.

<sup>169</sup> *Id.* Art. 6.

Table III-7: Comparison of Foreign Subsidiary with Foreign Enterprise\*

	Foreign Subsidiary	Foreign Enterprise
Definition	An enterprise which a foreign investor establishes by investing the entire amount of capital needed for founding and running it independently.	An institute, enterprise, individual, or other economic body from a foreign country with a proper source of income in the territory of DPRK.
Legal Basis	Laws of DPRK.	Law of investing countries.
Jurisdiction	Capital importing country.	Capital investing country.

\* See Chin, *supra* note 167.

In order to set up an enterprise under the FEL, a foreign investor must submit an application to the EEOAC.<sup>170</sup> If the application is approved, the foreign investor must register the enterprise at the administrative and economic committee of the appropriate province within 30 days.<sup>171</sup> In addition to registration, the foreign enterprise is required to complete tax registration within 20 days at the appropriate financial organ.<sup>172</sup> With the approval of the EEOAC, a foreign enterprise may establish branches, representative offices, agencies and subsidiaries in North Korea or other countries.<sup>173</sup> The foreign enterprise's investment must be made within the period stated in the approved application.<sup>174</sup>

Article 14 of the FEL provides the relevant guidelines for the business activities of foreign enterprises. According to this provision, foreign subsidiaries must carry out their business activities according to the charter and by-laws of enterprise management, which are subject to approval by the EEOAC. A foreign investor should submit its plan of future business activities—production, import and export—to the provincial administrative and economic committee where it has been registered. It may obtain the materials it needs either in North Korea or from abroad.<sup>175</sup> For better foreign currency circulation, Article 18 of the FEL allows a foreign subsidiary to open an account either at the trade bank, at other banks in North Korea, or abroad, according to the regulations of the foreign exchange control organ of North Korea.

<sup>170</sup> FEL, *supra* note 162, Art. 7.

<sup>171</sup> See *id.* Art. 9.

<sup>172</sup> See *id.*

<sup>173</sup> See *id.* Art. 10. The EEOAC should decide on the application through consultation with the relevant organs within 80 days from the day of its reception. See *id.* Art. 8.

<sup>174</sup> If the investment is impossible due to unavoidable circumstances, it may be postponed with the approval of the organ concerned. See *id.* Art. 12. In the case of investment failure without any good reason, the EEOAC may revoke its approval of the application. See *id.* Art. 13.

<sup>175</sup> See *id.* Arts. 15, 16.

An employment contract may be concluded with the labor service agency in the area of a foreign enterprise's operation. Generally, local workers may be employed by foreign enterprises, but with approval from the EEOAC, foreign enterprises may bring in technicians and skilled workers from other countries.<sup>176</sup> Employees of a foreign enterprise may form a trade union and demand insurance.<sup>177</sup>

Taxes are paid as stipulated in the relevant law of the DPRK.<sup>178</sup> The EEOAC and its financial agency are entitled to inspect and supervise tax payments of foreign enterprises.<sup>179</sup> No customs duty may be levied either on materials related to the production and management activities of a foreign enterprise, or on products that it exports.<sup>180</sup>

When the approved period of its operation expires, the foreign enterprise is dissolved.<sup>181</sup> In the case of dissolution, legal profits from a foreign enterprise's business activities may be either reinvested or remitted abroad according to the relevant laws and regulations of North Korea.<sup>182</sup> More detailed regulations for the implementation of the FEL were promulgated in March 1994.<sup>183</sup>

The FEL was also amended on February 26, 1999. In Article 1, the revised FEL provides the primary purpose of the law more clearly.<sup>184</sup> In Article 6, the stipulation of "overseas Koreans" has been eliminated.<sup>185</sup> Article 7 of the revised FEL requires a foreign investor who wishes to establish an enterprise in the DPRK to consult with relevant organs.<sup>186</sup> The revised FEL permits joint operations only between the enterprises from foreign countries.<sup>187</sup> Together, endorsement regulation for expanding or changing the business activities has been newly laid down in Article 14 of the revised FEL.<sup>188</sup> Table III-8 shows the differences between the old and new FEL

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<sup>176</sup> See *id.* Art. 20.

<sup>177</sup> See *id.* Arts. 21, 23.

<sup>178</sup> See generally TFIEL, *supra* note 17.

<sup>179</sup> See FEL, *supra* note 162, Art. 27.

<sup>180</sup> See *id.* Art. 25.

<sup>181</sup> See *id.* Art. 28, para. 1.

<sup>182</sup> See *id.* Art. 22.

<sup>183</sup> See generally Regulations for the Implementation of the DPRK on Wholly Foreign-owned Enterprises (adopted on June 27, 1994), translated in CPEEC, *supra* note 4, at 50-56 (Vol. 3, 1994).

<sup>184</sup> 1999 Revised FEL, *supra* note 162, Art. 1. Article 1 states:

[t]he Law of the Democratic People's Republic of Korea on Foreign Enterprises makes a contribution to establish and run foreign enterprises in the Rajin-Sonbong Free Economic and Trade Zone and to expand and develop economic relations with other countries.

*Id.*

<sup>185</sup> Article 6 of the revised FEL provides that "[t]his law shall be applied to the Rajin-Sonbong Free Economic and Trade Zone." See *id.* Art. 6.

<sup>186</sup> *Id.* Art. 7.

<sup>187</sup> *Id.* Art. 10.

<sup>188</sup> *Id.* Art. 14.

Table III-8: Comparison of the revised FEL with the old FEL

Provision	Old FEL	1999 Revised FEL
Article 1	In order to expand and develop economic relations with other countries, the DPRK shall allow corporate bodies and individuals from foreign countries to establish and run enterprises within the Free Economic and Trade Zone.	<u>The Law of the DPRK on Foreign Enterprises shall make a contribution to establish and run enterprises in the Rajin-Sonbong Free Economic and Trade Zone, and to expand and develop economic relations with other countries.</u>
Article 6	Overseas Koreans are also allowed to establish and run enterprises independently within the Free Economic and Trade Zone, in accordance with this law.	<u>This law shall be applied to the Rajin-Sonbong Free Economic and Trade Zone.</u>
Article 7	A foreign investor who wishes to establish an enterprise in the DPRK shall submit an application to the external economic organ of the Administrative Council of the DPRK.	A foreign investor who wishes to establish an enterprise in the DPRK shall <u>consult with relevant organs</u> and submit an application to the <u>Central Trade Guiding Organ</u> .
Article 10	A foreign enterprise may . . . conduct joint operations with companies in the DPRK or other countries.	A foreign enterprise may . . . conduct joint operations with companies in other countries.
Article 14	A foreign enterprise shall conduct business activities in accordance with the charter and by-laws of enterprise management endorsed by the external economic organ of the Administrative Council.	The expansion or change of the types of business must be agreed upon by the organ that approved the establishment of the enterprise.

#### D. Other relevant Laws and Regulations under the FIL

Together with the laws governing the three forms of foreign investment mentioned above, North Korea has continued to issue a series of detailed laws and regulations necessary for attracting and managing the capital and high-techniques of foreign investors.<sup>189</sup>

##### 1. *The Law of the DPRK on Taxes on Foreign-Invested Enterprise & Foreigners and its 1999 Revision*

The Law of the DPRK on Taxes on Foreign-Invested Enterprise and Foreigners ("TFIEL") was proclaimed in January 1993 in an attempt to provide guidelines of taxation for foreign enterprises doing business and earning income within the territory of North Korea.<sup>190</sup> Under the TFIEL, taxes imposed on foreign-invested enterprises are listed under six headings: Business Income Tax, Individual Income Tax, Property Tax, Inheritance

<sup>189</sup> The following laws and regulations will be introduced in chronological order.

<sup>190</sup> TFIEL, *supra* note 17.

Tax, Turnover Tax and Local Tax. Such taxation is calculated in [North] Korean *won*<sup>191</sup> and supervised by a competent financial organization.<sup>192</sup>

A foreign enterprise must pay the Business Income Tax on its earnings derived from its business activities or other sources of income in the territory of North Korea.<sup>193</sup> Article 12, paragraph 1 of the TFIEL sets the business income tax for foreign-invested enterprises at a rate of either 14% in the FETZ or 25% in other regions.<sup>194</sup> Article 15 of the TFIEL specifies cases in which income taxes may be reduced.<sup>195</sup>

Individual Income Tax, according to Article 17 of the TFIEL, must be paid by individuals who stay or reside in North Korea for more than one year and earn any personal income within the territory of North Korea. Items of personal income tax under the TFIEL are set out in Article 18,<sup>196</sup> and various rates of personal income tax are provided in Article 19 and Appendix 1 of the TFIEL.<sup>197</sup>

The Property Tax is imposed on buildings, vessels or aircraft owned and registered<sup>198</sup> by a foreigner.<sup>199</sup> In accordance with Appendix 3 of the TFIEL, the annual rate of the Property Tax imposed on all buildings, vessels and airplanes is between 1 % and 1.4%.<sup>200</sup> When a foreigner inherits property in the territory of North Korea, an Inheritance Tax is assessed.<sup>201</sup> The rate for inheritance tax is based on the remaining value of the property inherited.<sup>202</sup>

Turnover Tax is imposed on revenues from product sales in production sectors, goods sales in commercial sectors, and revenues from services in the services sectors such as transportation, banking, and tourism in North

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<sup>191</sup> *Id.* Art. 4.

<sup>192</sup> *Id.* Art. 5.

<sup>193</sup> *See id.* Art. 8.

<sup>194</sup> In special sectors such as high-tech, natural resource development, infrastructure construction, scientific research and technological development, the income tax rate is reduced by 10%. *See id.* Art. 12, para. 2.

<sup>195</sup> Such cases include 1) a foreign investment-business enterprise granted credit by its own government; 2) a foreign investment-business enterprise in a preferential sphere; 3) a foreign investment-business enterprise in the service sector; and 4) a foreign investment business-enterprise in infrastructure development. *See id.* Art. 15.

<sup>196</sup> Personal income tax is assessed under Article 18 of the TFIEL, as follows: 1) Incomes from remuneration for work; 2) Income from dividends; 3) Earnings from industrial property, know-how and copyright; 4) Income from interest payments; 5) Income from leases and other income from rent; 6) Proceeds from the sale of assets; 7) Income from gifts; and 8. Income from private enterprise. *Id.* Art. 18.

<sup>197</sup> *Id.* Art. 19, and App. 1.

<sup>198</sup> On the registration process, see *id.* Art. 26.

<sup>199</sup> *See id.* Art. 25, para. 1. No tax is imposed on buildings owned in the FETZ for a period of five years. *See id.* Art. 25, para. 2.

<sup>200</sup> *See id.* Art. 28.

<sup>201</sup> *See id.* Art. 31.

<sup>202</sup> *See id.* Art. 32. For a detailed description of the tax rate, see *id.* at Appendix 4.

Korea.<sup>203</sup> The tax rates range from 1.5 % to 2.0% in the product sector, 2% in the commercial sector and 2 to 4% in the service sector.<sup>204</sup> The procedures for calculation and payment are set out in Articles 40 and 41 of the TFIEL.

The Local Tax consists of a city management tax, a registration and license tax, and a vehicle tax, paid to the financial organ in the area of operation.<sup>205</sup> The city management tax is paid for the maintenance and management of public facilities, such as parks, roads, and waste disposal, and is equal to 1% of the monthly payroll of the enterprise.<sup>206</sup> Article 47 of the TFIEL stipulates the registration and license taxes for the registration of enterprises and royalties for mining or fishing and other activities, as well as requirements for technical qualification endorsements and licenses. A vehicle tax is paid for the use of a vehicle.<sup>207</sup> It must be paid before the end of February of each year to the financial organization in the foreign enterprise's area of operation or residence.<sup>208</sup> The amount of the Local Tax is prescribed in Appendix 6 of the TFIEL.<sup>209</sup> Detailed regulations of the TFIEL were promulgated in January 1993.<sup>210</sup>

The TFIEL was revised on February 26, 1999. The following regulations are eliminated in this revision: income from individual enterprise,<sup>211</sup> personal income tax procedure,<sup>212</sup> registration and license tax for mining or fishing enterprises,<sup>213</sup> and registration and license tax procedure.<sup>214</sup> Article 19 of the revised TFIEL specifies that the Cabinet should decide the rates of tax imposed on individual income,<sup>215</sup> property,<sup>216</sup> inheritance,<sup>217</sup> business,<sup>218</sup>

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<sup>203</sup> See *id.* Art. 38.

<sup>204</sup> See *id.* at Appendix 5. For restricted goods such as cigarettes and alcohol, the range is 21–60 percent.

<sup>205</sup> See *id.* Art. 43.

<sup>206</sup> See O'Brien, *supra* note 3, § 1.07.

<sup>207</sup> TFIEL, *supra* note 17, Art. 49.

<sup>208</sup> See *id.* Art. 51.

<sup>209</sup> *Id.* Art. 52.

<sup>210</sup> See Enforcement Regulations for the Law of the DPRK on Foreign-Invested Business and Foreign Individual Tax (approved on Feb. 21, 1994), *translated in CPEEC, supra* note 4, at 47-56 (Vol. 2, 1994).

<sup>211</sup> See 1999 Revised TFIEL, *supra* note 17, Art. 18(8).

<sup>212</sup> Article 24 of the TFIEL provided that "[p]ersonal income tax on income from remuneration for work, and income from interest payments shall be deducted and paid to the financial organization in the area of residence by an entity withholding such income within 15 days of the end of each month, personal income tax on proceeds from the sale of assets and income from gifts shall be reported and paid within 10 days of the end of each quarter, and personal income tax on income from unincorporated enterprise within 15 days of the end of each month, by the person receiving the income to the financial organization in the area of residence." See *id.* Art. 24 (1&2).

<sup>213</sup> See *id.* Art. 47.

<sup>214</sup> See *id.* Art. 48.

<sup>215</sup> *Id.* Art. 20.

and car utilization.<sup>219</sup> In the case of the personal income tax, the rate for the remuneration for work has been decreased from 2000 [North Korean] *won* to 1000 [North Korean] *won*.<sup>220</sup> Table III-9 shows the differences between the old and the new TFIEL.

Table III-9: Comparison of the revised TFIEL with the old TFIEL

Provision	Old TFIEL	1999 Revised TFIEL
Article 18	Income taxable as personal income tax shall be: 8. Income from individual enterprise.	8. Deletion
Article 19.	1. The income tax rate for the remuneration for work shall be as per Appendix 1 of this law, except where monthly income is less than 2,000 won, which amount shall be exempt from individual income tax.	1. The income tax rate for the remuneration for work shall be as per <u>rates regulated by the Cabinet</u> , except where monthly income is less than 1,000 won, which amount shall be exempt from individual income tax.
Article 24	1. Personal income tax on income from remuneration for work, and income from interest payments shall be deducted and paid to the financial organization in the area of residence by an entity withholding such income within 15 days of the end of each month. 2. Personal income tax on proceeds from the sale of assets and income from gifts shall be reported and paid within 10 days of the end of each quarter and personal income tax on income from an unincorporated enterprise within 15 days of the end of each month, by the person receiving the income to the financial organization in the area of residence.	1. & 2. Deleted.
Article 47	A foreign investment-business enterprise and a foreign individual shall pay a registration of enterprises, royalties for mining or fishing and other items, and for deeds such as technical qualification and licenses.	Deleted.
Article 48	The registration and license tax shall be collected by a body registering or issuing licenses at the prescribed amount for each item and paid to the financial organization in the area.	Deleted.

## 2. The Law of the DPRK on Foreign Exchange Control

The Law of the DPRK on Foreign Exchange Control (“FECL”)<sup>221</sup> governs the rules for foreign exchange control in order to contribute to the ef-

<sup>216</sup> *Id.* Art. 28.

<sup>217</sup> *Id.* Art. 34.

<sup>218</sup> *Id.* Art. 39.

<sup>219</sup> *Id.* Art. 50. In practice, however, there has not been a change in tax rates. See Chin, *supra* note 101.

<sup>220</sup> See 1999 Revised TFIEL, *supra* note 17, Art. 19(1).

<sup>221</sup> FECL, *supra* note 89.



fective use of foreign currencies and expand external economic relations.<sup>222</sup> Article 2 of the FECL stipulates the principles and procedures for foreign exchange operations, the issuance of foreign exchange securities, and the import and export of foreign currencies in cash, securities and precious metals.

With regard to the use of foreign exchange, Article 11 of the FECL sets out transactions in which foreign currency may be used. They include: (1) Payment in accordance with trade contract of payment agreement; (2) Payment in non-trade transactions; (3) The buying or selling of [North] Korean *won* at a bank; and (4) Capital transactions.

A foreign individual may deposit or sell foreign currency legally earned or remitted from abroad to a domestic bank of North Korea.<sup>223</sup> The manner in which foreign currency may be used by domestic organizations or citizens is specified in Articles 13 and 15. According to Article 13 of the FECL, foreign exchange may be used only for approved purposes and items.<sup>224</sup> Domestic organizations, enterprises, or other entities that earn foreign currency should convert it into [North] Korean *won* and deposit it in a bank.<sup>225</sup> Article 15 provides that DPRK citizens may possess foreign currency only within the amounts specified by the state.

Articles 22 to 28 also provide for the import and export of foreign currency. Any amount of foreign exchange may be brought into North Korea, but to take it out of North Korea, the amount permitted is limited to that specified in the foreign exchange certificates issued by the bank or in the declaration made to the customs office when entering North Korea.<sup>226</sup> A foreign investor, however, can remit or transfer all profits earned by the business activities abroad without limit.<sup>227</sup> Detailed regulations on the FECL were promulgated in June 1994.<sup>228</sup>

The FECL was revised in February 26, 1999 with an amendment. The regulation of "Korean compatriots residing outside the territory of the DPRK" has been simplified into "Korean nationals" in Article 10.<sup>229</sup> Table III-10 shows the differences between the old and new FECL.

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<sup>222</sup> *Id.* Art. 1.

<sup>223</sup> *See id.* Art. 16.

<sup>224</sup> *Id.* Art. 13, para. 2.

<sup>225</sup> *See id.* Art. 13, para. 1.

<sup>226</sup> *See id.* Arts. 22, 23.

<sup>227</sup> *See id.* Art. 27.

<sup>228</sup> *See* Regulations for the Implementation of the Law of the Democratic People's Republic of Korea on Foreign Exchange Control (approved on June 27, 1994), *translated in* INVESTMENT CLIMATE, *supra* note 17, at 273-82.

<sup>229</sup> 1999 Revised FECL, *supra* note 89, Art. 10.

Table III-10: Comparison of the revised FECL with the old FECL

Provision	Old FECL	1999 Revised FECL
Article 10	This Law shall be applied to the domestic organizations, enterprises, entities and citizens of the DPRK, as well as to foreign organizations, foreign investment-business enterprises, foreign investors and foreign individuals and Korean compatriots residing outside the territory of the DPRK that use foreign currencies within the territory of the DPRK.	This Law shall be applied to the domestic organizations, enterprises, entities and citizens of the DPRK, as well as to foreign organizations, foreign investment-business enterprises, foreign investors and foreign individuals and <u>Korean nationals</u> that use foreign currencies within the territory of the DPRK.

### 3. *The Law of the DPRK on Foreign-Invested Bank*

The Law of the DPRK on Foreign-Invested [*sic*] Banks (“FIBL”), promulgated in November 1993 for the establishment and management of foreign-invested banks (“FIB”), provides general rules for the establishment and dissolution of FIBs, capital and reserve funds, transactions and settlement, and penalties and settlement of disputes.<sup>230</sup> Under the FIBL, a FIB may be a joint venture bank, a foreign bank, or a branch of a foreign bank.<sup>231</sup> The management of foreign banks is performed independently, but supervised by the central bank and foreign exchange administration agency.<sup>232</sup> The legal rights and interests of a FIB in North Korea are generally protected by the state.<sup>233</sup> Articles 28 and 29 set out instances in which a FIB may be granted preferential treatment<sup>234</sup> or be subject to fine.<sup>235</sup>

<sup>230</sup> Law of the Democratic People’s Republic of Korea on Foreign-Invested Bank (adopted on Nov. 24, 1993 and revised on Feb. 26, 1999) [hereinafter FIBL], *translated in INVESTMENT CLIMATE*, *supra* note 17, at 168-72.

<sup>231</sup> *Id.* Art. 2.

<sup>232</sup> *See id.* Arts. 3, 6. Concrete relations between a FIB and the Central Bank are laid down in Articles 12, 14, 15, 16 and 17 of FIBL.

<sup>233</sup> *See id.* Art. 4.

<sup>234</sup> *See id.* Art. 28. A FIB shall be granted preferential treatment under the following conditions:

- (a) [i]n case the term of business is longer than 10 years, the enterprise income tax shall be exempted for the first profit-making year and shall be reduced by up to 50% for the succeeding two years;
- (b) no turnover tax shall be payable for the interest accruing from loans granted on favorable terms to the banks and enterprises of the DPRK;
- (c) no tax or only a low-rate tax shall be payable and no reserve fund for deposit payment shall be required for the income accruing from offshore banking; and
- (d) the income accruing from the banking business and the residual fund, if any, left over after the liquidation of the bank may, subject to the laws and regulations of the DPRK on foreign exchange control, be remitted abroad without a tax.

*Id.*

In order to establish a FIB in North Korea, Article 8 of the FIBL requires an application, together with the necessary documentation, to be filed with the central bank.<sup>235</sup> Each supporting document required for a joint venture bank and a foreign bank application is identified in Articles 9 and 10 of the FIBL.<sup>237</sup> The head office of the bank should file applications for bank branches.<sup>238</sup> The central bank must decide whether to approve or reject an application within 50 days from its receipt.<sup>239</sup>

A joint venture bank or a foreign bank should hold its registered capital in convertible currency of more than 30,000,000 [North] Korean *won*,<sup>240</sup> and reserve 5% of annual profits each year until the reserve fund grows to 25% of the registered capital.<sup>241</sup> A FIB should maintain a security fund against debts and set aside reserve funds, which include premiums, welfare, and R & D funds.<sup>242</sup>

The types of transactions in which a FIB may engage under the FIBL are set out in Article 23 of the FIBL.<sup>243</sup> In addition, Article 24 of the FIBL prohibits a FIB from investing more than 25% of its capital exclusively in any one business.

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<sup>235</sup> *See id.* Art. 29. A FIB may be subject to fines if it: (a) changes its president or vice-president or the location of the bank without approval; (b) fails to set aside a reserve fund in the required amount; (c) obstructs or causes difficulties in inspection; or (d) fails to submit regular reports within a fixed period of time or submits false ones. *See id.*

<sup>236</sup> *Id.* Art. 8. For example, the application must specify the name of the bank, the name and life history of its chief, the capital to be registered, paid-up capital, the management fund, investment rate, details of business, etc. *See id.*

<sup>237</sup> *Id.* Arts. 9, 10. Such documents include a memorandum, a feasibility study report, a copy of the contract of joint venture, a list of managing staff, a copy of the letter of approval for a foreign exchange transaction, and a copy of the business license. *Id.*

<sup>238</sup> *See id.* Art. 11.

<sup>239</sup> *See id.* Art. 12.

<sup>240</sup> *See id.* Art. 18. In the case of a foreign bank's branch, the working capital fund should be held in convertible currency of more than 8,000,000 [North] Korean *won*. *Id.*

<sup>241</sup> *See id.* Art. 21.

<sup>242</sup> *See id.* Arts. 20, 22. For details on the current aspects of North Korea's bank management, see Ri Won Gyong, *Issues Concerning Funds of Socialist Bank, The People's Korea Homepage*, available at <http://www.korea-np.co.jp/pk/102nd%5fissue/990701.htm> (as of Apr. 22, 2000).

<sup>243</sup> *Id.* Art. 23. A FIB may engage in the following transactions:

- (a) Depositing in foreign currencies, of foreign-invested enterprise or foreigners,
- (b) Granting loans in foreign currencies, over-drafting of foreign currency bills,
- (c) Dealing in foreign exchange,
- (d) Investment in foreign currencies,
- (e) Guarantees regarding liabilities in foreign currencies and contractual default,
- (f) Remittance of foreign currency,
- (g) Clearing of the importers' and exporters' bills,
- (h) Offshore banking,
- (i) Acceptance of securities in foreign currencies,
- (j) Trust banking,
- (k) Credit survey and consultation,
- (l) Others.

*Id.*

After a certified public accountant checks the annual financial statement and confirms the profit and loss account,<sup>244</sup> a FIB must submit these documents to the foreign exchange administration within 30 days from the date of completion of the annual business settlement.<sup>245</sup> If reasons are found that justify stopping a FIB's operations, the bank may be dissolved.<sup>246</sup> An application for dissolution must be submitted to the central bank in order to obtain approval. Upon completion of the liquidation under the supervision of the liquidation committee, a FIB's registration is canceled.<sup>247</sup> If a FIB intends to continue its banking business beyond the operational term, however, it should submit an application for postponement of expiration to the central bank six months prior to expiration.<sup>248</sup> Detailed regulations of the FIBL were promulgated in December 1994.<sup>249</sup>

The FIBL was revised on February 26, 1999. Article 7 of the revised FIBL has a new stipulation to regulate the principle and order concerning the establishment, management and dissolution of a FIB.<sup>250</sup> In Article 13, the Rajin-Sonbong People's Committee may be included as a registration organ for the establishment of a FIB.<sup>251</sup> Table III-11 shows the differences between the old and the new FIBL.

Table III-11: Comparison of the revised FIBL with the old FIBL

Provision	Old FIBL	1999 Revised FIBL
Article 7	Koreans residing outside the territory of the DPRK may establish and operate banks with their investment in the territory of the DPRK.	<u>This Law shall regulate the principles and order concerning the establishment, management and dissolution of a foreign-invested bank.</u>
Article 13	A person who has submitted an application for the establishment of a bank shall . . . register with the Administration and Economic Committee of the province where the bank is to be located.	A person who has submitted an application for the establishment of a bank shall . . . register with the <u>People's Committee of the province (city) where the bank is to be located, or of the Rajin-Sonbong area.</u>

<sup>244</sup> The account settlement year of a FIB begins on January 1 and ends on December 31 of each year. Annual business settlements must be completed by no later than February of the following year. *See id.* Art. 26.

<sup>245</sup> *See id.* Art. 27.

<sup>246</sup> *See id.* art 14. For example, expiration of the terms approved, merger of banks, insolvency, defaulting of the contract or natural calamities. *See id.*

<sup>247</sup> *See id.*

<sup>248</sup> *See id.* Art. 15. The application should be submitted six months before the term expires. *See id.*

<sup>249</sup> *See* Implementing Regulations for the Law of the Democratic People's Republic of Korea on Foreign-Invested Bank (approved on Dec. 28, 1994), *translated in* INVESTMENT CLIMATE, *supra* note 17, at 238-48.

<sup>250</sup> 1999 Revised FIBL, *supra* note 230, Art. 7.

<sup>251</sup> *See id.* Art. 13.

#### 4. *The Law of the DPRK on the Leasing of Land*

The Law of the DPRK on the Leasing of Land ("Land Lease Law") of 1993<sup>252</sup> consists of 6 chapters with 42 articles which relate to land leasing by foreign investors in North Korea. It deals with the process of leasing land, conveyance and mortgage of land use rights, rental amounts, use charges, and restitution of land use rights.<sup>253</sup>

Article 1 of the Land Lease Law defines its primary goal as "to contribute to the establishment of proper regulations for the leasing of land needed by foreign investors and foreign enterprises and for the use of lease land."<sup>254</sup> Concerning the rights and obligations between lessee and lessor, Articles 2 and 3 provide relevant regulations. Article 2 clarifies the right of a foreign corporation or an individual to lease and use land in North Korea.<sup>255</sup> Article 3 states that land use rights are confined to the ground above.<sup>256</sup> Leasing of land is accomplished under the unified control of the local land administration.<sup>257</sup> The maximum term of leasing land is 50 years.<sup>258</sup> A period up to 50 years can be fixed by agreement, as stipulated in Art. 15 of the FIL.<sup>259</sup>

Effectively, the land is leased through negotiation. Leasing through tender and auction may also be applicable in the FETZ.<sup>260</sup> The information required and the procedure for land lease negotiation are provided in Articles 10 to 13 of the Land Lease Law.<sup>261</sup> First, according to Article 10 of the law, the lessor must provide various data on the land.<sup>262</sup> With this data, les-

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<sup>252</sup> The Law of the Democratic People's Republic of Korea on the Leasing of Land (adopted on Oct. 27, 1993 and revised on Feb. 26, 1999) [hereinafter Land Lease Law], translated in INVESTMENT CLIMATE, *supra* note 17, at 215-30.

<sup>253</sup> For a simple explanation of these Laws and Regulations, see J.D. Park., THE SPECIAL ECONOMIC AREA IN NORTH KOREA (available only in Korean) 94-95 (1996).

<sup>254</sup> FIL, *supra* note 51, Art. 15; Land Lease Law, *supra* note 252, Art. 6.

<sup>255</sup> *See id.* Art. 2. Pursuant to the land lease law, foreign corporations and individuals, as well as "overseas Koreans," are allowed to lease and use land in North Korea. *See id.*

<sup>256</sup> *See id.* Art. 3. A lessee cannot claim his rights over the natural resources and deposits in the leased land. *See id.*

<sup>257</sup> *See id.* Art. 4. In the FETZ, however, the zone authority is entitled to lease the land. *See id.*

<sup>258</sup> *See id.* Art. 6.

<sup>259</sup> Article 15 of the FIL states that the "State shall lease the land required for foreign investors and the establishment of foreign invested enterprises for a maximum period of 50 years." FIL *supra* note 51, Art. 15.

<sup>260</sup> *See id.* Art. 9.

<sup>261</sup> *Id.* Arts. 10, 13.

<sup>262</sup> *See id.* Art. 10. The information that should be provided by a lessor is set out in Article 10 of the Land Lease Law as follows:

- (1) location and area of the land and a topographical map of it; (2) uses to which the land may be put; (3) construction sites and plans for land development; (4) period of construction and minimum cost limit of investment; (5) requirements for environmental protection, sanitation and fire fighting; (6) term of land lease; and (7) state of land development.

sees can take part in the process of negotiation,<sup>263</sup> bidding,<sup>264</sup> or auction.<sup>265</sup> In addition to governing how land may be leased, the Land Lease Law provides specific regulations on transfer and mortgage (Chapter III), rental and usage charges of land (Chapter IV), and return of the right to use land (Chapter V). Detailed regulations on the Land Lease Law were promulgated in September 1994.<sup>266</sup>

The Land Lease Law also received minor revisions on February 6, 1999.<sup>267</sup> First, in the revised Land Lease Law, the definition of the rent has been expanded to the payment for transferring the right to use the land.<sup>268</sup> Second, Article 29 of the revised Land Lease Law specifies the payment for transferring the right to use land, when leasing the developed land.<sup>269</sup> Table III-12 shows the old and the new Land Lease Law.

Table III-12: Comparison of the revised Land Lease Law with the old Land Lease Law

Provision	Old Land Lease Law	1999 Revised Land Lease Law
Article 28	The rent is the payment for the right to use land.	The rent includes the payment for the right to use land and for <u>transferring the right to use land</u> .
Article 29	When leasing developed land, the lessor authority shall receive from the lessee rent plus the cost of development.	When leasing developed land, the lessor authority shall receive from the lessee <u>the right to use land</u> plus the cost of development.

### 5. *The Customs Law of the DPRK*

The Customs Law of the DPRK ("Customs Law")<sup>270</sup> aims to ensure order and discipline in foreign trade and to promote the independent development of the North Korean economy through strengthening customs inspection and the correct imposition of customs duty.<sup>271</sup> Through its 51 articles, the Customs Law governs the rules on customs, including procedures, inspection standards, duties and sanctions, and petitions. A basic principle of customs practice in North Korea is that the "State shall apply either zero or a low tariff on material whose import and export are encour-

*Id.*

<sup>263</sup> *See id.* Art. 11.

<sup>264</sup> *See id.* Art. 12.

<sup>265</sup> *See id.* Art. 13.

<sup>266</sup> Implementing Regulations for the Law of DPRK on the Leasing of Land (approved on Sept. 7, 1994), *translated in CPEEC, supra* note 4, at 65-72.

<sup>267</sup> *See Chin, supra* note 101.

<sup>268</sup> 1999 revised Land Lease Law, *supra* note 252, Art. 28.

<sup>269</sup> *Id.* Art. 29.

<sup>270</sup> Customs Law of the Democratic Peoples Republic of Korea (adopted on Oct. 14, 1993) [hereinafter Customs Law], *translated in INVESTMENT CLIMATE, supra* note 17, at 190-97.

<sup>271</sup> *Id.* Art. 1.

aged, and a high tariff on materials whose import and export are discouraged.<sup>272</sup> Pursuant to this principle, the central customs guidance organ of North Korea administers guidance on customs affairs.<sup>273</sup> Details are set out in each provision of the Customs Law.

All customs formalities are compulsory<sup>274</sup> and applicable to institutions, enterprises, associations and citizens that bring cargoes, commodities, and transport means into or out of North Korea.<sup>275</sup> Customs officials perform inspections of cargoes, commodities, and transport vehicles at border routes, foreign trade ports, international airports, international post offices, and other specified places. In the case of hand baggage, customs inspection may be done on a train or ship.<sup>276</sup>

Article 30 of the Customs Law provides immunity from customs inspection of hand baggage and luggage of members of governmental delegations, diplomats, members of international organizations, and of diplomatic postal matter and correspondence.<sup>277</sup> In addition, customs inspection is generally not made of cargo compartments, passenger compartments, or crew's quarters.<sup>278</sup>

Customs authorities collect customs duty.<sup>279</sup> In accordance with Article 32 of the Customs Law, the standard price of the customs duty levied is calculated by either the price on arrival at the border in the case of imports, price of delivery in the case of exports, or retail price in other cases.<sup>280</sup> The currency unit for calculation is the [North] Korean *won*.<sup>281</sup> Articles 34 and 35 of the Customs Law specify the items exempted<sup>282</sup> and their exceptions.<sup>283</sup> The Customs Law contains a specific provision stating that if there

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<sup>272</sup> *Id.* Art. 4.

<sup>273</sup> *See id.* Art. 5.

<sup>274</sup> *See id.* Art. 2.

<sup>275</sup> *See id.* Art. 8.

<sup>276</sup> *See id.* Art. 14.

<sup>277</sup> *Id.* Art. 30. Despite this provision, customs inspection can be performed on these items when there is reason to believe that they contain controlled articles or materials which are not allowed to be brought into or taken out of North Korea. *See id.* Art. 30, para. 2.

<sup>278</sup> *See id.* Art. 16, para. 1.

<sup>279</sup> The Customs may also supervise and control its proper payment. *See id.* Art. 31.

<sup>280</sup> *Id.* Art. 32.

<sup>281</sup> *See id.* Art. 33.

<sup>282</sup> No customs duty shall be levied on the following items: (1) Gifts from the government of a foreign country or an international organization; (2) Traveler's articles whose quantity does not exceed the specified limits; (3) Materials brought in by a foreign-invested business for the purpose of production and management; (4) Materials brought in for the purpose of processing trade, entreport trade and re-export; (5) Materials for which no customs duty is payable pursuant to a treaty; and (6) Materials separately specified by the State. *See id.* Art. 34.

<sup>283</sup> The exceptions to the exemptions are when: (1) the materials brought in are larger than the specified limits; (2) a foreign-invested business sells its product outside the FETZ; (3) the materials brought in for the purpose of processing trade, entreport trade and re-export

is an agreement concluded between North Korea and a foreign country for preferential tariff treatment, that preferential tariff shall be applied.<sup>284</sup>

When a notice of customs duty payment is given to institutions, enterprises, associations or citizens, they must pay customs duty to the relevant bank within 15 days after receipt.<sup>285</sup> If the customs duty has not been paid within the specified time limit, the customs may impose daily arrears penalties accruing from the day after the termination of the time limit.<sup>286</sup> Cargoes and transport brought into or taken out of North Korea in violation of regulations of the Customs Law may be detained or confiscated.<sup>287</sup> In the case of severe offenses, administrative or criminal proceedings may be instituted against the responsible persons.<sup>288</sup>

#### E. Organizational Aspects of Foreign Investment in North Korea under the 1998 Constitution

In accordance with the revision of the Constitution and relevant foreign business laws between 1998 and 1999, the DPRK government has reshuffled the organizations for dealing with external economic affairs. Such reorganization may reflect the new political dynamics of North Korea under the Kim Jong Il regime. After a three-year political vacuum since the death of former president Kim Il Sung in July 1994, Kim Jong Il finally assumed control of the new political leadership in North Korea in late 1997.<sup>289</sup> With the new Constitution of 1998, the Kim Jong Il regime tried to secure its political authority by stabilizing the domestic economy and improving the nation's living standards. In promoting this economic campaign, priority has been given to foreign trade and external economic cooperation, because it is recognized that as the socialist economy expands, the demand for foreign currency grows. Trade income is thus the pillar for fulfilling the state demand for foreign currency in North Korea.<sup>290</sup> Following this policy shift, the administrative organs were rearranged to react more effectively to changes outside North Korea.

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are sold inside the DPRK; or (4) bonded materials are not delivered within the specified time. *See id.* Art. 35.

<sup>284</sup> *Id.* Art. 37.

<sup>285</sup> *See id.* Art. 39. For an extension of this time limit, a written application may be submitted to customs 5 days before the termination of the time limit. In this case, the payment may be postponed for ten days. *See id.* Art. 41.

<sup>286</sup> *See id.* Art. 48.

<sup>287</sup> *Id.* Art. 49, para. 1.

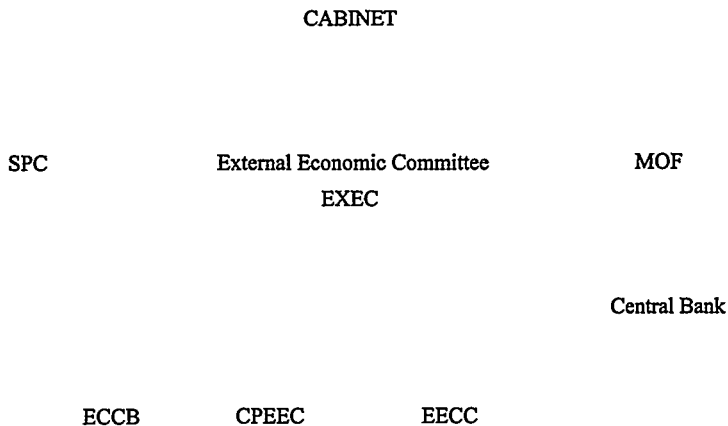
<sup>288</sup> *See id.* Art. 49, para. 2.

<sup>289</sup> Kim Jong Il was elected as the General Secretary of the Korean Workers' Party in October 1997. *See Special Report on General Secretary Kim Jong Il*, RODONG SHINMUN, Oct. 8, 1997, at 1.

<sup>290</sup> Concerning the earning of foreign currency, Kim Jong Il said, "[w]e must earn much more foreign currency so that we can purchase necessary materials on time." Choe Mun-Su, *Trade Income Must Be Increased*, 43 KIM IL SUNG UNIVERSITY GAZETTE No. 3 (1999).



Chart 2: Organizational Structure of the DPRK for External Economic Cooperation\*\*



SPC: State Planning Commission. MOF: Ministry of Finance

\*\* See HANSE POLICY INSTITUTE, ECONOMY OF NORTH KOREA 13, 61 (1996); see also Chin, *supra* note 101.

First, the new Constitution has changed the Administrative Council into the Cabinet.<sup>291</sup> Having enhanced its role and status, the Cabinet abolished some committees and integrated them into ministries.<sup>292</sup> Following the organizational restructuring, the main organ for foreign investments and external economic cooperation in North Korea has become the External Economic Committee of the Cabinet ("EXEC"). Under the External Economic Committee, two organizations operate to consolidate external economic contacts: the Committee for the Promotion of External Economic Cooperation ("CPEEC") under the Trade Ministry, and the External Economic Cooperation Committee ("EECC"). Under the CPEEC of the Trade Ministry, the External Economic Cooperation Bureau took charge of sub-bureaus.<sup>293</sup> The Rajin-Sonbong Free Trade and Economic Zone ("RSFETZ") is now managed and operated by the Economic Cooperation

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<sup>291</sup> See 1998 DPRK Constitution, *supra* note 53, Art. 117.

<sup>292</sup> See Chin, *supra* note 101.

<sup>293</sup> These sub-bureaus include the National Development Guiding Bureau, the Rajin-Sonbong Bureau, the Foreign Joint Venture Bureau and the International Cooperation Bureau.

and Control Bureau ("ECCB") of the Trade Ministry. Under the ECCB, the Central Trade Guiding Organ accepts applications for the establishment of foreign-invested enterprises, and deliberates on and responds to such requests. In addition, the People's Committee of Rajin-Sonbong has the authority to accept such an application and deliver it to the central organ.<sup>294</sup> It is not a theoretical implication. Thus, it should be changed. In principle, these organizations have different functions, but the question remains whether each restructuring will have any practical significance for prospective investors.<sup>295</sup> Chart 2 shows the organization structure of North Korea's external economic cooperation.

#### IV. EVALUATION

Based on the Joint Venture Law of 1984, North Korea's lawmaking for foreign business corporations has symbolized its open-door policy. The current regime under Kim Jong Il has set up a new policy stance with a series of legislation to take a political initiative in the post-Kim Il Sung era of North Korea, including the amendments of the Socialist Constitution in 1998 and the nine foreign business laws in 1999. In the case of the 1999 revision of foreign business laws, the revised provisions may show the direction of opening their doors in the foreseeable future. With the revisions, the new Kim Jong Il regime of North Korea is trying to overcome the political and economic difficulties lying before them. The 1999 revision has the following characteristics. First, the main region for foreign investment has been established in the Rajin-Sonbong Free Economic and Trade Zone.<sup>296</sup> Second, the government's control over the foreign investment has been strengthened. The foreign investments in the Rajin-Sonbong Free Economic and Trade Zone may be controlled by the ECCB, under which the Central Trade Guiding Organ approves the establishment of foreign-invested enterprises.<sup>297</sup> Third, the scope of foreign-invested enterprises has been expanded. The foreign enterprise except an EJV and a CJV may be approved as a foreign-invested enterprise if it derives income in the territory of the DPRK.<sup>298</sup> This is regarded as a pragmatic stance of North Korea to-

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<sup>294</sup> See 1999 Revised LFETZ, *supra* note 4, Arts. 9, 12.

<sup>295</sup> See Ik Soo Kim, *TRADP and the Korean Peninsula: Strategy for Investing in the RSFETZ* (available only in Korean), KIEP (Policy Report: 94-17) Seoul 26 (1994).

<sup>296</sup> See 1999 Revised EJVL, *supra* note 110, Art. 2; 1999 Revised CJVL, *supra* note 142, Art. 5.

<sup>297</sup> See 1999 Revised FEL, *supra* note 162, Art. 7; 1999 Revised LFETZ, *supra* note 4, Art. 9. The Central Trade Guiding Organ is empowered to promote such activities as budget compilation and planning and implementation of a regional development program, financial banking, land leasing, and metropolitan construction under its independent duty and authority. See 1999 Revised LFETZ, *supra* note 4, Art. 10.

<sup>298</sup> See 1999 Revised FIL, *supra* note 51, Art. 2. In that case, the foreign enterprise shall not become bodies corporate of North Korea. See *id.* Art. 14.

wards opening its doors to the outside.<sup>299</sup> Finally, investment by overseas Koreans has been separated from that of foreigners' investment.<sup>300</sup> Under this regulation, the investment of overseas Koreans is expected to be more than it has in the past.<sup>301</sup>

Regardless of the eventual outcome and its practical implications, the progressive legislation during the 1990s may be seen as a cornerstone of North Korea's external economic policy. In particular, the legislation over the last couple of years may have accelerated North Korea's efforts to induce foreign capital and open its doors to foreign investment. With this legislation, the total amount of foreign investment and external economic cooperation in the territory of North Korea has been continuously increasing, especially in the Rajin-Sonbong area.<sup>302</sup> Because the U.S. government has already lifted the prohibition on American citizens doing commercial business with North Korea,<sup>303</sup> investment from U.S. markets is expected to increase. According to the official data released on September 17, 1998, as of December 1997, business contracts in the Rajin-Sonbong area already spanned 18 different types of industries<sup>304</sup> in 111 projects.<sup>305</sup> That same data showed that the total number of countries investing in North Korea was 10, including the United Kingdom, the Netherlands and Australia.<sup>306</sup> With the new legislation related to foreign business cooperation that emerged in 1999, the amount of foreign business may now increase faster than before.

The legal developments in North Korea have been favorable with respect to inter-Korean economic cooperation. Together with the Basic

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<sup>299</sup> See Lee, *supra* note 138.

<sup>300</sup> See 1999 Revised FIL, *supra* note 51, Art. 5.

<sup>301</sup> See Lee, *supra* note 138.

<sup>302</sup> See CPEEC, *Update of Foreign Investment Situation in Rajin-Sonbong II, The People's Korea Homepage*, available at <http://www.korea-np.co.jp/pk> (as of Apr. 22, 2000).

<sup>303</sup> See STATEMENT BY THE PRESS SECRETARY, *Easing Sanctions Against North Korea*, available at <http://www.pub.whitehouse.gov> (as of Sept. 17, 1999).

<sup>304</sup> Industries invested in include the following: agriculture, marine products, forestry, food processing, manufacturing, ceramic, petroleum processing, textile, transport machinery, transportation, communications, finance, construction and real estate, hotel business, tourism and service, distribution and retail, and foreign trade. See CPEEC, *Classification of Enterprises by Type of Business (Form of Investment in US\$ 10,000)*, *The People's Korea Homepage*, available at <http://www.korea-np.co.jp/pk/62nd%5fissue/98092402.htm> (as of Apr. 22, 2000).

<sup>305</sup> Total value of these business contracts is US\$750 million. See *id.*

<sup>306</sup> Most of the contracts were made by China (including Hong Kong) and Japan. Koreans in the United States have also invested in North Korea through Chinese companies. See CPEEC, *Country-Wise Breakdown of Contract & Actual Foreign Investment in Rajin-Sonbong, The People's Korea Homepage*, available at <http://www.korea-np.co.jp/pk/061st%5fissue/98091703.htm> (as of Apr. 22, 2000).

Agreement of 1991,<sup>307</sup> which is the legal basis for inter-Korean relations, the revised Foreign Investment Law may accelerate North Korea opening its doors to South Korea. Their economic cooperation has developed continuously in various fields, including bilateral trade and joint ventures. In 1999, the total amount of inter-Korean trade reached more than US\$ 300 million with more than 490 trading companies.<sup>308</sup> Taking into account the severe military, political, and ideological discord over the past half century between the two Koreas, this shows substantial progress. Efforts are also being made for increased economic cooperation to surmount the challenges that remain.<sup>309</sup> In particular, the development plan for the Rajin-Sonbong Free Economic and Trade Zone as a part of the Tumen River Area Development Project<sup>310</sup> is intended to be a good opportunity for the two Koreas to enter a new stage of active regional economic cooperation. Under the circumstances, a carefully planned and gradually phased approach to economic cooperation would be required for the two Koreas to promote mutual prosperity and obtain ultimate economic integration. Despite developments in the legal domain, much room is left for further improvement in actual cooperation between them. As recognized by previous experiences with international economic cooperation, including the German inter-zonal trade,<sup>311</sup> as more cooperation occurs, more concrete and specific laws and regulations will be needed. For example, regulation addressing the exchange-rate-mechanism of the currency units between the two Koreas would be necessary for increased trade. "Law is an outgrowth of the needs of man in society. As the needs change with time and circumstance, law must necessarily change and grow."<sup>312</sup> In addition to specific legal reforms, policy coordination between long-term strategy and short-term project management will be critical. This should be carried out by the Korean people, who have shared a common history extending over thousands of years, under universal international legal norms and practices.

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<sup>307</sup> The Agreement on Reconciliation, Non-aggression and Exchanges and Cooperation between North and South Korea (The Basic Agreement) in its four chapters with 25 articles, presents progressive legal measures for shaping new inter-Korean relations in the 21st century. For details, see John Chung Hwan Oh, *Political Unification and the South-North Korean Non-Aggression Treaty*, 23 KOREA OBSERVER No.4, 467, 469-72 (1992).

<sup>308</sup> See *Retrospect the Korean Economy*, CHOSUN ILBO, Dec. 24, 1999, at 13.

<sup>309</sup> One of the serious challenges before them was North Korea's nuclear development in the mid-1990s. See generally Paul Leventhal & Steven Dolley, *The North Korean Nuclear Crisis*, NUCLEAR CONTROL INSTITUTE (June 16, 1994), available at <http://www.nci.org/nci/nkib1.htm> (as of Oct. 9, 1997).

<sup>310</sup> On the Tumen River Area Development Project, see SEOK-JIN LEW, *The Tumen River Area Development Project*, THE SEJONG INSTITUTE (1995).

<sup>311</sup> On the German inter-zonal trade, see R. DEAN, WEST GERMAN TRADE WITH THE EAST: THE POLITICAL DIMENSION 48-49 (1974). See also EAST-WEST BUSINESS TRANSACTION 85 (R. Starr ed., 1974).

<sup>312</sup> See R.P. ANAND, INTERNATIONAL LAW AND THE DEVELOPING COUNTRIES 1 (1987).

## V. CONCLUSION

This research has reviewed the development of North Korea's legal regime governing its foreign business cooperation. A focus is on the Law of the DPRK on Foreign Investment and its related laws and regulations, which sustain the current legal and institutional setting of North Korea's external economic cooperation. These laws and regulations represent the efforts of North Korea to adapt itself to the transformation of the new world economy, as well as the external international environment. It is particularly noteworthy that capitalist market principles have been adopted to some level by specific regulations of foreign business laws in the FETZ.<sup>313</sup>

As noted above, these legislative actions have been initiated by the new Kim Jong Il regime of North Korea since 1998 in order to resolve the economic difficulties, as well as to establish its political authority. This new environment, stemming from internal politics, has ultimately resulted in opening North Korea's doors wider to the outside and promoting foreign capital investment. This will be a good opportunity for foreign businessmen who wish to invest in North Korea. As new conditions demand new laws, the Kim Jong Il regime of North Korea will be forced to develop more flexible legal measures in order to face today's economic globalization, and this trend is expected to accelerate further under the 21st century's new world economy.

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<sup>313</sup> For example, in the Rajin-Sonbong area, the prices for goods may be determined by agreement between the buyer and seller. *See* LFETZ, *supra* note 4, Art. 22.