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The Special Economic Zones and North Korean Economic Reformation with a Viewpoint of International Law

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Abstract

This Article is composed of three Parts. Part I reviews the establishment of the SEZs in North Korea. This Part will introduce four SEZs currently in action and the grand scheme of the Tumen River Area Development Project. The backgrounds, purposes, and roles of the SEZs will also be addressed in this part. Part II deals with the legal instruments of North Korea involved in the economic reformation in these zones. This Part will systematically analyze the laws and regulations relating to inducing foreign investment in SEZs. Part III investigates protection against political risks in the SEZs, which is one of the critical issues in international economic relations. In the case of North Korea, which is currently undergoing the political disturbance of the nuclear standoff, foreign investors are likely very concerned with protection of their investments in North Korea. After searching for the international legal principles and methods for the protection against political risks, this Part will explore actual laws and regulations of North Korea available to guarantee the legal rights and interests of foreign investors. A few provisional agreements between North Korea and South Korea will be discussed in the final Part.

ARTICLES

THE SPECIAL ECONOMIC ZONES AND NORTH KOREAN ECONOMIC REFORMATION WITH A VIEWPOINT OF INTERNATIONAL LAW

*Eric Yong-Joong Lee**

INTRODUCTION

The year 2002 was a landmark year for economic reformation in the Democratic People's Republic of Korea ("North Korea" or "DPRK"). Since the announcement of the Reform Measures for the Economic Management (the "Measures") on July 1st of that year, a series of plans and policies have been initiated and implemented by the economic staff of Kim Jong-il's regime. The Measures include epoch-making contents. Some parts of the Measures may imply the fundamental change of North Korea's dogmatic socialist economic system that Pyongyang had maintained for about half a century. With the Measures, North Korea established a price system, and it virtually put an end to the distribution mechanism in food, housing and energy that is symbolic of a socialist economy. Following the adoption of the price system, salaries and market price both enormously increased, which should result in stimulating the pursuit of individual profits in the market. These changes not only made the State decentralize its role in economic policymaking, but they also required enterprises to have more responsibilities with self-control.¹

Crucial contents of the Measures have been realized

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1. For details on the Reform Measures for the Economic Management, see Jeon Young-sun, *The 7.1. Reform Measures for Economic Management and its One Year*, ASIA-PAC. REV., Aug. 2003, at 15-19.

through the special economic zones ("SEZs"). So far, four SEZs have been actively working or been under construction in the territory of North Korea. They are the Kaesung Industrial Complex, the Mt. Kumgangsan Special Tourist Region, the Rajin-Sonbong Free Economic and Trade Zone, and the Shinuiju Special Administrative Region. Although each SEZ has its own special objectives — an independent and reformative management system has been or will be applied to all the SEZs — this procedure is totally different from the traditional socialist economic principle because it can induce foreign investment more efficiently. The SEZs are the laboratories of North Korea's reformation projects in recent days. They cover the economic field as well as the political field. Moreover, the international influence in the construction of the SEZs has brought a degree of stability guaranteed by law. It is thus timely and meaningful to examine North Korea's SEZs, economic reformation laws, and policies within an international law framework.

This Article is composed of three Parts. Part I reviews the establishment of the SEZs in North Korea. This Part will introduce four SEZs currently in action and the grand scheme of the Tumen River Area Development Project. The backgrounds, purposes, and roles of the SEZs will also be addressed in this part. Part II deals with the legal instruments of North Korea involved in the economic reformation in these zones. This Part will systematically analyze the laws and regulations relating to inducing foreign investment in SEZs. Part III investigates protection against political risks in the SEZs, which is one of the critical issues in international economic relations. In the case of North Korea, which is currently undergoing the political disturbance of the nuclear standoff, foreign investors are likely very concerned with protection of their investments in North Korea. After searching for the international legal principles and methods for the protection against political risks, this Part will explore actual laws and regulations of North Korea available to guarantee the legal rights and interests of foreign investors. A few provisional agreements between North Korea and South Korea will be discussed in the final Part.

A perspective of international law will be maintained throughout this Article, not only because the SEZs themselves are international regions, but also because most foreign invest-

ments there are closely dependent on the peaceful relations with the other country.

I. ESTABLISHMENT OF THE SPECIAL ECONOMIC ZONES IN NORTH KOREA

A. Grand Scheme: Tumen River Area Development Project

North Korean economic reformation through SEZs was originally ignited under the continental context of the Tumen River Area Development Project ("TRADP").² The TRADP, officially launched in 1992 as a regional project of the United Nations Development Program ("UNDP"), developed into a more attractive intra-regional economic cooperation project among the five Member States³ in December of 1995.⁴ At the first stage, it was just a small project that might develop a Tumen River Economic Zone ("TREZ"), composed of a delta area connecting China's Hunchun, North Korea's Rajin, and Russia's Psyet. As the meetings went on, however, Member States began to discuss the legal and institutional framework to upgrade this project into a major engine for propelling Northeast Asian regional economic cooperation and prosperity.⁵

The TRADP has so far evolved into two different conceptual master plans. One is the "cross-border cooperation" between Member States;⁶ the other is the "gateway construction" of Northeast Asia.⁷ A primary goal of the TRADP is to create a new growth center of international trade and economic cooperation

2. See Li Haeng-ho, *Economic Cooperation in Northeast Asia and the Tumen River Delta Area Development*, 1 E. ASIAN REV. 99 (1997). On the grand plan of the TRADP, see GROWTH TRIANGLES IN ASIA: A NEW APPROACH TO REGIONAL ECONOMIC COOPERATION (Myo Thant et al. eds., 1998).

3. Original parties to this project are China, Mongolia, and North and South Korea. The Russian Federation joined later. For more details, see THE KOREA TIMES, Oct. 26, 1991.

4. See UNITED NATIONS DEVELOPMENT PROGRAM ET AL. ("UNDP"), STUDY OF THE COMMERCIAL AND INVESTMENT BANKING NEEDS IN THE TUMEN RIVER ECONOMIC DEVELOPMENT AREA 17-19 (1997).

5. See ERIC YONG-JOONG LEE, LEGAL ISSUES OF INTER-KOREAN ECONOMIC COOPERATION UNDER THE ARMISTICE SYSTEM 108-37, 176, 188-93 (2002).

6. See United Nations Development Program ("UNDP"), The Tumen Programme, at <http://www.tumenprogramme.org/tumen/programme/index/view> (last visited Apr. 9, 2004).

7. See Kim Si-jin, The Tumen Programme: The DPRK Perspective, Presentation at the Ninth Northeast Asia Economic Forum, at <http://www.tumenprogramme.org/tumen/publications/speeches/1999-10%20Tianjin/kimsijin/view> (Oct. 1999).

in Northeast Asia.⁸ To obtain this goal, the Member States of the TRADP are promoting cross-border cooperation by both integrating their infrastructures and encouraging the free movement of goods and people. The SEZs have been established as an important master plan of cross-border economic cooperation. Each SEZ is supposed to be a hub connecting different markets between the Member States. The second objective of the TRADP is to increase the area's strength as a gateway towards the grand Asia-Pacific market. This macro-plan is designed to connect the markets of China, North Korea, and Russia to Japan, South Korea, and, ultimately, the United States' economic sphere.⁹ By 2010, they aim to complete a comprehensive, modern international trade center for the twenty-first century.¹⁰

North Korea has been deeply interested in the TRADP, and it has been a crucial participant since the first meeting of the Northeast Asia Economic Forum held in Changchun in July of 1990. Under this project, North Korea has been given first priority to develop Rajin-Sonbong area into a free trade and economic zone.¹¹ If successfully carried out, this project would help North Korea reform its economic base for real cooperation and prosperity.¹²

B. *The Special Economic Zones of North Korea in Action*

1. The Rajin-Sonbong Free Economic and Trade Zone

So far, four SEZs have been established or are under construction in North Korea. The most active working SEZ in North Korea is the Rajin-Sonbong Free Economic and Trade Zone ("RSFETZ").¹³ The establishment of the RSFETZ was

8. For details, see Cho Lee-jay, *Northeast Asian Economic Development and Tumen River Basin Development*, in THE TUMEN RIVER AREA DEVELOPMENT PROJECT: THE POLITICAL ECONOMY OF COOPERATION IN NORTHEAST ASIA 279-312 (Lee Seok-jin ed., 1994).

9. See UNDP, A REGIONAL DEVELOPMENT STRATEGY FOR THE TUMEN RIVER AREA AND NORTHEAST ASIA: NORTHEAST ASIA SUBREGIONAL PROGRAMMES (1994).

10. See Ri Jong-yol, *The River Tumen Triangle*, 456 DPRK 29 (1994).

11. See Yang Un-chul, *North Korea's Choice for Survival: The RSFETZ Scheme*, in THE TUMEN RIVER AREA DEVELOPMENT PROJECT: THE POLITICAL ECONOMY OF COOPERATION IN NORTHEAST ASIA, *supra* note 8, at 17.

12. See KOREA NEWSREVIEW, Jan. 25, 1992, at 16. For details, see LEE *supra* note 5, at 180-81.

13. The delta area, called the Golden Triangle, covers an area of 746 square kilometers, and borders China and Russia with the Tuman River as the boundary. For more details, see Ri Jong-Yol, *supra* note 10, at 28.

modeled after China's SEZs under the open-door policy.¹⁴

The RSFETZ is a typical SEZ. The free economic and trade zone is defined in North Korea as "a certain part of the territory of the DPRK that is to be treated as a preferential area for transit transport and trade, processing of exports goods, financing and services."¹⁵ North Korea is trying to develop the RSFETZ into a tri-functional area that plays as an international transport, trade and a heavy industry base, as well as a center for finance and tourism.¹⁶

At the outset, North Korea established legal and institutional frameworks in order to clarify the investment environment of foreign enterprises in the RSFETZ. For the foreign enterprises, North Korea shall provide many preferential treatments, including taxation and customs duty. Here, even the capitalist market mechanism like price determination has been partly applied to control the business.

The original master plan for establishing the RSFETZ is divided into three stages. The main objective of the first stage (1993-1995) was to improve the role of the zone as an international cargo transit point by rebuilding and upgrading the existing infrastructure. In the second stage (1996-2000), North Korea planned to set up a trade center for Northeast Asia in this zone. To this end, the infrastructure network established during the first stage was expected to handle a large volume of international transit cargo. The third stage's (2001-2010) goal is to promote a comprehensive cross-border trade center under the TRADP.¹⁷ By 2010, consequently, North Korea is expected to have developed the zone as a center of economic growth in

14. In the early 1980s, the government of the People's Republic of China ("PRC") first set up five special economic zones ("SEZs") and then opened fourteen additional cities on the east coast of China for foreign investment. These nineteen special zones are meant to serve a variety of purposes: attracting foreign investment, importing advanced technology, keeping with current trends in international markets, expanding export trade, increasing foreign exchange earnings, and providing a training ground for scientific and technical personnel. See WORLD TRADE PRESS, CHINA BUSINESS 48 (1994). On the political background of establishing the SEZs of China, see G.T. CRANE, THE POLITICAL ECONOMY OF CHINA'S SPECIAL ECONOMIC ZONES 20-26 (1990).

15. See Law of the DPRK on Free Economic and Trade Zone, art. 2 [hereinafter LFETZ].

16. See COMMITTEE FOR THE PROMOTION OF EXTERNAL ECONOMIC COOPERATION ("CPEEC") OF THE DPRK, MASTER PLAN FOR THE DEVELOPMENT AND LEGAL ENVIRONMENT OF THE RAJIN-SONBONG FREE ECONOMIC AND TRADE ZONE 10 (1994).

17. See Ri Jong-yol, *supra* note 10.

Northeast Asia, keeping with its natural and geographical features.¹⁸

TABLE 1: MASTER PLAN FOR THE DEVELOPMENT OF THE RSFETZ

	First Stage (1993-1995)	Second Stage (1996-2000)	Third Stage (2001-2010)
Goal	Improving the role as an International Cargo Transit Point.	Establishing a Trade Center for Northeast Asia.	Promoting a comprehensive cross-border trade center.
Major Project	Construction of nine industrial complexes.	Handling a large volume of international transit cargo.	Developing the zone as a center of economic growth in Northeast Asia. ¹⁹

For the acceleration of this grand plan, North Korea has so far adhered to two policy guidelines: it has endeavored to take practical measures in an attempt to improve the accessibility of foreign investors to the zone, and it has endeavored to enable foreign investors to carry out economic activities freely without internal or external restrictions. As a result, no restriction has been adopted as to the method of business management and operation, partly adopting the capitalist market mechanism. Through freedom of choice, North Korea has tried to create a flexible business environment.²⁰

2. Shinuiju Special Administrative Region

North Korea promulgated a new law to create a special administration region in the city of Shinuiju near its national border with China. Under the Basic Law of the Shinuiju Special Administration Region ("the Shinuiju Basic Law"), North Korea has become "a country with two systems." The Shinuiju Basic Law covers various fields such as government, economy, State, people, and culture (as a national constitution usually has) to manage the independent special administration region. The Shinuiju Basic Law is composed of six chapters with 106 articles.²¹ Article 1 of the Shinuiju Basic Law indicates the legal

18. See CPEEC, *RAJIN-SONBONG: INTRODUCTION TO INVESTMENT* (1993). See also LEE *supra* note 5, at 183-84.

19. Yong-Joong Lee *supra* note 5, at 184 (Table VI-1).

20. See Kim Jong-U, *Rajin-Sonbong Will Keep Its Door Open to Investors At Any Time*, available at <http://www.kimsoft.com/korea/nk-jongu.htm> (last visited Apr. 9, 2004).

21. The Shinuiju Basic Law has been translated into English by Patricia Goedde.

identity of the Shinuiju Special Administration Region (“SSAR”), defining the SSAR as “a special administrative unit under the sovereignty” and the central authority of the DPRK. For the autonomy of the region, the State grants the SSAR independent legislative, executive and judicial powers at least for fifty years.²² Article 6 of the law prohibits the involvement of the central organ of the DPRK in the home affairs of the SSAR except for matters of defense: the State is allowed to station military personnel in the SSAR when necessary.²³

The economic principle of the SSAR is fundamentally different from that of other parts of North Korea. It is the free enterprise system. Based on such a diametrically different economic style, the SSAR will be developed into a multilateral SEZ covering international finance, trade, business, industry, science, entertainment, and even tourism.²⁴ To obtain these goals, the Shinuiju Basic Law provides assurances to potential investors regarding the investment climate of the SSAR. These includes a fifty-year land lease, land use rights, the non-nationalization of private property, unrestricted movement of foreign currency, preferential tax and tariff systems, and the convenience of exchange of good, capital, information and communication.²⁵

The Shinuiju Basic Law stipulates the regulations regarding education, culture, and health in Chapter 3. Article 32 of the law stipulates the cultural and aesthetic needs for residents of the region. First, the SSAR authority shall establish a high standard education system including compulsory eleven-year education and public nurseries and kindergartens.²⁶ The SSAR authority is required to provide modern cultural facilities for literary and artistic activities.²⁷ The authority should also operate a health insurance system and develop athletic science and technology by encouraging public athletic activities.²⁸ The SSAR

For an English version of the Shinuiju Basic Law, see Patricia Goedde, *The Basic Law of the Sinuiju Special Administrative Region: A Happy Medium Between the DPRK Constitution and Hong Kong Basic Law?*, 3 J. KOREAN L. 124-37 (2004)

22. See The Shinuiju Basic Law, arts. 2, 3.

23. *Id.* art. 7.

24. *Id.* art. 13.

25. *Id.* arts. 15-17, 23-25, 31. See also Goedde, *supra* note 21, at 98.

26. *Id.* arts. 33-34.

27. *Id.* art. 36.

28. *Id.* arts. 38-39.

shall issue regular newspapers, magazines, and broadcasting.²⁹

Article 42 of the law enumerates the terms of being a resident in the SSAR. A resident of the SSAR has the same rights that anyone in a democratic society would have: freedom of expression, press, assembly, strike/association, and religion.³⁰ A resident also can move freely and travel.³¹ Under the law, a resident has the right to work and can choose an occupation based upon his/her desire and ability.³² With regards to duties, the Shinuiju Basic Law lays down only two duties: one is to protect the Nation; the other is to comply with the laws and regulations enacted by the SSAR authority.³³

The political structure consists of the Legislative Council, Governor, Administration, Procuracy, and Judiciary. The Legislative Council is the law-making body of the SSAR, and it is composed of fifteen members of the SSAR, citizens or foreigners, who serve five-year terms.³⁴ The six specified functions of the Council are laid down at Article 64 of the law. The Legislative Council can declare and adopt decisions. However, these decisions are subject to the approval of the Governor and the supreme legislative body of the DPRK.³⁵ The Governor, the head representative of the SSAR, shall be appointed or dismissed by the supreme legislative body of the DPRK.³⁶ The Governor's activities are accountable to the supreme legislative body of the DPRK.³⁷ The Administration is the executive body of the SSAR.³⁸ The Governor heads it and appoints or dismisses its members.³⁹ The Administration must determine what departments should be created for the SSAR.⁴⁰

Fifteen functions and powers of the Administration are laid down at Article 83 of the law. The Procuracy and the Judiciary are separated into different sections in the Shinuiju Basic Law.

29. *Id.* art. 40.

30. *Id.* arts. 45-46.

31. *Id.* art. 49.

32. *Id.* art. 50.

33. *Id.* arts. 58-59. For details, see Goedde, *supra* note 21, at 100.

34. *Id.* arts. 60-62.

35. *Id.* arts. 72-74. See also Goedde, *supra* note 21, at 103.

36. *Id.* art. 77.

37. *Id.* art. 76.

38. *Id.* art. 81.

39. *Id.* art. 79, ¶ 3.

40. See Goedde, *supra* note 21, at 104.

The Procuracy is to ensure the compliance with laws as well as to undertake the investigation and prosecution of criminal offenses in accordance with the law. The Procuracy helps protect the legal rights, life, and personal assets of juridical persons and individuals.⁴¹ The SSAR court system is comprised of the regional court and district court.⁴² The functions of the SSAR court are very different in nature from the State court considering that the SSAR court does not concern itself with protecting the socialist system and maintaining vigilance against class enemies.⁴³ The functions of the court are found at Article 92 of the law. Trial proceedings in SSAR are generally similar to those of a democratic society.

C. *Kaesung Industrial Complex*

A third SEZ in North Korea has been under construction as an industrial complex in the City of Kaesung, not far from the Demilitarized Zone. The Kaesung Industrial Complex ("KIC") plan was announced by North Korea in November 2002 with the DPRK Law of the Kaesung Industrial Complex ("KICL"). The primary purpose of constructing the KIC is to induce capital and technology mainly from South Korea. North Korea hopes to develop the KIC as a complete capitalist-style SEZ.

The management and operation methods of the complex follow from the KICL. The KICL consists of four chapters with forty-six articles. The following are the important regulations of the law. According to Article 1 of the KICL, the KIC is a SEZ covering such multilateral sectors as industry, trade, commerce, finance, and tourism. South Koreans, overseas Koreans, foreign legal persons, and individual and economic organizations may invest in this complex.⁴⁴ Infrastructure development, light industry, and high-tech sector investment shall be encouraged in the KIC.⁴⁵ Article 7 of the KICL guarantees the private rights and profits of investors and prohibits the nationalization of their estates. The company assigned will play a major role in developing the complex.⁴⁶ Currently, South Korea's Hyundai Asan Co.

41. See The Shinuiju Basic Law, art. 86.

42. *Id.*

43. See Goedde, *supra* note 21, at 107.

44. See DPRK Law of the Kaesung Industrial Complex, art. 2 [hereinafter KICL].

45. *Id.* art. 4.

46. *Id.* art. 10.

has been appointed as a main constructor by the central authority of the KIC. According to Article 21 of the KICL, the managing organ under the central authority will operate the KIC. The KICL provides the emigration/immigration regulation for South Koreans, overseas Koreans, and foreigners and their transportation, all of whom can come in and out of the complex through the directed path without visa.⁴⁷ Commercial advertisement will be free regardless of its location, sort, content, method, and period.⁴⁸

Regarding business activities, the KICL basically lays down the free enterprise system. In order to establish a business company, an investor should submit an application to the managing organ of the KIC. The managing organ should make its decision and notify it to the applicant within ten days from the receipt of the application.⁴⁹ The business activities shall be limited within the scope approved. The change of business sectors will be dependent on the approval of the managing organ of the complex.⁵⁰ A business company would have a bank account in the KIC.⁵¹ The company shall freely take out and bring in the foreign currency.⁵² The complex tax will be 14% in general; 10% will be levied in infrastructure construction, light industry, and high-tech sectors.⁵³ The dispute concerning the development and management of the complex and business activities shall be resolved by the consultant, commercial arbitration, or judicial procedure.⁵⁴

Since the ground-breaking on June 30, 2003, the KIC has been under construction. The establishment of the KIC may be a symbol of North Korea's effort to have more active economic cooperation with South Korea in spite of the current political standoff and nuclear crisis.⁵⁵ In order to successfully obtain the

47. *Id.* art. 28.

48. *Id.* art. 31.

49. *Id.* art. 35.

50. *Id.* art. 38.

51. *Id.* art. 42.

52. *Id.* art. 44.

53. *Id.* art. 43.

54. *Id.* art. 46.

55. For details on the North Korean nuclear crisis, see Eric Yong-Joong Lee, *Geneva Agreed Framework and the Optimization of DPRK-US Relationship for Nuclear Security: A Legal and Policy Analysis*, 3 *CHINESE J. INT'L L.* 289-309 (2003).

purposes of the complex development, North Korea must institute more progressive economic reformation policies.

D. *Mt. Kumgangsan Special Tourist Region*

The development plan of Mt. Kumgangsan Special Tourist Region ("KSTR") was announced just ahead of the KIC plan in November 2002. The KSTR will be another SEZ of North Korea focusing on international tourism and environmental protection. For this project, North Korea enacted the DPRK Law of Mt. Kumgangsan Special Tourist Region ("KSTRL"). The KSTRL provides that North Korea will develop the Mt. Kumgangsan area into a comprehensive tourist complex. A main contractor is also South Korea's Hyundai Asan Co. The KSTRL adopts the free investment system. Foreign investors and organizations thus can invest in any business activities regarding tourism, including hotel, entertainment, or convenience facilities. Investors' estates will be legally protected in this region. Article 21 of the KSTRL especially welcomes high-tech/non-air pollution industries like information technology in this region. This regulation may imply that North Korea has an intention to develop the KSTR into not only a special tourism but also economic zone.

II. NORTH KOREA'S ECONOMIC REFORMATION THROUGH THE SPECIAL ECONOMIC ZONES

A. *North Korea's Legal Initiative for the SEZs*

Since proclaiming the establishment of the RSFETZ in late 1991, North Korea, with great concern for the economic reformation through the SEZs, has adopted over forty laws and regulations.⁵⁶ These laws and regulations have been taking more concrete shape as the legal regime governing external economic cooperation in North Korea. They are providing foreign compa-

56. Important ones are as follows: the Law of the DPRK on Free Economic and Trade Zone, the Law of the DPRK on Foreign Investment, the Law of the DPRK on Foreign Enterprises, the Law of the DPRK on Equity Joint Venture, the Law of the DPRK on Contractual Joint Venture, the Law of the DPRK on Foreign-Invested Bank, the Law of the DPRK on Foreign Exchange Control, the Law of the DPRK on Foreign Investment-Business Enterprise and Foreign Individual Tax, the Law of the DPRK on the Leasing of Land, Regulations on Immigration Procedure in the Free Economic and Trade Zone, and Labor Regulations on Foreign Invested-Enterprise, etc. See CPEEC, COLLECTION OF LAWS AND REGULATIONS, 1-8 (1996).

nies with a favorable environment for long term investment.⁵⁷

The basic legal ground of the SEZs may be found in both Article 37 of the DPRK Constitution, and Articles 9 and 10 of the DPRK Law on Foreign Investment. Together with these provisions, North Korea passed the law on Free Economic and Trade Zone ("LFETZ") in January 1993, which covers direct regulations on the establishment and management of the free trade and economic zone.⁵⁸ The LFETZ has been followed by a series of laws and regulations relating to business in the SEZs.⁵⁹

1. Article 37 of the Socialist Constitution of DPRK

Article 37 of the 1992 DPRK Constitution presents a rather progressive regulation for economic reformation. This article states: "The State shall encourage institutions, enterprises and organizations in our country to joint ventures and cooperation of enterprise with foreign corporations and individuals."⁶⁰ Article 37 aims to provide a legal bridge for establishing active relations with foreign countries and inducing foreign capital investment from them. The 1992 DPRK Constitution was amended on September 5, 1998.⁶¹ In accordance with Article 37 of the 1998 Constitution, the regional scope of foreign business activities has been confined "within a special economic zone."

2. Articles 9 and 10 of the DPRK Law on Foreign Investment

As just mentioned, the basic rules relating to the SEZs shall be found in the DPRK Law on Foreign Investment ("FIL"). The FIL, in Articles 9 and 10, provides legal principles on taxes, customs and other matters for foreign investors. First, Article 9, in paragraphs 1 and 2, stipulates the special preferential treatment of tax for foreign enterprises investing in North Korea. Article 10 of the FIL regulates the basic formalities and methods for foreign-owned enterprises⁶² in the SEZs. Pursuant to Article 10

57. See UNDP, *supra* note 4, at 39.

58. See *infra* note 64 and accompanying text.

59. On the legal framework of the Rajin-Sonbong Free Economic and Trade Zone (RSFETZ), see LEE *supra* note 5, at 108-37.

60. See DPRK CONST. art. 37 (1998).

61. See *The Socialist Constitution of the DPRK*, RODONG SHINMUN, Sept. 6, 1987, at 7. This newly revised Constitution has been in effect in North Korea since September 5, 1998 when the Tenth SPA endorsed it with unanimous approval.

62. Wholly foreign-owned enterprises are confined to the zone. See DPRK Law on

of the FIL, North Korea shall make convenient the entry and exit formalities and methods for foreign investors who travel with the purpose of setting up or operating business enterprises in this zone. In sum, the FIL has served for the first legal basis of both opening the SEZs, and inducing foreign investment to settle there.⁶³

3. The Law of the DPRK on Free Economic and Trade Zone

The LFETZ⁶⁴ is the basic legal instrument of foreign business activities in the SEZs. Consisting of seven chapters with forty-two articles,⁶⁵ the LFETZ regulates the following: general management and operation, competence and obligation of an administrative office, condition of economic activities, tariffs, finance, dispute settlement, etc. Through the LFETZ, especially, the capitalist market principle has been partially adopted in the process of managing foreign business activities in the SEZs.⁶⁶

In accordance with the LFETZ, the free economic and trade zone is a certain part of the territory of the DPRK, which is to be treated preferentially for transit transport and trade, processing of export goods, financing, and services.⁶⁷ The LFETZ also defines the purpose of establishing the SEZs as "to promote the external economic cooperation and exchange."⁶⁸ Under the LFETZ, foreign investors are permitted to choose any kind of business management and operation in this zone.⁶⁹ The law protects the capital, incomes, and other rights of the investors.⁷⁰

Investments and trade in this zone are to be controlled by the central trade-guiding organ ("CTGO"), the appropriate cen-

Foreign Investment ("FIL"), art. 3; Law on Foreign Enterprises, art. 1 (1992) (DPRK), available at http://www.novexcn.com/dprk_foreign_enter_92.html [hereinafter FEL].

63. See LEE, *supra* note 5, at 188.

64. Having been adopted at the Standing Committee of the Supreme People's Assembly on January 31, 1993, the LFETZ was approved at the Fifth Session of the Ninth Supreme People's Assembly on April 8, 1993, and revised in 1999. See 1 CPEEC, *supra* note 56.

65. LFETZ contains the following chapters: 1) General Provisions; 2) Powers and Duties of the Administrative Organs; 3) Provision of Conditions for Economic Activities; 4) Customs Duties; 5) Currency and Finance; 6) Guarantees and Privileges; and 7) Settlement of Disputes. See *id.*

66. See 1999 revised LFETZ, art. 22, ¶ 1.

67. *Id.* art. 2.

68. *Id.* art. 1.

69. *Id.* art. 5.

70. *Id.* art. 4.

tral organ, and the zone authority.⁷¹ The LFETZ was amended in 1999. Articles 9 and 12 of the revised LFETZ of 1999 regulate the powers and duties of the CTGO. The CTGO should reach a decision of approval or refusal within fifty days of receiving an application for investment in contractual or equity joint ventures, and within eighty days in the case of wholly foreign-owned enterprises.⁷² The appropriate central organ should consult the budget compilation and implementation, financing, land lease, urban construction or construction indication.⁷³ The zone authority consists of the two sub-organs carrying out their duties concerning foreign investment: the administrative and economic department, and the external economic department.⁷⁴

The LFETZ, by the provisions of Chapter III (Articles 17-24), confirms free economic activities of foreign investors in the SEZs. Its basic principle is provided at Article 18 of the LFETZ. Pursuant to this regulation, foreign investors may invest, establish, and operate an enterprise in these zones. For it, investors are entitled to carry out all business activities including free shipping, storing, processing, assembly and disassembly, packing and repairing of all goods.⁷⁵ Article 22 of the law states that price in the SEZs may be determined by agreement between buyer and seller in an objective and fair way on the basis of a scientific assessment of value and accurate consideration of the relationship between demand and supply.⁷⁶

In Article 25, North Korea aims to establish a system of preferential customs duties for foreign enterprises investing in the SEZs.⁷⁷ The currency in circulation in this zone is North Korean *won* or a convertible foreign currency. The foreign currency exchange rate against North Korean *won* shall be controlled by the foreign exchange control organization.⁷⁸

71. *Id.* art. 8.

72. *Id.* art. 13.

73. *Id.* art. 10.

74. *Id.* art. 11. See LEE *supra* note 5, at 191-92.

75. 1999 revised LFETZ, art. 17, ¶ 1.

76. *Id.* art. 7.

77. The preferential customs duties are applied to the materials on goods that are imported into the zone. See Customs Regulations for the Free Economic and Trade Zone, art. 38.

78. See 1999 revised LFETZ, art. 30. The Foreign Trade Bank of DPRK is specialized for foreign exchange transaction. See Law of the DPRK on Foreign Exchange Control, art. 5.

Moreover, the LFETZ guarantees all the rights and profits of foreign investors who have invested in the SEZs.⁷⁹ When the duration of operation expires, according to Article 35 of the law, a foreign investor may remit profits earned abroad from business activities in the SEZs and other incomes.

The foreign enterprise investing in the SEZs pays just a 14%⁸⁰ income tax of profits earned,⁸¹ and the income tax would be reduced up to 50% if the enterprise reinvests its profits within five years.⁸²

With regard to the method of dispute settlement, Article 42 of the law refers to consultation between the parties concerned. In some cases, however, disputes may be brought to the court or arbitration body of the DPRK, or to arbitration in a third country.⁸³

B. *General Principles of the FIL*

The FIL was adopted to encourage investment by foreign investors based on the principles of complete equality and mutual benefit in the territory of North Korea.⁸⁴ Article 2 of the FIL refers to the guidelines for the forms and management of foreign joint ventures established in the SEZs of North Korea, as well as the status of foreign investors there.⁸⁵ In particular, Article 2, paragraph 3 of the FIL provides three forms of foreign investment:⁸⁶ equity joint venture enterprises,⁸⁷ contractual

79. On rights and profits of investors, see Customs Regulations in the Free Economic and Trade Zone, arts. 41-53.

80. Foreign enterprises investing in other parts of North Korea should pay 25% income tax. See Law of the DPRK on Taxes on Foreign-invested Enterprise and Foreigners, art. 12 [hereinafter TFIEL].

81. See 1999 revised LFETZ, art. 36; FIL, art. 9. In the SEZs of the People's Republic of China ("PRC"), the manufacturing companies should pay a 15% income tax. For details on the income tax in China's SEZs, see J.G.S. Yang & H. An, *Tax Incentives of Joint Ventures in China*, 24 INT'L TAX J. 69-88 (1998).

82. See 1999 revised LFETZ, art. 40, ¶ 1. For details, see TFIEL, arts. 8-16.

83. See 1999 revised LFETZ, art. 42. For details, see LEE *supra* note 5, at 189-93.

84. See FIL, art. 1. Article 1, paragraph 2 of the FIL outlines the basic policies of North Korea, stating that: "The State encourages foreign investors to invest in the territory of the DPRK on the principle of complete equality and mutual benefit." *Id.*

85. *Id.* art. 2.

86. *Id.* art. 2, ¶ 3. 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, ¶ 3.

87. *Id.* art. 2, ¶ 5.

joint venture enterprises,⁸⁸ and wholly foreign-owned subsidiaries.⁸⁹

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.⁹⁰ Their legal rights and interests are guaranteed by the State.⁹¹ 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.⁹²

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.⁹³

The business areas available for foreign investment consist of industry and financial services. 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. In addition to investment sector-preferences, Article 9 of the FIL provides for special region-preference to those foreign enterprises that operate in the SEZs.⁹⁴ Article 11 of the FIL clarifies the investment projects that are prohibited and restricted.⁹⁵

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.⁹⁶ Article 15 of the FIL allows foreign investors to lease land necessary for their enterprises for a maximum period of fifty years. According to Article 16, paragraph 1, for-

88. *Id.* art. 2, ¶ 4.

89. *Id.* art. 2, ¶ 6.

90. *Id.* art. 2, ¶ 2.

91. *Id.* art. 3.

92. *Id.* art. 20. See LEE *supra* note 5, at 115.

93. FIL, *supra* note 62, art. 13. However, branch or representative offices set up in North Korea will not have a legal personality under North Korean law. *Id.* art. 14.

94. On preferential treatment, see *id.* arts. 9-10.

95. Article 11 restricts projects that may hinder the development of the national economy, threaten national security, or that may be technically obsolete and harmful to the environment. *Id.* art. 11.

96. *Id.* art. 17.

eign-funded enterprises must employ North Korean labor forces according to the recommendation of the relevant labor service agency.⁹⁷ It is permitted, however, to bring in special human resources, such as management personnel, technicians, or skilled workers under agreement with the External Economic Committee of the Cabinet ("EXEC").⁹⁸ Profits and other income earned by foreign investors in their business activities may be either reinvested or remitted abroad pursuant to Articles 18 and 20 of the FIL.⁹⁹

The FIL was revised on February 26, 1999, along with eight other laws relating to foreign business.¹⁰⁰ The revision was apparently aimed at making adjustments in connection with the amendment of the Constitution in 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.¹⁰¹ A foreign enterprise in this law may mean a foreign organ or an enterprise, individual, or economic organization that derives income in the territory of North Korea.¹⁰² This foreign enterprise is regarded as an independent bodies corporate [*sic*].¹⁰³ The new FIL adds a regulation to guarantee the condition of business activities for foreign invested enterprises.¹⁰⁴

97. *Id.* art. 16.

98. 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 60, art. 117.

99. On the general principles of the FIL, see A. Wohlgenuth, *The Law on Foreign Investment in North Korea*, 1 INT'L BUS. L.J. 48-52 (1993). See also LEE *supra* note 5, at 116.

100. 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.

101. See 1999 Revised FIL, art. 2

102. *Id.* Difference between the foreign enterprises and the foreign subsidiaries will be shown at Table 3.

103. *Id.* art. 14.

104. *Id.* art. 4. See LEE *supra* note 5, at 116-17.

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

Since the promulgation of FIL, North Korea has adopted a series of laws and regulations relating to foreign investment. They are the legal underpinnings for North Korea's economic reformation. Between 1992 and 1994, particularly, North Korea developed specific laws for the three forms of investment allowed under Article 2, paragraph 3 of the FIL. 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.

**TABLE 2: THE THREE FORMS OF FOREIGN INVESTMENT IN
NORTH KOREA UNDER THE FIL¹⁰⁵**

	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 product.	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

The Law of the DPRK on Equity Joint Venture ("EJVL"),¹⁰⁶ promulgated in 1994, governs the rights and obligations for establishing and managing joint ventures in the territory of North Korea. A purpose of EJVL is "to contribute to expanding and developing economic and technical cooperation and exchange between the DPRK and other foreign countries."¹⁰⁷ The 1994 EJVL has detailed and feasible regulations on the management

105. See LEE, *supra* note 5, at 118 (Table IV-4).

106. Law of the DPRK on Equity Joint Venture (adopted on Jan. 20, 1994 and revised on Feb. 26, 1999) [hereinafter EJVL].

107. *Id.* art. 1.

of an equity joint venture (“EJV”) enterprise.¹⁰⁸

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.¹⁰⁹ An EJV under this law may be established to do business in the science and technology, industry, construction, and transportation sectors. Projects involving high-tech, internationally competitive products, infrastructure development, or scientific research and technological development are especially encouraged by the State.¹¹⁰ Article 6, paragraph 2 of the EJVL ensures the protection of the legal rights and interests of the EJV enterprise.¹¹¹ In order to establish an EJV, the parties must submit an application to the authorities for approval after making the EJV contract.¹¹² Once the application has been received, the authorities must decide whether to approve or to refuse the application within fifty days.¹¹³

With regard to capital investment, Article 15 of the EJVL requires that the “registered capital” of an EJV must be between 30% - 70%¹¹⁴ of the total amount of capital required. 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.¹¹⁵

The top decision making body of an EJV enterprise is the board of directors, which is responsible for deciding major issues concerning the enterprise.¹¹⁶ For carrying out its business activities, pursuant to Article 22 of the EJVL, an EJV enterprise should obtain a business license issued by the appropriate authority. An EJV’s business activities are confined to the types of business in

108. See Eric Yong-Joong Lee, *Development of North Korea’s Legal Regime Governing Foreign Business Cooperation: A Revisit under the New Socialist Constitution of 1998*, 21 NW. J. OF INT’L L. & BUS. 216-17 (2000)

109. See EJVL, art. 2. For the original text, see *Equity Joint Venture Law on Joint Venture*, PEOPLE’S KOREA, Feb. 12, 1994, at 4-8.

110. See EJVL, *supra* note 106, art. 3.

111. Article 6, paragraph 2 of the EJVL states that “[t]he State shall protect the legal rights and interests of equity joint venture enterprises.” *Id.* art. 6, ¶ 2.

112. *Id.* art. 9, ¶ 1.

113. *Id.* art. 9, ¶ 2.

114. *Id.* art. 15.

115. *Id.* art. 11, ¶ 2.

116. *Id.* arts. 16-17.

which it has been specifically allowed to engage.¹¹⁷ In relation to managing and using labor forces, Article 27 of the EJVL provides that an EJV enterprise should be in compliance with labor law and regulations regarding foreign-invested businesses in North Korea.¹¹⁸

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.¹¹⁹ The remaining amount of profit should be distributed to the joint venture partners according to the proportion of their subscriptions.¹²⁰

If an EJV enterprise is unable to continue operations for some reason,¹²¹ 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 that approved its establishment, or by court decision.¹²²

The EJVL was amended on February 26, 1999. The 1999 revised EJVL reflects the factual needs and the practical perspective of North Korea's economic reformation. The revised EJVL may be applicable outside the territory of the DPRK.¹²³ Under the new EJVL, a partner's share can be transferred or inherited with the consent of the opposite party and through the discussion at the board of directors.¹²⁴ An EJV is permitted to combine with other foreign enterprises.¹²⁵

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

The Law of the DPRK on Contractual Joint Ventures ("CJVL") of 1992¹²⁶ governs the rights and obligations of con-

117. *Id.* art. 25, ¶ 1.

118. *Id.* art. 27. An example of such labor laws is the Labor Regulations for Foreign Enterprises (1993).

119. *See* EJVL, *supra* note 106, art. 33.

120. *See id.* art. 37, ¶ 2.

121. For example, termination of contracted time, insolvency, contractual default by either any partner, or natural calamities. *Id.* art. 43.

122. *Id.* art. 44, ¶ 1.

123. *See* 1999 revised EJVL, art. 2.

124. *Id.* art. 12.

125. *Id.* art. 13. For details on EJVL, see Lee *supra* note 108, at 216-20.

126. The Law of the DPRK on Contractual Joint Venture (adopted on Oct. 5, 1992 and revised on Feb. 26, 1999) [hereinafter CJVL].

cerned 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."¹²⁷ 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.¹²⁸

North Korea prefers to establish CJVs primarily in sectors producing exportable goods using advanced technology, as well as in the tourism and service sectors.¹²⁹ To establish 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 EXEC.¹³⁰ The EXEC must decide whether to approve or reject the application within fifty days after its submission.¹³¹

A CJV should pursue the business activities specified in the application at the time of approval. In order to draw a wider range of investors, the CJVL provides for the possibility of a third party's participation with the permission of the EXEC.¹³²

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.¹³³ 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.¹³⁴

The accounts of a CJV may be settled on a monthly, quar-

127. *Id.* art. 1.

128. *Id.* art. 2.

129. *Id.* art. 3.

130. *Id.* art. 6, ¶¶ 1-2.

131. *Id.* art. 7.

132. *Id.* art. 10.

133. *Id.* art. 11.

134. *Id.* art. 16, ¶ 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. *Id.* art. 16, ¶ 2.

terly, or yearly basis.¹³⁵ After the accounts have been settled, any profits or other revenue “earned by the foreign investor may be remitted abroad subject to the laws and regulations of North Korea on foreign currency control.”¹³⁶ A CJV enterprise must pay tax as prescribed by the relevant law of the DPRK.¹³⁷

A CJV may be dissolved when the period of its contract expires.¹³⁸ If any of the CJV partners fails to fulfill its duties as stipulated in the contract, the enterprise may be terminated before the expiration of the contract.¹³⁹

The CJVL received some alterations on February 26, 1999. According to Article 5 of the revised CJVL, “the regional scope of establishing a CJV could be expanded outside the territory of the DPRK.”¹⁴⁰ In addition, Article 8 of the revised CJVL provides for the tax registration of a CJV.¹⁴¹

3. The Law of the DPRK on Foreign Enterprises

The FEL¹⁴² provides the basic rules for the creation of wholly foreign-owned entities (“foreign subsidiaries”) in the SEZs.¹⁴³ 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.”¹⁴⁴ The revised FEL of 1999 introduces a new term, “foreign enterprise.”¹⁴⁵ Compared to foreign subsidiaries, 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.”¹⁴⁶ North Korea’s definition of a foreign enterprise, however, is a bit different from the generally recognized one. In North Korea, a

135. *Id.* art. 17.

136. *Id.* art. 15.

137. *Id.*

138. *Id.* art. 20.

139. *Id.* art. 19.

140. 1999 Revised CJVL, art. 5.

141. *Id.* art. 8. For details on CJVL, see Lee, *supra* note 108, at 220-22.

142. FEL, *supra* note 62.

143. *Id.* art. 1.

144. *Id.* art. 2.

145. 1999 Revised FEL [hereinafter Revised FEL]. The revised FEL 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, ¶ 3.

146. *Id.* art. 2.

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.¹⁴⁷ The sectors in which foreign subsidiaries are permitted to operate are listed in Article 3 of the FEL.¹⁴⁸

TABLE 3: COMPARISON OF FOREIGN SUBSIDIARY WITH FOREIGN ENTERPRISE¹⁴⁹

	Foreign Subsidiary	Foreign Enterprise
Definition	An enterprise which a foreign investor establishes by investing the whole amount of capital needed for founding and running it independently.	An institute, enterprise, individual, or other economic bodies from foreign countries 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.

In order to set up an enterprise under the FEL, a foreign investor must submit an application to the EXEC.¹⁵⁰ If approved, the foreign investor must register the enterprise at the administrative and economic committee of the appropriate province within thirty days.¹⁵¹ The foreign enterprise's investment must be made within the period stated in the approved application.¹⁵²

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. A foreign investor should submit its plan of future busi-

147. See Chin Gil Sang, *Difference between Foreign-owned Enterprise and Foreign Enterprise*, The People's Korea, at <http://210.145.168.243/pk/main.htm> (last visited Apr. 9, 2004).

148. Important sectors in which foreign subsidiaries are permitted are: 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 62, art. 3.

149. Lee, *supra* note 108, at 224 (Table III-7). See also Chin, *supra* note 147.

150. See FEL, *supra* note 62, art. 7.

151. *Id.* art. 9.

152. *Id.* arts. 12-13.

ness activities to the provincial administrative and economic committee where it has been registered. It may obtain the materials it needs either in North Korea or abroad.¹⁵³ For better foreign currency circulation, the FEL allows a foreign subsidiary to open an account at the trade bank or other banks in North Korea, or abroad.¹⁵⁴

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 with approval from the EXEC. Foreign enterprises may bring in technicians and skilled foreign workers.¹⁵⁵ Employees may form a trade union and demand insurance.¹⁵⁶

Taxes are paid as stipulated in the relevant law of the DPRK. 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.¹⁵⁷

When the approved period of its operation expires, the foreign enterprise is dissolved.¹⁵⁸ 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.¹⁵⁹

The FEL was revised on February 26, 1999. In Article 1, the revised FEL provides the primary purpose of the law more clearly.¹⁶⁰ Article 7 of the revised FEL requires a foreign investor who wishes to establish an enterprise in the DPRK to consult with relevant organs.¹⁶¹ The revised FEL permits joint operations only between the enterprises from foreign countries.¹⁶² Together, endorsement regulation for expanding or changing the business activities has been laid down in Article 14 of the

153. *Id.* arts. 15-16.

154. *Id.* art. 18.

155. *Id.* art. 20. To do this, foreign enterprises must reach an agreement with the external economic organ of the Administrative Council. *Id.*

156. *Id.* arts. 21, 23.

157. *Id.* art. 25.

158. *Id.* art. 28, ¶ 1.

159. *Id.* art. 22.

160. *See* 1999 Revised FEL, *supra* note 145, 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.*

161. *Id.* art. 7.

162. *Id.* art. 10.

revised FEL.¹⁶³

III. PROTECTION AGAINST POLITICAL RISKS INVESTING IN THE SPECIAL ECONOMIC ZONES

A. Political Risks in International Economic Relations

One of the greatest concerns to participants in foreign investment is the loss of their investment and acquired interests due to political risks in the host country. A political risk in international economic relations may be defined as the "risk faced by a foreign government or an investor that a host country will confiscate all or a portion of the investor's property rights located in the host country."¹⁶⁴

The origins of such political risks may be divided into some typical forms. The first form of political risk is ideological hostility. Despite the end of the Cold War, ideological hostility may still be a critical risk in foreign investment. For example, a (former) socialist political regime may be far from the private control of certain areas of industry. In such countries, capital investment would be sometimes regarded as capital infiltration, which might threaten to the maintenance of their political regime. The second form of political risk is nationalism. When the host economy is in decline, prosperous foreign investors who seem to control the economy and repatriate profits may become easy target of xenophobic nationalism.¹⁶⁵ Today's economic nationalism stems from various factors such as religion,¹⁶⁶ neo-liberalistic multinational corporations,¹⁶⁷ or previous history between the relevant States. Another form of political risk may be a fundamental change of domestic political regime in the host State including revolution, terrorism, civil strife, or a military coup.¹⁶⁸ In such a case, the incoming government might claim a right to

163. *Id.* art. 14. For details on FEL, see Lee, *supra* note 108, at 223-25.

164. PAUL E. COMEAUX & N. STEPHAN KINSELLA, *PROTECTING FOREIGN INVESTMENT UNDER INTERNATIONAL LAW I* (1997). On the political risks in foreign investment, see, e.g., S. Linn Williams, *Political and Other Risk Insurance: OPIC, MIGA, Eximbank and Other Providers*, 5 *PAGE INT'L L. REV.* 59 (1993).

165. *Id.* at 58.

166. See GEORGE H. ALDRICH, *THE JURISPRUDENCE OF THE IRAN-UNITED STATES CLAIMS TRIBUNAL 2-5* (1996).

167. Much of the debate on the business activities of multinational corporations as a threat to State sovereignty began in Europe in the 1960s. For details, see generally JEAN-JACQUES SERVAN-SCHREIBER, *THE AMERICAN CHALLENGE* (1969).

168. See COMEAUX & KINSELLA, *supra* note 164, at 16.

rescind any contracts made by the previous government, because the new government has an absolutely different ideology or political system. No noticeable cases, however, have been reported recently that a host country has abrogated an intergovernmental contract just for fundamental changes of domestic political regime. Moreover, the continuation of international treaties between successive political regimes is often supported by the theory of State succession under international law.¹⁶⁹

Today, a few types of political risks may be found in actual foreign investment. The first form of political risk is expropriation.¹⁷⁰ Expropriation refers to the taking by a host state of property owned by an investor and located in the host State, ostensibly for a public purpose.¹⁷¹ The second type of political risk is *de facto* expropriation,¹⁷² which refers to depriving the investors of the use and effective ownership of its assets, even though the investor may retain nominal ownership. The third type of political risk is currency risk. In this case, the host country either prohibits the investor from converting local currency into hard currency, or increases controls over the exchange of currency.¹⁷³

169. See LEE, *supra* note 5, at 154-57. On the legal principle of State succession, see MUDIMURANWA A. B. MUTITI, STATE SUCCESSION TO TREATIES IN RESPECT OF NEWLY INDEPENDENT AFRICAN STATES (1976). See also LUNG-FONG CHEN, STATE SUCCESSION RELATING TO UNEQUAL TREATIES (1974).

170. On the international legal aspects of expropriation, see SAMY FRIEDMAN, EXPROPRIATION IN INTERNATIONAL LAW (1953); BEN ATKINSON WORTLEY, EXPROPRIATION IN PUBLIC INTERNATIONAL LAW (1959); HANS W. BAADE ET AL., ESSAYS ON EXPROPRIATIONS (Richard S. Miller & Roland J. Stanger eds., 1967); MICHAEL BOGDAN, EXPROPRIATION IN PRIVATE INTERNATIONAL LAW (1975).

171. See COMEAUX & KINSELLA, *supra* note 164, at 3. Expropriation is considered legitimate under international law only if it meets the following conditions: (1) nondiscriminatory; (2) done for a public purpose; and (3) accompanied by full compensation. *Id.* at 77-85. The meaning of expropriation is often used interchangeably with nationalization or confiscation. For details on the distinction between expropriation and nationalization, see WORTLEY, *supra* note 170, at 93. See also RUDOLF DOLZER & MARGRETE STEVENS, BILATERAL INVESTMENT TREATIES 98 (1995).

172. It is often referred to as "creeping" expropriation or "indirect" expropriation. See Robert B. Shanks, *Insuring Investment and Loans Against Currency Inconvertibility, Expropriation, and Political Violence*, 9 HASTINGS INT'L & COMP. L. REV. 417, 417-24 (1986).

173. In the sense that a State's prohibition of converting local currency into hard currency has expropriated the assets of the investors, currency risk is a new type of political risk. See LEE, *supra* note 5, at 157-59.

B. *International Legal Principles Governing Protection against Political Risks*

1. *Pacta Sunt Servanda*

One of the fundamental principles shaping international law against political risk is *pacta sunt servanda*.¹⁷⁴ This well-established legal principle will bind the States under an international contract and lead them to exercise the promise made in the contract. A modern transformation of the *pacta sunt servanda* principle is the stabilization clause of State contracts. The main purpose of this clause is to segregate international contracts from changes in the law of the State party. By means of the stabilization, investors could prevent the host State from changing its laws to their detriment.¹⁷⁵ *Pacta sunt servanda* has been also substantiated by the judgment of the arbitration court. In the case of *Texaco Overseas Petroleum Co. & California Asiatic Oil Co.* (“TOPCO”) vs. Government of the Libyan Arab Republic, the arbitrator Dupuy confirmed this principle stating that: “[t]his Tribunal cannot but reaffirm this in its turn by stating that the maxim *pacta sunt servanda* should be viewed as a fundamental principle of international law.”¹⁷⁶

2. State Responsibility

State responsibility in international law¹⁷⁷ can be invoked as a legal ground for protecting foreign investment against political risks. It generally concerns the accountability of States in violation of international law and requires States to make reparation for such violations.¹⁷⁸ State responsibility may be invoked when

174. The principle of *pacta sunt servanda* has been codified at the Vienna Convention on the Law of Treaties of 1969 (opened for signature on May 23, 1969, entered into force Jan. 27, 1980). The Vienna Convention of 1969 provides that: “[e]very treaty in force is binding upon the parties to it and must be performed by them in good faith.” *Id.* art. 26. Moreover, the Preamble to the Vienna Convention of 1969 notes that “the principles of free consent and of good faith and the *pacta sunt servanda* rule are universally recognized.” *Id.* at pmb. See Manfred Lachs, *Pacta Sunt Servada*, in 7 *ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW* 364, 364-71 (Rudolf Bernhardt ed., 1984).

175. See TRANSMITTAL & INSTRUCTION SHEET FOR TRANSNATIONAL CONTRACTS 34 (Charles Stewart ed., 1999).

176. 17 I.L.M. 1, 19 (1978). See also LEE *supra* note 5, at 159-60.

177. See James Crawford, *Second Report on State Responsibility*, U.N. GAOR 51st Sess., U.N. Doc. A/CN.4/498 (1999). On the principle of State responsibility, see UNITED NATIONS CODIFICATION OF STATE RESPONSIBILITY (Marina Spinedi & Bruno Simma eds., 1987). See also IAN BROWNLIE, *STATE RESPONSIBILITY* (1983).

178. See ROSALYN HIGGINS, *PROBLEMS AND PROCESS: INTERNATIONAL LAW AND HOW*

a breach of obligation in a treaty is committed by a State.¹⁷⁹ In the case concerning the Rainbow Warrior arbitration, the tribunal stated: “[t]he legal consequences of a breach of treaty are subjects that belong to the customary of State responsibility.”¹⁸⁰ With regard to international contracts, the principle of State responsibility may be also called upon as a guideline to guarantee the contract between the parties concerned.¹⁸¹

3. Sovereign Immunity

Sovereign immunity is a doctrine that prohibits a State from exercising jurisdiction over another State, agents, or instrumentalities.¹⁸² Before the twentieth century, this doctrine was so absolute that a State should not subject another State to its jurisdiction.¹⁸³ As States became increasingly involved in international activities, the doctrine of absolute sovereign immunity began to be questioned.¹⁸⁴ In 1945, the United States first recognized the doctrine of “restrictive” sovereign immunity, stating that immunity would be recognized concerning sovereign and public acts of State, but not with respect to private acts.¹⁸⁵ This recognition

WE USE IT 146-68 (1994). On the accountability of States in international law, Judge Huber emphasized in the Spanish Zone of Morocco case that: “[r]esponsibility is the necessary corollary of a right. All rights of an international character involve international responsibility. Responsibility results in the duty to make reparation if the obligation in the question is not met.” See 2 Reports of International Arbitral Awards 615, U.N. (1924).

179. A breach of a treaty, at any rate if it is substantial, constitutes an international wrong and cannot simply be linked to a breach of contract. See F. A. Mann, *The Consequence of an International Wrong in International and National Law*, BRIT. Y.B. INT’L L. 1 (1977).

180. See 82 I.L.R. 519 (1990).

181. See COMEAUX & KINSELLA, *supra* note 164, at 32-35. See also LEE, *supra* note 5, at 160-61.

182. See COMEAUX & KINSELLA, *supra* note 164, at 45. See also GAMAL MOURSİ BADR, STATE IMMUNITY: AN ANALYTICAL AND PROGNOSTIC VIEW 9-19 (1984).

183. Concerning the absolute sovereignty immunity, Judge Higgins has stated: “[u]nder classical international law, [S]tates were granted immunity from the territorial jurisdiction of other [S]tates. Various reasons of policy have been suggested, all interrelated.” See HIGGINS, *supra* note 178, at 78-79.

184. According to Judge Higgins: “[a]s [S]tates began to engage in functions not wholly reserved to the [S]tates, absolute immunity increasingly seemed an inappropriate phenomenon in the face of the requirements of the contemporary commercial world and of notions of stability, fairness, and equity in the market place.” *Id.* at 79.

185. A more traditional theory restricting the absolute sovereign immunity of the foreign investor may be found in the Calvo clause maintained by Latin American governments, under which the alien agrees not to seek the diplomatic protection of his or her own State and submits matters arising from the contract to the local jurisdiction.

was codified in the Foreign Sovereign Immunities Act of 1976 ("FSIA").¹⁸⁶ Following the new trend of restrictive sovereign immunity, foreign investors could protect their rights over the capital invested in the host country more efficiently by submitting disputes to the jurisdiction they want.¹⁸⁷

C. *Legal Methods for Protecting against Political Risks in Foreign Investment*

1. Standard Contract Model: BIT

In order to minimize political risks in international economic relations, investors, first of all, should inform themselves of the protection regulations of the host State governing potential political risks when making an international contract. To this end, parties concerned should make a contract following a recognized contract model. One of the internationally established contract models is the Bilateral Investment Treaty ("BIT").¹⁸⁸ The BIT is an agreement concluded between two States in which each State agrees to offer certain protections to investors and foreign direct investment from the other State.¹⁸⁹ To provide a more detailed illustration of a typical BIT, in 1982, the United States announced the formulation of a new Model BIT including provisions that affect political risks in international economic transactions.¹⁹⁰

2. Insurance

In addition to the standard contract model internationally established, foreign investors can purchase insurance for reduc-

See IAN BROWNLIE, *PRINCIPLES OF PUBLIC INTERNATIONAL LAW* 546 (4th ed. 1990). On the juridical review of the *Calvo* clause, see DONALD R. SHEA, *THE CALVO CLAUSE: A PROBLEM OF INTER-AMERICAN AND INTERNATIONAL LAW AND DIPLOMACY* (1955).

186. On the FSIA of the United States, see COMEAUX & KINSELLA, *supra* note 164, at 48-54.

187. See U.S. Model Bilateral Investment Treaty, art. IX.

188. See EAST-WEST ECONOMIC RELATIONS IN THE CHANGING GLOBAL ENVIRONMENT: PROCEEDINGS OF A CONFERENCE HELD BY THE INTERNATIONAL ECONOMIC ASSOCIATION IN BUDAPEST, HUNGARY, AND VIENNA, AUSTRIA 99 (Bela Csikos Nagy & David G. Young eds., 1986).

189. For details, see DOLZER & STEVENS, *supra* note 171, at 19-46. See also Antonio R. Parra, *Provisions on the Settlement of Investment Disputes in Modern Investment Laws, Bilateral Investment Treaties and Multilateral Instruments on Investment*, 12 ICSID REV. 287, 288 (1997).

190. The US Model BIT was updated in 1983, 1984, 1987, and 1994. See LEE, *supra* note 5, at 162-63.

ing political risks to their investment. With insurance, the investors may be compensated for the losses arising from political risks. Two renowned investment insurance companies are the United States' Overseas Private Investment Corporation ("OPIC") and the World Bank's Multilateral Investment Guarantee Agency ("MIGA").¹⁹¹

D. *North Korea's Legal Instruments for Protecting Foreign Investment in the Special Economic Zones*

1. General

Regarding the protection of political risks, in principle, North Korea is trying to guarantee the legal rights and interests of foreign investors and foreign-funded enterprises with laws and regulations for protecting their investment.

A basic principle for protecting the legal rights of foreign investors against political risks in North Korea is provided by the FIL. Article 4 of the FIL first provides the guidelines for protection against the political risks, proclaiming that: "[t]he State, subject to the laws of the DPRK, shall guarantee the legal rights and interests of foreign investors and foreign-invested enterprise."¹⁹² With regard to the nationalization of foreign investment, Article 19 of the FIL provides strict legal conditions.¹⁹³ According to this provision, foreign-funded enterprises and assets invested by foreign investors may be nationalized or confiscated only when an inevitable situation requires it.¹⁹⁴ This also lays down that full compensation shall be paid even in these circumstances. Article 20 of the FIL guarantees the legal profits and revenue earned by foreign investors in their business activities and the repatriation or remittance of moneys remaining after the liquidation of investment according to the relevant laws and regulations.¹⁹⁵ Article 21 of the FIL stipulates the regula-

191. *Id.* at 163-64.

192. FIL, *supra* note 62, art. 4.

193. It states: "[f]oreign-invested enterprises, and assets invested by foreign investors, shall not be subject to nationalization or seizure by the State. Should unavoidable circumstances make it necessary to nationalize or seize such enterprise or assets, fair compensation shall be paid." *Id.* art. 4.

194. See Wohlgemuth, *supra* note 99, at 50.

195. See *e.g.*, The Law of the DPRK on Foreign Exchange Control (1994) [hereinafter FECL]; Regulations for the Implementation of the Law of the DPRK on Foreign Exchange Control.

tions for protecting the managerial secrets of foreign-invested enterprises.¹⁹⁶ Concerning capital investment, Article 12 of the FIL provides for the protection of property rights of foreign investors. According to the article: “[t]he value of properties and property rights invested should be assessed jointly on the basis of international market prices prevailing at the time of evaluation.”¹⁹⁷

In the case of carrying out a joint venture business, Article 6¹⁹⁸ of the EJVL stipulates State protection for both invested properties and the income of foreign partners in North Korea.¹⁹⁹ Article 12 of the EJVL allows a joint venture partner to transfer his or her share to an heir or a third party. In the meantime, protecting foreign currency convertibility is laid down in Article 9 of the Law of the DPRK on Foreign Exchange Control (“FECL”).²⁰⁰ Article 7 of the KICL prohibits the nationalization of investors’ estate and guarantees their rights and profits. Neither South/overseas Koreans nor foreigners shall be confined, arrested, or searched without specific legal procedures.²⁰¹ The Shinuiju Basic Law lays down similar provisions. In Article 4, the State shall guarantee all the legal rights and interests of the residents and nonresidents of the SSAR. Article 5 of the law provides that the personal safety of the residents and nonresidents shall be safeguarded by law. With these provisions, basically, foreign partners may enjoy immunity from nationalization and other taking of their property invested in the territory of North Korea. Concerning foreign exchange control especially, the FECL seems to follow the principle of obligations regarding

196. It reads that: “[t]he State shall protect by law the managerial secrets of foreign-invested enterprises and shall not disclose them without prior agreement with the foreign investors.” FIL, *supra* note 62, art. 21.

197. LEE, *supra* note 5, at 164-65.

198. It reads that: “[t]he State shall protect legal rights and interests of equity joint venture enterprises.” EJVL, *supra* note 106, art. 6, ¶ 2.

199. Originally, protection of the legal rights of foreign investors was more specifically laid down in Articles 3 and 4 of the North Korea’s Joint Venture Law of 1984. Article 3 of JVL governs the protection of the properties invested by foreign parties in joint ventures and Article 4 of JVL refers to the legal rights of the management activities of the parties to joint ventures. See Kim Chin, *North Korean Joint Venture Laws*, 19 CAL. W. INT’L L.J. 175, 178 (1989). For an English text of JVL, see PYONGYANG TIMES, Sept. 15, 1984.

200. It reads that: “[f]oreign exchange earned legally within the territory of the DPRK shall be protected by law and may be inherited.” FECL, *supra* note 195, art. 9.

201. See KICL, *supra* note 44, art. 8.

exchange agreements prescribed at the International Monetary Fund's present Articles of Agreement.²⁰² Notwithstanding, some questions have been raised concerning the North Korea's regulations for protecting foreign investment. First, the regulations of compensation for the nationalization are ambiguous even if compensated; for example, it would not be clear in which currency it would be paid.²⁰³ Second, North Korea's foreign currency exchange system is not explained.²⁰⁴

2. Mutual Investment Protection Agreements between the Two Koreas

Together with general regulations for protecting foreign investment, South Korea concluded a few provisional agreements with North Korea. First, the Provisional Agreement of Investment Guarantee was signed between the two Koreas on November 11, 2000.²⁰⁵ With this Provisional Agreement, North and South Korea agreed to permit investment and protect investment property according to law.²⁰⁶ It also regulates the Most Favored Nation treatment of investors, investment property, profits and business activities of the other side.²⁰⁷ Nationalization or expropriation for a non-public purpose of the other side's investment shall be basically prohibited. Even in these cases, it should be fully compensated without discrimination.²⁰⁸ This agreement also guarantees the free and prompt remittance of investment capital.²⁰⁹

Second, the Provisional Agreement of Double Taxation Avoidance was concluded at the same day.²¹⁰ Important contents of the Provisional Agreement of Double Taxation Avoid-

202. Articles of Agreement of the International Monetary Fund, art. IV. For more details, see JOSEPH GOLD, *LEGAL EFFECTS OF FLUCTUATING EXCHANGE RATES* 9-20 (1990).

203. See STRATEGY FOR ENTERPRISES INVESTING IN NORTH KOREA 220 (You H.S. & Lee Y.S. eds., 1997) (in Korean).

204. See Shin W.S., *Foreign Currency Management in North Korea*, 19 *BUSINESS & L.* 1, 10-12 (1995) (in Korean). See LEE, *supra* note 5, at 165-66.

205. For the full text of the Provisional Agreement of Commercial Dispute Settlement between North and South Korea (available only in Korean), see ROK Ministry of Unification, at <http://www.unikorea.go.kr>.

206. See Provisional Agreement of Investment Guarantee between North and South Korea, art. 2 (2002).

207. *Id.* art. 3.

208. *Id.* art. 4.

209. *Id.* art. 5.

210. See THE CHOSUN ILBO, Nov. 11, 2000.

ance are as follows.²¹¹ The income exemption is adopted as a method for double taxation avoidance; once tax is paid on one side, the other side should not put the tax to the same income.²¹² Less than 10% of the tax rates will be applied to the investment income including interest, dividend, and royalty, regardless of the place where the income was earned.²¹³ In the case of the income earned by inter-Korean transportation like rail, shipping, or aviation, tax will be levied from the each side, but reduced by 50% in the income-occurred place.²¹⁴ Tax will not be levied on the incomes earned by business activities without permanent establishment on the other side,²¹⁵ entertainers or sportsmen under the agreement between the authorities,²¹⁶ independent human services, including lawyers, medical doctors, or accountants²¹⁷ and the labor of workers dispatched by a side staying less than 183 days per annum on the other side.²¹⁸

Third, North and South Korea made the Provisional Agreement of Commercial Dispute Settlement.²¹⁹ Under this Provisional Agreement, commercial disputes between the two Koreas will be settled either out of court by negotiating with the parties concerned, or by the North-South Commercial Arbitration Committee ("Arbitration Committee").²²⁰ The Arbitration Committee may inquire into the case if either of the parties concerned request arbitration, or investors call upon arbitration for the non-enforcement of the investment guarantees by one of the authorities.²²¹ Unless the chairman of each side agrees, the International Center for the Settlement of Investment Disputes ("ICSID") shall appoint the head arbitrator by the request of the Ar-

211. A full text of the December 16, 2000 Provisional Agreement of Double Taxation Avoidance between North and South Korea may be found at the ROK Ministry of Unification, at http://www.unikorea.go.kr/en/library/library.php?mode=view&page_code=ue0501&ucd=eng0204&ewn_num=66 (last visited Apr. 9, 2004).

212. *See id.* art. 22.

213. *Id.* art. 11(2).

214. *Id.* art. 8.

215. *Id.* art. 7.

216. *Id.* art. 17.

217. *Id.* art. 14.

218. *Id.* art. 15(2).

219. For the full text of the Provisional Agreement of Commercial Dispute Settlement between North and South Korea (available only in Korean), see ROK Ministry of Unification, at <http://www.unikorea.go.kr> (last visited Apr. 9, 2004).

220. *See id.* art. 1.

221. *Id.* art. 8.

bitration Committee.²²² In addition, this agreement provides the composition and functions of the Arbitration Committee,²²³ the arbitration procedure,²²⁴ the effect and enforcement of arbitration decisions,²²⁵ etc.²²⁶

SUMMARY AND CONCLUSION

In this Article, I have discussed the new economic reformation law and the policies of North Korea through scrutinizing the SEZs from an international legal perspective. In order to overcome the harsh economic difficulties throughout the late 1990s, the Kim Jong-il regime promulgated the Reform Measures for Economic Management on July 1, 2002 and continued to release new plans and initiatives for the improvement of the North Korean economy. Those initiatives sometimes include revolutionary changes to the dogmatic socialist economic system. The establishment of the SEZs is considered the most far-reaching reform measure that North Korea has taken to date, because a lot of sub-reform measures would be implemented in the SEZs. Four SEZs have been working or been under construction in North Korea. Each SEZ has different characteristics. The Rajin-Sonbong Free Economic and Trade Zone is the first SEZ in North Korea and is still actively working to be an international financial and trade center. The Shinuiju Special Administrative Region is an autonomous governing unit under the Basic Law. The State grants that region independent legislative, executive, and judicial powers at least for fifty years. The economic system of this region is fundamentally different from that of other parts in North Korea. Based on the free enterprise system, the Shinuiju Special Administrative Region would be developed into a multilateral economic zone covering international finance, trade, business, industry, science, entertainment, and tourism. The Kaesung Industrial Complex is under construction. This complex will cover multilateral sectors including manufacturing industry, trade, commerce, finance, and tourism. A target country here is South Korea. North Korea expects to induce capital and technology mainly from South Korea. Mt. Kumgangsan

222. *Id.* art. 10.

223. *Id.* arts. 2-3.

224. *Id.* arts. 9-10.

225. *Id.* art. 14.

226. See LEE, *supra* note 5, at 172-73.

Special Tourist Region is also under construction. The region would not only be a comprehensive tourist complex, but also an information technology center.

In the SEZs, foreign investors are permitted to be involved in various businesses. Laws will support their business activities. The basic regulations regarding foreign investment may be found at the DPRK Law on Foreign Investment. The FIL lays down the principles of complete equality and mutual benefit for foreign investors doing business in the territory of North Korea. Noticeable is the preferential treatment of tax in Articles 9 and 10 of the law. Together, the LFETZ provides general rules covering the SEZs. Following these legal instruments, North Korea enacted the laws for the three forms of foreign investment — Equity Joint Venture, Contracture Joint Venture, and Foreign Enterprise — in the SEZs. Other business activities may be permitted according to the special purposes of each SEZ.

A controversial problem in the course of foreign investment is the protection against political risks. Due to the current political disturbance, including the nuclear crisis, foreign investors would be quite nervous their investments could not be guaranteed in this time of political instability. Foreign investors may invoke both the principles of general international law and specific legal methods for protecting their legal rights in North Korea. Laws relating to the SEZs fortunately stipulate specific regulations for foreign investment guarantees; e.g., nationalization of private properties shall be basically prohibited.

The significance of the SEZs may be looked at from two different perspectives. First, foreign investors can take advantage of the SEZs because the authorities of the zones are expected to induce active capital investment from foreign countries in various fields of industry. Second, the SEZs will be important bases of human exchange. Foreign enterprises from both South Korea and other countries could utilize the low-wage labor force if investing in these zones. Eventually, North Korea is supposed to promote mutual interests in products and trade through the SEZs.

The establishment of the SEZs is an on-going project of North Korea. It is expected to be a stepping stone of North Korea's open-door policy. The steady development of the SEZs would be a promising footing for them to cooperate more ac-

tively in connection with an international scheme. With the SEZs, North Korea may hope to be a true member of the international community. People in the West seem to be negative towards the SEZs of North Korea, because the current political situation is very unstable. If successful, however, the SEZs would help North Korea overcome its economic difficulties and construct mutually profitable political ties with the outside world. The success of the SEZs may be dependent on the decision of North Korea's political leadership as well as advanced legal arrangements. The peaceful resolution of the current nuclear crisis will also be the key to promoting foreign businesses in the SEZs. The time is coming to seriously consider the twenty-first century's relations for real economic cooperation and prosperity.