

# Investment Plan for the Establishment of Marine Infrastructure in North Korea – From the Perspective of the Legal Systems

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# I

## **Value of Establishing Marine Infrastructure in North Korea**

# I . Value of Establishing Marine Infrastructure in North Korea

## ■ Current Status of the Ports and Harbors in North Korea

- 8 trading ports, 5 marine bases for deep-sea fisheries, and over 30 fishing ports
- Cargo handling capacity of thirty-six million (36,000,000) tons; North Korea has been suffering from serious port congestions due to the standstill since 1990s and deteriorating conditions of old facilities.
- North Korea has a coastline stretching for over 3,000 kilometers but separation between the east coast and the west coast is disadvantageous for the marine transportation between the coasts.
- Main trading ports:
  - In the east coast: Rajin Port, Chongjin Port, Sonbong Port, Hungnam Port, and Wonsan Port
  - In the west coast: Haeju Port, Nampo Port, and Songrim Port

# I . Value of Establishing Marine Infrastructure in North Korea

## ■ Possible Development of North Korean Ports and Harbors (cont'd)

- Development of Rajin Port
  - Development of Rajin Port as a link between Korea, China, Japan and Russia.
  - Development of Rajin Port as a link between the northern part of Northeast Asia and the North-American Continent: Among the major ports in Northeast Asia, Rajin Port is the closest to LA Port in terms of distance.
  - Cargos from Northeast China can be handled by Rajin Port.
- Development of Ports for Transportation of Natural Resources
  - In the east coast of North Korea, it is rich in underground natural resources but lacks large-scaled ports.
  - There is a necessity of connecting the resources development and the development of ports and harbors
  - An example of the development of Danchon Port in 2012

# I . Value of Establishing Marine Infrastructure in North Korea

## ■ Possible Development of North Korean Ports and Harbors

- Development of Marine Transportation System Between the Coasts
  - If a détente between two Koreas is maintained, the east coast of North Korea will be able to be connected to the west coast of South Korea.
  - There is a possibility of increasing the function of marine transportation in the railway-based North Korean transportation system.



## **Marine Legal System of North Korea**

## II. Marine Legal System of North Korea

### ■ Major Laws

Laws	Enacted / Finally Amended	Key Provisions
<b>Harbor Act</b>	Sep. 1986 / Amended in Dec. 2013	Construction, management and operation, etc., of harbors and ports
<b>Harbor Affairs Supervision Act</b>	Oct. 2013 / Amended in Jun. 2015	Management of marine transportation, supervision of vessels and cargo work, supervision of operation of harbors and ports
<b>Marine Transportation Act</b>	Aug. 1980 / Amended in Dec. 2013	Vessels, seamen, sailing, marine transportation, services to vessels, maritime salvage, marine insurance, etc.
<b>Maritime Affairs Supervision Act</b>	Sep. 1997 / Amended in Jul. 2013	Registration of vessels, registration of seamen and screening of technical qualification for vessels, investigation and handling of marine accidents, evaluation of engineering and design of vessels, inspection of vessels, safety examination of vessels, vessel operators and harbor facilities, inspection of foreign vessels, control of marine pollution by vessels
<b>Waterway Act</b>	Mar. 2004	Survey of waterway, publication and notification of waterway data, use of waterway data, management of waterway facilities, etc.

## II. Marine Legal System of North Korea

### ■ Other Marine Laws

- Maritime Transport Act
- Seafarers' Act
- Vessel Safety Act
- Ship Registration Act
- Waterway Indication Act
- Trade Cargo Inspection Act
- Merchant Vessel Chartering Brokerage Act
- Foreign Ship Agency Act
- Refractories Management Act



## **Legal System Related to Foreign Investment**

# III. Legal System Related to Foreign Investment

## ■ Reliability of the Legal System

- Socialist law-abiding life

“Respect for the law and its strict adherence and execution is the duty of all institutions, enterprises, organizations and citizens. The State shall perfect the system of socialist law and promote the socialist law-abiding life.” (Article 18 of the Constitution)

- 14 economy-related laws were extensively enacted/amended around the time of Kim Jong Il’s death (December 2011).
- Steady changes in the system with focus on economy-related laws since Kim Jong Un began to rule.

# III. Legal System Related to Foreign Investment

## ■ Protection of Foreign Investment

- Principle of Protection of Foreign Investment

“The DPRK shall guarantee the legal rights and interests of foreigners in its territory.” (Article 16 of the Constitution)

- Restriction on Nationalization

“The State shall not nationalize or expropriate the properties of foreign-investors, foreign-invested enterprises and banks. Should expropriation is required for public interests, notification thereof shall be made in advance and sufficient compensation for its value shall be made through legal procedures.” (Article 19 of the Foreign Investment Act)

- Guarantee on Recovery of Investment

“Legitimate profits and other income earned by a foreign investor from business or banking operations, and any money that remains after the liquidation of a business or bank may be remitted out of the territory of the DPRK without any restrictions.” (Article 20 of the Foreign Investment Act)

# III. Legal System Related to Foreign Investment

## ■ Types of Foreign Investment

- Equity Joint Venture
  - Realization of joint investment through equity contribution: similar to utilization of a stock company or a limited company.
  - Joint investment/operation/profit distribution by North Korean investors and foreign investors.
- Contractual Joint Venture
  - Realization of joint investment by contract: similar to utilization of an association or a partnership.
  - Joint investment by North Korean and foreign investors/independent operation by North Korea/redemption of investment or profit distribution to foreign investors.
- Wholly Foreign-Owned Enterprises
  - Realization of a local corporation.
  - Independent investment/operation by foreigner investor.
  - Can be established only in special economic zones.

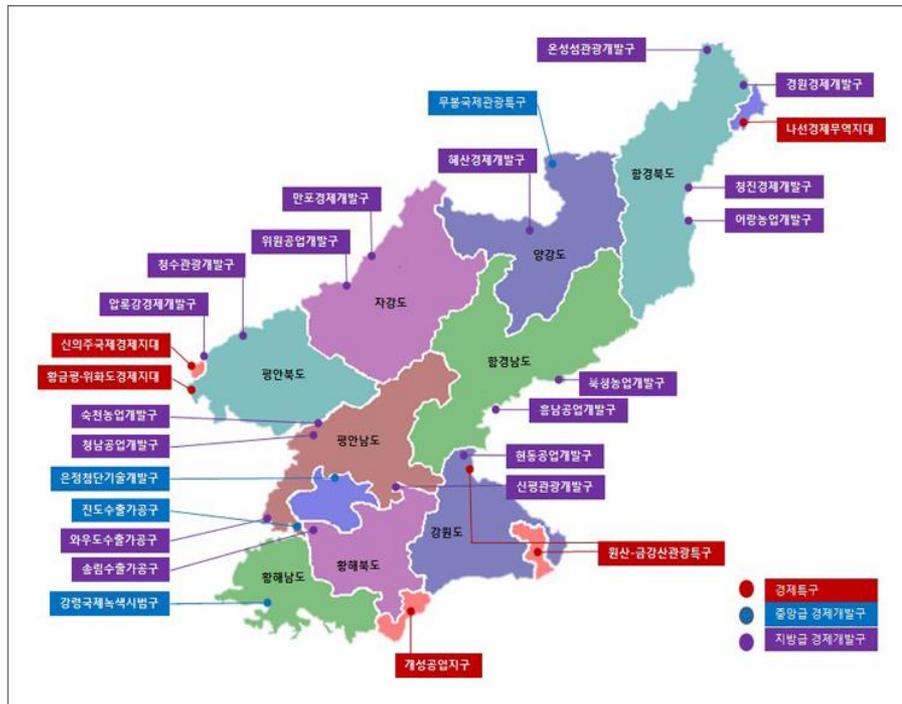
# **IV**

**Proposal for Investment in Marine Infrastructure in  
North Korea (1) :  
Investment in the Special Economic Zones (SEZs)**

# IV. Proposal for Investment in Marine Infrastructure in North Korea (1) : Investment in the Special Economic Zones (SEZs)

## ■ Current Status of SEZs

- Currently, there are 5 SEZs and 22 economic development zones.
- SEZs: Rason Economic and Trade Zone, Hwanggumphyong and Wihwado Economic Zone, Kaesong Industrial Complex, Mt. Kumgang Special Zone for International Tourism, Sinuiju Special Administrative Region.



- Economic development zones: economic development zones (6), industrial development zones (4), tourist development zones (4), export processing zones (3), agricultural development zones (3), cutting-edge technological development zone (1), international green model zone (1).

[Source: Korea Federation of Banks, The Banker, Vol. 771]

# IV. Proposal for Investment in Marine Infrastructure in North Korea (1) : Investment in the Special Economic Zones (SEZs)

## ■ Economic Development Zones Act

- Enacted in May 2013
- Integration of legislations which had been enacted separately for each SEZ such as Rason Economic and Trade Zone Act and Gaesong Industrial Complex Act.
- Types of Economic Development Zones
  - Classification by characteristics: industrial development zones, agricultural development zones, tourist development zones, export processing zones, cutting-edge technological development zone, etc.
  - Classification by managing authority: local economic development zones, central economic development zones.

# IV. Proposal for Investment in Marine Infrastructure in North Korea (1) : Investment in the Special Economic Zones (SEZs)

## ■ Benefits Related to Enterprise Activities Within the SEZs (cont'd)

Classification	Details
<b>Guarantee of Enterprise Management</b>	<ul style="list-style-type: none"> <li>• Guarantee of free management activities of the investing enterprise</li> <li>• Guarantee of preferential treatment in management activities</li> <li>• Free to establish a company, branch, or office</li> </ul>
<b>Preferential Policy for Enterprise Activities</b>	<ul style="list-style-type: none"> <li>• Guarantee of preferential treatment including land use, recruitment of employees and tax payment, etc.</li> <li>• Encouragement and preferential treatment of investment in infrastructure construction, cutting-edge technology, and sectors that manufacture internationally competitive goods; preferential right to select land location; exemption of land use fee for a certain period</li> </ul>
<b>Tax Reduction/Exemption</b>	<ul style="list-style-type: none"> <li>• Enterprise income tax rate - 14% of profit, 10% of the profit for the encouraged sectors</li> <li>• Enterprise income tax exemption or reduction for the enterprises operating for 10 years or more</li> <li>• Income tax pertaining to the re-investment may be wholly refunded for the re-investment or operation of an enterprise for 5 years or more since incorporation</li> </ul>
<b>Tariff Benefit</b>	<ul style="list-style-type: none"> <li>• Non-tariff benefit: (i) construction supplies, (ii) materials subject to processing/intermediary/compensation trade, (iii) industrial or management supplies, export commodities, daily supplies for investors</li> </ul>

# IV. Proposal for Investment in Marine Infrastructure in North Korea (1) : Investment in the Special Economic Zones (SEZs)

## ■ Benefits Related to Enterprise Activities Within the SEZs

Classification	Details
Land Use	<ul style="list-style-type: none"><li>• Lease term of 50 years</li><li>• Possible to sell, re-lease, donate, bequeath, or mortgage land use rights and building ownership</li></ul>
Labor	<ul style="list-style-type: none"><li>• North Korean/expatriate manpower</li></ul>
Other Benefits	<ul style="list-style-type: none"><li>• Free to remit legitimate profits and other income without restriction</li><li>• Free to bring in and take out foreign currency</li><li>• Free to trade marketable securities</li></ul>

[Source: Korea Maritime Institute, KMI Weekly Report, Vol. 92]

**V**

**Proposal for Investment in Marine Infrastructure in**

**North Korea (2):**

**Investment under “Specially Approved Management” System**

# V. Proposal for Investment in Marine Infrastructure in North Korea (2): Investment under “Specially Approved Management” System

## ■ Introduction of the Specially Approved Management System

- It was first introduced under the Regulations on Development of Rason Economic and Trade Zone.
- It provides that a company may obtain special approval and construct and operate the designated target for a given period of time.
- It is similar to the BOT (Build-Operate-Transfer) system for development of infrastructure.

# V. Proposal for Investment in Marine Infrastructure in North Korea (2): Investment under “Specially Approved Management” System

## ■ Details of the Specially Approved Management System

### (Rason Economic and Trade Zone)

- Target fields: Infrastructure and public facilities such as electricity, heating, gas, wastewater treatment, sewage treatment, roads, bridges, etc.
- Specially Approved Management Agreement: specifying management period, investment method, disinvestment method, rights and obligation of the management, method and process of transfer of the target after termination of the management period.
- Exit method: Compensation from the developer, subsidy from the governmental authorities, etc.
- Restrictions on disposal: The management right shall not be transferred or provided as security to a third party.
- Transfer of the target managed under the special approval: To transfer the target managed under the special approval for free.

# V. Proposal for Investment in Marine Infrastructure in North Korea (2): Investment under “Specially Approved Management” System

## ■ Background and Current Status of Specially Approved Management System

- Influence from the Chinese system of Development of Infrastructure:
  - North Korean government had the legal basis for BOT system by announcing the Notification on BOT-based Foreign Investment Promotion in 1995.
  - Among the private and public investment projects performed from 1990 to 2017, the BOT-based projects account for approximately 76%.
- North Korea participated in the Grand Panorama Museum Development Project in Cambodia on the BOT basis, which was completed in April 2013.
- They adopted the BOT system in other projects: Infrastructure Construction & Development System under the 10-Year Strategic Plan for National Economic Development (2010), Master Agreement for Gaesong- Sinuiju High Speed Railway Construction Project (2014), Investment Proposal for Wonsan-Mt. Kumgang International Tourist Zone (2016), etc.

## V. Proposal for Investment in Marine Infrastructure in North Korea (2): Investment under “Specially Approved Management” System

### ■ Usefulness of BOT System in the Marine Infrastructure Development Projects

- North Korean government has difficulties in making financial investment in a large amount for development of infrastructure.
- It would be easy to attract private or foreign fund for a quasi-public project.

# **VI**

## **Matters that Require Attention according to Sanctions against North Korea**

## VI. Matters that Require Attention according to Sanctions against North Korea

### ■ UN's Sanctions against North Korea

- New and old equity joint ventures/contractual joint ventures are prohibited (No. 2375), except for a non-commercial public infrastructure project with prior approval from the 1718 Sanctions Committee of the United Nations.
- Provision of financial services and financial assets (including bulk cash) that may be contributory to a nuclear/ballistic missile development program is banned (No. 2094, No. 2371).
- Provision of free gift, financial support, concessional loan is banned (No. 1874).

## VI. Matters that Require Attention according to Sanctions against North Korea

### ■ US's Independent Sanctions against North Korea

- Section 104(b) of North Korea Sanctions and Policy Enhancement Act:
  - to perform an important transaction in the transportation industry, mining industry, energy industry or financial industry of North Korea;
  - to assist transfer of cash or property in breach of UN Security Council's resolution; and
  - to assist bringing in/out of bulk cash, jewel and precious metal, etc.
- Asset blocking, prohibition of transaction in foreign exchange and any transfers of credit or payment, etc., are applicable.

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Thank you