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NORTH KOREA

LAW AND PRACTICE:

p.3

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The 'Law & Practice' sections provide easily accessible information on navigating the legal system when conducting business in the jurisdiction. Leading lawyers explain local law and practice at key transactional stages and for crucial aspects of doing business.

Law and Practice

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NORTH KOREA LAW AND PRACTICE

Jipyong LLC's Project Finance and Real Property Practice Group provides comprehensive legal services for a broad range of financial transactions related to real estate and infrastructure. It represents developers, contractors and financial investors in forming consortiums, establishing proper legal entities, and obtaining financing. It is comprised of attorneys from multiple disciplines, and together

they have extensive experience in advising on large-scale development projects, infrastructure and SOC matters, and renewable energy projects. The firm has recently established the North Korea Investment Consulting Center ("NKICC") to assist clients in their investments in North Korea in the event that the UN and US sanctions are lifted from North Korea.

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1. Project Finance Panorama

1.1 Recent History and Expected Developments

North Korea has taken active measures to attract foreign investment since the end of 2011. At that time it launched or otherwise extensively amended 14 economy-related laws to promote the protection of investor assets, guarantee of autonomy in company management, stability in repatriation of foreign investment, tax benefits for investors, and guarantee of personal safety. But, due to the economic sanctions imposed by the UN and the US, project finance has not been actively utilised as a financing tool in North Korea.

In the meantime, however, North Korea has permitted the build-operate-transfer (BOT) model of private investment in multiple current development projects. BOT is specified in the 'National Economic Development 10-Year Strategic Plan' (2010) as the project financing model for infrastructure developments such as railroads and ports. Additionally, the contract for Kaesong-Shinuiju Speed Rail Road Construction Project (2014), the 'Introduction to Investment Projects in Wonsan-Mt Kumgang International Tourist Zone' (2015) and the wind farm project in Wonsan-Mt Kumgang International Tourist Zone (2016) specify BOT as their project financing model. The Regulations on the Development of Rason Economic and Trade Zone include the term 'operation with special authorisation' for the BOT model.

Considering the investment scale of development projects and recent cases of private investment proposals by North Korea, it appears that future development projects will mainly use BOT, and project finance will be actively utilised.

1.2 Institutions Typically Acting as Sponsors and Lenders

Once the US and UN sanctions against North Korea have been lifted, it is anticipated that, at least initially, investments will be made from the public funds and led by the government or the public financial institutions, due to the inadequacy of regulations protecting against investment risk. But as the development of primary infrastructure, such as roads and railways, requires large-scale financing, it is expected that the participation of private financial institutions will increase in the eventual process of the stabilisation of initially government-led investments, and this will mean an increase in the use of project finance.

It is anticipated that a diverse range of institutions will participate as sponsors in development projects, including North Korean institutions proposing the project, construction companies, operating companies and financial institutions.

1.3 Public-private Partnership Transactions

There is no general law on public-private partnerships, but as mentioned in **1.1 Recent History and Expected Developments**, above, the Regulations on the Development of Rason

Economic and Trade Zone include the term 'operation with special authorisation' for the BOT model.

An operator with special authorisation is a party to a project financing transaction that, after receiving special authorisation from the government, builds and operates a project for a certain period of time. Afterwards, the project right is transferred to the People's Committee of Rason, the Management Committee or any unit designated by either of the two committees. But it is also possible for the terms of the project right transfer to be determined by the agreement of the parties.

Investment projects involving operation with special authorisation include those in the areas of infrastructure and public facilities, such as electricity, heating, gas, sewage treatment, waste management, roads and bridges.

The applicable regulations allow for the People's Committee of Rason or the Management Committee to provide, within the scope of their authority, security interest to secure the performance of contracts by the North Korean parties.

Regarding recoupment of investment, the regulations stipulate the following methods: being compensated by the project companies; receiving subsidies by the People's Committee of Rason or the Management Committee; or other methods.

With the approval of the People's Committee of Rason or the Management Committee, the transfer or mortgage of the project right to a third party, in whole or in part, is also allowed to provide an option to investors to recoup their investment amount at an early stage of the project.

Further, the regulations prohibit or restrict in principle the withdrawal of the project right to protect managers with special authorisation. Even in exceptional cases where the project right is withdrawn due to public interest concerns, the regulations provide for sufficient compensation to the managers.

1.4 Main Issues Considered When Structuring the Deal

For development projects in North Korea, risk-sharing among participating parties is especially necessary, and to ensure stability of the projects it is imperative that the North Korean parties pursuing the projects commit to sharing substantial risk. For example, it is necessary to induce active participation by the North Korean parties to secure continuous viability of the projects by having them invest land use fees related to infrastructure projects, such as development of railways and roads, and actually executing on collection of such contributions.

2. Guarantees and Security

2.1 Assets Typically Available as Collateral to Lenders

In North Korea the system of providing real estate as security for financing is not well developed, but it is possible under the Law on Land Lease for a foreign investor or foreign-invested company to lease land from the government for a project and provide the land-use right related to the lease to a bank or financial institution as security. In establishing a mortgage on the land-use right or building, the mortgage needs to be registered with the relevant real estate registration authority.

The system of mortgaging the land use right under the Law on Land Lease is not widely used and operates primarily in the special economic zones. For example, according to the Real Estate Regulations in Rason Economic and Trade Zone, when obtaining a loan, a lessee of land or a building owner can establish a mortgage on the land use right or the building by executing a security agreement and registering the mortgage with the real estate registration authority within ten days of the execution of the security agreement.

The same system operates in the Kaesong Industrial Region, in which South Korean companies have made entry and are doing business.

For reference, the basic laws for North Korean real estate are the Law on Land Lease and the Law on Foreign Investment. The former regulates the rights and issues arising from foreign-invested companies leasing land for their business. The latter provides the methods by which a foreign investor can lease land that is necessary to establish a foreign-invested company or a foreign-invested bank. The laws for special economic zones regulate the use of land in such areas. The applicable laws are the Law on Rason Economic and Trade Zone, the Basic Law of Sinuiju Special Administrative Region, the Law on Mt Kumgang Zone, the Law on Mt Kumgang Special Zone for International Tourism, the Law on Hwanggumphyong and Wiwado Economic Zone, the Law on Economic Development Zone and the Law on Kaesong Industrial Region. For the Rason Economic and Trade Zone and the Kaesong Industrial Region, separate regulations for real estate have been enacted so more regulatory details can be obtained.

2.2 Charge or Interest over All Present and Future Assets of a Company

No floating charge or similar security interest over all present and future assets is used in North Korea.

2.3 Costs Associated with Registering Collateral Security Interests

The costs related to registering security interests in the Kaesong Industrial Region amount to 0.02% of the secured amount registered with the real estate registration authority.

2.4 Granting a Valid Security Interest

Each item of collateral needs to be individually identified in the security document in order to establish a valid security interest over it. The registration application requires the listing of the borrower's name, the loan amount or maximum secured amount, the repayment date, the interest and interest payment date, and other matters that may be affected by the mortgage including the description of collateral.

2.5 Restrictions on the Grant of Security or Guarantees

During the term of the mortgage agreement, the mortgagor may not transfer the mortgaged asset, such as the land-use right or the ownership of a building, to a third party without the consent of the mortgagee.

In the case of mortgaging the land-use right, there is a special characteristic in that the building and its attachments located on the land must also be mortgaged.

2.6 Absence of Other Liens

As the mortgage is registered with the real estate registration authority, the mortgagee can verify the absence of other liens on the mortgaged asset and exercise its rights according to the registered terms of the mortgage.

2.7 Releasing Typical Forms of Security

If the loan is paid during the mortgage term and the mortgage agreement is terminated, the mortgagor and the mortgagee need to cancel the registered mortgage within ten days of the termination of the mortgage agreement.

The real estate registration authority maintains a ledger of real estate records, and for each mortgage, the ledger includes the information about the mortgagee and the terms of the mortgage. Should there be any change in the terms of the mortgage or the release of the mortgage, such information is recorded in the ledger.

3. Enforcement

3.1 Secured Lender Enforcing its Collateral

In the event that the loan is not repaid upon the expiry of the mortgage term or the borrower is subject to dissolution or bankruptcy during the mortgage term, the mortgagee may dispose of the mortgaged asset. In the case of the land-use right, this would mean the land-use right, any building located on the land, and its attachments.

In the Rason Economic and Trade Zone, if the mortgagor is unable to repay the loan on the repayment date or dies before repaying the loan but does not have a successor, the mortgagee has the authority to request the disposition of the mortgaged asset to the proper court.

In the Kaesong Industrial Region, the mortgagee needing to exercise its rights may make a request for disposition of the mortgaged asset to the industrial region management authority.

3.2 Upholding Foreign Law

The Law on External Economic Contracts provides that if a civil dispute arises between a North Korean company and a foreign company and the governing law is not specified in their contract, international customs or North Korean law will apply. In cases where a foreign law is the governing law, if this law is deemed to be against the basic principles of the North Korean legal system, North Korean law will apply. In this way there is a real concern that the governing law provision, although clearly stated in the contract, may become meaningless. Also, according to the Law on the Free Economic Trade Zones, all activities in the free economic trade zones are subject to North Korean laws and regulations.

3.3 Judgment Without Retrial

According to the Law on External Economic Arbitration, the approval and execution of an arbitral award from a foreign arbitral body is subject to North Korean law, and the execution of the arbitral award can be refused if the arbitral award is deemed prejudicial to the sovereignty, safety and public order of North Korea. There does not appear to be any law that addresses execution of a judgment by a foreign court.

3.4 Other Matters Impacting a Foreign Lender's Ability

In order for a foreign lender or rights holder to exercise its security interest in North Korea, it must comply with North Korean law, and the choice of a foreign law as the governing law or international customs may not be effective. There has been a dearth of concrete examples of enforcement, but several cases can be found in the Kaesong Industrial Region, where pursuant to the regulations established by the Management Committee, the enforcement bodies have been created and overseen several voluntary auctions to dispose of the mortgaged assets. Other than such cases, it is difficult to confirm other cases in which a foreign lender has been able to exercise its security interest rights. But it should be noted that the Law on Foreign Investment provides at least a minimum protectionary measure for foreign investors by stipulating that North Korea will not nationalise or confiscate the assets of a foreign investor, foreign-invested company or foreign-invested bank.

4. Foreign Investment

4.1 Restrictions on Foreign Lenders Granting Loans

An equity joint venture enterprise may be granted a loan needed for its business activities from a bank in any foreign country, in which case the company needs to send a notice to the foreign exchange control organ.

4.2 Restrictions on Foreign Lenders on Granting of Security or Guarantees

There is no known special restriction on the granting of security or guarantees to foreign lenders according to the available public records.

4.3 Foreign Investment Regime

The Law on Foreign Investment stipulates the general principles and procedures regarding the basic elements of foreign investment, concepts of foreign investors and foreign-invested enterprises, establishment of foreign-invested enterprises, promotion, prohibition and restriction of foreign investment, investment benefits and preferential conditions, types of foreign investment assets, land lease, labour supply and taxation.

The Law on Foreign Investment classifies the forms of a foreign-invested enterprise into the categories of an equity joint venture enterprise, a contractual joint venture enterprise and a wholly foreign-owned enterprise, and there exists a separate law for each category (the Law on Equity Joint Venture, the Law on Contractual Joint Venture and the Law on Wholly Foreign-Owned Enterprises, respectively). Generally, equity joint venture enterprises, contractual joint venture enterprises and wholly foreign-owned enterprises are established as limited liability companies, but the foreign-invested enterprises established in the Kaesong Industrial Region (all of which fall under the category of wholly foreign-owned enterprise) are set up as joint stock companies.

An 'equity joint venture enterprise' is an enterprise which the North Korean investor and the foreign investor jointly invest in and operate and which makes distributions of profits according to the stakeholding ratio (investment share). A 'contractual joint venture enterprise' is an enterprise in which the North Korean investor and the foreign investor make a joint investment, but it is solely operated by the North Korean investor, which uses the profits to redeem the foreign investor's stake or make distributions. Finally, a 'wholly foreign-owned enterprise' refers to an enterprise solely invested in and operated by the foreign investor.

The permission of the central investment management organ is required for the establishment of a foreign-invested enterprise. While there is no location restriction for equity joint venture enterprises and contractual joint venture enterprises, wholly foreign-owned enterprises can only be established in the special economic zones. As of 2014, 371 foreign-invested enterprises (excluding foreign-invested enterprises established in the special economic zones) were known to have been established in North Korea.

4.4 Restrictions on Payments Abroad or Repatriation of Capital by Foreign Investors

The Law on Foreign Investment provides that profits and other income earned from business or banking operations by a foreign investor, and any money remaining after

liquidation of a business or bank, may be repatriated without any restrictions. In addition, the Law on Foreign Exchange Control provides that a foreign investor is allowed to repatriate the profits and other earnings from business and any money remaining after liquidation of a business tax-free, subject to verification by an audit office. Any foreign investor wishing to repatriate money in foreign currency will need to submit the application for remittance to the relevant bank, together with confirmation by the central investment management organ.

In the meantime, a foreign individual working for a foreign-invested business may repatriate in foreign currency 60% of his total salary and other earnings. Any amount in excess of 60% is subject to approval by the foreign exchange control organ.

4.5 Maintenance of Offshore Foreign Currency Accounts

While foreign-invested enterprises, including contractual joint venture enterprises, equity joint venture enterprises, wholly foreign-owned enterprises, their branch offices or their other offices are required to open an account with the Foreign Trade Bank in North Korea, they may open accounts with other external settlement banks in North Korea or a foreign bank outside of North Korea, subject to approval by the foreign exchange control organ. But the opening of accounts has to meet the requirements of the 'single finance management system' as, in principle, a foreign-invested enterprise can only open its accounts at one bank. A foreign-invested enterprise which has opened a bank account in another country is required to submit the documents related to foreign currency earnings and expenditures from the foreign account to the foreign exchange control organ every quarter.

For reference, the foreign currency cannot be circulated in North Korea, and must be converted into North Korean Won at designated places.

5. Structuring and Documentation Considerations

5.1 Registering or Filing Financing or Project Agreements

If an equity joint venture enterprise obtains a loan needed for its business activities from a bank in another country, the enterprise is required to send a notice to the foreign exchange control organ. Although no other regulation is known, additional requirements may apply on a case-by-case basis.

5.2 Licence Required for Owning Land or Natural Resources

Land

In principle, land cannot be purchased in North Korea. That is, the ownership of the land lies with the state government, while the lessee only has the right to use the land. The land

must be leased through negotiations in accordance with the Law on Land Lease, the Law on Foreign Investment, and individual laws related to special economic zones. The Law on Land Lease provides that "*foreign corporate bodies or individuals may lease and use the land,*" and there are similar provisions in other laws. It should be noted that the land in the Rason Economic and Trade Zone can also be leased through other means, such as bidding and auction, instead of negotiations.

The contract for land lease is required to be executed by the land and environmental protection guidance organ, the people's committee of each province (or municipality directly under the central authority; in the case of the Rason Economic and Trade Zone, the People's Committee of Rason), subject to the approval of the central land and environmental protection guidance organ. Any institution, enterprise or organisation wishing to invest a land use right in any equity joint venture enterprise or contractual joint venture enterprise has the right to use the land upon obtaining an approval from the people's committee of the province (or municipality directly under the central authority) in which the enterprise is located. In the meantime, the right to develop or excavate valuables such as natural resources, cultural relics, or precious metals underground or underwater is not included in the right to use the land. The lessee can invest the right to use the leased land, assign it to any third party or create a mortgage thereon, and the term of lease can be determined, by agreement between the parties, for a period of up to 50 years, depending on the purpose of the land use and substance of the investment.

Natural Resources

All natural resources, including underground resources, forest resources, and fishery resources, can only be owned by the state government. Notwithstanding this, the right to develop (excavate) underground resources can be granted to institutions, enterprises or organisations. An equity joint venture enterprise or contractual joint venture enterprise in which foreign investors have a stake can also obtain the right to develop (excavate) underground resources. According to the Law on Underground Resources, underground resource development can be carried out only with the approval of the non-standing resource development deliberation committee, and underground resource development for export is permitted only under special circumstances. Since inducement of foreign investment through the execution of production sharing agreements or concession agreements is not legally guaranteed in connection with underground resource development in North Korea, any foreign investor wishing to invest in underground resource development in North Korea or to export underground resources may do so by:

- (a) obtaining approval for underground resource development through a contractual joint venture enterprise or an equity joint venture enterprise;
- (b) investing in an institution or enterprise which has obtained approval for underground resource

- development; or
- (c) securing the right to export underground resources by executing a contract thereon with a person who has obtained the approval for underground resource development.

Even in the case of (b), above, unless the relevant institution or enterprise obtains separate approval for exporting underground resources, the right to export the relevant underground resources will not be guaranteed.

5.3 Recognition of Agent and Trust Concepts

According to the Civil Law, any institution, enterprise, organisation or citizen can engage in any civil juristic act by means of an agent, unless otherwise required by law to act directly, which indicates that the concept of an agent is acknowledged under North Korean law. Since an equity joint venture enterprise, contractual joint venture enterprise, or wholly foreign-owned enterprise established in North Korea is also included as a party to a civil juristic relationship, the Civil Law applies to foreign-invested enterprises, unless otherwise set forth in the laws and regulations related to foreign investment.

However, North Korean law does not seem to recognise the concept of a security agent, which obtains and manages security rights directly in its name on behalf of the lender.

The trust structure is recognised in the Kaesong Industrial Region. The trustee may obtain and manage the assets of the borrower as trust assets for the benefit of the lender. In the event of a default by the borrower under the loan agreement, the trustee can dispose of the trust assets in order to satisfy the borrower's secured obligations to the lender.

5.4 Rules Governing the Priority of Competing Security Interests

The priority of the rights over the registered real estate follows the order recorded with the real estate registration authority in the Kaesong Industrial Region. Under this requirement, in terms of mortgage, the priority of security interests follows the order recorded with the real estate registration authority.

In terms of the priority in distribution of assets during bankruptcy proceedings of a foreign-invested enterprise, secured claims take precedence over unsecured claims. In addition, any unsecured claim that falls into the category of a priority claim qualifies for distribution before other ordinary unsecured claims.

5.5 Requirements of Local Law

In general, a project company is expected to be established in accordance with the laws and regulations applicable to foreign investment in North Korea.

It seems that both joint investment with North Korea and independent investment is feasible for any project. In the

case of joint investment, an equity joint venture enterprise or a contractual joint venture enterprise can be established with North Korea, and in the case of an independent investment, a wholly foreign-owned enterprise can be established in North Korea.

In fact, according to the Introduction to Investment Projects in Wonsan-Mt Kumgang International Tourist Zone (2015), the investment method (type of enterprise) differs depending on the nature of investment projects, eg:

- equity joint venture enterprise (Finance Centre);
- equity joint venture enterprise or contractual joint venture enterprise (Wonsan Department Store, Wonsan Brewery, Wonsan Solar Cell Assembly Plant);
- wholly foreign-owned enterprise (Samilpo Casino Hotel);
- or
- as mutually agreed between the parties (Wonsan-Mt Kumgang Railroad).

In the case of a contractual joint venture enterprise, there may be some difficulties related to management since the enterprise will be operated independently by North Korea, and is somewhat incompatible with the BOT model. Therefore, any BOT private investment in a development project is expected to take the form of an equity joint-venture enterprise, or an independent investment as a wholly foreign-owned enterprise. Since a wholly foreign-owned enterprise can be established only at designated locations, it will be subject to the state government's approval on a case-by-case basis.

6. Bankruptcy and Insolvency

6.1 Availability and Practice of Company Reorganisation Procedures

The Bankruptcy Law for Foreign-Invested Enterprises regulates the bankruptcy and rehabilitation of foreign-invested enterprises. According to the Law, bankruptcy means an act by a court of distributing the assets of an insolvent enterprise to its creditors and dissolving it. An enterprise may be declared bankrupt if it fails to repay its debts within the prescribed period, the debts of the business exceed its assets, the enterprise can no longer continue its operation due to a grave loss, or the enterprise cannot be dissolved through normal procedures. However, an enterprise may not be declared bankrupt if it can receive financial assistance in North Korea or when there is sufficient collateral that the overdue debts can be cleared within six months of the application for bankruptcy. Also, in the event that the parties agree on rehabilitation after an application has been made for bankruptcy, the bankruptcy procedures under way may be discontinued.

In the meantime, an enterprise declared bankrupt and wishing to apply for rehabilitation will, within the term of investigation and determination of claims, submit to the liquidation committee a written application for rehabilitation stating the

reason for the application and the method of repayment for debts and security. An application for rehabilitation will be approved only when it is approved by more than half of the creditors attending the meeting and the amount of the claims held by the approving creditors represent not less than two thirds of the total amount of claims against the bankrupt enterprise. If the court approves the rehabilitation that has been approved at the creditors' meeting, the enterprise notified of the award will perform the obligations stated in the terms of the rehabilitation timely and accurately. If the enterprise defaults on its obligations, the court may revoke the rehabilitation at the request of the creditors.

6.2 Commencement of Insolvency Processes Impacting Lender's Rights

A foreign-invested enterprise that is declared bankrupt must suspend its accounting, property transactions and business operations from the date of receiving a certified copy of the written judgment, and since the distribution of the assets of the bankrupt enterprise will be undertaken by the liquidation committee according to the assets distribution schedule endorsed by the court, any lender that fails to comply with the bankruptcy procedures may be restricted in terms of collection of loans or exercise of its security interest rights.

A creditor to the bankrupt enterprise must, upon receipt of declaration of bankruptcy, declare its claims in writing to the liquidation committee within the claim declaration period. Any claim that has not been declared during the period will be deemed null and void.

6.3 Payment Order to Creditors on a Company's Insolvency

The assets of a bankrupt foreign-invested enterprise are distributed in the following order:

- the state charges and the expenses for bankruptcy procedures;
- salary, wages and insurance premiums;
- payments due to the state, including tax;
- penalties incurred due to cancellation of contracts in the course of bankruptcy procedures;
- secured claims;
- unsecured claims; and
- other claims.

Any unsecured claim that falls into the category of a priority claim shall qualify for distribution before other ordinary unsecured claims.

6.4 Risk Areas for Lenders

If the remaining assets of the bankrupt enterprise are not sufficient to cover all liabilities, the claim amounts of the lenders may be restricted.

In cases where a bankrupt enterprise has concealed, distributed or transferred (at a low price or free of charge) its assets

within six months prior to the application for bankruptcy or after the submission of the application, has waived its claims without legal grounds 30 days before the application for bankruptcy or after the submission of the application, or has inflicted losses upon its creditors in anticipation of its bankruptcy, such acts will be null and void. Therefore, lenders should take note of such facts when collecting on claims from any enterprise which is bankrupt or expected to become bankrupt.

6.5 Entities Excluded from Bankruptcy Proceedings

The Bankruptcy Law for Foreign-Invested Enterprises is applicable only to the bankruptcy of foreign-invested enterprises.

7. Insurance

7.1 Restrictions, Controls, Fees and/or Taxes on Insurance Policies

Insurance business in North Korea is undertaken by insurance companies that have obtained a licence from the central insurance administration organ, and the state government ensures that institutions, enterprises, organisations and citizens of North Korea, as well as foreign bodies, foreign-invested businesses, foreign individuals and overseas Koreans that wish to be insured, can take out an insurance policy from the insurance companies in North Korea. The form and contents of an insurance policy shall be determined by an insurance company, which needs to be approved by the central insurance administration organ. Currently, Korea National Insurance Corporation (KNIC) is known to have a monopoly on all insurance business in North Korea.

7.2 Payable Insurance Policies over Project Assets to Foreign Creditors

The Insurance Law appears to allow provision of insurance to foreign companies and individuals, but this needs to be checked for each project on a case-by-case basis.

8. Tax

8.1 Payments to Lenders Subject to Withholding Tax

Any foreign enterprise or individual earning income in North Korea is required to pay enterprise or individual income tax in accordance with the Taxation Law for Foreign-Invested Businesses and Foreign Individuals. Where a foreign enterprise or a foreign individual earns income from the interest on loans in North Korea, such income is taxable as an enterprise income tax at the rate of 20%. However, where a foreign government or an international financial organisation grants a loan, or a foreign bank grants a loan on favourable terms, to a North Korean company, an enter-

prise income tax is not required to be paid on the interest on such loans.

8.2 Taxes, Duties, Charges or Tax Considerations Relevant to Lenders

Under the Taxation Law for Foreign-Invested Businesses and Foreign Individuals, interest income is taxed at a rate of 20%. It is not known whether there are any other taxes, duties, charges or tax considerations payable on the interest income according to the available public records.

8.3 Usury Laws or Other Rules Limiting the Amount of Interest Charged

There is no separate provision on usury under the Taxation Law for Foreign-Invested Businesses and Foreign Individuals. It is also not known whether there are restrictions in any other regulations.

9. Applicable Law

9.1 Law Typically Governing Project Agreements

The specific legal relationship of a development project is regulated in accordance with the project agreement (implementation agreement) executed for each project. While there are general regulations governing BOT projects, such as the Regulations on the Development of Rason Economic and Trade Zone, there is no general law governing BOT projects such as PPP in other regions. Given this, the specific legal relationship of the project can only be governed by the project agreement executed with North Korea, and the laws applicable to individual transactions will have to be reviewed separately. It should be noted that projects are generally regulated and protected by the foreign investment laws and regulations.

The laws in various fields have been enacted based on the Law on Foreign Investment, and they can be classified as follows:

- Establishment and operation of foreign-invested businesses: Law on Equity Joint Venture; Law on Contractual Joint Venture; Law on Wholly Foreign-Owned Enterprises; Law on Foreign-Invested Banks; Law on Registration of Foreign-Invested Businesses; Law on Financial Management of Foreign-Invested Enterprises; Labour Law for Foreign-Invested Enterprises; Law on External Economic Contracts; Law on External Civil Relations; and related regulations.
- Tax on foreign-invested businesses and foreign individuals: Taxation Law for Foreign-Invested Businesses and Foreign Individuals; Accounting Law for Foreign-Invested Businesses; and related regulations.
- Management and operation of special economic zones: Law on Rason Economic and Trade Zone; Law on Economic Development Zones; Law on Mt Kumgang Special Zone for International Tourism; Basic Law of Sinuiju Spe-

cial Administrative Region; Law on Hwanggumphyong and Wihwado Economic Zone; and related regulations.

- Lease of real estate: Law on Land Lease; and related regulations.
- Dispute resolution, dissolution, bankruptcy: Law on External Economic Arbitration; Bankruptcy Law for Foreign-Invested Enterprises; and related regulations.

The foreign investment laws comprise an independent legal field and are enforced in close relationship with the laws falling under the other legal fields, including but not limited to the Law on Foreign Currency Control, the Customs Law, the Law on the Protection of the Environment, the Civil Law, the Civil Procedure Law, the Invention Law, the Law on Industrial Designs, the Trade Mark Law, the Law on the Name of Origin, the Immigration Law, the Foreign Trade Law, and the Law on Processing Trade.

9.2 Law Typically Governing Financing Agreements

The loans, opening of accounts and foreign currency management of foreign-invested enterprises are regulated by the Law on Foreign Investment, the Law on Equity Joint Venture, the Law on Contractual Joint Venture, the Law on Wholly Foreign-Owned Enterprises, and the Law on Foreign Currency Control. Further, the Law on Land Lease is applicable with respect to creation of security on the land-use right.

In connection with transactions in special economic zones, the Law on Rason Economic and Trade Zone, the Law on Economic Development Zones, the Law on Mt Kumgang Special Zone for International Tourism, the Basic Law of Sinuiju Special Administrative Region, and the Law on Hwanggumphyong and Wihwado Economic Zone take precedence over other laws.

9.3 Matters Typically Governed by Domestic Law

The creation and enforcement of mortgages on a land-use right is typically governed by North Korean law.

10. Islamic Finance

10.1 Development of Islamic Finance

The available public records contain no information on Islamic finance in North Korea.

10.2 Regulatory and Tax Framework

No information on the regulatory and tax framework for the provision of Islamic finance can be found in the available public records.

10.3 Business Requirements for Islamic Banks to be Authorised/Admitted

There are no known requirements for Islamic banks or takaful operators to be authorised or admitted to carry out business in North Korea, according to the available public

records. However, an investor that wishes to establish a foreign-invested bank (joint-venture banks, wholly foreign-owned banks and branches of foreign banks) needs to obtain the approval of the Central Bank. While a joint-venture bank can be established in any location within North Korea without any restriction, wholly foreign-owned banks and branches of foreign banks can be established only in special economic zones.

Insurance business in North Korea must be undertaken by insurance companies that have obtained a licence from the central insurance administration organ. In the special economic zones, insurance companies can be set up by foreign investors and overseas Koreans, and foreign insurance companies may set up their representative offices, branches or agencies.

10.4 Framework for Ensuring Shari'a-compliant Products

The available public records contain no information on Shari'a compliant products.

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