Your Way-Too-Early Guide to North Korean Investment: Big Opportunities, Big Risks, and the Regulatory Guidance to Identify Both

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I spent last week in Seoul talking to clients about the latest changes to U.S. trade and sanctions policy (as South Korea is one of Iran’s largest trading partners, it is understandable that some concerns have arisen there in May). Interestingly, a topic that came up often was how to reenter the North Korean market. The people with whom I spoke, in industries ranging from financial, to manufacturing, to technology, to legal, were sanguine on the possibility of a détente and the resulting opportunities for investment, growth, and profit in a reopened North Korea.

The History

You will recall that U.S. and international sanctions have been in place against North Korea at various levels since the end of the Korean War. However, in recent decades, the sanctions pressure has mounted in response to the nuclear ambitions of North Korean leaders. Finally, in 2016, UN Security Council resolution 2270 and its adoption by the United States, Europe, South Korea, and, to a certain extent, China, effectively closed the country off to substantially all trade with the outside world.
The Present

Now, a fence-mending South Korean President, Moon Jae-in has increased hopes that the North can be brought into the fold and that relations can be relaxed, if not normalized. Additionally, U.S. President Trump seems, at least for the moment, to be interested in making some sort of deal among the interested parties. Notwithstanding some wild diplomatic (and decidedly undiplomatic) turns in the story, the leaders of North Korea and United States will hold a summit on June 12, 2018.

Obviously, nothing about the reconciliation is set (there isn’t even agreement on who will pay for Kim Jong Un’s hotel room at the summit) and it could collapse into nothing or, worse, outright conflict at the drop of a tweet. However, it is interesting, and perhaps profitable, to consider the potential business opportunities (and the concomitant legal risks) that may arise from a positive resolution of the summit.

The Future

South Korea and China stand to benefit most from the potential opening, as they have the strongest connections to the isolated nation. If relations warm, South Korea may rely on the linguistic and cultural connections to make solid, on-the-ground, direct investment into the North (perhaps reopening Kaesong Industrial Complex). As Sally Macdonald at Investment Week points out, South Korean-heavy industry could pave the way (pardon the pun) to better infrastructure in the North. Additionally, all of South Korea could benefit from a relatively young North Korean work force that could be trained up in a common language from a relatively educated (if not altogether worldly) base.

China, meanwhile, reportedly maintains illicit trade routes with the North and it will be interesting to see whether those ties are as profitable when they become licit (huh, I didn’t think that was a word either).

If the détente is widespread and countries around the world lift the UN-led sanctions on trade with North Korea, companies outside of Asia may be able to enter the resource-rich country, though likely just a little behind North Korea’s immediate neighbors.

The Precedent

It take more space than we have here to fully draw comparisons to two countries recently opened by lifted sanctions: Myanmar and Iran. However, it is interesting to note that the recent history of both countries demonstrates both the opportunity and risk of entry into the freshly opened market.

In Myanmar, major foreign investment – about 70% from China, Singapore, and Hong Kong – has given rise to a boom in the extraction and energy industries in that country. However, the influx of investment has not assuaged concerns over the lack of domestic stability.

In Iran, erratic and capricious changes in U.S. policy have recently scuttled what
appeared to be a positive trade trend. As the United States withdrew from the Iran Nuclear deal, it left a wake of questions about the long-term prospects of developing investments in the country from Europe, Asia, and even from Washington State, where Boeing is left to redirect its order of 80 aircraft that had been destined for Iran Air.

Planning for Uncertainty

The North Korean market will be lacking in some basic business infrastructure for those who enter. It may be difficult to collect payments or rely on local jurisprudence to resolve commercial disputes. However, internet payment systems and outside arbitral fora will go some way toward easing those difficulties. Still, savvy businesses will be keenly aware of other potential concerns, particularly the function of U.S. and international sanctions.

The lessons of Myanmar and Iran (the lessons of which we are still assessing), show the benefits of careful contingency planning. If the talks this month go well, some or many of those restrictions on trade with North Korea may be lifted. That lifting would create enormous opportunity in a newly opened market. However, the remaining sanctions, particularly U.S. designations of SDNs, will put unwary companies at risk. There will be plenty to watch for if and when outside investors, or their funds, are able to cross the border.

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