

Amendment to the Overseas Resources Development Act

(Representative Sponsor: Assemblyperson Cho Seung-Soo)

Submitted: December 2010

Sponsored by: Currently more than 10 assemblypersons

Editor's note: The Overseas Resources Development Act has for many years required all developers of overseas resources (mineral, agricultural or livestock) to report their activities to the government. The Act also authorizes the government to create special purposes companies for overseas resources development.

Reasons for Proposal

With the increasing interest in developing and owning natural resources, public and private entities' participation in such projects have also increased. However, the terms of contracts of those projects and the nature of the expenses thereof have not been disclosed, restricting the Government's supervision on the subsidies and loans made toward those projects and possible bribes to the host governments. Also, the relationship between natural resources development and our Government's troops dispatch is not being clearly disclosed.

In June 2008, the Energy Ministers of G8 plus China, India and Korea welcomed in their Joint Statement the implementation of the Extractive Industries Transparency Initiative (EITI) by the countries exporting oil and gas as well as minerals, and also the United States recently passed the Dodd-Frank Wall Street Reform and Consumer Protection Act, both of which are the efforts to improve transparency and accountability in the overseas resource-extractives sector.

In keeping pace with this trend, this Amendment requires all enterprises participating in overseas resources development to prepare business reports, which shall contain details of the business including contracts made with host governments and details of expenses, and submit them to the Government. The Amendment also requires the Financial Services Commission(hereafter referred to as FSC) to disclose the said business reports to the public, and to submit and report them to the National Assembly, thereby protecting the related investors and guaranteeing the transparency and viability of the projects.

Highlights of the Amendment

- A. A corporation organized under the laws of Korea is required to submit a business report, which shall contain the details of the overseas resources project and its expenses, to the competent Minister and the FSC, and they may be examined by relevant officials. (Article 19-2)

- B. The FSC is required to annually disclose the business reports to the public, thereby insuring the transparency of the project and the protecting the investors. (Article 19-3)
- C. The FSC is required to submit the business reports to the National Assembly no later than March of each year. The business reports shall contain related documents such as copies of contracts and agreements signed by the government, local governments, and public institutions with the host government. If required by the Assembly, the Chairman of the FSC shall attend the Assembly to answer questions regarding the business report. (Article 19-4)

Amendment to the Overseas Resources Development Business Act

The Overseas Resources Development Business Act shall be amended as follows:

The Article 19 shall be amended as follows:

Article 19 (Reporting and Inspections)

- (1) The competent Minister may, when deemed necessary, order the overseas resources developer of the Republic of Korea nationality to report on the business or submit documents thereon.
- (2) The competent Minister may have public officials under his control inspect or investigate books, documents, and other things necessary for conducting business at the offices of an overseas resources developer of the Republic of Korea nationality.
- (3) The public officials inspecting or investigating in accordance with paragraph (2) shall carry certificates identifying their authority and present them to the related persons.

The following new Articles 19-2 to 19-4 shall be inserted:

Article 19-2 (Reporting and Investigations on Corporations)

- (1) A corporation organized under the laws of Korea is required to submit a business report, which shall contain the details of the overseas resources project and its expenses, to the competent Minister and the Financial Services Commission.
- (2) The business report under paragraph (1) must include expenses and revenues prescribed by Presidential Decree, and shall include expenses such as government subsidies, loans, taxes, use fees, and license fees, and revenues such as operating revenues and incidental revenues.
- (3) When deemed necessary, the competent Minister and the Chairman of the FSC, in regards to the submitted business report under paragraph (1), may have relevant public officials inspect books, documents, and other things necessary for conducting business at the offices or places of business of the corporation.
- (4) In order to conduct inspection under paragraph (3), the inspected corporation must be notified 7 days prior to the inspection of the plan including the date, purpose, and contents of the inspection; provided, however, that the preceding shall not apply where an urgent inspection is necessary or it is deemed that the purpose of the inspection may not be achieved due to destruction of evidence if the corporation is notified in advance.
- (5) The public officials under paragraph (4) shall carry certificates identifying their authority and present them to the related persons.
- (6) Necessary matters such as the procedure and method of preparing business report under paragraph (1) and its due date shall be prescribed by the Presidential Decree.

Article 19-4 (Submission of the business report to the National Assembly)

- (1) The FSC is required to submit the business reports under paragraph 1, Article 19-3 to the National Assembly no later than March of each year.
- (2) The business reports under paragraph (1) shall contain related documents such as copies of contracts and agreements signed by the government, local governments, and public institutions (entities defined by Article 4 of Act on the Management of Public Institutions) with the host government.
- (3) If required by the Assembly, the Chairman of the FSC shall attend the Assembly to answer questions regarding the business report under paragraph (1).

The following subparagraphs under Paragraph 2, Article 24-2 shall be inserted:

(Article 24-2 A person falling under one of the following shall be punished to imprisonment up to 5 years and a fine up to 50 million Korean one).

3. A person who has not submitted a business report or submitted a fraudulently prepared business report under Paragraph 1, Article 19-2.
4. A person who has rejected, obstructed or evaded inspections under Paragraph 3, Article 19-2.

Addenda

The Act shall enter into force 3 months after the date of its promulgation.