

Doing Business in South Korea



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Introduction

Geography

The Korean Peninsula, which lies on the northeastern edge of the Asian continent shares its northern border with China and Russia and juts toward Japan to the southeast. Korea is roughly 1,000 kilometers long and encompasses a total of 222,154 square kilometers (South Korea - 99,392 sq. km; North Korea - 122,762 sq. km). It is nearly the same size as Britain and a little larger than Portugal. The Republic of Korea is populated by 48.6 million people as of 2008.

Climate

The Korean Peninsula, which is situated at the eastern edge of the Eurasian continent, lies between 33° and 43° north latitude. With the Taebaek mountain range forming the backbone of the Korean Peninsula, Korea has a diverse climate in spite of its small size. It lies in the temperate zone, and has four distinct seasons as well as diverse topography. The transitional seasons, spring and autumn, are generally sunny and clear, although they are short in comparison to winter and summer and have distinct weather patterns.

Language and Currency

In 1443, King Sejong promoted the creation of an alphabet for writing that could simply and accurately convey the sounds of the spoken language. Originally known as Hunminjeongeum, or “the correct sounds for the instruction of the people,” it is an easy-to-learn phonetic alphabet that enabled the common people to express themselves in writing. Hangeul, as the alphabet has come to be known, is unique among the world’s writing systems as its creation is well documented, including the date it originated and the names of the people who invented it. The unit of Korean currency is the Won (indicated as ₩).

Legal System

The South Korean legal system effectively dates from the introduction of the original Constitution of the Republic of Korea and the organization of South Korea as an independent state. During the existence of the Republic of Korea, the Constitution has been revised or rewritten several times, the most recent of which was in 1987 at the beginning of the Sixth Republic.

The Court Organization Act, which was passed into law on 26 September 1949, officially created a three-tiered, independent judicial system in the Republic of Korea.

The revised Constitution of 1987 guaranteed that judges would not be removed from office for any reason other than impeachment, criminal acts, or incapacity. Additionally, the 1987 Constitution officially codified judicial independence in Article 103, which states that, "Judges rule independently according to their conscience and in conformity with the Constitution and the law." In addition to the new guarantees of judicial independence, the 1987 rewrite of the Constitution established the Constitutional Court, marking the first time that South Korea had an active body for constitutional review.

The judicial system of South Korea is composed of the Supreme Court of South Korea, the Constitutional Court of South Korea, six High Courts, 13 District Courts, and several courts of specialized jurisdiction, such as the Family Court and Administrative Court. In addition, branches of District Courts may be established, as well as Municipal Courts. South Korean courts are organized and empowered in chapters V and VI of the Constitution of the Republic of Korea.

There is no system of juries in the judicial system of South Korea, although since Feb 2nd 2008 a limited system of juries has been adopted for criminal cases and environmental cases, and all questions of law and fact are decided by judges.

Advantages of Investing in Korea

The Republic of Korea is located between China and Japan. Its geopolitical position has enabled Korea to act as a bridge for cultural exchanges and trade between its neighbors. In this regard, Korea is an optimal location for doing business with China (the largest market in the world), and Japan (the world's 2nd biggest economy).

North Asia is home to 25% of the world's population and generates 22% of its GDP

(forecasted to increase to 30% by 2020).

Korea has rapidly emerged as one of the world's leading ICT (Information & Communication Technology) powerhouses. Korea's excellent telecommunications infrastructure makes Internet use and maintenance easily affordable. Its outstanding edge and competitiveness enabled Seoul to rank top in the UN Global e-Government Survey. Korea's e-Government program was exported to Moscow, Russia in 2004, and Hanoi, Vietnam in 2005.

Korea is the world's 8th largest investor in research and development (IMD 2003). Annual R&D investment has increased steadily since 1997, well above the rate of GDP growth. Although R&D investment temporarily shrunk in 1999 because of the economic slowdown caused by the Asian financial crisis, it has been on the rebound since 1999. The R&D investment in 2005 stood at US\$ 24.1 billion, or 2.99% of GDP, which is close to the highest level in the world. Korea's responsiveness to the latest products and services make the country an ideal test bend. In fact, a number of global companies take advantage of this responsiveness to utilize Korea's leading infrastructure and dynamic market.

Constitution

The Republic of Korea (commonly known as "South Korea") is a republic with powers nominally shared among the presidency, the legislature, and the judiciary, but traditionally dominated by the president. The president is chief of state and is elected for a single term of 5 years. The 299 members of the unicameral National Assembly are elected to 4-year terms; elections for the assembly were held on April 9, 2008. South Korea's judicial system comprises a Supreme Court, appellate courts, and a Constitutional Court. The judiciary is independent under the constitution. The country has nine provinces and seven administratively separate cities--the capital of Seoul, along with Busan, Daegu, Daejeon, Gwangju, Incheon and Ulsan.

Economy

Over the past four decades, Korea's impressive economic growth was part of what has been described as the "East Asian miracle." Intensive growth transformed Korea into the 12th largest economy and trading partner in the world in 2006. It was driven by high

savings rates and investment and a strong emphasis on education, which boosted the number of young people enrolled in a college or university to one of the highest levels in the world (82.1% in 2005).

During those years, Korea's industrial structure was drastically reshaped. Major industries were diversified to include automobiles, petrochemicals, electronics, shipbuilding, textiles and steel products. By applying lessons from centuries of development in the West, Korea was able to make a similar transformation from an agricultural to manufacturing and on to a service-centered economy in just 50 years of time. Thanks to the GDP growth driven by brisk export and sizeable investment in plant and facilities, Korea emerged as the world's 11th largest economy in terms of GDP, which reached US\$887.4 billion in 2006.

Import Controls

Korea runs a dual-channel system in which a traveler can choose between a red and green channel for customs clearance. As long as a traveler accurately submits his/her customs declaration to a customs official, he or she may enjoy improved service such as quick customs clearance, permission to pay duties after completing customs clearance, and other conveniences. The customs office will confiscate items that exceed the duty/tax free allowance or those items listed as prohibited or restricted from entering the country.

Major Exports and Imports

Major Exports are automobile, wireless communication devices, semiconductor, petroleum products, ship structure and parts, liquid crystal displays (LCDs). Korea's semiconductor industry has shown remarkable growth in the past 20 years and now ranks first in the world in terms of total production in 2009. Korea has been the largest D-RAM producer in the world since 1998 and has emerged as the world's largest manufacturer in memory semiconductor production, of which D-RAM constitutes a major portion. In the shipbuilding industry, Korea recaptured the world's no.1 title in 2004, with exports of US\$15.66 billion and a ship manufacturing volume of 8.34 million compensated gross tons. In 2005, Korea held fast to the first place with exports jumping to US\$17.7 billion and shipbuilding volume reaching 10.24 million compensated gross tons. And, in 2006, the shipbuilding industry recorded exports of

US\$ 22.1 billion.

Major imports are oil, semiconductor, petroleum products, steel, and semiconductor manufacture equipment.

Communications

Korea was ranked at the top among the 181 economies considered in the digital opportunity index (DOI) published by the International Telecommunication Union. That is based on comprehensive indicators including Internet penetration rate, telecom spending-to-income ratio, and rate of Internet use. To further upgrade its ICT infrastructure, Korea is currently constructing BcN (Broadband Convergence Networks), the completion of which is expected to be a major stride toward achieving ubiquitous networking in Korea, as the new networks will enable QoS (Quality of Service) guaranteed broadband multimedia services that are nearly ubiquitously accessible from anywhere in the country.

Korea is also highly competitive on the technology front. WiBro, or "Wireless Broadband" -- a high-speed portable Internet system; terrestrial wave DMB; intelligent integrated information broadcasting; standard embedded software integration technology; low-power SoC (System on Chip) for interactive DMB; and telematics wireless telecommunication integration technology are just some of the impressive technologies in the country's arsenal. These innovative technologies are expected to succeed Korea's CDMA technology, whose total economic effect has been estimated at 56 trillion won, as powerful new engines of growth for the country's ICT sectors.

Finance

The Korean financial market consists of a financial market in the traditional sense, in which short and long-term financial products are traded in relation to procurement and operation of funds, a foreign exchange market, and a derivatives market. Foreigners' investments into domestic securities were promoted step by step in consideration of their effect on macro economic variables, such as currency, interest rate, exchange rate, etc. Currently, foreigners may acquire all securities under the Securities Exchange Act. According to the financial services handled, financial institutions in Korea are categorized into banks, non-bank deposit handling institutions that handle financial products similar to bank deposits, securities companies and asset management companies, insurance companies, and other financial institutions, etc.

※Capital Markets Consolidation Act

With the implementation of the Capital Markets Consolidation Act in February 2009, the strictly separated fields within the existing capital market in the finance sector such as securities companies, asset management companies, merchant banks, futures companies, trust companies, etc will be consolidated. This measure is expected to bring changes to the Korean capital market to promote financial companies centered around investment banks and private equity funds to become larger and more specialized, as well as the expansion of derivatives' underlying assets, which will lead to Korea becoming a major financial hub.

Government Policy on Foreign Investment in Korea

Unless otherwise stipulated by law, a foreigner may carry out foreign investment activities in Korea without restrictions. However, restrictions are placed when the investment is deemed as harmful to national security, public order, the health and welfare of Korean nationals, and environment preservation, or goes against established social morals, customs, and/or the laws of the Republic of Korea. Through the Foreign Investment Promotion Act, foreign investments are provided with a higher level of investment protection than indirect investments such as investments through securities and bonds. Overseas remittances of gains from the stocks acquired by foreign investors and stock transactions, principal and fees paid according to a loan contract under the Foreign Investment Promotion Act, and compensation under a technology import contract are allowed in accordance to what has been permitted and notified under the foreign investment technology import contract at the time of the remittance. The Ministry of Strategy and Finance may temporarily suspend or restrict foreign exchange transactions, when it is unavoidably required due to force majeure (war, calamities, etc.), substantial and drastic changes to internal and external economic conditions, or other matters in proportion to such. However, a foreign investment under the Foreign Investment Promotion Act shall be an exception to the application of this clause in the Foreign Exchange Trade Act. Unless otherwise stipulated by law, the business operations of foreign investors and foreign-invested companies shall be treated equally as citizens and corporations of the Republic of Korea.

Exchange Controls

All transactions involving foreign exchange in Korea or flows of capital between Korean residents and non-residents are controlled according to the provisions of the Foreign Exchange Transactions Law. The Foreign Exchange Transactions Law applies to all domestic companies, including branches, agencies, representative offices and other offices of foreign companies operating in the Republic of Korea. In essence, inflows and outflows of foreign exchange are regulated. Under the Foreign Exchange Transactions Law, foreign exchange earnings from external transactions are regarded as coming under the jurisdiction of the Republic of Korea.

Foreign investors who comply with the notification requirements of the Foreign Investment Promotion Act are guaranteed the right to remit dividends and repatriate capital through a designated foreign exchange bank.

The Foreign Investment Promotion Act guarantees the remittance of royalties, dividends and equity owned by foreign investors, any related proceeds, and any principal and interest paid from long-term loan agreements. Any suspension of foreign exchange transactions due to restrictive measures from critical situations, such as war or domestic economic strife, will not apply to Foreign Direct Investment. Under the Foreign Exchange Transactions Law, confirmation by the head of a foreign exchange bank is required to remit such funds overseas.



Business Forms Available to Foreign Investment

Foreign advancement into Korea for business purposes can largely be divided into 4 types; a foreigner's (corporation) establishment of a local corporation, a foreigner's (corporation) establishment of a private business, or a foreign corporation's establishment of a local branch or a local office.

[Types of Foreign Investment]

	Type	Law	Remarks
1	Local Corporation	Foreign Investment Promotion Act	Recognized as a foreign investment
2	Private Business		
3	Branch	Foreign Exchange Trade Act	Categorized as a domestic branch of the foreign corporation
4	Office		

The Foreign Investment Promotion Act and Korea's domestic commercial law apply to investments that a foreigner (corporation) makes by establishing a "local corporation" in Korea. To benefit from the protections and benefits of the Foreign Investment Promotion Act, the foreigner shall invest a minimum of 50 million Won. The Foreign Investment Promotion Act will also apply to foreign individuals investing 50 million won and more who operate a business as a form of "private business." Such an investment will also be recognized as a foreign investment.

A foreign-invested business that generates profits is categorized as "branch." As it is a foreign corporation, such a branch is not considered FDI. An "office" differs from a branch in that it does not conduct for-profit sales, but instead undertakes a non-sales function such as market research, R&D, etc. And unlike branches, offices do not need to register themselves domestically, but are given a unique business code number at the district tax office which is equivalent to business registration.

Local Corporation Establishment

Types of companies recognized by the commercial law include general partnership company, limited partnership company, incorporated company, and private company. As most companies take the form of “incorporated company,” the focus will be on the procedures to establish incorporated company.

In establishing an incorporated company, there are two ways of incorporation: promotion and subscription. The promotion of a company means that promoters accept all shares issued at the time of company establishment. For a subscription-based incorporation, promoters accept part of the total shares issued at the time of company establishment and collect shareholders for the remaining shares. The registration of incorporated company establishment shall be made within 2 weeks following the completion of the establishment inspection of incorporation by promotion, and 2 weeks following the conclusion of the inaugural meeting of incorporation by subscription.

A pre-registration check shall be done to determine the composition of promoters and whether there are any companies with similar names. An incorporated company needs at least 1 promoter. The promoter shall acquire shares in writing and become a shareholder of the newly created company. Also, in order to conduct business in any area, the company name shall be clearly distinguished from others prior to registration.

Generally, the corporation establishment notification and business registration application are processed simultaneously. Notification and application may be carried out at the relevant district tax office of the company headquarters, or at Invest KOREA. The corporation establishment notification shall be completed within 2 months from the corporation establishment registration, while business registration shall be done within 20 days from the commencement of business operations.

Private Business Registration

When foreign investors are registered as a private business and not as a local corporation, the existing foreign investment procedures are to be followed, which is the case for local corporations as well. However, what differs is that a private business does not require the registration of the establishment of a corporation. A foreign investor (or an agent) shall file foreign investment notification to a foreign exchange bank or Invest KOREA, upon which the Institution shall accept the notification immediately. A letter of attorney containing the signature of the investor shall be brought when an agent files a notification on an investor's behalf (no authentication required).

A foreign investor is not permitted to use domestic funds to remit investment funds. Furthermore, in principle, a third party other than the investor is not allowed to remit the funds. Funds may be remitted by bank wire or carried on one's person through customs. In case of a bank remittance, both the sender and the receiver shall be an investor. For remitted investment funds, the bank shall issue a foreign exchange purchase and deposit certificate, which should be in possession when registering the business and/or the foreign-invested company.

A foreign investor (or an agent) shall register him/herself at the district tax office of the place of business or at Invest KOREA within 20 days from the commencement of business operations. In principle, the business registration shall be done in person, however when applying through an agent, a notarized letter of attorney is required.

Establishment of a Foreign Company's Domestic Branch

Unlike the case that the establishment of a local corporation and private business registration are recognized as a foreign investment under the Foreign Investment Promotion Act (FIPA), the establishment of a domestic branch is not recognized as a foreign investment, and is thus subject to the Foreign Exchange Trade Act. There are 2 types of domestic branches: branch and liaison office. While a branch undertakes sales activities in Korea for profit, a liaison office does not conduct sales activities to create profits, but instead carries out a non-sales function such as business contacts, market research, R&D, etc. Liaison offices may carry out quality management, market surveys, advertisements, and other incidental and supportive roles. However, they are limited in their scope of activities since they are not allowed to sell directly, or hold shares to sell on their headquarters' behalf. In order for a foreign company to establish a domestic branch, notification shall be made to the head of the designated foreign exchange bank.

However, both the branch and the office shall notify to the Ministry of Strategy and Finance for the following cases:

- Financial operations other than bank operations, including fund loans, brokering and arranging overseas finance, credit cards, etc.;
- Operations related to securities and insurances;
- Operations not permitted under the Foreign Investment Promotion Act or other laws;
- Operations that could harm Korea's existing social morals and customs.

According to commercial laws, if a foreign company is looking to operate domestically without being classified as either a branch or an office, then that company has the

responsibility to establish a sales office and register it. According to the foreign exchange management regulations, an office cannot display sales activities, hence it may not be registered as a sales office. Only branches may be registered for sales office establishment. A notification to the head of the designated foreign exchange bank has to be made when a person who has acquired the appropriate establishment permits, etc. according to regulations wishes to close the domestic branch or to close and dispose of assets held domestically by remitting them to the foreign country. In such cases, the amount that may be retrieved is limited to the sum of funds brought for local operations, profit surplus and other surpluses of the local branch (minus any losses).

Directors

The principal controlling body of a company is the Board of Directors, which is appointed by the shareholders. Directors shall be at least three in number: provided, that in case of a company of which the total capital is less than ten hundred million won, the number of the directors may be one or two. The terms of office of directors may not exceed three years.

Directors shall perform their duties faithfully for the good of the company in accordance with the relevant acts, subordinate statutes and the articles of incorporation. Directors shall not divulge the business secret of the company, which has come to his knowledge during his duties, not only while in office but also after the retirement.

Registration requirements and filing procedures for public securities

Any listed company intending to register securities (eg shares or debentures) for public sale may issue a prospectus that complies with the rules contained in the Corporations Law. Companies intending to invite public subscriptions may seek admission to the Korean Stock Exchange(KRX). The listing requirements are contained in the KRX Listing Rules.

The following entities (referred to as disclosing entities) are subject to continuous disclosure and periodic reporting requirements:

- . entities that are listed on a stock market or a securities exchange;
- . borrowing corporations by issuing corporate bonds such as convertible bonds and bond with subscription warrant, etc.

These entities must publicly disclose all information that is considered to have a material effect on the price or value of their securities, in addition to lodging annual, half-year and quarterly financial reports.

Shareholdings by non-residents

Shares in Korean companies do not have to be held by Korean resident shareholders. However, there may be restrictions in specific industries like military defense. The names of non-resident shareholders and the amount of shares they own does not need to be disclosed until ownership doesn't exceed 5%



Accounting

Business Accounting Standards

Since the 1997 foreign exchange crisis, the Financial Supervisory Commission (FSC) of Korea has accepted the recommendations of the IMF and the World Bank to fully revise Korean business accounting standards to fit international standards. This resulted in a shift from the legal provision-like form of the past and a birth of the current business accounting standards that adhere to the global standard. From July 2007, the Korean Accounting Institute (KAI) has been commissioned by the FSC to set, revise and interpret the business accounting standards, and has been enacting and declaring the financial accounting standards or revising existing business accounting standards by designating a serial number in the order of issues. The financial accounting standards apply to the cases of corporations under the law on external audit on corporations, creating financial statements for external users, as well as for audits by external auditors.

Business Accounting Standards and Commercial Law & Tax Law

In Korea, laws that regulate financial reports resulting from management activities include the Commercial Law, Tax Law, Securities Exchange Act, law on external audit on corporations, Certified Accountant Law, business accounting standards, and the accounting auditing standards. In the Commercial Law, financial statements are listed as the balance sheet, income statement, statement of appropriation of retained earnings or deficit reconciliation statement. However, the business accounting standard adds the cash flow chart and annotations to the financial statements. The Tax Law is based on the major premise of the settlement principle of claims and obligations, and fair taxation, and is different from the financial reports under the business accounting standards based on an accrual basis and realization principle. On the other hand, recent trends have shown efforts to legislate towards narrowing the gap between business accounting and tax accounting.

Audit Policies

▶ External Audit Policy

The external audit policy refers to the audit policy of auditing by external accountants with no vested interest in the company being audited. The policy was established to have external auditors conduct audits independently from internal auditors to protect the interested parties such as shareholders, creditors, employees, etc. and promote sound development of companies. According to the law on external audit of corporations, auditors consisting of certified public accountants inspect whether the financial statements created by businesses at closing were done according to the business accounting standards.

Article 2 of the enforcement ordinance of the law on external audit on corporations stipulates the object of external audits as 'corporations with 10 billion KRW or more in total assets at the end of the previous business year.' Therefore, private businesses, or business with less than 10 billion KRW or more in total assets at the end of the previous business year do not need to receive an external audit. However, the Securities Exchange Act stipulates stock-listed corporations and association registered corporations to receive external audits. Hence stock-listed corporations and association registered corporations may be the objects of an external audit even if they are not considered as such according to the law on external audit on corporations.

Introduction of the International Financial Reporting Standards

The Korea Accounting Standards Board (KASB) declared the 'K-IFRS' in December 2007 which refers to the IFRS (International Financial Reporting Standards) having been selected as the Korean business accounting standard GAAP. Accordingly, businesses wishing to apply the IFRS are permitted to do so from 2009. From 2011, it will become compulsory for all listed companies, including those on the KOSDAQ exchange, to apply the IFRS. However, as a way to reduce the burden on non-listed companies, the accounting standards with simple accounting methods have been enacted and applied. And, in shifting key Korean financial statements from the separate financial statement to the consolidated financial statement, business capacities will be taken into consideration to have businesses with 2 trillion won and over in assets create and provide quarterly and semi-annual consolidated financial statements from 2011, while businesses with more than 2 trillion won in assets shall do so from 2013.

[Difference between K-GAAP and IFRS]

Category	Domestic	International
Key Financial Statement	<ul style="list-style-type: none"> ▪ Separate financial statements 	<ul style="list-style-type: none"> ▪ Consolidated financial statements
Consolidated subsidiary range Assets/Debts assessment method	<ul style="list-style-type: none"> ▪ Consolidation range set by the Law on External Audit of Corporations (30% and over major shareholders, over 50% equity ratio) ▪ Apply historical cost principle 	<ul style="list-style-type: none"> ▪ Use de facto control as a basis (over 50% equity ratio) ▪ Evaluate fair value (market value)
Assets/Debts assessment method for investment properties, contingent liabilities, financial debts, tangible assets, etc.	<ul style="list-style-type: none"> ▪ Evaluate acquisition costs for items for which objective assessment is difficult 	<ul style="list-style-type: none"> ▪ Evaluate fair value in principle
Provision for bad debts	<ul style="list-style-type: none"> ▪ Reflect losses expected 	<ul style="list-style-type: none"> ▪ Reflect losses that actually occurred
Goodwill	<ul style="list-style-type: none"> ▪ Depreciate 	<ul style="list-style-type: none"> ▪ No depreciation (reduction)
Negative goodwill	<ul style="list-style-type: none"> ▪ Transfer profits for a certain period of time 	<ul style="list-style-type: none"> ▪ Recognize profits immediately



Taxation

Introduction

Korean taxes are composed of national and local taxes. For tax purposes, an individual is defined as either a resident or non-resident of Korea depending on his / her residence or domicile in Korea. A resident is liable for income taxes on the income from sources both within and outside Korea. A non-resident is liable for income taxes on the income derived from sources within Korea.

Under the income tax law as it applies to individuals, income derived by both residents and non-residents is subject to composite income, capital gains, retirement income and timber income taxation. Composite income taxation includes real estate rental income, business income, dividend income, interest income, employment income, pension and annuity income, temporary property income, and other income. This income is aggregated and taxed progressively. Currently, interest and dividends are subject to withholding tax. Non-residents are taxed on income earned within Korea in a similar way.

A company established in Korea under Korean law is regarded as a domestic company and liable for tax on the worldwide income whereas a foreign company is only liable for tax on its Korean-source income. A foreign company without a permanent establishment (PE) in Korea is subject to withholding tax as payments are made to it.

Fiscal Year

Taxable income is ordinarily determined by reference to the year ending 31 December, which is the standard Korean financial year. However, with the consent of the Commissioner of Taxation, taxpayers may choose a substituted accounting period for the purpose of determining taxable income. This generally applies to local branches and subsidiaries of foreign companies that adopt a different balance date.

Lodgement of returns

Taxpayers are required to lodge returns annually.

National Taxes

► Corporate Tax

There are three types of taxable income falling under corporation tax—annual income (1 fiscal year), liquidation income, and capital gains from the transfer of land, etc. Annual income refers to the remaining balance following the deduction of exclusions for each fiscal year. Liquidation income refers to the residual property value of a dissolved (merged or divided) corporation exceeding the total equity capital. Capital gains from the transfer of land, etc. refers to additional tax on transfer gains from the transfer of real estate, particular houses, or land for non-business purposes in areas in which land value has increased drastically. In this case, a tax is levied to suppress speculation, and is thus added on to the transfer gains. Therefore, corporate tax on the income of each fiscal year, and the corporate tax on capital gains from the transfer of land, etc. overlap to form double taxation.

[Taxable Income]

The calculation of taxable income for a corporation is similar to the calculation of income before corporate income taxes as shown on the financial statements. The accrual basis of accounting is used in both cases. However, certain adjustments to book income will be required to derive taxable income. Taxable income is defined as assessable income less allowable deductions. Assessable income is simply gross income adjusted to include receipts deemed to be income by the Corporate Income Tax Law and to remove tax-exempt income items. Allowable deductions include most expenses recognized for financial accounting purposes.

<Corporate Tax Rate>

Tax Base	Tax Rate
KRW 200 million or less	11% of tax base
More than KRW 200 million	KRW 22 million+22% of the amount in excess of KRW 200 million

[Dividends]

- Ninety percent of the dividend income institutional investors receive from listed

corporations defined under the Securities and Exchange Act (i.e. Korea Stock Exchange-listed corporations or KOSDAQ-registered corporations), is not included in the taxable income.

- If a “financial holding company” as defined under the Financial Holding Company Law, or other “holding companies” declared to the Korean Fair Trade Commission whose shareholding in their subsidiaries equals 50 percent or more of the subsidiaries' total assets (30 percent or more in the case of listed companies, 20 percent or more in the case of venture companies), receives dividends from its subsidiary, a certain percentage of the dividend will be deducted from the holding company's taxable income. These deductions are said to be dividends received deductions (DRD).

- Deduction limit is as follows:

Classification	Ownership ratio	DRD (%)
Dividend from unlisted companies	Over 80 percent	90
	80 percent or less	60
Dividend from listed companies	Over 40 percent	90
	40 percent or less	60

The deduction amount will be reduced in proportion to the amount of borrowings of the holding company used for investment in the subsidiary or the amount of its subsidiary's investment in other companies.

- If “securities investment companies” as defined under the Securities Investment Company Law, “asset liquidation companies” as per the Asset Liquidation Control Law, “corporate restructuring investment companies” as per the Corporate Restructuring Investment Company Law, and “real estate investment companies” for corporate restructuring purposes as per the Real Estate Investment Company Law, distribute dividends equivalent to 90 percent or more of their profits as defined under Article 86-2-1 of the Presidential Decree, such dividends are deductible from taxable income.
- Corporate entities other than those mentioned above are also entitled to similar benefits in proportion to their shareholding in their subsidiaries. Where the subsidiary is wholly owned, 100 percent of the income received from the subsidiary is not included in taxable income. Where the shareholding in the subsidiary exceeds 50 percent (30 percent in the case of listed companies), 50 percent of the dividend received is not included in the taxable income. Where the shareholding is 50 percent or less (30 percent in the case of listed companies), 30 percent of the dividend received is not included in the taxable income.

[Exempt Income]

Income derived from property held in trust for the benefit of the public is not subject to corporate income tax without the submission of an application for an exemption. Expenses incurred in deriving this income will not be deductible.

[Interest deductions]

Interest paid on loans and other debts is deductible to the extent it relates to borrowings made for income producing purposes. Thin capitalisation rules apply to reduce the deduction available where the taxpayer is a foreign entity operating in Korea, a foreign controlled Korean entity or an Korean resident with foreign business investments. In each of these cases, the tax deduction for interest may be reduced if the taxpayer's debt exceeds the levels permitted under the thin capitalisation provisions.

[Losses]

Tax losses can be carried forward for a maximum of five years. Only tax losses of small and medium-sized companies can be carried back for a year and the company can claim a refund of tax paid in the previous year.

[Grouping / Consolidation]

Consolidated group may calculate taxable income as if the consolidated group is one entity. (applicable from the fiscal year starting on or after Jan. 1, 2010).

[Tax Return and Payment]

Annual corporate income tax returns must be filed and corporate income tax payments must be made within three months from the end of fiscal year. If the amount of corporate income tax payable is over KRW10 million, part of the amount of tax payable must be paid in installments within one month (2 months in case of small and medium-sized corporation) from the due date of payment.

[\[Interim Corporate Income Tax Return\]](#)

A corporation subject to corporate income tax during the preceding financial year or a corporation whose current financial year exceeds six months is required to file an interim corporate income tax return for the six-month period and remit the appropriate tax payment by the end of the second month immediately following the end of the interim period (i.e. six fiscal months). The interim corporate income tax paid will be credited against the annual corporate income tax payable.

[\[Interaction with International Tax Regime\]](#)

The International Tax Coordination Law prioritises the Korean Double Tax Agreements (DTAs) over the domestic tax law. The Korean tax authority may exchange tax information with its concerned contracting states (those countries who have concluded DTAs with Korea), subject to the provisions and limitation of the DTAs.

As of December 2008, Korea has entered into bilateral DTAs with 70 countries. Whilst the primary objective of the DTAs is the avoidance of international double taxation, these DTAs serve to promote the introduction of advanced technology and capital from abroad, as well as encourage business expansion of domestic companies in foreign countries.

These DTAs are intended to reduce or eliminate double taxation, deal with administrative matters, and promote closer economic cooperation. The DTAs apply to individuals and corporations alike, but the impact on corporate income tax is more complex. Generally, the DTAs provide rules for determining the income that each country has the right to tax. This allocation of income will depend on factors such as the residency of the earner and the source of the income. Most DTAs provide for foreign tax credits, which help to reduce the tax liability in cases where both countries have the right to tax the same income items. Each DTA generally delineates the circumstances where income arises in the other country. Finally, most DTAs reduce the withholding taxes on payments of dividends, interest and royalties flowing between Korea and the treaty partner.

[Branch Tax]

If the treaty between Korea and the foreign country allows the imposition of a branch profits tax, the tax is imposed on the “adjusted taxable income” of the Korean branch of the foreign corporation. 25 percent (or at a reduced rate as provided in the treaty) of the adjusted taxable income of a foreign corporation is levied as a branch profits tax in addition to corporate income tax. The adjusted taxable income is calculated by deducting regular corporate income tax and the resident tax from the taxable income. In addition, where the net assets at the end of the taxable year exceed the net assets at the beginning of the taxable year, the excess amount is allowed as a deduction in computing taxable income.

▶ Personal Income Tax

Personal Income Tax is imposed on the global income and scheduler income of an individual. Global income refers to interest, dividends, real estate rental income, business income, wages and salaries, temporary property income, pension income, and other income, and scheduler income denotes retirement income, capital gains, and timber income. Resident individuals are taxed on their worldwide income. Nonresident individuals are taxed only on Korean-source income. A non-resident is liable for tax only on the income derived from Korea and there are two methods of taxation: composite income taxation and withholding taxation. The composite income taxation is applied to non-resident taxpayers with their business places in Korea or income incurred from real estate located in Korea (excluding capital gains from the transfer of land or buildings). For those non-residents with no business places in Korea or income incurred from real estate located in Korea, withholding taxation is applied.

<Taxable Income>

Tax payers	Taxable Income	Tax Payment
Resident taxpayer	Income generated from domestic and foreign sources	Report and payment of final return of the global income tax by May 31 st of the following year
Non-Resident taxpayer	Income from domestic source	Either same as resident or withholding taxation

The Income tax rate applies four-phase progressive tax rate.

<Income Tax Rate>

Tax Base	Tax Rate
-KRW 12 million or less	-8% of the tax base
-More than KRW 12 million	-KRW 960,000 + 17% of the amount exceeding KRW 12 million
-More than KRW 46 million	-KRW 6.74 million + 26% of the amount exceeding KRW 46 million
-More than KRW 88million	-KRW 1.766 million + 35% of the amount exceeding KRW 88 million

▶ Capital Gains Tax

The capital gains tax applies to the income accruing from the transfer of certain assets by an individual in a given year. 'Transfer' under tax law refers to the de facto transfer for the value of assets arising from sale, exchange, capital contribution in kind to a corporation, etc. whether or not such transfer or assets are registered. A corporation is not subject to capital gains tax, and is instead taxed on income generated from this transfer in a form of corporate tax.

[Real Property and Property of its kind]

If lands, real estates or other properties are transferred, the capital gains tax shall be prorated according to the period of possession. For example, 50 percent for less than one year, 40 percent for one year to less than two years, and 9 percent to 36 percent for more than 2 years. In case the property is transferred before owner's registration, the tax rate will be 70 percent. For specific share transfers, the holdings of a corporation that possesses excessive real property, such the rights to use specific facilities (golf club membership, etc.), and business rights, a tax rate of 9 percent to 36 percent shall be applied regardless of the period of possession.

<Tax rate of specific occasions>

Specific Shares	<ul style="list-style-type: none"> -Value of real property is more than 50% of a corporation's total asset value -Majority shareholder owns 50% or more of the total interest -The stock transfer ratio is more than 50%
The equity securities of a corporation that possesses real property excessively	<ul style="list-style-type: none"> -The value of real property accounts for more than 80% of the total asset value -The shares of a corporation that built or acquired and is operating or renting one or more of the following: golf

courses, ski resorts, condominiums and specialized resort facilities.

[Equity Securities]

In case of the unlisted shares, if a major stockholder of a large corporation transfers them after retaining less than a year, a tax rate of 30 percent shall be applied. If such stocks are retained for more than a year, a tax rate of 20 percent is applied. Minority stockholders of large corporations transferring unlisted stocks, shall be liable to a 20 percent rate, regardless of the period retained. If a small and medium corporation transfers its unlisted stocks, they will be liable to 10 percent tax, regardless of its period retained. Listed stockholders, in principle, are normally not subject to tax. If, however, a majority shareholder transfers them after holding on to them for less than a year, he or she will be liable to a 30 percent rate of tax. If he or she retains the stocks for more than a year, the tax will be 20 percent.

► **Value Added Tax**

Value Added Tax (VAT) is a tax levied on added value in each step of production and distribution. In principle, VAT is a general consumption tax levied on the consumption of all goods and services, and at the same time, a form of indirect tax for which the transfer of tax burden can be anticipated. VAT takes the form as a multi-level taxation method by taxing added value created in each step of the transaction.

Goods and services for basic life necessities, education, and medical services are subject to exemption.

Taxation and Tax Rates	Tax Refund System	Proxy Payment System
-Value-added tax will be collected where a trader supplies goods or services. The rate of value-added tax is 10%, and the trader shall be provided a tax invoice. The amount payable is [output tax-input tax to be deducted]	-Goods for export; services rendered outside Korea; and other goods or services supplied for foreign exchanges earnings are zero-rated and the related input taxes incurred are refundable.	A non-resident without a domestic establishment and a recipient of a service from a foreign corporation should pay VAT on the payment for the taxable services.

► Composite Real Estate Tax

With the government's revised plan of the real estate possession tax (2003) by the government, the Composite Real Estate Act was prepared, and as a part of the activities, the concept of composite real estate tax was introduced. Put into effect in 2005, the policy aims to reinforce taxation on excessive real estate owners, suppress real estate speculation, reorganize irrational aspects of the local tax system.

In regard to property tax, the relevant local government in reference to the address of a land/ building owners shall levy taxes on the land and buildings in their district. Taxation is done after adding together the total number of properties owned by an individual household. However, composite real tax can change every year according to changes in real estate policy. Therefore, it is advised that the Composite Real Estate Act be referred to, and the accurate standards of assessment and tax rate checked.

Local Taxes

Local taxes consist of provincial, city and county taxes. Provincial taxes include acquisition tax, registration tax, race tax, horse race tax, license tax, community facility tax and local education tax. City or county taxes include inhabitant tax, property tax, mileage tax, automobile tax, agricultural income tax, butchery tax, urban planning tax, and business place tax. At the same time, local education tax is added to taxes such as registration tax and property tax.

► Acquisition Tax

Persons acquiring the following are liable to being taxed within 30 days of acquisition:

- * Real estate (land, buildings),
- * Motor vehicles, heavy equipment (heavy equipment for construction according to the Construction Machinery Management Act),
- * * Golf club, condominium, and health club memberships, etc.

Generally, the tax base is two percent of the acquisition price. However, a high tax is levied for the acquisition of luxury properties, etc.

▶ Registration Tax

Registration tax refers to tax levied on items related to the acquisition, transfer, change or cancellation of property rights and other rights are officially registered or recorded. The standards of registration tax assessment are the price, credit amount, or investment amount at the time of registering/recording the rights, etc.

▶ Property Tax

Property tax is a city, county, or ward tax levied on the owners of land, buildings, boats, and/or airplanes for private use. The object for taxation for land is divided into the aggregate summing up of taxation objects, special summing up taxation objects, and separate taxation objects.

- Aggregate summing up taxation objects: Land other than objects of special summing up taxation objects, and separate taxation objects
- Special summing up taxation objects: Land attached to buildings that have been calculated by using a certain ratio of ownership by the taxpayer on the basic date for taxation, and land with cause to be objects of special summing up taxation
- Separate taxation objects: Farms, fields, fruit orchards, ranch lands, forest lands, private golf courses and other legally appointed lands

The standard of assessment of property tax is the statutory standard price of fair market value.

▶ Resident Tax

Residential tax is largely divided into per capita rate and per income rate. Per capita rate levies an equal amount of tax on individuals, offices, and corporations with business locations located within city limits. Per income rate levies tax by utilizing income tax, corporation tax, and agricultural income tax as the standard of assessment. The object of residents' tax and the tax amount is as follows. The city mayor or county magistrate may increase or decrease the tax rate via regulation by up to 50% of the standard tax rate.

► **Business Place Tax**

The business place tax is levied on those with places of business in cities or counties to supply costs required for environmental improvement and maintenance. Business place tax is divided between the per property rate and the per employee rate, and is exempted for business places smaller than 330km², and with less than 50 employees. When the Business place taxpayer has not paid the declared amount by the due date for payment, or has paid insufficiently, 20% of the unpaid tax, or insufficient tax shall be added on to be collected.

Customs Duties

▶ Tariff Assessment

All goods being imported from foreign countries cannot be brought into Korea unless their customs duties are prepaid. Customs duties are calculated by multiplying tax base of the tariff tax base by the tariff rate. The tariff tax base is either the value of the imported goods or the quantity. The tariff rate is provided on the tariff rate table by group of items. As the tax rate applies to each HS Number corresponding to an item or a group of items, the tariff is affected by the decision on which value should be regarded as the taxable value or how the taxable value is decided. If the value is the tax base of the tariff, it is an “ad valorem duty” and if the quantity is tax based, it is called a “specific commercial duty.” The value, which is the tax base of the ad valorem duty, is called the “taxable value.” Korean customs valuations on taxable values reflect the relevant provisions of the WTO Valuation Agreement and have the same principals of the international tariff valuation.

▶ Cases not recognized as sales

- Goods imported free of charge
- Goods imported for consignment sale where sale prices are determined by auctions etc.
- Goods imported to be sold in the local market under the exporter’s responsibility
- Goods imported by legally dependent entities such as branch offices etc.
- Goods imported under a lease agreement
- Imported goods for gratuitous lease
- Goods imported to be disposed within Korea at the consignor’s expense (such as industrial waste etc.)
- Imported goods with restriction for their use and dealings

Other Taxes

▶ Inheritance and Gift Taxes

Individuals and non-profit companies that acquire property through inheritance or bequest are liable for Inheritance Tax. A gift tax is payable by resident beneficiaries

and nonresident beneficiaries who receive property located in Korea. Both taxes are imposed at varying rates based on the tax value of the property.

▶ **Education Tax**

Education tax is a tax levied upon the income of persons engaged in the banking and insurance businesses and various taxes such as surtax.

▶ **Stamp Tax**

The stamp tax is levied on a person who prepares a document certifying establishment, transfer, or change of rights to property.

▶ **Securities Transaction Tax**

The Securities Transaction Tax (STT) is levied when the securities are transferred. The basic tax rate of STT is 0.5 percent and elasticity tax rates of STT are 0.15 percent to 0.3 percent. In case of listed stocks, the taxpayers are securities settlement corporations and securities companies. In case of unlisted stocks, the taxpayer is the transferor. However, in the case that a non-resident foreign corporation, whose business place is not within the country transfers securities, the purchaser of the securities must withhold taxes from the purchase price on a securities transaction certificate, and the location of the main office of the corporation that issued the securities becomes location responsible for tax payment.

▶ **Repatriation of Profits and Transfer Pricing**

In addition to paying interest and dividends, the payment of management fees, service fees and royalties are methods of repatriating profits to the non-resident associates, controllers and owners of Australian entities. In these circumstances, the payments made by the Australian resident to the non-resident associate must reflect the market value of the goods and/or services to the Korean company, that is, all payments must be calculated with reference to arm's length market rates.

Where the Korean Tax Office takes the view that the Korean company has paid an

excessive amount for the goods and/or services, the Korean Tax Office can disallow the deduction claimed by the Korean company, and substitute an alternative price.

Other transactions between Korean taxable entities (or branches), and their related foreign entities or head offices are also subject to the transfer pricing rules.

Where an Korean branch of a foreign company remits profits to its parent by way of management fees or service fees, the profits are subject to 5-15% of branch profits tax depending on foreign countries.



Grants and Incentives

General Instruction

Tax incentives are provided under the special tax treatment control law (STTCL). There are a number of tax incentives in Korea related to a small and medium enterprise's business performance, international capital movement, investment promotion, business restructuring, public business promotion and foreigners' investment etc.

Tax Support

> Tax Support for Foreign-Invested Companies

According to the Tax Exemptions and Exceptions Act, corporate and income tax on business income, dividends income, technology introduction considerations, earned income, etc. have been reduced. Acquisition tax, registration tax, and property tax have been reduced for properties that have been acquired or held.

▶ Corporate Tax Reduction

Reduction in corporate tax for foreign-invested companies applies to income from businesses qualifying for reductions under the Tax Exemptions and Exceptions Act. However, in the case that a Korean citizen (corporation) directly or indirectly holds 10% or more of the voting shares of a foreign corporation or foreign business that has invested in a business subject to tax reduction, the portion of the investment proportionate to the ratio of the said held shares will not be subject to tax reduction.

That is to say, the tax reduction shall not apply to domestic round trips of domestic companies that have advanced overseas. The initial day of reckoning tax reductions is, whichever is sooner between, the tax year in which the first income is created, or the tax year in which the 5th year anniversary of the date of business commencement falls.

In capital increases, the date marking the registration of capital increase shall be considered the date of commencing business in applying this regulation. For foreign acquisition of shares through capitalization of reserves, revaluation reserve, etc. the period and rate of reduction shall be determined by cases of reductions for shares, etc. that are the basis of such occurrence. If an application for tax reduction is made after increasing the capital less than 5 years after the decrease in paid-in capital, the

reduction shall be determined only for the foreign investment ratio of the portion that is purely increased from before the capital decrease. However, in the case that a purely domestic company receives an investment from a foreigner through a capital increase and becomes a foreign-invested company shall be considered as a new foreign investment, and not as a case of capital increase as described above

► **Local Tax (acquisition/registration/property tax) Reduction**

Property acquired or held by a foreign-invested company to do business subject to reduction shall receive either a 100% or 50% reduction in acquisition, registration, and property taxes, or the items will be deducted from the standard of assessment. The amount of foreign investment ratio (for tax amount subject to reduction) multiplied by the calculated tax amount shall be deducted 100% from acquisition, registration, and property taxes for 3-5 years following the commencement of business, and 50% for 2 years afterwards on properties that have been acquired following the commencement of business operations. However, acquisition, registration, and property taxes that have been already paid on properties that have been acquired following the commencement of business operations, but prior to becoming the subject of tax reduction, may not be refunded. However, acquisition, registration, and property taxes on properties that have been acquired prior to the starting date of business shall be subject to 100% reduction on the tax reduction amount for properties that have been acquired following the date of the tax reduction decision. Property tax shall be subject to 100% reduction of the tax reduction amount for 3-5 years following the acquisition of the property, and 50% of the tax reduction amount for the next 2 years. According to the regulations, the local tax reduction period may be extended up to 15 years, or the reduction or deduction rate could be increased.

► **Exemption of Customs Tariffs, etc.**

According to the Tax Exemptions and Exceptions Act, customs tariffs, etc. shall be exempted for the following capital goods used directly in businesses subject to reduction in corporate tax or income tax, and are imported through foreign investment notification on acquisition of newly issued shares, etc.

- Capital goods imported as external or internal payment vehicles invested by foreign investors to foreign-invested companies
- Capital goods imported as investment objects by foreign investors

▶ Tax Support for Dividends

Dividends received by foreign investors from foreign-invested corporations operating tax reduction businesses are subject to tax reductions in the same rate as the portion of the amount of income of the tax reduction business, based on the dividend income during the reduction period.

Cash Grant

For foreign investments that meet certain requirements, the government and the local government shall provide cash grant for funds required to build new factories. In doing so, various aspects shall be considered regarding the foreign investment, such as whether or not they come with high technologies, effects of investment's technology transfer, the number of jobs created, redundancy with internal investments, adequacy of location, etc.

> Eligibility and Usage of Cash Grant

▶ Eligibility

To become eligible for cash grant, the foreign investment ratio shall be over 30% and meet the following requirements:

- 10 million USD and over of foreign investment in industry support services, businesses with high technologies, or parts, material manufacturing Greenfield investment (newly built/expanded factory facilities);
- Newly built/expanded R&D facilities in fields related to industry support services or hi-tech businesses, or research facilities of non-profit corporations invested by foreigners (10 or more full-time hired research personnel);
- For cases when the investment amount, etc. do not meet the requirements, but has a profound impact on the domestic economy, the Foreign Investment Committee shall deliberate on the matter and determine whether the case is eligible for cash grant;
- Establishing regional headquarters of multi-national companies (multi-national companies with business presence in 3 or more countries, and controlling regions of 2 or more countries);

- Contributing to regional economic development as a regional strategic industry
- Providing items or services not produced domestically, or which can improve domestic industry's competitiveness through introduction of advanced technologies.

▶ Grant Rate

Through negotiations, the cash grant ratio shall be determined at 5% and higher of the FDI, with the upper limit determined by a closed formula. As for an R&D center, FDI and R&D funds from overseas that are used for stipulated purposes shall be included in the funds to be calculated (except for funds raised domestically).

▶ Legal Usage

Foreign-invested companies may use cash grant only for the following purposes:

- Funds to support employment and training;
- Land purchase lease;
- Construction costs;
- Foundation facilities installation cost;
- Capital goods/research equipment purchasing costs;
-

In such cases, the purchasing amount of leased land for foreign-invested companies shall be included in the cash grant limit. However, receiving cash grant shall nullify the eligibility to be provided with leased land, or support for difference in sales price through the existing location support policy (within 50% of foreign invested amount)

> Cash Grant Post-Management

▶ Applicants' Obligations

The applicant shall, directly or indirectly, manage foreign-invested companies and faithfully carry out the obligations of the cash grant contract, as well as the investment expenditure plan. The applicant shall enter into insurances, or take other similar measures to make it possible to recover and replace, to a satisfactory level, all assets (including those under construction) such as building, facilities & equipment, etc. Contracts for acquiring assets that receive cash grants shall be concluded in a way that utilizes the cash grant fund in the most efficient way through public tenders, official

appraisals, request for 2 or more estimate, etc. Prior written consent of the Ministry of Knowledge Economy shall be secured to use the cash supported assets for purposes other than the stated business, or to transfer, exchange, loan, or provide as collateral. Also, the cash grant shall not be dealt out as dividends or royalties. The concerned foreign-invested companies may not give security for any liabilities than for business purposes.

During the contract period, the applicant shall provide enough information to check on the performance of the contract and submit every year to the Ministry of Knowledge Economy a statement of accounts audited externally.



Intellectual Property Rights

Intellectual Property Rights Policy

Since concluding the 'Trade-Related Intellectual Property Rights' (TRIPs) in the Uruguay Round of the WTO negotiations, Korea has made continuous efforts to strengthen protection of IPR by revising all related domestic laws, enacting the Intellectual Property Rights Act, and establishing the long-term government-led realization of "IPR Powerhouse Korea." Also, Korea is making strides to expand and fortifying international cooperation for IPR protection by strengthening multilateral/ bilateral cooperation, as well as cooperation between Korea, China and Japan.

IPR can be defined as rights endowed by law on creations of human intellect that are worthy of legal protection. As is the case with ownership, which one can exercise property rights to use it directly or lend it to someone else and receive considerations from it, IPR receives certain protection set by the law to establish or transfer the rights to exercise that can be used directly, or lent to another party for use. IPR is largely divided into industrial property rights, copyrights, and new intellectual property rights.

Here, we focus on explaining the application and registration procedures of patents, utility models, trademarks, designs, and copyrights, that are industrial rights.

Intellectual Property Rights

► Patents

Patent rights go through a variety of examination procedures to be registered. The first step is to submit an application for patents under the Patent Law set by the commissioner of the Korea Intellectual Property Office (KIPO). The commissioner of KIPO must publicize the application in an official patent report 18 months following the patent application date, or prior to that when requested by the applicant. When the application is publicized, the applicant may exercise the rights valid for patents such as warnings to third parties, claims for compensation, etc. However, the rights to claim compensation may only be exercised after the patent is registered, and shall be claimed within 3 years of the registration. The applicant shall request examination within 5 years of submitting the application. If not, the application shall be considered void.

▶ Utility Model Rights

Utility model rights apply only to those whose patent application was filed prior to September 30, 2006. Applications placed after October 1, 2006 shall apply equally as patents. After the KIPO commissioner completes the examination of methods and basic requirements, the registration creation is carried out and the registration notification is made on a utility model official report. The commissioner then provides the applied documents and their annexed articles for public viewing for 3 months following the registration notification.

Legal protection is provided to utility models for 10 years after the registration creation. And with the pre-registration non-examination policy, the registration certificate can be attained through the method and basic requirement examinations 3-6 months after the application is filed.

▶ Trademarks

Trademarks are largely divided into trademarks, service marks, collective marks, business emblems, and are protected by the Trademarks Law. In order to be protected by the Trademarks Law in Korea, the trademark has to be registered at KIPO. The Trademarks Law prevents registration of trademarks identical, or similar to unregistered prominent trademarks. However, Trademarks Law protection does not extend to others using identical or similar trademarks, as such protection may only be provided by the Unfair Competition Prevention Act.

The trademark is valid for 10 years from the registration creation date of the trademark. The validity can be extended by 10 years through validity renewal registration application, etc. and is practically semi-permanent.

▶ Design

Designs are easy to copy, subject to trends, and thus, are subject to particular policies that differ from other industrial property rights laws. For example, the 'non-examination registration policy (when stipulated as articles under the Design Law) applies to items that are easy to copy and are very trendy, while the 'similar design policy' can register a modified version of a basic design as a similar design. The 'one-set item design policy' makes it possible to register a single design for multiple items combined as a single set, while the 'secret design policy' allows the design to be kept secret and not publicized

for 3 years after the creation of registration for design rights have been carried out, upon request from the applier. Design rights registered are protected for 15 years from the creation of the registration.

► Intellectual Property Rights

Originally, the copyright belongs to the creator upon creation. However, such creations are subjective and are difficult to understand from outside. Hence, through the copyright registration procedure of the Copyright Deliberation and Mediation Committee, various legal forces can be gained. Registering copyrights refers to the registration of certain items related to copyright materials such as the name of the author, etc. and making it public to enable the general public to view the details. At the same time, legal forces, such as presumptive and opposing powers, are endowed to certain registered items. The registration is initiated through the application of the applicant, or the commissioning of a related institution. The order of the matters is receipt, examination, approval, registration, issuance of registration certificate, and issuance of registration official report. The Copyright Deliberation and Mediation Committee is an institution established under the Copyright Law which oversees the registration of copyrights, and is in charge of providing copyright-related materials and mediating copyright-related disputes.



Visa and Sojourn Procedures

Employment for Foreigners in Korea

The scope of activities and employment opportunities for foreigners is relatively limited. Therefore, foreigners are limited to the scope of activities and period of stay as stated in their visa. When looking for employment opportunities in Korea, foreigners must obtain the proper visa status and are limited to working at the workplace specified in their visa application. When looking to change a place of employment, foreigners have to notify the Seoul Immigration Office and obtain permission to do so in advance.

Korean Labor Law

Korean Labor law issues are often the ones which any foreign investor conducting business in Korean market has most difficulty in understanding. We set forth below certain basic concepts of Korean labor law requirements.

The basic law in Korea regulating labor standards is the Labor Standards Act (LSA), which is applicable to an employer with at least 5 employees. LSA was substantially amended September of 2003 to be more in line with international standards, and the key changes resulting from the amendment include the reduction of work hours per week from 44 hours to 40 hours and abolishment of monthly-leave system, among other things.

Visa

In principle, a foreign national may enter the country after receiving a visa in advance from an overseas Korean embassy. A visa is a proof in recognition of permission to enter the country.

There are the following 3 ways for foreign nationals to enter the country:

- Entering without a visa and being granted a visa and period of stay through airport entry formalities;
- Entering the country after having a visa issued by an overseas Korean embassy or legation;
- If for some reason an overseas embassy or legation does not have the right to

issue a visa, a visa issue confirmation certificate (or confirmation number) must be obtained in advance from the immigration office nearest the Korean inviter's address and forwarded to the foreign national who may present it to the relevant officials at an overseas Korean embassy or legation in order to receive a visa to enter the country.

All foreign nationals entering the country shall have a visa as dictated by Presidential Decree (Immigration Management Act, Article 10). Korean visas are categorized into 36 categories according to the scope of activities. Foreign investors and essential specialists are eligible to receive a D-8 visa which designates the holder as a foreign investor.

One's sojourn in Korea is categorized into short-term (up to 89 days) and long-term (90 days or longer). Application for a change in one's visa status to a long-term stay is granted selectively, depending on the applicant's status of sojourn. The issuance of short-term visas is swiftly issued by overseas Korean embassies by the commissioned authority of the consul. However, long-term visas which are not commissioned must be issued by an overseas Korean embassy or legation with the approval of the Ministry of Justice, and hence may take longer to process.

Procedures for Investors' Sojourn in Korea

▶ Permission of Change in Visa Status

For applicants who are eligible for a D-8 visa (those who have established a foreign-invested company) to enter the country on a short-term visa or without a visa, his/her family members, and/or domestic helpers may apply for a change in visa status. Applications for permission to change one's visa status may be processed at the local immigration office or at Invest KOREA within the permitted period of sojourn, and a change permit to a D-8 visa will be granted.

However, permission to change visa status shall not be granted to the following:

Chinese nationals who enter Korea as a member of a tour group on a short-term (C-3) visa, individuals who have entered the country purely for tourism reasons, those with visas for study (D-2), industrial training (D-3), training employment (E-8), non-expertise employment (E-9), other (G-1), and tourism employment (H-1) visas.

▶ Alien Registration

Applicants who enter the country on a long-term visa (not less than 91 days) shall apply for an alien registration card at the local immigration office within 90 days of entering the country. Applicants who have obtained permission for a change in the status of sojourn to D-8, F-3 and F-1 after entering Korea on a short-term visa shall immediately apply for registration at the local immigration office.

Upon leaving Korea permanently, foreign nationals shall return his/her alien registration card to an immigration officer handling exit procedures at the port or airport of departure.

▶ Extension of Sojourn

Business investment visa holders who wish to extend their sojourn shall apply for an extension of sojourn at the local immigration office before the expiration of the granted sojourn. Generally, the applications are made 2 months prior to expiration, or earlier when unavoidable reasons are stated, such as overseas trips, etc.

According to the size of the invested company, investment amount, operating performance, etc. a maximum of 5 years may be granted when extending the period of stay. When wishing to continue to conduct business activities or dispatch operations, a foreign investor may extend the period of stay for an unlimited number of times only if he or she has not committed any illegal activities.

▶ Re-entry Permit

Business investment visa holders who wish to exit the country temporarily during their domestic sojourn and then re-enter the country during the same period of sojourn shall apply for a single or multiple re-entry permit at the local immigration office or at Invest KOREA. The re-entry permit application may also be made at a port/airport immigration office when exiting the country.

The re-entry permit may be granted within the time limit of passport validity, visa validity, re-entry permit validity (1 year for single-entry, 2 years for multiple-entry, 1 year for China). However, investors whose investments total larger than US\$500,000 in addition to executives of foreign-invested companies may receive re-entry permits good for up to 3 years.

► Notification on Change to Place of Stay

When holders of business investment visas change their place of stay, they must notify the change of address within 14 days of moving in to the local immigration office or to the city/county/district office where the new place of stay is located.

Those failing to notify a change in the place of stay within 14 days of changing the place of stay are subject to a fine under Article 36 of the Immigration Act.

► Notification on Change in Alien Registration

Business investment visa holders shall notify a change in the following to the local immigration office within 14 days:

- Name, gender, date of birth, or nationality
- Passport number, date of issue and expiration date
- Company name (in the case of a business investment)

Those failing to notify one of the above changes are subject to a fine under Article 36 of the Immigration Act.

► Activities other than Status of Sojourn

When a business investment visa holder wishes to be active in activities that qualify for other than status of sojourn while being active in status of sojourn activities, the person shall apply at the local immigration office prior to conducting the activities in order to be granted permission.

► Change and Addition of Work Place

Holders of business investment visas wishing to change or add a work place within the scope of their status of sojourn shall apply to the local immigration office prior to changing or adding a work place to receive permission. However, this is limited only to holders of business investment visas changing or adding a work place that is within the same group of subsidiaries.

Foreign Investor Preferential Treatment Policy

► Granting of Permanent Residence (F-5 visa)

Permanent residence visas are granted to foreign investors, executives of multinational

companies in Korea, etc. whose efforts have contributed to improving foreign investment and strengthening national competitiveness by way of attracting multinational companies to Korea, etc.

Barring those subject to forcible deportation, permanent residences visa is granted to those who qualify for one of the following:

- A foreign investor with investments of over US\$2 million which hires 5 or more Korean nationals;
- A foreign investor with investments of at least US\$500,000, staying 3 or more years in Korea with an investment visa, who hires 3 or more Korean nationals;
- A foreign investor with investments of at least US\$300,000, staying 5 years and longer in Korea with an investment visa, who hires 3 or more Korean nationals, and who has fulfilled certain additional requirements including passing level 3 on the KICE-administered Korean proficiency exam, or having a certain level of income for the last 3 years.

Benefits for holders of permanent residency:

- Exemption from the obligation to apply for extension of the period of sojourn as long as he/she maintains F-5 status
- Unrestricted business activities
- Exemption from the obligation to apply for a re-entry permit for overseas travel (when he/she enters within one year)
- Loose application of regulations concerning forced exit

▶ [Permission to Hire Foreign Domestic Helpers](#)

In order to improve the convenience of sojourn in Korea for large-scale investors, the hiring of foreign domestic helpers is permitted. One of the following requirements shall be met to hire a foreign domestic helper:

- A foreign investor who has invested not less than US\$500,000
- Executives dispatched to foreign-invested corporations whose investment is not less than US\$500,000

One (1) domestic helper per foreign investor is permitted. Even if the domestic helper enters the country with a general short-term (C-8) visa due to unavoidable reasons, he/she may apply for a change in visa status to F-1 status (visit/family). When the relationship between the domestic helper and the employer ends due to conclusion/cancellation of the employment contract, loss of business investment visa by the employer, etc. the domestic helper must exit the country.

