



# Korea

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## Guide To Doing Business Questionnaire:

### South Korea

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## **I. The Country At A Glance**

### **A. What languages are spoken?**

The language is Korean. As its writing system, Korea uses its own alphabet, “Hangul”, which was created by a group of scholars under the patronage of King Sejong the Great during the 15th century. Hangul consists of 10 vowels and 14 consonants and can be combined to form numerous syllabic groupings. It is simple, yet systematic and comprehensive and is considered one of the most scientific writing systems in the world.

### **B. What is the exchange rate for the U.S. dollar, the Euro?**

1,091 Korean Won per U.S. dollar (February 1st, 2018)

1,360 Korean Won per Euro (February 1st, 2018)

### **C. Describe your country’s geography, proximity to other countries and climate.**

The Republic of Korea is located on the southern half of a peninsula that extends from the northeastern portion of the Asian continent into the northwestern corner of the Pacific Ocean. The Korean peninsula is bordered by China to the northwest and Russia to the northeast. It is separated from Japan to the east by the Korea Strait and the East Sea.

Korea has four distinct seasons; spring, summer, autumn and winter. Spring usually lasts from late March to early May, summer from mid-May to early September, autumn from mid-September to mid-November, and winter from late November to mid-March. Korea tends to have a humid continental climate and a humid subtropical climate. Winters can be extremely cold with the minimum temperature dropping below  $-20^{\circ}\text{C}$  ( $-4^{\circ}\text{F}$ ) in the inland region of the country: in Seoul, the average January temperature range is  $-7$  to  $1^{\circ}\text{C}$  ( $19$  to  $34^{\circ}\text{F}$ ), and the average August temperature range is  $22$  to  $30^{\circ}\text{C}$  ( $72$  to  $86^{\circ}\text{F}$ ). Summer can be uncomfortably hot and humid, with temperatures exceeding  $30^{\circ}\text{C}$  ( $86^{\circ}\text{F}$ ) in most parts of the country.

### **D. Are there cultural influences or prohibitions on the way business is conducted?**

Koreans hold to firm Confucian traditions, which emphasize respect for education, authorities and those who are older. Although modern Koreans may not adhere to Confucian principles as rigidly, these principles continue to underpin many customs and business practices.

Given this Confucian influence, Koreans intuitively establish hierarchical relationships, especially based upon the age of other people relative to themselves.

### **E. Are there religious influences or prohibitions on the way business is conducted?**

According to the results of the census of 2015 more than half of the Korean population (56.9%) declared themselves not affiliated with any religious organizations. No particular religious influences or prohibitions are recognized in business fields.

### **F. Explain your country’s infrastructure. Be sure to explain which cities have airports, railroad systems, ports, and public transportation.**

Korea has a technologically advanced transport network consisting of high-speed railways, highways, bus routes, ferry services, and air routes.

Korail provides frequent train services to all major South Korean cities. The Korean high-speed rail system, KTX, provides high-speed service along Gyeongbu and Honam Line. Major cities including Seoul, Busan, Incheon, Daegu, Daejeon and Gwangju have urban rapid transit systems. Express bus terminals are available in most cities.

Korea's largest airport, Incheon International Airport, was completed in 2001. By 2007, it was serving 30 million passengers a year. Other international airports include Gimpo, Busan and Jeju. There are also seven domestic airports, and a large number of heliports.

Korea has one of the world's largest shipbuilding industries and an extensive system of ferry services. Most fleet operators are large conglomerates, while most ferry operators are small, private operators.

There are 1,609 km of navigable waterways in Korea. The cities that have major ports include Incheon, Gunsan, Mokpo, Pohang, Busan, Ulsan and Jeju.

### **G. Explain the communication system.**

Korea has one of the world's most active telecommunications and Information Technology markets backed by strong support from the government. Korea's operators have invested heavily in fibre based broadband deployments, laying the foundations for triple play services. Korea has the world's highest number of broadband services per capita; approximately 40% of the population and around 95% of households are broadband subscribers. Korea continues to be a booming mobile market as it rapidly takes up LTE and innovatively explores the options for value-added services.

### **H. Describe the public services – i.e. water, electricity, gas. Are they publicly or privately owned?**

The public services (i.e. water, electricity, gas) are predominantly provided by Government-owned companies.

Korea Electric Power Corporation, better known as KEPCO is the largest electric utility in South Korea, responsible for the generation, transmission and distribution of electricity and the development of electric power projects including those in nuclear power, wind power and coal. KEPCO is responsible for 93% of Korea's electricity generation. The South Korean government (directly and indirectly) owns a 51.11% share of KEPCO.

The Korea Water Resources Corporation (K-water), is the governmental agency for comprehensive water resource development and providing both public and industrial water in South Korea. The South Korean government (directly and indirectly) owns a 92.1% share of K-water.

Korea Gas Corporation (KOGAS) is a South Korean public natural gas company that was established by the government in 1983. KOGAS has grown into the largest LNG-importing company in the world.

## **II. General Considerations**

### **A. Investment policies**

#### **1. Does the country generally welcome investment? Are there governmental or private agencies devoted to the promotion of investment?**

The Korean government generally welcomes and encourages foreign investment. Since adopting the Foreign Investment Promotion Act (FIPA) in 1998, the Korean government has significantly deregulated and opened up the country's investment market to foreign investors, launching a wide range of programs and efforts to attract foreign direct investment. One of the efforts by the Korean government to do so is establishment of the Korea Trade-Investment Promotion Agency (KOTRA). KOTRA is a non-profit organization established by the government to promote trade and investment by providing support and assistance for foreign investment. KOTRA provides foreign investors with information, support, and assistance regarding investment and their business in Korea. The KOTRA's main activities include:

- surveying and collecting information on overseas markets for trade promotion and foreign investment inducement, and to disseminate the collected information;
- organising public relations of domestic industries and commodities, to establish a climate of foreign investment and support the enhancement of the nation brand; and
- facilitating trade and investment co-operation to exchange industrial technology between domestic and foreign enterprises and to support international development co-operation.

KOTRA also provides administrative services to foreign investors. In order to minimize the number of institutions a foreign investor needs to contact and to increase processing speed, KOTRA established KISC (Korea Investment Service Centre) in 1998 as a one-stop service centre for foreign investors. At the KISC, foreign investors can complete their FDI report and obtain information on FDI procedures. Government officers stationed there, with discretionary power granted to them by the head of their respective organizations, process eleven types of administrative formalities onsite, including entry and departure formalities, customs duty and tax-related procedures.

## **2. What is the rate of inflation?**

The average inflation of Korea in 2017, based on average consumer price, was 1.95% (0.97% in 2016 and 0.71% in 2015).

## **3. Explain any sector exceptions, incentives or restrictions on foreign investment?**

Article 4 of the Foreign Investment Promotion Act (“FIPA”) provides that foreign investment can be limited or prohibited if the foreign investment:

- threatens national security and public order;
- harmfully effects public health, sanitation or environmental preservation; or
- is against Korean morals and customs, violates any Act or subordinate statutes of Korea.

Based on this provision, the Ministry of Trade, Industry and Energy (“MOTIE”) specifies restrictions on foreign investment in certain industries and publishes necessary public notices announcing such restrictions (Regulations on Foreign Investment and Technology Introduction and Integrated Public Notice of Foreign Investment).

Below are a few examples of such restricted industries that are either closed or only partly open for foreign investors:

- completely closed: nuclear power generation, radio broadcasting, television broadcasting;
- less than 25 percent: news agency activities;
- less than 30 percent: publishing of newspapers;
- not more than 30 percent: hydro electronic power generation, thermal power generation, other power generation;
- not more than 49 percent: program distribution, cable networks, satellite and other broadcasting, wired telephone, mobile telephone, satellite telephone and other telecommunications;
- less than 50 percent: farming of beef cattle, inshore and coastal fishing, transmission/distribution of electricity, wholesale of meat, coastal water passenger/freight transport, air transport, publishing of magazines and periodicals.

## **4. Describe de facto restrictions on investment, if any, such as bureaucratic discretion.**

There are no de facto restriction on investment.

**5. What are the sizes of the different markets?**

Korea has undergone a rapid economic growth since the 1960's. Today, Korea's GDP is approximately USD 2.027 trillion (purchasing power parity), ranked 11th in the world and third in the East Asia region in 2017.

In 2017, the services sector accounted for 59.1% of the total Korean GDP. The industry sector accounted for 38.8% and the agriculture sector accounted for 2.2%.

**6. What types of businesses are conducted in the country?**

As a highly industrialized and developed country, types of businesses conducted in the country are countless. However, it is noted that Korea's economy is still highly dependent upon the manufacturing exports. Korea's major manufacturing industries include the textile and steel sectors, shipbuilding, car manufacturing and electronics. Especially, Korea is the world's largest producer of semiconductors. As one of the leaders in the IT sector which it has become during the past couple of decades, leading Korean firms in this sector include Samsung Electronics and LG Electronics.

**B. Diplomatic Relations**

**1. Explain any established diplomatic relations your country may have.**

Korea maintains diplomatic relations with 190 countries. It has also been a member of the United Nations since 1991, when it became a member state at the same time as North Korea. Korea is also a member of a number of international institutions including the WTO, OECD/DAC, ASEAN Plus Three, East Asia Summit (EAS), and G-20. It is also a founding member of Asia-Pacific Economic Cooperation (APEC) and the East Asia Summit.

Korea has also developed strong economic relations with many countries by signing free trade agreements (FTAs) with them. As of January 2018, Korea has concluded 15 FTAs with 52 countries (agreed and effectuated).

**2. Give addresses, and contact information for the embassies or consulates in your country.**

Contact information for the embassies and consulates in Korea is available on the website of the Ministry of Foreign Affairs, which can be accessed at the following URL:

[http://www.mofa.go.kr/www/pgm/m\\_4073/uss/cnsrshp/inKoEmblqbdAdres.do](http://www.mofa.go.kr/www/pgm/m_4073/uss/cnsrshp/inKoEmblqbdAdres.do)

**3. Are there prohibitions or restrictions on certain business dealings with the country?**

There are no such particular restrictions.

**4. Explain any travel restrictions to or within the country?**

There are no particular restrictions on travel to or within the country. However, any foreigner who enters the country from North Korea must submit a statement to the relevant immigration authority at the place of his/her entry explaining the reason for his/her visit to North Korea.

**C. Government**

**1. Explain your country's election system and schedule. Is there an anticipated change in the present government?**

Korea is a multi-party state, where political parties actively participate in national and local elections. On national level, elections take place every five years to elect the President and every four years to elect the

members of the National Assembly. On local level, elections are held every four years to governors, metropolitan mayors, municipal mayors and provincial and municipal legislatures. The National Election Commission oversees the elections.

The president of Korea is directly elected for a single five-year term by plurality vote. The National Assembly has 300 members elected for a four-year term, 253 in single-seat constituencies and 47 members by proportional representation.

**2. Is the present government stable? Briefly explain your country's political history in the last decade.**

After its full democratization in 1987, the subsequent governments had generally enjoyed stability. The elections had been held without any interruption, and the conservative party and the progressive party had alternately taken the government in the past thirty years.

The current president of the Republic of Korea is Moon Jae-in. He was elected as the 19<sup>th</sup> president of the Republic of Korea on 9 May 2017 after the impeachment and dismissal of his predecessor Park Geun-hye. Although the impeachment was strongly objected by certain group of Koreans, the impeachment did not impair the political stability of Korea. The entire process was administered peacefully in accordance with the relevant laws. After months of popular protests, the National Assembly voted to impeach Park Geun-Hye, and the decision was upheld by the Constitutional Court of Korea on 10 March 2017, which took immediate effect. The current government was instated by the national elections which was held after 60 day interim period.

**3. Explain your country's judicial system. Be sure to answer the following questions:**

- **Is the judicial system generally perceived to be impartial?**

Yes. The Korean judicial system is generally perceived to be independent and impartial.

- **Must disputes be resolved in the country?**

Under Korean law, the basic principle is that the Korean courts have jurisdiction over civil cases that are substantively related to Korea. In determining the "substantive relationship" with Korea, the court must obey reasonable principles compatible to the ideology of the allocation of international jurisdiction. Specifically, the court will judge whether or not it has the jurisdiction in the light of jurisdictional provisions of domestic civil procedural laws and consider the unique nature of international jurisdiction.

Having said that, the Korean courts generally respect the choice of jurisdiction agreed by the parties. The Supreme Court has declared that an agreement to recognise the exclusive jurisdiction of a foreign court is effective if the following requirements are met:

- The case is not about a matter subject to the exclusive jurisdiction of the South Korean courts;
- The foreign court designated as the court with exclusive jurisdiction has jurisdiction in the matter under the relevant law of the foreign country; and
- The foreign court designated as the court with exclusive jurisdiction has a reasonable connection to the matter in dispute.

The Supreme Court has also ruled that an agreement on exclusive jurisdiction of a foreign court that is clearly unreasonable or unfair would be voidable for being against the public order and good morals of Korea.

- **Is there a political method of resolving disputes?**

No.

- **Are alternative methods of dispute resolution permitted?**

Yes, they are permitted. Arbitration and mediation are generally recognized as alternative methods of dispute resolution.

- **How long does it take to resolve disputes?**

Litigation in Korea can be slow and easily take several years if it is appealed up to the Supreme Court. Nevertheless, applications for provisional orders, including provisional injunctions are heard and determined relatively quickly on an urgent basis.

- **Can foreign judicial decisions be enforced in the country?**

Foreign judgments may be enforced in Korea provided that: (a) the international jurisdiction of such foreign court is recognized under the principle of international jurisdiction pursuant to the statutes or treaties of the Republic of Korea; (b) a defeated defendant is served, by a lawful method, a written complaint or document corresponding thereto, and notification of date or written order allowing him/her sufficient time to defend (excluding cases of service by public notice or similar), or that he/she responds to the lawsuit even without having been served such documents; (c) the approval of such final judgment, etc. does not undermine sound morals or other social order of the Republic of Korea in light of the contents of such final judgment, etc. and judicial procedures; and (d) mutual guarantee exists, or the requirements for recognition of final judgment, etc. in the Republic of Korea and the foreign country to which the foreign country court belongs are not far off balance and have no actual difference between each other in important points.

- **Can decisions from the country be enforced outside the country?**

Enforcement of decisions of the Korean courts outside of Korea depends on the local law of the jurisdiction where enforcement is sought.

- **Are there separate tribunals depending upon the subject matter of the case?**

Although there are specialized courts for specific subject matter of the case (i.e. Patent Courts, Administrative Courts and Family Courts), they are not separate tribunals. As appeals from decisions by other courts, appeals from decisions by these courts will be finally heard by the Supreme Court.

- **Are there different legal systems within the country or its political subdivisions?**

No.

- **Can the investor choose to be subject to the country's jurisdiction or not?**

Only to a certain extent. See the answers above.

#### **4. Explain your country's legislative system.**

At the national level, the legislative branch consists of the National Assembly of South Korea. A unicameral legislature with 300-member. The latest legislative elections were held on 13 April 2016. Single-member constituencies comprise 253 of the assembly's seats, while the remaining 47 are allocated by proportional representation of political parties. All members serve four-year terms.



Bills may be introduced by members of the National Assembly or by the Executive. To pass a bill, a majority of the members of the National Assembly must be present and a majority of those present must vote for the bill. Each bill passed by the National Assembly must be sent to the President who must promulgate it within fifteen days unless he choose to object the bill.

The President can veto the bill that comes before him with a written explanation of his objection. In this case, the National Assembly can override such veto by a resolution by super-majority (2/3) of the members in attendance when a majority of members are present.

The Korean constitution vests the Executive branch with the authority to enact administrative legislation including Presidential Decrees, Ordinances of the Prime Minister, Ordinances of Ministries and so forth to effectively implement the laws passed by the National Assembly. Administrative legislations enacted under powers delegated by laws are enacted for the purpose of enforcing laws, and therefore, are not permitted to contain details in conflict with such laws.

#### **D. Environmental Considerations**

##### **1. What is the public/government attitude toward environmental regulation?**

The Korean government takes an active role in promoting protection of the environment. The environmental regulatory regime of Korea concern the general environment including nature preservation, air quality preservation, water quality preservation, water supply/sewage management, waste treatment/recycling, green growth, etc.

##### **2. Explain any environmental regulations.**

Korea has wide-ranging legislations designed to promote protection of the environment. The main foundation is established by the Framework Act on Environmental Policy (FAEP), which contains fundamental environmental policy goals, including preventing pollution and managing natural resources for sustainable use.

The Ministry of Environment of South Korea (MOE) classifies statutes broadly into the following categories:

##### (1) General environment, including:

- FAEP;
- Environmental Health Act;
- Toxic Chemical Control Act;
- Sustainable Development Act; and
- Act on Special Measures for the Control of Environmental Offences.

##### (2) Nature preservation, including:

- Natural Environment Conservation Act;
- Environmental Impact Assessment Act; and
- Asbestos Injury Relief Act.

##### (3) Air quality preservation, including:

- Clean Air Conservation Act (CACA);
- Special Act on the Improvement of Air Quality in Seoul Metropolitan Area; and
- Malodor Prevention Act.

##### (4) Water quality preservation, including

- Water Quality and Ecosystem Conservation Act (WQECA).

(5) Water supply/sewage management, including:

- Water Supply and Waterworks Installation Act;
- Sewage Act;
- Management of Drinking Water Act;
- Underground Water Act (UWA); and
- Soil Environment Conservation Act.

(6) Waste treatment/recycling, including:

- Wastes Management Act (WMA);
- Act on the Promotion of Saving and Recycling of Resources; and
- Promotion of installation of waste disposal facilities and assistance, and so on to the Adjacent Areas Act.

(7) Green growth, including

- Framework Act on Low Carbon, Green Growth.

**E. Intellectual Property**

- **Describe the law for the protection of intellectual property, including trademarks, copyrights, patents and know-how.**

The relevant laws for the protection of intellectual property in Korea include the Patent Act, Trademark Act, Design Protection Act, Copyright Act, and Unfair Competition Prevention and Trade Secret Protection Act.

- Patents

The Patent Act regulates the requirements, procedures, and effect for acquiring patent rights. A patent may be granted for a new and industrially useful invention, which is defined as a “highly advanced creation of technical ideas utilizing laws of nature.” The term of a patent right is for twenty years from the filing date of a patent application (the corresponding term for a utility model patent is ten years).

- Trademarks

The Trademark Act is the main source of law for trademarks in Korea. The Trademark Act protects any (i) sign, character, figure, three-dimensional shape, color, hologram, motion or any combination thereof; and (ii) visually recognizable marks that are used in connection with goods related to the business of a person who produces, processes, or sells such goods in commerce and used to distinguish such goods from those of others. The term of a trademark right is ten years from registration, and the trademark right is renewable indefinitely, subject to a request for renewal before the Korean Intellectual Property Office (“KIPO”) and payment of applicable fees.

- Designs

The Design Protection Act governs industrial designs, which encompasses shape, pattern, color, or any combination thereof. To be granted protection, the design should meet the substantial requirements including i) novelty, ii) creativity and iii) industrial applicability. The term of a design right is for twenty years from the filing date of a design application.

- Copyrights

The Copyright Act protects creative works in which human ideas or emotions are expressed. Copyright protection arises upon creation of the original copyright work by the author and encompasses both the moral and economic rights of the author to the copyrighted work. The term of a copyright is for seventy years after the death of the author (in the case of cinematographic works or works for hire, the

corresponding term is seventy years after the date of publication).

- Trade Secrets

The Unfair Competition Prevention and Trade Secret Protection Act (“UCPA”) protects trade secrets. Any information that is confidential, has independent economic value, and has been kept secret through substantial efforts is protected as a trade secret.

- **Does the country subscribe to international treaties? Describe.**

Korea is a signatory to the following international treaties that concern intellectual property rights.

INTELLECTUAL PROPERTY RIGHT	MEMBER COUNTRY TO INTERNATIONAL TREATIES
Patents	<ul style="list-style-type: none"> <li>• Paris Convention for the Protection of Industrial Property</li> <li>• Convention Establishing the World Intellectual Property Organization</li> <li>• Patent Cooperation Treaty</li> <li>• Strasbourg Agreement Concerning the International Patent Classification</li> <li>• Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure</li> </ul>
Trademarks	<ul style="list-style-type: none"> <li>• Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks</li> <li>• Trademark Law Treaty</li> <li>• Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks</li> <li>• Vienna Agreement Establishing an International Classification of the Figurative Elements of Marks</li> </ul>
Design	<ul style="list-style-type: none"> <li>• Geneva Act (1999) of the Hague Agreement Concerning the International Registration of Industrial Designs</li> <li>• Locarno Agreement Establishing an International Classification for Industrial Designs</li> </ul>
Copyright	<ul style="list-style-type: none"> <li>• Berne Convention for the Protection of Literary and Artistic Works</li> <li>• Universal Copyright Convention</li> <li>• Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations</li> <li>• WTO Agreement on Trade-Related Aspects of Intellectual Property Rights</li> <li>• World Intellectual Property Organization Copyright Treaty</li> <li>• WIPO Performances and Phonograms Treaty</li> </ul>

- **Are there substantive prior approvals by national investment boards?**

There are no substantive prior approvals required by any national investment boards to obtain and enforce intellectual property rights.

- **What are the notarization requirements?**

A notarized power of attorney is required for Korean law firm (or patent law firm) to represent or act on behalf of the foreign client before the KIPO and the Korean courts. The powers granted under the power of attorney

would include, for example, to prosecute patents, trademarks, or designs, record licenses with KIPO, assign intellectual property rights, and enforce intellectual property rights. Other ancillary documents, such as the Certificate of Incorporation used to demonstrate that a corporate applicant is a going concern, must also be notarized. Apostille is generally not necessary.

- **Are there regulatory guidelines for licenses?**

The Monopoly Regulation and Fair Trade Act (“MRFTA”) is the primary competition legislation in Korea, and the Korean Fair Trade Commission (“KFTC”) is the competition authority tasked with enforcing the MRFTA. The MRFTA seeks to regulate activities that could potentially have a negative impact on the market. In the context of transactions between related parties (e.g., affiliated entities), the MRFTA prohibits practices that involve the provision of intangible properties or transacting under unreasonably advantageous terms if such practices are judged as unfair and adversely affect the market. In particular, although the MRFTA does not expressly regulate intellectual property rights, the KFTC promulgated the “Guidelines on the Unfair Exercise of Intellectual Property Rights” (“IP Guidelines”) that seeks to clarify the boundaries of permissible and impermissible exercise of intellectual property rights from the competition law perspective.

The IP Guidelines provides guidance that apply to all types of transactions involving intellectual property rights such as licensing, joint developments, and technology transfers. In addition, strictly foreign intellectual property transactions could be subject to the IP Guidelines if they have anticompetitive effects in Korea.

- **Are there specific exceptions or requirements relation to a particular product(s)?**

There are no specific exceptions or requirements that are specific to any particular type of product with respect to intellectual property rights.

- **When are royalties from licenses deemed to be excessive?**

Royalties from licenses are, in principle, freely negotiated between the parties to the license transaction. Although there are no specific criteria for royalties to be considered as excessive, royalties could be reviewed and found excessive based on an analysis of all relevant facts and circumstances. In addition, if the licensor and licensee are related parties, further consideration must be had as to whether the royalties were agreed to in an arm’s length negotiation to avoid any issues of unfair trade practice that could arise from the competition law perspectives.

- **Do local antitrust or competition laws apply to licenses?**

See the answers above.

- **What typical agreements do foreign corporations enter into with their wholly owned subsidiaries?**

Typical agreements between foreign corporations and their wholly-owned subsidiaries include licensing agreements, distribution agreements, technology transfer agreements, and joint development agreements.

### **III. Investment Incentives**

#### **A. Explain any export incentives or guarantees.**

The Korea Trade Insurance Corporation (K-sure), a corporation established in July 1992 under the Trade Insurance Act, is an export credit agency that focuses on promoting trade and overseas investment of enterprises in Korea. The company was formerly known as Korean Export Insurance Corporation and changed its name to Korea Trade Insurance Corporation in July 2010. As the official export credit agency under Ministry of Trade, Industry and Energy, its business scope include:

- Operation of various trade insurance programs to cover risks arising from the export and import of goods and services, overseas construction projects and investments, management of foreign exchange (FX) and interest rate fluctuations, export of cultural contents and services, and other overseas transactions; and
- Provision of credit-related services, such as credit research and credit information management, in addition to debt recovery services, including the collection of overseas receivables for Korean enterprises.

**B. Explain any grants, subsidies or funds your country offers foreign investors. Be sure to answer the following questions:**

- **Are grants and subsidies restricted by the type of activity?**

For foreign investments that satisfy certain conditions, the central and local governments of Korea may provide cash grants. In the process, the Korean government takes into account whether the relevant foreign investment involves advanced technology, the effect of technology transfer, the scale of job creation, whether the foreign investment overlaps with domestic investment, the propriety of the location in which the foreign investment is to be made, the effect on the local and national economy, the viability of the investment, etc.

A foreign-invested company should use a cash grant only for the following purposes:

- To purchase or lease land or a building for the installation of a factory or research facility;
- To construct a factory or research facility;
- To purchase capital goods and research equipment to be used at a factory or research facility for business or research purposes;
- To install infrastructure facilities, including power/communication facilities, required for building a factory or research facility; or
- Employment subsidies or education and training subsidies.

- **What is the process for obtaining approval for these grants or subsidies?**

A foreigner who intends to receive a cash grant should submit an application form and an investment plan to the Minister of Trade, Industry & Energy (MOTIE). An evaluation team consisting of public officials and private sector experts shall evaluate the application form and the investment plan, and submit the evaluation report to the MOTIE.

A foreigner may request a negotiation with the MOTIE prior to submitting the application form to identify the chances of receiving a cash grant and the cash grant amount. Hence, the pre-application negotiation is more important than the formal application procedure.

A cash grant is approved after the deliberation and resolution of the Foreign Investment Committee, and the funds are transferred after signing a cash grant contract. However, if the amount of the cash grant excluding grants for site support is less than 1 billion won, the cash grant contract shall be signed with the Foreign Investment Working Committee after due deliberation and resolution.

- **How long does it take to receive approval?**

The decision on whether to grant a cash grant shall be decided within 60 days of receiving the application for a cash grant. However, the deadline for such decision may be extended by up to 30 days. A cash grant may be paid in lump sum within one year from the date on which approval was obtained, or in up to 10 installments over a period of up to five years.

- **Can the investor receive loans from the government or governmental agencies?**



There is no loan program provided to the investor by the government or governmental agencies. However, the Korean government provides tax incentives to foreign investors that meet certain qualification and also provides industrial site support (i.e. support in connection with spaces for performing industrial activities).

- **Must a national be a participant in the enterprise in order for the investor to receive these grants or subsidies?**

No.

**C. Explain any national tax incentives for foreign investors.**

Korea provides tax incentives to attract foreign direct investment in many ways. Business involving “Advance Technologies” (specifically set forth in the relevant laws, such as electronic, information and electrical technologies, precision machines, new materials, etc.) and service industries supporting manufacturing sector (specifically set forth in the relevant laws, such as electronic, information and electrical technologies, precision machines, new materials, etc.) are eligible for tax exemptions and deductions. Businesses that are located inside Foreign Investment Zones (FIZs), Free Economic Zones (FEZs) and Cheju Investment Promotion Zones (CIPZs) are also eligible to receive tax exemptions and deductions. Such businesses are eligible to be exempted from corporate and income taxes for the first 5 years or 5 years from the year in which the profit is first realized and are entitled to receive a 50 percent reduction for 2 years thereafter.

Normally, various local tax on assets purchased by foreign investors including acquisition tax, registration tax, aggregate land tax and property tax are exempted for the first five years from the year in which the profit is first realized and will receive a 50 percent reduction for 2 years thereafter.

An application with supporting documents shall be submitted to the Ministry of Strategy & Finance for review and generally applicants would receive a notice in 20 days.

**D. Explain any regional tax incentives open to foreign investors.**

The Korean government has created an exclusive industrial complex for foreign corporations engaging in investment in Korea. These complexes allow for companies to easily begin operating in Korea. Currently, the exclusive industrial complexes for foreign corporations include the Chun Ahn complex in Southern Choongchung Province (Choongchung Nam-Do), the Pyung-Dong complex in Kwang-Ju City and the Dae-Bul complex in Kwang-Yang City, Southern Chulla Province (Chulla Nam-Do).

There is a local industrial complex or Hyun/Han San complex although it is not exclusively reserved for foreign corporations. Space availability should be confirmed in advance. To be a tenant of this area, foreign companies shall satisfy the following two conditions: 1) high-technology business under the ordinance on the Foreign Investments Promotion Act, the production of high technology products and hitech industry as stipulated by the MOTIE which has attained the NT (New Technology) mark under the Industrial Development Law; and 2) the ratio of the foreign ownership above 30% in case of joint venture company or foreign investment wholly-owned by the foreign corporations.

Incentives are available to tenants of the complexes, which can include exemption from or a discount on lease charges, financial subsidies for the development of industrial technology (the capital goods development cost) and industrial base fund support (plant refurbishment and upgrade expenses, replacement cost of old facilities and purchase cost of facilities and equipment). To become a tenant of the complex, foreign companies should submit a tenant application, a business plan, and a copy of the foreign investment application.

## **IV. Financial Facilities**

**A. Banking/Financial Facilities**

- **What kind of financial institutions exist?**

The financial institutions in Korea can be broadly divided into (i) banks, (ii) non-bank deposit handling institutions that handle financial products similar to bank deposits, (iii) securities companies, and (iv) other financial institutions including asset management companies, insurance companies. The Financial Services Commission (FSC) and the Financial Supervisory Service (FSS), its regulatory arm, are responsible for supervising and examining all banks, including specialized and government-owned banks, as well as securities and insurance companies. The financial institutions in Korea can be summarized as follows:

Category	Subcategory 1	Subcategory 2	
Banks	General banks	Commercial banks	
		Local banks	
		Foreign bank branches	
	Special banks		Korea Development Bank
			Export-Import Bank of Korea
			Industrial Bank of Korea
			Nonghyup Bank
		National Federation of Fishery Cooperatives	
Non-bank deposit handling institutions	Merchant banks	Merchant banks	
	Mutual savings banks	Mutual savings banks	
	Credit cooperative institutions		National Credit Union Federation of Korea
			Korean Federation of Community Credit Cooperatives
	Postal Savings and Insurance Services	Mutual Finance	
		Postal Savings and Insurance Services	
Securities companies & asset management companies	Securities companies	Securities companies	
	Asset management companies	Asset management companies	
	Future companies	Future companies	
	Securities finance companies	Securities finance companies	
	Investment advisory companies	Investment advisory companies	
Insurance companies	Life insurance companies	Life insurance companies	
	Non-life insurance companies	Non-life insurance companies	
			Reinsurance companies
		Guarantee insurance companies	
	Postal savings and insurance services	Postal savings and insurance services	
	Provident institutions	Provident institutions	
	Korean Trade Export Insurance Corporation	Korean Trade Export Insurance Corporation	
Other financial institutions	Credit-specialized financial companies	Leasing companies	
		Credit card companies	
		Installment financial companies	
		New technology business investment Companies	
	Venture capital companies	Small business investment companies	
	Corporate restructuring companies		
	Trust companies	Trust companies	
Financial support institutions	Financial supervisory service	Financial supervisory service	
	Korea Deposit Insurance Corporation	Korea Deposit Insurance Corporation	
	Korea Telecommunications and Clearings Institute	Korea Financial Telecommunications and Clearings Institute	

	Credit guarantee companies	Korea Credit Guarantee Fund
	Credit rating agencies	Korea Technology Finance Corporation Credit rating agencies
	Korea Asset Management Corporation	Korea Asset Management Corporation
	Korea Housing Finance Corporation	Korea Housing Finance Corporation
	Korea Exchange	Korea Exchange
	Financial intermediaries	Financial intermediaries

- **Must the investor maintain a bank account in the country?**

In general, an investor is not obliged to open a local bank account. The decision to open a local bank account would depend upon the nature of the investment being made and the proposed activities to be performed in Korea.

A nonresident may open a deposit account or trust account at a foreign exchange bank for the purposes of depositing foreign currency or Korean Won. The types of deposits are determined by the Bank of Korea (BOK) from time to time.

- **What are the requirements for opening a bank account?**

In case of an individual, most banks do not place any restrictions on foreigners who want to open up a bank account. In order to open an account at a commercial bank, the applicant is required to furnish certain identifying details such as: name, address, date of birth and citizenship. In addition, a photocopy of the applicant's passport, certificate of alien registration, and Visa may also need to be furnished.

In case of a corporate entity, the banks will usually require corporate documents which show that the entity is in good standing and has obtained its internal authorization to open a bank account in its name. The specific documents required may vary for each commercial bank, the documents that are generally required are, inter alia, the company's incorporation documents, documents evidencing the internal authorization, a list of the company's shareholders and directors as well as the names of those persons who will have signatory rights with respect to the account to be opened on behalf of the company.

- **What are the restrictions, if any, on the investor's use of the account?**

There are no restrictions on the investor's making use of funds maintained in the bank account in Korea.

- **What is the type of financial system in the country?**

Korea has an effective regulatory system that encourages portfolio investment. There is sufficient liquidity in the market to enter and exit sizeable positions. The Korean government uses various incentives, such as tax breaks, to facilitate the free flow of financial resources into the markets. The Korean government respects International Monetary Fund (IMF) Article VIII on the general obligations of member states by refraining from restrictions on payments and transfers for current international transactions. Credit is allocated on market terms.

Foreign portfolio investors enjoy open access to the Korean stock market. Aggregate foreign investment ceilings in the Korean Stock Exchange (KSE) were abolished in 1998, and foreign investors owned 35.1 percent of KSE stocks and 10 percent of the Korean Securities Dealers Automated Quotations (KOSDAQ) as of the end of 2016.

- **How is the banking system structured?**



Overall, there are 148 licensed banks in South Korea, consisting of 52 commercial banks, 5 specialized banks, and 91 mutual savings banks. Banks in South Korea are regulated by the FSS, which is responsible for examining and supervising financial institutions under the broad oversight of the FSC. The Bank of Korea is the country's central bank, which is responsible for issuing the Korean won and maintaining price stability.

As of 2018, there were 5 specialized banks mostly owned by the government each performing specific functions aimed at driving different areas of the Korean economy: 1) Korea Development Bank: financing of key industries for development of national economy. 2) Export-Import Bank of Korea: providing financial support to export-import transactions, overseas investment projects, and the development of natural resources abroad. 3) Industrial Bank of Korea: mainly financing for small to medium sized enterprises. 4) Credit and Banking Sector of National Agricultural Cooperative Federation: mainly providing agricultural, forestry, and livestock loans. 5) National Federation of Fisheries Cooperatives and member cooperatives: providing loans to fisheries.

- **Is there a stock market?**

Korea has three major stock markets, namely the Korean Stock Exchange, KOSDAQ and KONEX, all of which are run by the Korea Exchange ("KRX"). The Korean Stock Exchange is a traditional stock market where stocks, options, futures and bonds are traded using the Korea Composite Stock Price Index or KOSPI. KOSDAQ is a comparatively younger stock market and can be compared with NASDAQ in the U.S. KONEX (Korea New Exchange) is an securities exchange exclusively for small and medium-sized enterprises (SMEs) and venture companies prior to listing on KOSDAQ. KONEX was established to facilitate SMEs and venture capitalists to raise fund or collect investments, and started its operations on July 1, 2013.

- **Can the investor receive bank loans?**

In Korea, there is no legal restriction other than the foreign exchange regulations for a foreign investor to receive bank loans.

## **V. Exchange Controls**

### **A. Business Transactions with Nationals, Residents or Non-Residents**

- **How are nationals, residents and non-residents defined?**

Under the Foreign Exchange Transaction Act (FETA), 'Residents' include all individuals who have their domicile or residence in Korea as well as corporate entities with main offices in Korea (Article 3(2)). 'Non-residents' are defined as all individual and corporate entities other than Residents. Branch offices located in Korea, however, shall be deemed to be residents notwithstanding whether such offices have an agent's authority by law.

Foreigners who fall under any of the following criteria will be deemed as Residents: (i) Persons engaging in business activities in Korea; (ii) Persons staying in Korea for not less than six months.

- **Are there reporting requirements? Are there restrictions on conducting business with nationals, residents or non-residents?**

All transactions involving foreign exchange in Korea or flows of capital between Residents and Non-residents are regulated according to the provisions of FETA. Currently, capital transactions require some acceptance of reports from the Ministry of Strategy and Finance (MOSF), Bank of Korea or designated foreign exchange banks. However, practices show that such reports are being completed using simple forms, and approval can be processed within a few business days.

Currently, non-capital transactions (ordinary transactions) between Residents and Non-residents are regulated under a 'negative system'. This means that such transactions are in principle permitted unless they are specifically subject to prior approvals or required to be accepted by the MOSF, Bank of Korea or designated foreign exchange banks as delegated by regulations under the FETA.

- **Can the investor receive loans from nationals, residents or non-residents?**

Korean banks provide loans to investors in the ordinary course of business. The terms of the loan depend upon the financial soundness of the investor.

## **B. Investment Controls**

- **Are there restrictions on direct / indirect investment in the country?**

The Foreign Investment Promotion Act (FIPA) provides grounds for restriction of foreign investment in certain industries, and accordingly the Ministry of Trade, Industry and Energy (MOTIE) specify those restrictions. Below are a few examples of such Restricted Industries that are either closed or only partly open for foreign investors:

- Completely closed: nuclear power generation, radio broadcasting, television broadcasting
- Less than 25%: news agency activities
- Less than 30%: publishing of newspapers
- No more than 30%: hydro electronic power generation, thermal power generation, other power generation
- No more than 49%: program distribution, cable networks, satellite and other broadcasting, wired telephone, mobile telephone, satellite telephone and other telecommunications
- Less than 50%: farming of beef cattle, inshore and coastal fishing, transmission/distribution of electricity, wholesale of meat, coastal water passenger/freight transport, air transport, publishing of magazines and periodicals.

- **Must the investor make declarations regarding the nature of his/her investment?**

The foreign investor must report and register according to the nature of his/her investment. When a foreigner intends to make an investment in Korea, in principle, the foreigner should provide advance notice of the planned foreign investment to the Bank of Korea or the designated foreign exchange bank pursuant to the FETA. However, certain instances of foreign investment (for example, investment of KRW 100 million or more and acquisition of 10% or more of shares with voting rights) trigger a simplified notification procedure pursuant to the FIPA. Foreign investment procedures pursuant to the FIPA can be summarized as follows:

- a) a foreign investor should make a prior notification report of the foreign investment to the Korea Trade-Investment Promotion Agency (KOTRA) or the designated foreign exchange bank;
- b) after completion of the foreign investment report, the registration process with the relevant agencies for the foreign-invested company should be completed;
- c) after registration, if any change or cancellation becomes necessary, then the procedures for change or cancellation of the foreign-invested company should be completed.

## **C. Money Transfer**

- **Is there free determination of exchange rates?**

The exchange rate in Korea is determined by the single floating exchange rate system, based on the market's average exchange rate.

- **Are there restrictions on the transfer of money into or out of the country?**

The FETA authorizes the Ministry of Strategy and Finance to impose necessary and proper measures to the transfer of currency during certain emergencies. Absent such emergencies, there is no significant restriction on the transfer of money in and out of Korea, except for some reporting requirements under the FETA .

- **Are there restrictions on the remittance of profits abroad?**

Any investment funds and profits acquired by a foreign investor through foreign investment, including dividends from shares, proceeds from the sale of shares, and the principle and interests paid in accordance with a loan agreement will be guaranteed to be remitted overseas, as long as foreign investors comply with the notification requirements under foreign exchange laws.

Moreover, any suspension of foreign exchange transactions due to restrictive measures from critical situations, such as war or domestic economic strife in accordance with the FETA, will not apply to foreign direct investment.

However, it should be noted that, under the FETA, confirmation by the designated foreign exchange bank is required to remit such funds overseas. Therefore, the foreign investor must provide documents to the designated foreign exchange bank regarding the source of funds to be remitted, which makes properly filing the initial foreign investment report crucial.

- **Can hard currency be taken out of the country?**

Yes. However, it should be noted that, if the traveler carries more than USD 10,000 in currency, it should be reported to customs.

## **VI. Import/Export Regulations**

### **A. Customs Regulations**

- **Is the country a member of GATT?**

Yes, the Republic of Korea is a member of GATT.

- **Is the country a member of the EEC?**

No.

- **Is the country a party to a regional free trade agreement?**

As of November 2017, Korea has 15 free trade agreements (FTA) in effect with 52 countries worldwide including Chile, Singapore, EFTA, ASEAN, India (CEPA), EU, Peru, USA, Turkey, Australia, Canada, China, New Zealand, Vietnam and Columbia, and is actively negotiating FTAs with other countries including Ecuador, Israel, and RCEP.

In recent years, the Korea Customs Service (KCS) has been known to be aggressive in conducting origin verification, strictly observing the FTA-related rules in many cases to preclude application of the FTA preferential treatment. Since KCS origin verification is mostly conducted after import clearance, Korean importers who applied for and received FTA preferential treatment face post-importation risks of both preferential treatment exclusion (imposition of customs duty and import value-added tax) and penalty taxes (customs duty additional tax and VAT additional tax). Therefore, it is highly recommended for the companies operating in Korea to have a sufficient review (e.g., through an advance origin ruling provided that the relevant



FTA prescribes advance origin ruling) before applying preferential duty rates and also prepare for any post-importation origin verification in order to fully enjoy the benefits granted under the FTAs.

- **Does the Customs Department value the goods?**

Korea employs the self-declaration system, under which the Importer of Record (IOR) is responsible for determining and declaring an appropriate dutiable value of a good to the KCS upon importation of the good. Please be noted that after importations of the good are cleared according to the importer's self-declaration, KCS is entitled under the Korean customs laws to carry out post-importation audit to verify the accuracy and validity of IOR's declaration of dutiable value and impose additional customs duty, etc. if the previously declared dutiable value is deemed inappropriate (i.e. while Korea employs importer self-declaration system for efficient, speedy clearance, Korea also adopts post-audit system to verify declared results, which makes accurate declaration of dutiable value very important).

In terms of valuation, Korea generally follows the guidelines provided under the WTO Valuation Agreement and the Customs Act where specific methods of valuation are described. The six valuation methods are to be applied in sequence. The first method is 'transaction value method' which can be used if the goods are imported due to a sale and satisfy the conditions provided under the Customs Act. Under this method, a dutiable value is to be determined based on the 'price actually paid or payable', directly or indirectly, for the imported goods. In cases where the 'transaction value method' cannot be used, the other methods – transaction value of identical goods, transaction value of similar goods, Korean domestic selling price, computed value, or, if none of these methods are applicable, a reasonable method in combination of the above methods and principles– must be used in sequence to determine the dutiable value of the imported goods (the application order of Korean domestic selling price and computed value may be reversed (i.e. computed value may be applied before Korean domestic selling price) upon the taxpayer's request, provided that it is possible to determine the dutiable value using the computed value method).

- **How are goods cleared through customs?**

Goods exported from overseas to Korea are first stored in a bonded area. In the meantime, the importer (or a customs broker on behalf of the importer) electronically files an import declaration of the goods to be imported at the KCS. Based on risk management of the cargo and carrier, the KCS may inspect some of the goods. If the declaration is legitimate and justified according to the Customs Act and other relevant regulations, the KCS would approve the import declaration. The importer should then provide the KCS with a payment for due taxes including customs duties or a security for tax payment. When such payment or a security is provided, the declaration will be accepted and the importer can request for release of the goods from the bonded area.

Please note that pre-importation requirements or specific approval may be required for importing certain goods (see Section. D. below).

Please also note that any improper entry declaration, such as errors in classification, may result in an administrative sanction, a fine or other forms of punishment, depending on the existence of intent and severity of each case.

- **Are there applicable tariffs?**

See Section D. below.

## **B. Exports**

- **Are there restrictions on exports?**

Exporting certain goods or exporting to certain countries/parties may be subject to export controls based on international agreements and/or local regulations for the purpose of national security, environmental protection,



etc. A license or an approval from relevant governmental bodies may be required to export goods subject to such export controls, examples of which are listed below:

<b>Relevant Laws</b>	<b>Goods Concerned</b>
Grain Management Act	Goods (grains) subject to the Grain Management Act
Wildlife Protection and Management Act	Wild animals, wild animals and plants in dange of extinction, etc.
Nuclear Safety Act	Nuclear materials, radioisotopes and radiation generating devices
Control of Firearms, Knives, Swords, Explosives, etc. Act	Pistols, rifles, machine guns, artillery, gunpowder, explosives, guns and their parts, etc.

In particular, under the Foreign Trade Act, exporting goods and technology listed as ‘Strategic Goods’ (including military goods and dual-use goods such as certain chemicals, which can be used to produce weapons) to specific countries/parties in the ‘Denied Parties List’ (e.g., terrorists) may be restricted if the exportation is deemed to pose a threat to the international peace and security. Therefore, exporters always need to check if the goods to be exported would fall in any of the Strategic Goods categories and also if the buyer is listed in the Denied Parties List. In either case, a governmental permit would be required.

In addition, exporting the following goods is strictly prohibited:

- (i) Books, publications, drawings, records, films, videos, sculptures and other similar goods which disrupt the constitutional order, disturb the public safety and order or corrupt public morals;
- (ii) Goods which reveal confidential matters of the Government or are used to carry out intelligence activities; and
- (iii) Currencies, bonds and securities which are counterfeited, forged or copied.

- **Are export licenses required?**

There are no particular requirements to act as an exporter. However, a Korean business registration number is required when export-declaring goods, so non-resident foreign companies cannot be the Exporter of Record.

- **Are there applicable export duties?**

No.

### **C. Foreign Trade Regulations**

- **Are there foreign trade regulations on the import or export of goods involved in the business?**

The Foreign Trade Act of Korea governs general rules and restrictions of imports and exports, as explained in the Section B. above and D. below.

There are also other domestic laws and regulations that specify import requirements of certain goods (e.g., Pharmaceutical Affairs Act) and transactions conducted in foreign currency (Foreign Exchange Transactions Act).

### **D. Imports**

- **Are import licenses required?**

In principle, there are no import license requirements to act as an importer. This is because the Korean customs act adopts a self-declaration system and post-audit system (please refer to section A. above for details).

Although it is not a license or permit for importation, a person/company must register with the KCS (with a business registration number) and obtain a unique import registration number in order to import goods into Korea as an IOR. VAT registration is also generally required to make an import entry. These registrations are for administrative purposes and shall be completed without legal issues or disputes provided that the necessary formalities are prepared.

In addition, (as an exception to the above principle of Korean customs act self-declaration system) special confirmation, licensing or import requirements may apply to importation of certain goods under other individually specified domestic laws (e.g. inspection and safety certificates should be presented before import-clearing foodstuffs and electric appliances).

- **Are there applicable import duties?**

The basic duty rate in Korea is 8%, but the exact duty rates are determined in accordance with the tariff classification of the imported goods, as provided under the Harmonized Tariff Schedule of Korea (HSK). Valuation is based on an ad valorem basis on the CIF value of the imported goods.

Apart from the customs duties, import VAT and other taxes such as special excise tax, liquor tax, education tax and transportation tax may apply to imported goods, depending on the type of the goods being imported.

- **Are there applicable import quotas? Are there applicable import barriers?**

With respect to importation of certain goods, Korea may apply industry protection measures including anti-dumping duties, countervailing duties, tariff quota system, retaliatory duty, etc.

#### **E. Manufacturing Requirements**

- **Must the product contain ingredients or components, which are found or produced only in the country?**

No, there is no such requirement in Korea.

- **Will the importation of certain component parts be permitted only if they are to be ultimately incorporated in a final product?**

No, there is no such requirement in Korea.

#### **F. Product Labeling**

- **Are there applicable labeling or packaging requirements (e.g. multi-lingual notices, safety warnings, listing of ingredients, etc.)?**

Labelling requirements vary depending on the products, but in general, imported and exported goods must be labelled with an indication of origin as specified under the Foreign Trade Act. The origin label must be placed on the imported good itself and be expressed in Korean, Chinese or English language. In addition, various local regulations address specific labeling requirements for certain goods (e.g. labelling of pharmaceuticals is regulated under the Pharmaceutical Affairs Act and Food Sanitation Act, etc). Due to KCS recently becoming active in verifying the legality of imported goods' origin labelling (and initiating criminal investigation/administrative sanction procedures if it believes to have found sufficient evidence), Korean importers and their overseas transaction counterparts are advised to thoroughly check and ensure the properness of product labelling before the relevant product is imported into Korea in order to prevent criminal/administrative punishments.

## VII. Structures For Doing Business

### A. Government Participation

In general, the Korean government does not seek to participate in the ownership or operation of a business entity. However with regard to certain industries, the government does play a role in ownership and operation. This is done most often in the form of state-owned enterprises. Such industries include transportation, electricity and broadcasting. There are approximately 30 state-owned enterprises in Korea, and the extent of the participation varies among these state-owned enterprises as they are subject to specific laws and regulations.

### B. Forms of companies in Korea

There are five (5) types of companies under the Korean Commercial Code (KCC), namely, a *Chusik Hoesa* (a joint stock company), a *Yuhan Hoesa* (a closely held limited liability company), a *Yuhan Chaekim Hoesa* (similar to a limited liability company), a *Hapja Hoesa* (similar to a limited partnership), and a *Hapmyung Hoesa* (similar to an unlimited partnership). Under the KCC, the two (2) most frequently used types of limited liability companies, are *Chusik Hoesa* (a joint stock company) and *Yuhan Hoesa* (a private limited liability company).

#### (1) Hapmyong Hoesa (a partnership company)

A *Hapmyong Hoesa* consists of members with unlimited liabilities. In case of a default, members of the company are jointly and severally liable to its creditors without limitation. In general, each member is entitled to manage and represent the company. Transfer of ownership interest is limited and requires unanimous consent of all members.

#### (2) Hapja Hoesa (A limited partnership company)

A *Hapja Hoesa* consists of members with unlimited liabilities and those with limited liabilities. Unlimited members bear the rights and responsibilities pertaining to the company's business and its representation, while limited members participate in profit distribution through their capital investment. Limited members do not have the right to carry out company business and bear liabilities only to the extent of their capital investment. *Hapmyung Hoesa* and a *Hapja Hoesa* are rarely used in practice because the investors are exposed to unlimited liability.

#### (3) Chusik Hoesa (a joint stock company)

In a *Chusik Hoesa*, members of a corporation have limited liabilities, being liable only to the extent of their capital investment in the corporation made through the acquisition of stocks. The capital of a corporation is the sum of the total par value of stocks issued by the corporation. The stocks of a corporation may be freely transferable, unless its Articles of Incorporation provides that the transfer is subject to the approval of the board of directors. A *Chusik Hoesa* may issue bonds and/or various classes of shares such as preferred stocks.

#### (4) Yuhan hoesa (a private limited company)

A *Yuhan hoesa* consists of members with limited liabilities who are responsible only to the extent of their capital investment. Although the units of the corporation may be transferable, *Yuhan Hoesa* may not issue bonds or preferred shares.

#### (5) Yuhan Chaekim Hoesa (a limited liability company)



*Yuhan Chaekim Hoesa* is very similar to a U.S. LLC. It is intended to provide the advantages of *Yuhan Hoesa* and *Chushik Hoesa*. The liability is limited, shares are freely transferable between members, no capitalization requirements are imposed and no director or auditor requirements are imposed. However, *Yuhan Chaekim Hoesa* has rarely been used in practice yet, as it was only introduced by the revision of the KCC in April 15, 2012.

**C. Comparison between *Chusik Hoesa* and *Yuhan Hoesa***

The below table summarizes the key differences between a *Chusik Hoesa* and *Yuhan Hoesa*, the two most frequently used corporate structures, under Korean law:

	<b>Chusik Hoesa</b>	<b>Yuhan Hoesa</b>
<b>Class of shares (units)</b>	2 or more classes of shares permitted	Only 1 class of units permitted
<b>Securitization of Shares (units)</b>	Allowed	Prohibited
<b>Issuance of Bonds</b>	Permitted according to procedure prescribed in the KCC	Not permitted
<b>Public offerings of shares or units</b>	Permitted, provided that minimum requirements of the Financial Investment Services and Capital Markets Act are met	Neither permitted nor required in any case
<b>Equity certificates</b>	Non-bearer certificates, which may or may not be issued	N/A
<b>Information on equity holders required for AOI</b>	Not required	Name, resident registration number, address and number of contributing units of each member
<b>Voting rights of equity holders</b>	One (1) vote for each voting share/unit, unless otherwise prescribed by the AOI	
<b>Number of directors</b>	Minimum of 3 (if the company has paid-in capital of 1 billion KRW or more).  If paid-in capital is less than 1 billion KRW, the company may have 1 or 2 directors.  No maximum prescribed.	Minimum of 1, and no maximum prescribed
<b>Term of directors</b>	Maximum of 3 years at a time	No maximum term prescribed
<b>Board of directors</b>	Required, except where the company has only 1 or 2 directors	Not prescribed by law
<b>Management of Business</b>	Representative Director (or sole director) (cannot be a corporation)	
<b>Statutory auditor</b>	1 statutory auditor required if the company has paid-in capital of 1 billion KRW or more, and otherwise, it is not mandatory for the company to have a statutory auditor.	Appointment of statutory auditor optional
<b>Public notice of annual balance sheet</b>	Required	Not required



	<b>Chusik Hoesa</b>	<b>Yuhan Hoesa</b>
<b>Accounting</b>	Accounting record shall be maintained as required by Korean tax law and Korean GAAP.	

#### **D. Incorporation Procedures**

The following activities, among others, must be completed to incorporate a *chusik hoesa*, a joint stock company:

- Draft articles of incorporation (AOI);
- Subscription of shares by the promoter(s) and other subscriber(s);
- Payment of subscription money;
- Investigation by the directors and statutory auditors into whether the incorporation has complied with applicable laws and the articles, and investigation by the court-appointed inspector into whether any elements of abnormal incorporation, such as promoters' special benefits, contributions in kind and transferred property in advance, have been duly assessed and dealt with in accordance with applicable laws;
- Election of director(s) and corporate auditor(s);
- Registration of the incorporation at a competent commercial registry; and
- If the foreign investor incorporates the company or participate in equity investment for the new company, a foreign exchange filing (this should be completed before the registration).

Thereafter, a business registration certificate from the local tax office must then be obtained.

#### **E. Partnerships in Korea**

##### (1) Johap

A *johap*, (a general partnership) consists of partners with unlimited liabilities, and is regulated by the Korean Civil Code. All partners in a general partnership are jointly and severally liable for all debts. A *johap* is not a separate legal entity per se and, instead, is recognized as an "association" authorized by law to engage in business. Therefore the partners of a *johap* must add their share of profits and losses from the partnership to their taxable income at the time of accrual.

##### (2) Hapja Johap

A *hapja johap*, (a limited partnership) regulated by the KCC, is similar to *hapja hoesa* (a limited partnership company), but with no legal entity. A *hapja johap* can be established upon an agreement among (i) one or more managing partners who agree to bear unlimited liability in the partnership and (ii) one or more limited partners, whose liability is limited to their capital contribution in the partnership to make joint capital contributions to conduct business together.

##### (3) Ikmyung Johap

A *Ikmyung Johap*, an undisclosed partnership is formed when parties agree that one party will make a contribution toward the business of the other and to divide any profits accruing from such business (Article 78 of KCC). The contribution made, in the form of money or property by the undisclosed partner shall be regarded as the property of the proprietor of the receiving business. The undisclosed partner neither acquires rights nor bears obligations with regard to the third parties through the acts of the proprietor.

#### **D. Sole Proprietorships**



In Korea, a foreign investor can be a sole proprietor. The most common form of a sole proprietor is being a single stockholder in a *chusik hoesa* or a single unitholder in a *yuhan hoesa*.

#### **E. Subsidiaries/ Branches/ Representative Offices**

A foreign investor may establish a subsidiary, which is considered a separate legal entity from its parent company, in various types of companies shown above. The parent company would generally not be liable for the activities of the subsidiary.

On the other hand, a branch or a representative office is not a legal entity distinct from its head office and are deemed as an extension of its head office. Thus, setting up a branch or representative office in Korea can be viewed as the head office being engaged in commercial operations in Korea. For the same reason, the head office can be directly subject to liability for the activities of the branch. There is no discrepancy between them regarding incorporation or registration thereof. It should be noted that the branch may conduct business while representative office may not. The process of establishing a branch is considered simpler than compared to that of a subsidiary.

#### **F. Joint Ventures**

A Joint Venture (JV) is not expressly defined under Korean law. If a JV is defined as a commercial venture between two or more separate legal entities that pool their resources and carry on a business, JV can be organized in any of the corporate forms or partnerships described above. The decision regarding what type of partnership or corporate structure is most desirable for a given JV will depend on several factors, including the length of the contemplated co-operation and the extent to which the parties require the independence and autonomy of a common entity. The vast majority of JVs in Korea are set up as a joint stock company (*chusik hoesa*).

#### **G. Trusts and other fiduciary entities**

The Trust Act regulates the legal relationship of a trust. The Financial Investment Services and Capital Markets Act (Capital Markets Act) regulates businesses related to trust and fiduciary relationships involved in collective investment businesses, etc.

### **VIII. Requirements For The Establishment Of A Business**

#### **A. Alien Business Law**

- **Is the business subject to any alien business law?**

As explained above, the Foreign Investment Promotion Act (FIPA) provides grounds for restriction of foreign investment in certain industries. See Section V. B. above for detail.

- **Are there registrations or reporting requirements?**

See Section V. B. above.

#### **B. Antitrust Laws**

- **Do the entity's operations comply with anti-trust laws?**

Foreign companies conducting business in Korea are subject to the Monopoly Regulation and Fair Trade Act (MRFTA). According to the Fair Trade Act, business combinations that are subject to merger control include the following transactions: (1) acquisition of shares of another company; (2) interlocking directorate (where an officer or employee holds an officer's position in another company); (3) mergers; (4) business or fixed



operating asset transfer or lease, acceptance of appointment to management; and (5) participation in the establishment of a company. The MRFTA also regulates concerted acts of unfairness, acts of preserving resale price and other unfair trades.

- **Are there filing requirements?**

M&A transactions that may restrict fair competition in the market are regulated by the government. Under the MRFTA, certain M&A transactions may trigger the requirement to submit a merger report to the Korean Fair Trade Commission (KFTC) and must be approved by the KFTC, as long as at least one of the parties (including affiliates that continue to be affiliates after the transaction) has assets or annual revenues of at least KRW 300 billion, where each of the acquirer and the target has assets or annual revenues of at least KRW 30 billion.

### **C. Environmental Regulations**

- **Is the business of the investor subject to environmental regulation?**

Yes. The business of the investor is subject to various environmental regulations depending on the environmental concern in connection with such business. For example, a business that discharges air pollutants, water pollutants and waste and soil pollutants must obtain a government approval on the installation of discharging facilities from the Minister of Environment (MOE) in accordance with each relevant law. To comply with environmental requirements, companies operating in Korea must adhere to the permitted level of pollutant discharge and environmental related surcharges stated in the relevant laws. For instance, anyone intending to install a wastewater emitting facility must obtain a permit from or file a report with the MOE.

### **D. Government Approvals**

A business, including foreign investors as well as domestic businesses, may be required to obtain other governmental approvals, licences and permits, depending on the nature of the anticipated activities

### **E. Insurance**

Under Korean law, an employer is required to enroll its employees into the national pension, national health insurance, industrial accident insurance, and unemployment insurance (a.k.a. Four Mandatory Insurances).

There are some compulsory insurance required for a business depending on the nature of its business. For instance, users of specific gas-using facilities are required to enroll in a gas insurance policy that covers damages to life, body or property of other persons caused by any accident from gas used by them.

### **F. Licenses/Permits**

Depending on the anticipated activity, a licence or permit may be required pursuant to the relevant laws.

## **IX. Operation Of The Business**

### **A. Advertising**

- **Are there restrictions on advertising?**

In general, all labeling and advertising of products and services offered by businesses are regulated by the Act on Fair Labeling and Advertising in order to establish fair transactions and protect consumers. Also, there are certain restrictions imposed by industry-specific laws on advertisement relating to transactions concerning specific products (e.g., pharmaceutical products) and transactions taking place by specific sales methods (e.g., Act on Broadcast Advertising Sales Agencies, Outdoor Advertisements Control Act, etc.).

## **B. Attorneys**

- **Is it necessary to have local counsel?**

There is no general requirement to appoint local counsel. Nevertheless, it is highly recommended that specific legal advice from Korean counsel be obtained prior to entering into any transaction. In addition, only Korean attorneys may represent a party in any litigation proceedings conducted in Korean courts.

- **How can local counsel be found?**

It is not difficult to contact Korean legal counsel and receive consultations. The investor may choose lawyers through personal recommendation or engage international law firms referenced in an official legal practitioner's guide.

- **How much are attorneys fees?**

Most law firms use a time-based fee structure. Fees usually range from US \$200 to US \$900 per hour, depending on the seniority of the lawyer. Fees do not usually include out-of-pocket expenses and VAT (currently 10%).

Flat or task-based fee agreements are also common in litigation cases. In such cases, the contingent fees or success fees are usually added to the fee arrangement. Success fee is only payable if there is a favorable result in the litigation. Until 2015, the success fee arrangement was used in both criminal and civil litigation. On July 23, 2015, the Supreme Court ruled that contingent fee agreements for criminal representation were void as against public policy, under Article 103 of the Civil Code.

## **C. Bookkeeping Requirements**

- **Must the investor keep local books of accounts?**

Korean law imposes requirements on companies to keep accounting records and to prepare and disclose accounting records.

- **In what form must the investor keep accounts (e.g. GAP, in what language, etc.)?**

The KCC provides that the accounting of a company shall be conducted in accordance with generally accepted fair and proper accounting practices. In addition, the Act on External Audit of Stock Companies mandates a stock company with total assets of at least 12 billion Korean won to prepare the financial statements in accordance with K-GAAP or K-IFRS.

## **D. Consumer Protection Laws**

- **Are there consumer protection laws, which apply to the investor's operations?**

There are a wide range of laws which regulate business transactions with consumers and which would apply in relation to the investor's operations involving consumers. These laws are aimed at protecting consumers from any harm arising out of their relatively weak position compared to manufacturers, suppliers and merchants.

General consumer protection issues may be classified into two categories: (i) issues arising from the use of products and (ii) issues arising from transactions with business. Framework Act on Consumers, which operates as the basic legislation regarding consumer protection, govern the both categories of issues.



Product Liability Act governs issues from the use of products. Act on the Regulations of Terms and Conditions, etc. governs the issues arising from consumer's transactions with businesses.

In addition, there are a great number of legislations that apply to specific industries, businesses, and transaction methods. The following are only a few examples of such consumer protection laws.

- Act on Consumer Protection in Electronic Commerce etc.
- Financial Investment Services and Capital Markets Act
- Insurance Business Act
- Agricultural Products Quality Control Act
- Livestock Products sanitary Control Act
- Food Sanitation Act
- Medical Service Act
- Pharmaceutical Affairs Act
- Framework Act on Products Safety
- Electrical Appliances Safety Control Act

## **E. Construction**

- **What are the costs of construction?**

The costs of construction are highly dependent upon various factors such as the size, location and purposes of the required construction.

- **Are permits required for construction?**

Under the Building Act, a person who intends to construct a new building or substantially repair an existing building, must obtain permission from the relevant government authority. After construction is complete, the person must submit a construction completion report to the relevant local governmental authority and obtain a permit for use. Requirements for building permit and permit for use are prescribed by law that apply to the relevant project.

The Building Act, however, provides an exception to permission requirements for small buildings, for which the applicant only needs to report to the relevant government authority of its construction.

- **How is authorization to construct obtained?**

In order to obtain a building permit, the applicant is required to submit an application to the relevant local government authority. Once application is received, the local government and relevant government authorities review the application in light of the Building Act and other applicable laws and will issue the authorization.

- **How long does it take to receive authorization?**

It usually takes 3 to 5 months if there are not issues related to the construction. Of course, upon review, the time may take longer.

- **What fees are involved?**

The amount of fees required for filing the Application depends upon the area in which the building permit is required and the purpose for which the building is to be used (e.g. residential, commercial, industrial, etc.).

## **F. Contracts**

- **Can the investor freely enter into local contracts?**

Yes. The principle of freedom of contract is a constitutional principle that applies to all civil relations in Korea.

- **Can the law of another country govern the contracts?**

Yes. A contract executed in Korea may designate the laws of a foreign jurisdiction as its governing law.

## **G. Price Controls**

- **Are there applicable price controls?**

Except for certain essential utilities which the government has control over the pricing, there are no directly imposed price controls. From the fair trade perspective, the Monopoly Regulation and Fair Trade Act provisions relating to matters such as cartel, bid rigging, resale price maintenance and predatory pricing can also affect price.

## **H. Product Registration**

- **Must the entity register its product?**

There is no general requirement to register products in Korea. However, there are many kinds of products regulated by individual legislations which are required to be registered (e.g. drugs, medical equipment, chemicals, etc.)

## **I. Reductions or Return on Capital**

- **Can capital be repatriated while the corporation is still ongoing?**

Under the KCC, a company may decrease its capital by shareholder's approval subject to undergoing a procedure to protect its creditors.

In addition, a company may acquire its own shares and cancel such shares. In order for a company to acquire its own shares, it must go through set procedures and meet certain requirements prescribed in the KCC.

## **X. Cessation Or Termination Of Business**

### **A. Termination**

For the purpose of this section, we assume that the termination of business signifies a case of voluntary liquidation or winding-up of a company.

- **What are the tax consequences of terminating the business?**

Under the Corporate Tax Act (CTA) and the Value Added Tax (VAT) Act, liquidator of a company should undertake the following procedures to obtain tax clearance for the liquidation of the company: a) report the closure of the business; b) file a VAT return for the last period ending on the dissolution date; c) file an annual corporate tax return for the last fiscal period ending on the dissolution date; and d) file a liquidation income return.

Under the provisions of CTA, the 'Deemed Dividend' to an individual shareholder upon liquidation of the company may be subject to withholding tax. Deemed Dividend may accrue only when the shareholder receives

a distribution from the company as a result of the liquidation which exceeds the amount of the investment made. Under the CTA, corporations are subject to corporate income tax on their liquidation income (net assets less net equity), if any, at the normal corporate income tax rate.

- **What costs are involved in termination?**

In general, liquidation of company will take the following steps: (a) resolution to dissolve the company; (b) registration of resolution and appointment and registration of liquidator; (c) reporting of assets by liquidator; (d) notification to creditors and repayment through public notices or individual notifications; (e) distribution of remaining assets; (f) preparation of liquidator's report for shareholder's approval; and (g) preservation of corporate records.

Costs are involved with the each step of the procedure. Especially, the costs will include the cost for registration of dissolution and appointment of liquidator, legal fee in connection with the procedure, cost of notifications to creditors, and cost of registration of completion of liquidation.

- **How long does it take to terminate the business?**

Generally speaking, if all required procedures progress without problem, a liquidation procedure may be completed in about four to five months. On a precautionary note, the creditor protection procedure for the liquidation may take longer than initially expected. This is because the liquidation involves the termination of all outstanding such creditor-debtor relationships, even if such termination may not be preferred by, or considered to be detrimental to the company's creditors or customers.

- **How is the investor's particular form of business treated in termination?**

The liquidation processes for a *chusik hoesa* (joint stock company) and *yuhan hoesa* (private limited company) are almost the same.

- **Can the business be terminated without government approval or intervention?**

Commencement of the liquidation process (i.e. resolution to dissolve) and the appointment of the liquidator must be registered with the relevant court. The completion of liquidation should also be registered with the court.

- **What are the obligations toward creditors, employees and others upon termination?**

Within two months from the date when the liquidator is appointed, the liquidator is required to make two or more public notices to notify the company's creditors that they need to report their claims within a period which should not be less than two months. The liquidator needs to notify individually those creditors that he is aware of. During the reporting period, the liquidator may not, in principle, pay off any claim. The liquidator may pay off claims only after the expiration of the reporting period.

## **B. Insolvency/Bankruptcy**

- **What is the extent of the investor's liability in the event of insolvency or bankruptcy?**

Shareholders in a *chusik hoesa* (joint stock company) or *Yuhan Hoesa* (private limited company), in principle, have limited liability. Therefore, the potential liabilities of shareholders are limited to their respective amount of investment (namely, value of shares owned).

However, according to the court precedents and the KCC provisions, there are certain exceptional situations where shareholders can be liable for the obligations of the company. For example, in case upholding the separate legal identity of the company violates the principles of fairness and equity, the courts may instead opt to pierce the 'corporate veil' and recognize liability on the part of the shareholder that in fact controls the company. The foregoing is limited in application and in exceptional circumstances, and there are not many

Korean case precedents where the court actually applied this legal principle.

- **What choices, if any, are available to the investor with regard to the restructuring of the business?**

The legislative framework in Korea allows for informal work-outs, as well as formal restructuring and insolvency proceedings under the Debtor Rehabilitation and Bankruptcy Act.

There are two types of informal work-outs in Korea: (i) Voluntary Agreement among the debtor and creditor-financial institutions, and (ii) work-out procedures under the Corporate Restructuring Promotion Act.

## **XI. Labor Legislation, Relation, And Supply**

### **A. Employer/Employee Relations**

- **What laws govern employer/employee relations?**

The key employment statute is Labor Standards Act (LSA). Other major pieces of legislation include the following:

- Guarantee of Workers' Retirement Benefits Act;
- Occupational Safety and Health Act;
- Act on Prohibition of Age Discrimination in Employment and Aged Employment Promotion;
- Act on the Protection of Fixed term and Part time Employees;
- Act on the Protection of Dispatched Workers;
- Act on Employment Promotion and Vocational Rehabilitation for Disabled Persons;
- Equal Employment Opportunity and Work-Family Balance Assistance Act ;
- Minimum Wage Act; and
- Trade Union and Labor Relations Adjustment Act.

- **Are there obligations to train employees?**

There are no obligation to train employees for the work that they perform. However, some of the key training requirements include:

- annual sexual harassment prevention training;
- personal information protection training; and
- industrial safety and health training

### **B. Employment Regulations**

- **Must the investor hire nationals of the country?**

Investors are not required to hire nationals of Korea. Please note that the Act on Private International Laws stipulates that, as a general proposition, employees who habitually provide work from Korea shall not be deprived of the mandatory protections provided under the Korean employment and labor laws. Therefore, even if the investor hires foreign nationals, Korean employment and labor laws may apply.

- **Is there a minimum wage?**

For 2018, KRW 7,530/hr (KRW 60,240/day based on the standard 8-hour workday, which has been increased by 16.4% compared to 2017).



- **Is there a maximum number of hours an employee can work each week?**

40 hours per work week and up to 12 hours of overtime; provided that, additional restrictions on working hours and overtime may apply for minors or pregnant employees. Please note that there is an ongoing dispute as to the definition of 'work week'. That is, the Ministry of Employment and Labor (MOEL) interprets 'work week' as excluding weekends, resulting in up to 68 total work hours (*i.e.*, 40 hr/wk + 12 overtime hours + 8 hrs on Saturday + 8 hrs on Sunday), while the lower courts have held that 'work week' includes weekends, resulting in a maximum of 52 total work hours (*i.e.*, 40 hr/wk + 12 overtime hours)).

- **Is there a minimum number of vacation and sick days to be given?**

Statutory paid holidays are those that are specified under the LSA such as Labour Day (which falls on 1 May every year) and the 'weekly holidays' (*i.e.*, one day of paid holiday if the employee works the full work week). As a general proposition, Sundays are typically designated as the weekly holiday. There are no other statutory holidays, and employers are free to determine their own holiday calendar and to decide whether such holidays should be paid or unpaid.

During the first year of service, employees are entitled to one (1) day of paid leave per completed month of service. For the second year of service, employees are entitled to fifteen (15) days of paid annual leave less any paid annual leave days used during the first year of service; provided that, the employee has obtained an 80% attendance rate during the immediately previous year. If an employee has not obtained the 80% attendance rate, he/she would be entitled to one (1) day of paid leave per completed month of service.

The employees are entitled to one (1) additional paid annual leave per every two (2) years after the first year of service. However, the total number of paid annual leave days thus accrued may not exceed twenty-five (25) days. Please note that, on May 29, 2018, the new amendments to the LSA will take effect. One such change would be that employees would be entitled to one (1) day of paid leave per completed month of service during the first year of service, but the paid annual leave days used during the first year of service shall not be deducted from the employee's entitlement for the second year of service.

There are no statutory sick leaves under Korean law.

## **B. Hiring and Firing Requirements**

- **Must the investor employ a minimum number of people?**

Generally speaking, there are no minimum number of people that an investor must employ.

- **Must the investor employ a minimum number of nationals?**

Generally speaking, there are no minimum number of Korean nationals that an investor must employ.

- **Must nationals hold certain positions in the company?**

There are no positions that a Korean national must hold. For example, the registered directors or representative director of a Korean subsidiary need not be Korean nationals.

- **Are there rules to follow in hiring/dismissing personnel (e.g. notice)?**

Under the LSA, an employee may be terminated only for just-cause. While there is no clear definition of just-cause, the courts have described it as a "cause that is attributable to the employee which, under the socially-accepted principles, makes the continuation of the employment impossible."

A layoff is also referred to as a termination for "managerial reasons" (*i.e.*, reasons attributable to the employer) under the LSA. Please note that the courts review the layoff requirements and the satisfaction thereof with

great scrutiny, and as a matter of practice, it is generally more difficult and time-consuming to satisfy all the requirements for a layoff than individual terminations.

The layoff requirements are as follows:

1. There must exist an imminent managerial necessity (e.g., severe financial strain over a period of time);
2. The employer must make best efforts to avoid the layoff;
3. The employer must establish a reasonable and fair criteria regarding those to be laid off;
4. The employer must consult in good-faith with the employee representative or labor union (if majority union exists) on matters related to the layoff;
5. An advance notice must be provided at least 50 days prior to the scheduled layoff date to the employee representative or labor union (if majority union exists) and good faith consultation in connection thereto; and
6. The employer must submit a report to the Ministry of Employment and Labor (“MOEL”) if, in principle, 10% or more of the workforce is being laid off.

Subject to the limited circumstances stipulated in the LSA where advance notice may be waived, employers must provide a written termination notice of at least 30 days or provide the appropriate compensation in lieu of the advance notice. Even if a payment is made in lieu of an advance notice, a written termination letter, containing information on the specific grounds for termination and the effective termination date, is still required.

- **Does the investor have a continuing obligation towards dismissed employees?**

Following an employee termination, the investor does not have any continuing obligations towards the employee. However, the law requires that wages and statutory severance be paid within fourteen (14) days of the effective termination date. Also, as Korea offers four national insurances (*i.e.*, the national pension, national health insurance, industrial accident insurance, and unemployment insurance), employers must report the change of status and occupation of the terminated employee to the MOEL within timeframes stipulated in the law.

### **C. Labor Availability**

- **Is adequate skilled or unskilled labor available for the anticipated business?**

As in any jurisdiction, availability of individuals with the right qualifications would depend on the industry, required PQE, complexity of the work required, etc.

### **E. Labor Permits**

- **Are labor permits required?**

As a general proposition, for foreign nationals working in Korea, labor/work permits (or visas) would be required. The type of permit/visa that would be required may depend on the individual’s work, duration of stay, and/or the number of prior work permits/visas that the investor has obtained for its foreign national workers.

- **If so, how are they obtained?**

The procedure (e.g., documentation, timing) would depend on the type of visa being sought.

- **How long does the process take?**

The time required would depend on the type of visa being sought. For example, for the E-7 visa (a common work visa whereby an employer in Korea would be the employer-sponsor), processing time would be approximately one (1) month.

- **What fees are involved?**



The administrative fees (if any) may depend on the type of visa being sought.

#### **F. Safety Standards**

- **Are there safety codes that must be followed?**

The Industrial Safety and Health Act stipulates in detail the safety obligations that employers must observe for each industry. Although the specific obligations may differ depending on the employers' industry, major obligations include the appointment of safety managers and health managers, installing and operating industrial safety and health committees, and conduct health examinations for employees.

#### **G. Unions**

- **Are unions recognized?**

Yes, unions are recognized, and the Trade Union and Labor Relations Adjustment Act (Union Act) constitutes the primary legislation for the organization, operations, and other matters related to labor-management relations.

- **What are the unions in the investor's business?**

Each employer would have a unique workforce demographic. That is, whether to create a union would be subject to the relevant employees' decision to establish a union. Whether or not a union exists does not depend on the industry.

- **What are these unions' political affiliations, if any?**

Instead of political affiliations, workplace unions may be members of larger umbrella unions or industry-specific unions. The two largest, primary umbrella unions are: Federation of Korea Trade Unions and the Korea Confederation of Trade Union.

- **Is there an obligation on the part of the employer to organize unions?**

Whether to establish a union would be the choice of the employees, not the employer. Employers would not be organizing unions; employers must also not unduly dominate or influence union formation (e.g., dissuade employees from joining unions, disadvantage an employee for establishing of joining a union) or union activities, as such acts may constitute unfair labor practices under the Union Act. Please note that unfair labor practices constitute criminal offenses under the Korean law.

- **Are there mandatory collective bargaining agreements for the business involved?**

If a union exists, upon the request for collective bargaining negotiations from the Union, the employer must negotiate in good-faith.

## **XII. Tax On Corporations**

#### **A. Allowances**

- **What are the major allowances (e.g. capital cost depreciation)?**

The major allowances that could reduce taxable income include a net operating loss (no carryback, carryforward for 10 years only), certain exempted income items, and deductible expenses.

- **What are the major deductible items?**

Generally, ordinary and necessary expenses that are common and accepted in taxpayer's trade or business are deductible such as cost of goods sold, marketing and selling expenses, wages, etc.

- **What are the major expenses that are excluded from deductibility?**

Major nondeductible expenses include non-business related expenses, certain entertainment costs, capital transactions, asset valuation loss, etc

## **B. Calculation of Taxes**

- **How is the taxable base determined?**

Corporate income tax is basically imposed in accordance with a net asset increase theory. In other words, the corporate income tax base is determined by deducting gross deductible expenses from gross revenue and then applying the relevant corporate tax rate to such tax base.

## **C. Capital Gains**

- **What are the federal or national tax rates on capital gains?**

Capital gains are not treated differently, rather capital gains or losses are subject to corporate income tax.

- **What are the regional or state taxes on capital gains?**

Local income tax at a rate of 10% as a surtax applies to corporate income tax

- **What are the municipal or local taxes on capital gains?**

N/A

## **D. Filing and Payment Requirements**

- **When must the corporation file its tax return, if any?**

Companies generally must file a year-end income tax return within three months after the end of their fiscal years.

- **When must the corporation pay its taxes?**

Companies generally must pay taxes within three months after the end of their fiscal years.

- **Are taxes paid in installments or annually?**

Corporate income taxes are generally paid annually. Installments are allowed for a taxpayer whose tax liability exceeds KRW 10,000,000.

## **E. Miscellaneous Taxes Due**

- **Is there a tax on capital?**

Upon establishment, registration and license tax which applies to the paid-in capital at a rate of 0.4% to 25 depending on the place of incorporation is imposed. In addition, local education tax at a rate of 20% applies to the registration and license tax.

- **Is there a business license tax?**

See the answers above.

- **Is there an apprenticeship tax?**

N/A

- **Is there a training tax?**

N/A

- **Are there other taxes?**

Various local taxes exists such as property tax and acquisition tax.

- **What are the filing and payment requirements?**

Payments generally shall be made upon filing, and filing requirements vary depending upon the types of taxes.

#### **F. Registration Duties**

- **Are there registration duties due upon the incorporation of a company?**

A registration fee of KRW20,000 to KRW30,000 would be imposed depending on the filing methods. Also, a notarization fee for articles in the amount of KRW80,000 or more would be imposed depending on the amount of paid-in capital.

- **Are there registration duties due upon an increase in capital?**

Registration and license tax along with education tax shall apply.

- **Are there registration duties due upon the transfer of the company's shares?**

N/A

- **Are there registration duties due upon a transfer of corporate assets?**

Transfer of real estate assets, certain machineries and rights are subject to acquisition tax pursuant to the Local Tax Act.

- **Are there any other registration duties due?**

Registration license tax applies to certain property rights and licenses upon registration.

#### **G. Sales Tax or other Turnover Tax**

- **What is the system of sales tax (e.g. V.A.T., cumulative)?**

For the purposes of the VAT Act, a taxable transaction means any supply of goods or services by an independent entrepreneur, unless such supply of goods or services is expressly provided as a VAT-exempt business under the VAT Act. Corporations are required to issue VAT invoices electronically and a penalty is imposed for any taxpayer's failure to issue and report an electronic VAT invoice to the relevant Korean tax authorities.

- **Is input tax creditable against output tax? .**

If the total amount of VAT on goods and services supplied by a taxpayer (output tax amount) is greater than the total amount of VAT paid by such taxpayer for purchase of goods and services during the taxable period either used or to be used for his or her own business (input tax amount), then the difference between the output tax amount and the input tax amount will be paid by the taxpayer to the Korean tax authorities. If the input tax amount is greater than the output tax amount, then the Korean tax authorities will refund the difference to the taxpayer.

- **What are the tax rates?**

VAT is imposed on any and all taxable transactions at a uniform rate of 10 per cent, except for certain limited cases such as export of goods where the applicable rate is reduced to zero per cent.

- **What are the filing and payment requirements?**

VAT tax returns should be filed four times a year – once for each three-month period.

#### **H. Social Security and Welfare System Contributions**

- **Are social security contributions due?**

Yes

- **Are retirement or pension contributions due?**

Yes

- **Are unemployment insurance contributions due?**

Yes

- **What are the filing and payment requirements for any such contribution?**

A business generally is responsible for the filing and payment of the national pension, national health insurance, industrial accident insurance, and unemployment insurance by the 10th of the following month.

#### **I. Special Tax Schemes**

- **Are there particular tax consequences of doing business in the country?**

N/A

#### **J. Tax on Profits**

- **What are the federal or national income tax rates on profits?**

Currently, applicable corporate income tax rates are as follows:

<b>Tax base</b>	<b>Applicable rate</b>
Up to 200 million won	10% of the tax base
200 million won to 20 billion won	20 million won + (20% of the tax base exceeding 200 million won)

Tax base	Applicable rate
20 billion won to 30 billion won	3.98 billion won + (22% of the tax base exceeding 20 billion won)
Over 30 billion won	6.18 billion won + (25% of the tax base exceeding 30 billion won)

- **What are the regional or state tax rates on profits?**

A 'local income tax' is levied in addition to the corporate income tax at a rate of 10% as a surtax.

- **What are the municipal or local tax rates on profits?**

N/A

#### **K. Tax Treaties**

- **Are there any applicable tax treaties?**

Korea is currently a party to double taxation treaties with more than 80 nations. The provisions of such tax treaties generally allow for reductions of local withholding on outward-bound payments to non-residents, and reductions of non-local withholding on inward payments to residents of dividends, interest and royalties. The precise levels and combinations of reductions on withholdings for outward and inward bound payments vary depending on the respective treaties.

- **Are there any rules against treaty-shopping?**

Basic Act for National Taxes has expressly adopted a principle of placing priority on 'substance over form'. This means that determinations of whether, and against whom, a particular tax liability is to be imposed will not be limited to a superficial examination of the formal entities and relationships that exist 'on paper' when there is evidence that the formal characterisation of an entity or transaction do not adequately reflect the substantive realities involved. For example, in cases where there is a beneficial owner of a corporate entity established in a country with which Korea has executed a double tax treaty, and evidence indicates that such entity has no business function other than to serve as a tax-advantaged conduit through which payments are routed to the beneficial owner, the tax authorities may disregard such entity and deny the application of tax treaty benefits that would ordinarily apply to the entity located in such country; and instead impose tax liabilities based on the beneficial owner's home jurisdiction. This general principle of 'substance over form' can be seen as the primary mechanism through which the tax authorities are empowered to limit tax avoidance schemes.

#### **L. Territoriality Rules**

- **Where is the corporation subject to tax?**

Corporations are subject to tax on its worldwide income.

- **Is the corporation subject to tax on its worldwide income?**

Yes.

#### **M. Treatment of Tax Losses**

- **How are corporate tax losses treated?**

As a general rule, deficit amounts accruing in each business year can be carried forward for 10-year periods.

#### **N. Wealth Tax**

- **Is there an applicable wealth tax?**

N/A

#### **O. Withholding Taxes**

- **What are the rates of withholding tax on dividends?**

Dividends paid to nonresident companies are subject 22% withholding tax (including the local surtax). The rate may be reduced under a tax treaty.

- **What are the rates of withholding tax on royalties?**

Royalties paid to nonresident companies are subject 22% withholding tax (including the local surtax). The rate may be reduced under a tax treaty.

- **What are the rates of withholding tax on interest?**

Interest paid to nonresident companies are subject 22% withholding tax (including the local surtax). The rate may be reduced under a tax treaty.

- **What are the rates of withholding tax on profits realized by a foreign corporation?**

See the Section J. above.

### **XIII. Tax On Individuals**

#### **A. Allowances**

- **What are the major allowances?**

Personal and dependent exemptions for taxpayer and taxpayer's qualifying family members could reduce taxable income. Also certain deductions and exemptions (such as contributions made to health insurance and foreign taxes paid) allowed under the Personal Income Tax Act and Restriction of Special Taxation Act would also reduce taxable income.

#### **B. Calculation of Taxes**

- **How is the taxable base determined?**

Taxable income comprises wages and salaries, dividends, interest income, rental income, business income, pension income, severance income and other income, and the taxable base is determined after various deductions, allowances and credits.

#### **C. Capital Gains Tax**

- **Are capital gains taxable?**

Yes. Capital gains are taxed separate from ordinary income, with the rate depending on the type of asset and holding period.

#### **D. Filing and Payment Requirements**



- **When must the individual file a tax return, if any?**

Taxpayers who have various types of income (interest, dividends, rent, pension, etc) other than wages generally are required to file an personal income tax return before May 31 of the following year.

- **When must the individual pay his/her taxes?**

Payments are due before the filing deadline.

#### **E. Inheritance and Gift Tax**

- **Does the individuals' presence in the country subject him/her to inheritance or gift tax?**

Individuals' presence subjects him/her to inheritance or gift tax.

- **What kinds of assets are subject to tax?**

Inheritance tax is imposed on all of the decedent's assets with economic value on the date of death. If the decedent is a resident, estate tax is charged on the fair market value of all of the decedent's worldwide assets that are subject to tax. If the decedent is a non-resident, estate tax is charged on the fair market value of the decedent's assets located in South Korea.

Gift tax is charged at the time of gift on the fair market value of the gift. A South Korean resident donee is taxed on gifts received on a worldwide basis. A non-resident donee is subject to gift tax on assets situated in South Korea. However, if a resident gives assets situated outside of South Korea to a non-resident, the resident donor must pay gift taxes except when gift tax is imposed under foreign law.

- **What are the tax rates?**

Applicable tax rates are as follows:

<b>Tax base</b>	<b>Applicable rate</b>
Up to 100 million won	10% of the tax base
100 million won to 500 million	10 million won + (20% of the tax base exceeding 100 million won)
500 million won to 1 billion won	90 million won + (30% of the tax base exceeding 500 million won)
1 billion won to 3 billion won	240 million won + (40% of the tax base exceeding 1 billion won)
Over 3 billion won	1 billion 40 million won + (50% of the tax base exceeding 3 billion won)

- **Are allowances available?**

A marital deduction up to KRW 600 million could reduce taxable income and certain personal exemptions are also allowed.

- **What are the payment and filing requirements?**

An estate tax return shall be filed and any taxes due shall be paid within six months of the last day of the month in which the testator died (day of the inheritance) with the head of the relevant tax office. A gift tax return shall be filed and any taxes due shall be paid within 3 months of the last day of the month in which the gift was made.

**F. Miscellaneous Taxes Due**

- **What are the miscellaneous taxes to which the individual may be subject?**

The miscellaneous taxes could include acquisition tax, property tax, registration license tax, vehicle taxes and, etc., and filing requirements vary depending on the type of taxes.

- **What are the filing and payment requirements?**

See our answer above

**G. Real Estate/Habitation Tax**

- **Is the individual subject to real estate or habitation tax?**

Individuals are subject to acquisition tax and resident tax as a surtax in relation to real estate pursuant to the Local Tax Act.

**H. Sales Tax**

- **Does the individual pay sales tax?**

Please see VAT Section

**I. Social Security and Welfare System Contributions**

- **Are contributions to social security due?**

Yes

- **Are contributions to the welfare system due?**

Yes

- **If so, what are the payment and filing requirements?**

Filing and payment requirements are generally met for employees as such contributions are made through a withholding tax on wages.

**J. Stock Option, Profit Sharing and Savings Plans**

- **Is there taxation of stock option plans?**

There is no taxable event at grant or on the vesting date of stock option as the stock option is taxed on exercise date. The spread between the market price of the stock and the amount paid by the employee for the stock pursuant to the plan, if any, is subject to income tax at exercise as employment income.

- **Is there taxation of profit sharing plans?**

Korea does not have the exact match to the profit sharing plans but if the profit sharing plans refer to compensation linked to employer's earnings, such compensation would be taxable as employment income.

- **Is there taxation of savings plans?**

Contributions to pension plans are generally tax deductible and distributions out of pension plans are generally taxable income

**K. Taxation of Benefits in Kind**

- **What is the rate of taxation on benefits in kind (e.g. automobile, housing and utilities, education, etc.)?**

Benefits in kind are generally taxable as employment income (progressive rates depending upon tax bracket) but certain fringe benefits that meets the qualification rules may be tax-exempt.

**L. Taxes on Dividends**

- **Are dividends taxable regardless of their form?**

Dividends are generally taxable, but certain dividends received from an individual savings account (ISA) may be exempt from tax under the Personal Income Tax Act and the Restriction of Special Taxation Act.

**M. Tax on Income**

- **What are the federal or national tax rates on income for residents?**

The applicable national tax rates are as follows:

<b>Tax base</b>	<b>Applicable rate</b>
Up to 12 million won	6% of the tax base
12 million won to 46 million	720,000 won + (15% of the amount exceeding 12 million won)
46 million won to 88 million	5,820,000 won + (24% of the amount exceeding 46 million won)
88 million won to 150 million	15,900,000 won + (35% of the amount exceeding 88 million won)
150 million won to 300 million	37,600,000 won + (38% of the amount exceeding 150 million won)
300 million won to 500 million	94,600,000 won + (40% of the amount exceeding 300 million)
Over 500 million won	174,600,000 won + (42% of the amount exceeding 500 million won)

- **What are the federal or national tax rates on income for non-residents?**

Same as residents.

- **What are the regional or state tax rates on income for residents?**

The applicable local tax rates are as follows:

<b>Tax base</b>	<b>Applicable rate</b>
Up to 12 million won	0.6% of the tax base
12 million won to 46 million	72,000 won + (1.5% of the amount exceeding 12 million won)
46 million won to 88 million	582,000 won + (2.4% of the amount exceeding 46 million won)
88 million won to 150 million	1,590,000 won + (3.5% of the amount exceeding 88 million won)
150 million won to 500 million	3,760,000 won + (3.8% of the amount exceeding 150 million won)

Tax base	Applicable rate
Over 500 million won	17,060,000 won + (4.0% of the amount exceeding 500 million won)

- **What are the regional or state tax rates on income for non-residents?**

Same as residents.

- **What are the municipal or local tax rates on income for residents?**

N/A

- **What are the municipal or local tax rates on income for non-residents?**

N/A

#### **N. Tax Treaties**

- **Are there any applicable tax treaties?**

Korea is currently a party to double taxation treaties with more than 80 nations. The provisions of such tax treaties generally allow for reductions of local withholding on outward-bound payments to non-residents, and reductions of non-local withholding on inward payments to residents of dividends, interest and royalties. The precise levels and combinations of reductions on withholdings for outward and inward bound payments vary depending on the respective treaties.

- **Are there any rules against treaty-shopping?**

Basic Act for National Taxes has expressly adopted a principle of placing priority on 'substance over form'. This means that determinations of whether, and against whom, a particular tax liability is to be imposed will not be limited to a superficial examination of the formal entities and relationships that exist 'on paper' when there is evidence that the formal characterisation of an entity or transaction do not adequately reflect the substantive realities involved.

#### **O. Territoriality Rules**

- **Where is the individual subject to tax?**

Resident individuals are subject to tax on its worldwide income.

- **Is the individual subject to tax on his/her worldwide income?**

Yes.

#### **P. Wealth Tax**

- **Is the individual subject to tax based upon his/her wealth?**

N/A

#### **Q. Withholding Tax**

- **Is salary subject to a withholding tax at the source?**

Yes.

- **What is the treatment of residents as compared to non-residents?**

See Section XVII. below.

#### **XIV. Tax On Other Legal Bodies**

N/A

#### **XV. General Tax Considerations**

##### **A. Taxes Generally**

- **Is there a generally accepted way of structuring the company or other entity so as to insure the desired tax consequences?**

Business organisations in Korea generally adopt a corporate form. Regarding the types of corporate forms provided in the Commercial Code of Korea, please refer to Section VII. B. above.

Among these, the most commonly used form is the joint-stock company.

In principle, from a tax perspective, all of the above-mentioned corporate forms are subject to taxation of the corporate entity. With regard to the *hapmyung hoesa* and *hapja hoesa* forms, however, it is possible for the corporate form to be treated as a simple pass-through entity analogous to a partnership (which is not subject to taxation as a separate entity) by filing an application pursuant to the Restriction of Special Taxation Act (RSTA).

- **Is there a general anti-tax avoidance system?**

Yes, there are various anti-tax avoidance regimens such as transfer pricing, thin capitalization, controlled foreign companies and 'substance over form' principle.

- **Can the chosen form of business be treated as a deferent form for tax purposes?**

Please see above with regard to the *hapmyung hoesa* and *hapja hoesa*.

#### **XVI. Immigration Requirements**

##### **A. Immigration Controls**

- **Are there immigration quotas?**

There are no immigration quotas in Korea.

- **Are vaccinations required?**

No vaccinations are required to enter Korea. However it is recommended that immunizations be up-to-date particularly for Hepatitis A and Hepatitis B, diphtheria, tetanus, polio (DTP) and typhoid.

- **Are medical certificates required?**

No medical certificates are required to enter Korea

- **Are entry permits required?**

In principle, all foreign nationals who enter Korea should obtain a status of sojourn and the visa evidencing such status pursuant to the Immigration Control Act.

However, nationals of visa waiver countries can enter Korea without a visa as long as the purpose of their visit is tourism or temporary visit (they are automatically granted B-1 status). Considering international convention, mutuality doctrine, national interest and other similar factors, certain countries are granted visa-free entry permissions. Nationals of visa-free countries are allowed up to 30 days of visa-free sojourn for tourism or visitation. However, if foreigners want to engage in profitable activities such as employment, they must apply for a Korean visa suitable for their purpose.

- **If so, must you apply for an entry permit before entering the country?**

Yes. Unless the person who wishes to enter Korea is a national from visa waiver countries, one must apply for a visa before entering the country.

- **Are exit permits required?**

Foreigners are free to leave Korea at their will, and by default, the right to do so may not be restricted. However, exceptions are made to those who involved in acts of crime or any such activities that justifies such restriction. Those that exceeded their allowed period of stay may leave the country after complying with prescribed procedures at the Immigration Bureau. Registered foreigners that are permanently departing the country must return their foreign registration cards during the departure inspection.

- **Are re-entry permits required?**

A foreigner who intends to re-enter Korea after a temporary departure within the current period of stay should apply for a single or multiple re-entry permit at an immigration control office having jurisdiction over the place of sojourn or at KOTRA's Investment Consulting Center. The application can also be filed at an immigration control office at the airport on the day of departure.

A re-entry permit is issued within the period of validity of the passport, the permitted sojourn period, and the period of the re-entry permit's validity (one year for a single permit and two years for a multiple permit).

Those who fall under the following are exempted from the obligation to obtain a re-entry permit, with the exception of foreigners who are banned from entering the country:

- Permanent residence (F-5) holders who intend to re-enter the country within two years from the date of departure;
- Persons who intend to re-enter the country within one year from the date of departure (the remaining sojourn period in the case that the remaining period is shorter than one year) holding the following visa types: from 1. Diplomacy (A-1) to 3. Negotiation (A-3), from 10. Culture and Arts (D-1) to 28. Accompanying Person (F-3), from 29. Others (G-1) to 31. Employment (H-2).

## **B. Immigration Requirements/Formalities**

- **Is a residence permit required?**

A foreigner may stay in Korea within the scope of his/her sojourn status and sojourn period. Foreigners staying in Korea for a period of 91 days or longer are subject to alien registration. To apply for alien registration, the necessary documents should be attached to the alien registration application form and submitted to the head of the immigration office having jurisdiction over the place of sojourn.

- **If so, does the investor have to apply for one before entering the country?**

Not necessarily. In the event that a foreigner has entered Korea without a residence permit or with a short-term visa due to unavoidable circumstances, he/she may apply for permission to change the status of sojourn at the immigration office that has jurisdiction over his/her place of sojourn or KOTRA's Investment Consulting Center.

- **What information must be supplied to the immigration authorities?**

For documents necessary for obtain business investment visa, please see our answer below under Section C.

- **How long does it take to receive authorization?**

It usually takes 3 or 4 days for the applicant to get the Alien Registration card, provided that the applicant already has obtained require visa for long term stay. In case, the applicant applies to change his or her status of sojourn for a long-term stay, it can take more than 3 weeks to receive the authorization, which may be shortened or extended depending on the circumstances.

## **C. Visas**

- **Is a visa required for travel or stay in the country?**

Yes, a visa is required in order for travel or stay in Korea.

- **If so, for how long is the visa valid?**

The status of sojourn is classified into more than 30 categories depending on the scope of permitted activities. Foreigner's sojourn in Korea is categorized as follows:

- Short-term stay: Limited, up to 90 days of stay
- Long-term stay: Limited, 91 or more days of stay
- Permanent Residency: Unlimited period of stay

- **How does the investor apply for a visa?**

A visa can be obtained through the following procedures: (1) A foreigner may submit the required documents to a diplomatic mission abroad to apply for visa issuance; (2) In the event that the authority for issuing visas is not delegated to the head of an overseas diplomatic mission, a foreigner may apply for visa issuance after he/she receives a visa issuance certificate or a certificate number, which an inviting party has obtained from the immigration control office that has jurisdiction over the inviter's place of sojourn; (3) In the event that a foreigner has entered Korea without a visa (in case of nationals from visa waiver countries) or with a short-term visa due to unavoidable circumstances, he/she may apply for permission to change the status of sojourn at the immigration office that has jurisdiction over his/her place of sojourn or KOTRA's Investment Consulting Center.

- **What documents are required?**

The documents required vary depending upon the type of the visa that a foreigner applied for. For a business investment Visa (D-8), necessary documents include the following, and further information may be required for review:

- Certificate of foreign-invested company registration;
- Copy of business registration certificate;
- Corporation registration certificate;
- Specification of change in shareholders (original copy);

- Dispatch order and employment certificate (in the case of employees dispatched to Korea);
- Documents certifying qualification as indispensable professional specialists: Technical certifications, certificate of career, company organizational chart, etc.;
- Certificate of payment of tax (corporation);
- Documents certifying place of sojourn (real estate lease contract, etc.); and
- Documents certifying introduction of investment funds.

- **How long does it take to receive a visa?**

Most short-term visas are issued immediately by a diplomatic mission abroad, since the authority to issue short-term visas is delegated to a consul. However, the issuance of a long-term visa may take longer, as it is issued at a diplomatic mission abroad after the approval of the Minister of Justice has been obtained

- **What fees are involved?**

Permits	Processing fee
Issuance and re-issuance of alien registration card	30,000 won
Permit for extension of period of stay	60,000 won
Permit for change of Visa status	100,000 won

## XVII. Expatriate Employees

### A. Cost of Living and Immigration

- **How does the cost of living compare to that in the investor's home country?**

The Cost of living index in Korea is 82.94, ranked 17th in the world. The Cost of living index in Seoul is 13.26% lower than that in New York.

- **What is the rate of inflation?**

The average inflation of Korea in 2017, based on average consumer price, was 1.95% (0.97% in 2016 and 0.71% in 2015).

### B. Drivers' Licenses

- **Must the investor obtain a driver's license for that country?**

Yes. Foreign driver's licenses are not valid in Korea. However, the investor may obtain an International Driving License prior to arriving in Korea which may be used for up to a period of 1 year.

- **How does the investor obtain a driver's license?**

In order to obtain a driver's license, the applicant must attending traffic safety training, undergo a physical checkup, take a written exam and a driving course test.

In addition, people with a valid foreign driver's license granted by the responsible government authority can apply for an exchange of their driver's license to a Korean driver's license as follows:

- Review of the required documents such as an Embassy Certificate;
- Aptitude Test (health check) and Written Examination (when a driver's license is issued by the Acknowledged Countries (AC), a written examination will be exempted).



- **What fees are involved?**

Fees for health checkup, written exam, driving course test, processing, and issuance will incur. The total cost of obtaining the driver's license is approximately 55,000 Korean won.

- **Is an examination, either practical or written, required?**

See our answer above.

### C. Education

- **What types of schools are available for the investor's family?**

Investor's family can attend either local schools or international schools.

#### (1) Local School

From the age of five or six (depending on space and a child's ability), it's compulsory to attend primary school in Korea. This stage of schooling is provided free of charge. Primary school lasts for 6 grades, and the curriculum is broad, covering basic skills, physical education and languages

Middle school begins when students are around 12 years old, and lasts for three years. Middle school is free of charge, and covers both compulsory and elective subjects. The curriculum at this stage remains broad, covering math, Korean and English languages, social studies, science and art. There are also 'moral education' classes.

There are several different options for secondary education in South Korea. Students can choose to go to a school which specialises in foreign language, arts or music, for example, although they'll face stiff competition and have to take tests to enroll. Otherwise, there are also general schools, in which admission is arranged according to your home address.

#### (2) International School

South Korea has some 45 international schools, mainly in the major cities, teaching in English and other major world languages, and often using either the International Baccalaureate syllabus, or a variant of the United States standard curriculum. International schools are generally of a high standard, and therefore typically competitive, with testing and interviews to secure admission.

- **What fees are involved?**

There are fees charged for pre-school and secondary education under the Korean educational system, as well as additional costs for uniforms, transport and school materials.

If the investor does not choose the Korean educational system and decide to find a private international school, the costs are much higher. Fees can commonly range from USD 15,000 to USD 30,000 per year.

- **Can the investor or company receive a tax benefit?**

All employment income earners are eligible to claim 15 percent credit for the educational expenses which are paid for persons eligible for basic deduction within the following allowable limits. Education expenses spent for the taxpayer him/herself and the disabled are not subject to such limits.

For taxpayer himself/herself and the handicapped	Total amount
For children not-yet-enrolled in elementary schools and students enrolled in	Up to KRW 3 million

elementary schools, middle schools, high schools	
For graduate school	Not allowable

- **What type of housing is available for the investor?**

The most popular type of housing in Korea is the apartment (buildings with 5 floors or more used for residential purposes).

‘Officetels’ are also popular for single people who want a place to live close to their workplace. ‘Officetels’ are relatively small residential establishments that can be used as both an office and living space, equipped with essential furnitures and convenience facilities

Villas, low-rise residential buildings similar to Western-style condominiums that have a spacious interior, although smaller than most apartments in compound size, are also common.

- **Can the investor own property?**

Yes, investors can own real estate in Korea.

Land acquisition by foreigners in Korea is governed by the Foreign Investment Promotion Act, the Foreigners’ Land Acquisition Act, and the Foreign Exchange Transactions Act. When a Foreign Investor plans to acquire land in Korea, he/she must follow certain procedures and report his/her purchases to the appropriate authorities. In some cases, a real estate purchase requires the purchaser to obtain permission in advance

- **Must the investor have housing before entering the country?**

No

#### **E. Importing Personal Possessions**

- **How can the investor import personal belongings? Are import duties payable?**

Foreigners who enter Korea for a stay of at least two years may bring in used household goods duty-free at the time of entry or within six months of arrival. All items must be used, foreigners are permitted to import articles only for their family’s personal use and in amounts deemed appropriate for the intended length of stay. Excessive amounts of any item may be inspected at customs.

- **Are there requirements for clearing the belongings through customs?**

Customs requirements do change frequently, however requirements include:

- Passport - original, and each member of the family
- Visa – valid for over one year
- Work Permit – obtained from Embassy at origin, stating client will be in Korea for over 12 months
- Residence Card - obtained from Immigration Office in Korea for each member of the family
- Employment Certificate - terms of stay should state over 2 years
- Bill of Lading/Air Waybill – copy
- Comprehensive Valued Inventory – all electronics, computers etc. must state make, model & serial
- Numbers on the Inventory
- Power of Attorney – giving authority for Destination Agent to arrange customs clearance
- Customs Declaration Forms

#### **F. Medical Care**

- **What level of medical care is available?**

The quality of Korean healthcare has been ranked as being among the world's best. It had the OECD's highest colorectal cancer survival rate at 72.8%. Korean hospitals ranked 4th for MRI units per capita and 6th for CT scanners per capita in the OECD. It also had the OECD's second largest number of hospital beds per 1000 people at 9.56 beds.

- **Is there national health care?**

Korea has national health coverage funded by a single payer tax system and is centered on the National Health Insurance Act. Everyone enrolled in the national health insurance pays a premium which is done through either a deduction from the paycheck (and the rest from the employer) or paying directly to the National Health Insurance Corporation (NHIC). Under the Korean law, all medical procedures (except special/elective ones) are covered by the health insurance. Therefore, in most cases, the patient only has to pay a small co-pay portion for the diagnosis, treatment, and prescription and later on to obtain the medicine. To do so, Koreans only need to provide their name and national ID number but foreign investors living and employed in Korea will need to provide their Alien Registration Card.

#### **G. Moving Costs**

- **What costs are involved in moving?**

No special moving costs are involved, except for the regular costs involved in shipping personal belongings to Korea.

- **Can the investor receive any tax allowances?**

Only salary workers with yearly income less than certain threshold may benefit from tax allowances for the moving expenses.

#### **H. Tax Liability**

- **What is the expatriate's tax liability? (See also Section XIII)**

Expatriates who become residents would be subject to tax on worldwide income.

- **What are the allowances?**

Same as residents (see Section XIII. above)

- **Are there any applicable tax treaties?**

Yes, depending upon the eligibility of the claimant pursuant to relevant treaty provisions.

#### **I. Work Contracts**

- **Does the investor need a work contract to work in the country?**

Although a work contract is not expressly required, the LSA requires that information on working terms and conditions including wages, contractual work hours, holidays, annual paid leaves, severance, etc. must be provided to the employee in writing.

- **If so, does the contract have to be for a certain duration, for the performance of a specific job or for a specific position?**

As a general proposition, contracts do not have to be for certain durations. However, please note that Korean law recognizes fixed-term employment and permanent (indefinite-term) employment. Under the fixed-term employment, an employee who is employed for more than two (2) years on a fixed-term basis shall be deemed a permanent (indefinite-term) employee as a matter of law.

- **Does the contract have to be with a national or resident of the country or related state?**

Employment contracts do not have to be with a national or resident of the country.

#### **J. Work Permits**

- **Does the investor need a work permit to work in the country?**

For foreign nationals working in Korea, labor/work permits (or visas) would be required. The type of permit/visa that would be required may depend upon the individual's work, duration of stay, and/or the number of prior work permits/visas that the investor has obtained for its foreign national workers.

- **How and where does the investor apply for the permit?**

Visas/permits applications would be submitted to the relevant immigration office having jurisdiction over the address for the hosting company. The procedure (e.g., documentation, timing) would depend on the type of visa being sought.

- **What documents are required?**

The procedure (e.g., documentation, timing) would depend on the type of visa being sought.

- **What fees are involved?**

The administrative fees (if any) may depend on the type of visa being sought.

- **How long does it take to receive the permit?**

The procedure (e.g., documentation, timing) would depend upon the type of visa being sought. For example, for the E-7 visa (a common work visa whereby an employer in Korea would be the employer-sponsor), processing time would be approximately one (1) month.

- **For how long is the permit valid?**

The duration of the visa/permit would depend on the type of visa.