Establishing a business in South Korea

Thomas Pinansky, Ki Tai Park and Eugene Lee
Barun Law LLC

LEGAL SYSTEM

1. What is the legal system in your jurisdiction based on (for example, civil law, common law or a mixture of both)?

The legal system in South Korea is based on the civil law system.

BUSINESS VEHICLES

2. What are the main forms of business vehicle used in your jurisdiction? What are the advantages and disadvantages of each vehicle?

In South Korea, there are five forms of business entities.

Joint stock company (chusikhoea)

This is the most commonly used corporate vehicle, as it offers shareholders limited liability and shares are generally freely transferable. Shareholders are only liable up to the amount of their contribution to the company's share capital. A joint stock company is appropriate for a large business requiring large amounts of fixed capital and continued procurement of funds.

Limited liability company (yuhanhoea)

As with a joint stock company, the liability of all shareholders is limited to the amount of their share capital contribution to the company. However, the individual character of each shareholder is taken more into account, transfer of equity is limited, and the company is not open to the public. Therefore, it is appropriate for the operation of a small or medium-sized business owned by a small number of persons.

Private limited company (yuhanchaek-imhoea)

The liability of shareholders is also limited to the amount of their share capital contribution to the company. Externally, a private limited company is similar to a limited liability company, but the specific regulation of a private limited company is different. In contrast with a limited liability company, internally a private limited company is a type of trade association.

General partnership company (hapmyunghoea)

Members bear direct, joint and unlimited liability in relation to the business's creditors. In principle, all members bear rights and obligations relating to the implementation of partnership affairs and the representation of the partnership. This vehicle is appropriate for an enterprise jointly owned by a small number of persons with a close association.

Limited partnership company (hapjahoesa)

This consists of at least one member with unlimited liability and at least one member with limited liability. Members with limited liability can only participate in the business through their capital contributions, and have no right to undertake partnership affairs or represent the partnership.

ESTABLISHING A PRESENCE FROM ABROAD

3. What are the most common options for foreign companies establishing a business presence in your jurisdiction?

The most common options for foreign companies establishing a business presence in South Korea are set out below.

Establishing an independent local company

This is governed by the Foreign Investment Promotion Act and the Commercial Act and is recognised as a foreign investment.

Generally, a joint stock company is the most common option for foreign companies establishing a business presence in South Korea. This limits business losses by limited liability, and many persons can easily invest because the capital structure and business organisation of the company is open. This can also absorb a large scale of public capital through a stock listing. However, one disadvantage in setting up a joint stock company is that it may also be taxed on its foreign income.

Registering as a foreign company and establishing a branch

To establish a branch in South Korea, foreign companies must:

- Report the establishment of the branch to a specified foreign exchange bank (see Question 4).
- Complete court registration and business registration.

There are advantages to establishing a domestic branch by registration only without incorporation. For example, compared to incorporation, the domestic branch only pays corporate income tax on its domestic source income.

Opening a liaison office

This usually occurs at the initial stage and is governed by the Foreign Exchange Transactions Act and the Commercial Act. These types of business entities are categorised as a domestic branch of a foreign corporation.

To open a liaison office only, in a similar way to opening a domestic branch (see above, Registering as a foreign company and establishing a branch), the company must report the establishment of the office to a specified foreign exchange bank and then complete business registration.

The main advantage is that a liaison office only has co-operative tax duties (that is, withholding taxes and reporting payment records). However, the scope of business it can conduct in South Korea is limited to preparatory and ancillary activities of the foreign corporation's business.

4. How can an overseas company trade directly in your jurisdiction?

When a foreign party wants to make an investment in South Korea, the party must report this to the Minister of Finance and Economy.
In practice, receipt of investment reports is delegated to specified foreign exchange banks of the Korea Trade Investment Promotion Agency (KOTRA).

In the past, the Minister of Finance and Economy determined whether to accept a report, but through the enactment of the Foreign Investment Promotion Law, reports are no longer reviewed, and an investment report alone is sufficient. After reporting, the overseas company can carry out transactions in South Korea.

When foreign companies establish a business in South Korea, they must generally follow the procedures in the Commercial Act.

Companies must prepare articles of association, secure shareholders and the company's property through stock payment, and register incorporation (see Question 8).

A foreign party must invest at least KRW100 million for the local company to be recognised as a foreign investment under the Foreign Investment Promotion Act (see Question 20).

Required documents for business registration are as follows:

- Application for registration of name.
- Copy of business licence, copy of business registration certificate, and copy of certificate of completion of report.
- Copy of lease.
- Copy of certificate of foreign currency purchase.

In the case of foreign companies opening a domestic branch, the procedure is different. The documents required by foreign exchange transaction regulations are as follows:

- Application for a foreign company to establish a domestic branch (made to a specified foreign exchange bank).
- Documents to prove the name, location, and details of the main work of the head office of the foreign corporation.
- In case other legislation requires permission of establishment, copies of documents to prove this.
- A statement on the details and range of domestic work.

In the case of foreign companies opening a domestic branch and a domestic place of business, the required documents are as follows:

- A report on the domestic place of business.
- The balance sheet.
- Documents on the registration of the head office.
- Articles of association.
- A registered copy of branch documents to prove the details of the business operation.

Opening a domestic branch also requires a business registration. The required documents are as follows:

- An application for the registration of name.
- Copy of business licence, copy of business registration certificate, and copy of certificate of completion of report.
- A copy of the lease.
- Other documents (for example, report on appointing a manager for tax payments).

5. What are the formalities for setting up a partnership?

General partnership company

To set up a general partnership company (see Question 2), the members promise to join a business with unlimited liability, regardless of their participation in its management. Two or more people must draft articles of association and every member must sign it. The general partnership company then has to be registered at the registry office in the jurisdiction where the head office is located.

The employees jointly hold unlimited liability. Therefore, a general partnership company must specify its employees by recording them in the articles of association and cannot change them freely. In principle, inheritance of an employee’s shares is not permitted. Changing investment by resignation is permitted subject to restrictions. However, resigning employees have subsidiary liability for the company’s debt for a certain period from the time of resignation, to protect the company's creditors.

Investment in a general partnership company is made through the employees’ performance of their determined investment duties under the articles of association. This is possible by providing money, other assets, labour, or credit.

Taxation of a general partnership company does not differ from other types of corporate vehicles. It is subject to corporate income tax on its income.

Limited partnership company

In contrast, a limited partnership company consists of at least one member with unlimited liability and at least one member with limited liability (see Question 2). The members must draft articles of association, and the company has to be subsequently registered at the registry office in the jurisdiction where the head office is located.

For members with unlimited liability, the same rules as for a general partnership company apply (see above, General partnership company).

There must be at least one member with limited liability, and they must be listed in the articles of association. However, such members can be easily changed, compared to members with unlimited liability.

Members with unlimited liability can provide labour investment and credit contributions, aside from cash contributions or contributions in kind. Members with limited liability cannot provide credit or labour as an investment.

Corporate income tax applies to the income of limited partnership companies.

Partnership under the Civil Act

In addition, when two or more persons agree to operate a business by mutual investment, it is called a Partnership under the Civil Act. The benefit has to be divided between all members of the partnership. It usually has no corporate entity. Each member's character is more important than the partnership itself. Operations are carried out by majority agreement of all the members of the partnership.

6. What are the formalities for setting up a joint venture?

A joint venture is established by setting up a joint venture company or a partnership (including limited liability partnerships) with a local business. To operate the joint venture, a shareholders' agreement, an operative agreement or a joint venture agreement can be executed.

The parties can choose which contract to use. Contracts between shareholders are commonly used for joint investment in a joint stock company.

There are many active joint investments between domestic and foreign companies in South Korea. They are made in various forms, as companies see fit. The most common form is direct involvement.
in management by purchasing shares. In this case, the joint investment consists of entering into a contract between shareholders. Joint investment usually consists of direct investment into already existing companies.

7. Are trusts available in your jurisdiction?

Trusts are widely used in South Korea. The main laws concerning trusts are the:

- Trust Act.
- Trust Business Act.
- Secured Bond Trust Act.
- Public Trust Act.

In South Korea, there are several forms of trusts, such as land trusts, collateral trusts, disposable trusts, and parcelling-out management trusts. Among these, land trusts and collateral trusts related to real estate development are often used. In real estate development, a bailor typically transfers ownership of land to a trustee or makes other forms of disposal, and a trustee effectively develops and manages the trust property to return the profits for specific purposes.

The answers to the following questions generally relate to joint stock and limited liability companies where indicated.

FORMING A PRIVATE COMPANY

8. How is a private limited liability company or equivalent corporate vehicle most commonly used by foreign companies to establish a business in your jurisdiction formed?

A joint stock company is most commonly used by foreign companies to establish a business in South Korea, due to its limited liability and the free transfer of the shares. Not all joint stock companies are listed.

Regulatory framework

Joint investments/ventures can be made through the establishment of, or acquisition of, partial ownership of existing domestic corporations. In both cases, it is subject to the Commercial Act, the Foreign Investment Promotion Act, and the Foreign Exchange Transactions Act. The Korea Trade Investment Promotion Agency (KOTRA) is working actively to support foreign companies to expand into South Korea.

In case of establishing a limited liability company, the Commercial Act must be followed. When foreign persons or foreign corporations establish a limited liability company, they are subject to the Foreign Investment Promotion Act and the Foreign Exchange Transactions Act.

Investment must be reported to one of the following:

- The head office or branch offices of South Korean banks.
- Domestic branch offices of foreign banks.
- KOTRA or the overseas investment base Korea Business Centre (KBC) of KOTRA.

For business establishments, a party must register for incorporation at a competent court and register for business at a tax office.

For more information on KOTRA see box: The regulatory authorities.

Tailor-made or shelf company

Both tailor-made and shelf companies are possible and actively used.

Formation process

The following documents are required for company formation:

- Two copies of the foreign investment notification by type (new stocks, existing stocks and so on).
- Documents to prove foreigners’ nationality/citizenship (certificate of nationality/citizenship).
- When a foreigner is a corporation or an organisation: a certified copy of the register issued by the government or institution with authority of the relevant country, or documents to prove corporations or organisations are located in the relevant country.
- When a foreigner is an individual: citizenship papers or a passport issued by the government or institution with authority of the relevant country, to prove nationality.
- When foreign investors hold South Korean nationality, the documents can be substituted with a certificate of permanent residency issued by the government or institution with authority of sojourn countries, or certificate of overseas resident registration issued by the head of diplomatic offices in South Korea.
- A business licence.

In principle, documents should be filed in paper hard copy.

Investments must be reported to one of the following:

- The head office or branch offices of South Korean banks.
- Domestic branch offices of foreign banks.
- KOTRA or the overseas investment base Korea Business Centre (KBC) of KOTRA.

For business establishment, a party must register for incorporation at a competent court and register for business at a tax office.

The fees for company establishment are KRW100 million, when the company is established in a large city.

A joint stock company’s establishment fees are about KRW1.62 million, consisting of:

- Registration tax of about KRW1.2 million. This consists of 0.4% of the share capital, and three times the share capital when a stock company is established in a large city.
- Local education tax. This is charged at 20% of the registration tax, which is about KRW240,000.
- Revenue stamp of the Supreme Court (registration application fee) of KRW30,000.
- Notarisation fee. This is charged at about KRW150,000 on the articles of association and other incorporation documents (exempted in the case of a company with share capital of no more than KRW1 billion).

The overall process of establishment is as follows:

- Notification of foreign investment (through KOTRA or a foreign exchange bank).
- Transfer of investment amount into the company’s share capital (through a foreign exchange bank, or carrying the money through customs).
- Registration of incorporation (at the registry office of the court in the relevant jurisdiction or district).
• Notification of incorporation and business registration (through a tax office or KOTRA).
• Transfer of paid-in capital to a corporation’s account (through a foreign exchange bank).
• FDI company registration (at the agency where the initial FDI notification was made).

When the required documents for this process are submitted, the procedure for corporation establishment is complete. The entire process consists of the report and register, excluding extra time for additional permission.

A trade name that has been registered by another person cannot be registered as a trade name for another business of the same kind in the same area (Seoul special metropolitan city, metropolitan city, or city/gun (administrative district) area). A proposed company name must be verified in advance at the Supreme Court website (www.siros.go.kr).

To change a company name, after payment of the licence tax for registration to the head of the relevant city, district, or borough where the head office is located, the company must submit an application form for registration of change of company name to the competent court. Required documents are:
• Certified copy of the register of corporation.
• Certificate of corporate legal seal register.
• Corporate legal seal.
• Copy of the articles of association.
• List of shareholders.
• Legal seal and certificate of legal seal register of the representative director and auditor.
• Legal seal and certificate of legal seal register of any shareholders possessing more than the majority of the shares.

Company constitution
Preparation of the articles of association and registration of incorporation are required to establish a corporation. The articles of association regulate the company’s autonomous agenda, but are not open to the public. The articles of association are generally drafted based on a standard form articles of association.

When establishing businesses, especially a joint investment/venture, shareholder agreements are also important for operation.

FINANCIAL REPORTING

9. What financial reports must the company submit each year?

The following financial reports must be approved and submitted each year by a joint stock company and a limited liability company:
• Statement of financial position.
• Statement of comprehensive profit and loss.
• Statement of changes in equity.
• Statement of cashflow.
• Annotation.
• Consolidated financial statements, for companies with affiliates.

Under the Commercial Act, when foreign companies conduct business in South Korea, a branch office has the same obligations as a domestic corporation. Therefore, the above requirements also apply to branch offices. The branch account must comply with South Korean law.

TRADING DISCLOSURE

10. What are the statutory trading disclosure and publication requirements for private companies?

The statutory trading disclosure and publication requirements of a joint stock company and a limited liability company are mainly regulated by the Commercial Act.

Businesses can freely choose their names. However, companies must put an abbreviation such as LLP, Ltd, Co., or LLC next to their name. There is no obligation to use the company name, but when used, companies are required to specify the type of businesses.

The disclosure required by the Commercial Act is for the interests of creditors (for the shareholders, in a joint stock company) so the articles of association, financial statements, business reports, and audit reports must be prepared and approved by the company.

The company’s business or financial information, including remuneration details and replacements of executives or the development of new technologies, and new business opportunities, must also be disclosed. The bond register must also be disclosed.

11. How do companies execute contracts or deeds?

Oral agreements are valid, but companies usually execute written agreements and contracts. For a company to execute a written contract, either of the following is required:
• Signature of the company’s authorised representative.
• Affixing of the company name and seal.

MEMBERSHIP

12. Are there any restrictions on the minimum and maximum number of members?

Joint stock companies, limited liability companies, and private limited companies must have at least one shareholder. There is no maximum limit on the number of shareholders.

A general partnership company must include at least two members. A limited partnership company must have at least one member with unlimited liability and at least one member with limited liability. There is no maximum limit on the number of members but they are usually small in number (see Question 2).

MINIMUM CAPITAL REQUIREMENTS

13. Is there a minimum investment amount or minimum share capital requirement for company formation?

A joint stock company can be incorporated with as little as KRW100 of share capital. For the other types of company, there is no minimum investment amount stipulated by law.

Specific requirements apply to qualify as foreign direct investment (FDI) (see Question 20).

global.practicallaw.com/ebi-guide
14. Are there restrictions on the transfer of shares in private companies?

In joint stock companies, shares can usually be freely transferred. The articles of association can restrict the transfer of shares by requiring approval of the board of directors, the shareholders, or by law, but this is rare.

Limited liability companies and private limited companies usually have a small number of members, so the transfer of shares is usually restricted by the articles of association.

In limited liability companies, the transfer of all or part of a person's shares is not allowed without the consent of the other members.

In private limited companies, before the amendment of the Commercial Act in 2011, the transfer of shares was allowed in principle, requiring a resolution at the general meeting of members. After the amendment, members can transfer all or part of their shares. The amendment stipulates that the articles of association can restrict the transfer of shares.

SHAREHOLDERS AND VOTING RIGHTS

15. What protections are there for minority shareholders under local law? Can additional protections be given?

Under commercial law, minority shareholders have the right to:
- Call a shareholders' meeting.
- Add proposals to the agenda for the shareholders' meeting.
- Inspect the accounting books of the company.
- Appoint the directors at a shareholders' meeting, by cumulative voting.
- Call for a vote on the dismissal of a director.
- Call for a court-appointed inspector to examine the status of the business operations and assets.
- Call for a vote on the dissolution of the company or other legal entity.

Additional protections can be provided through the articles of association. However, these additional protections must adhere to the fundamental principle of equality between shareholders.

16. Are there any statutory restrictions on quorum or voting requirements at shareholder meetings? Do quorum or voting rights need to be proportionate to shareholdings?

The basic statutory quorum for shareholder meetings is met when shareholders with a majority of the voting rights attend the meeting, and the majority of the attending shareholders approve the agenda. However, this quorum requirement can be strengthened by the articles of association or by local law.

Restrictions on shareholder voting rights include the following:
- Non-voting stock, mutually possessed stock and treasury stock have no voting rights.
- If a shareholder has a special interest in an item on the agenda, he cannot vote on that item.
- When appointing an auditor, anyone who has more than 3% of the total issued stock can only vote in relation to 3% of the total issued stock.

Generally, every voting right is deemed equal by the principle of equality of shareholders.

17. Are specific voting majorities required by law for any corporate actions (for example, increasing share capital, changing the company’s constitution, appointing and removing directors, and so on)?

The Commercial Act prescribes a higher quorum and voting requirements for certain important resolutions. In these cases, the quorum is met when shareholders with a majority of the voting rights attend the meeting, and two-thirds of the voting rights of the participating shareholders are cast to approve a resolution. A stricter standard may be set by the articles of association. Examples include resolutions to:
- Approve business transfers.
- Dispose of the company's properties.
- Lease the company's business assets.
- Change the articles of association.
- Approve mergers and certain other forms of corporate reorganisations.
- Approve a company reorganisation.
- Approve decreases in the share capital.
- Dismiss a director or auditor.
- Issue shares below par value.

18. Can voting majorities required by law be disapplied to protect a minority shareholder (for example, through class rights or weighted voting)?

Multiple voting shares or weighted voting is generally not allowed due to the principle of equality of shareholders (that is, each shareholder must be treated equally). As an exception, minority shareholders can appoint the directors at a shareholders' meeting by cumulative voting (Commercial Act).

SECTORAL RESTRICTIONS

19. What are the conditions or restrictions on establishing a business in specific industry sectors? Are there industry sectors in which it is not permitted to establish a business?

There are 1,145 business categories under the Korean Standard Industrial Classification (KSIC). Foreign investment is not permitted in 60 of them (unpermitted business category).

Foreign investment is partially permitted in 29 categories of business (restricted business category), as prescribed by the Foreign Investment Promotion Act.

Unpermitted business categories include:
- Public administration, diplomacy, and national defence.
- Postal services, central banking, individual mutual aid organisations, pension funds, administration of financial markets, and activities auxiliary to financial service activities.
- Legislative, judiciary, administrative bodies, foreign embassies, and extra-territorial organisations and bodies.
- Education (pre-primary, primary, secondary, higher education, universities, graduate schools, schools for the handicapped, and so on).

global.practicallaw.com/ebi-guide
• Artists’, religious, business, professional, environmental advocacy, political, and labour organisations.

Restricted business categories include:
• Growing cereal crops and other crops for food.
• Farming of beef cattle.
• Manufacture of basic inorganic chemicals.
• Nuclear power generation.
• Transmission and distribution of electric power.
• Disposal of radioactive waste.
• International and domestic air transport.
• Publishing newspapers.
• Program distribution.
• Mobile communications.
• Domestic commercial banking.

More restricted business categories and the details for obtaining permission are listed at www.investkorea.org/ikwork/ko/eng/cont/contents.jsp?code=1020401004.

FOREIGN INVESTMENT RESTRICTIONS

20. Are there any restrictions on foreign shareholders?

A foreign investment must be registered under the Foreign Investment Promotion Act or under the Foreign Exchange Transaction Act.

A fast track registration process is available for foreign direct investments (FDI) under the FIPA. To qualify as an FDI, the foreign investor must both [Article 2-2, Foreign Investment Promotion Act]:
• Acquire at least 10% of the voting shares of a South Korean company.
• Invest at least KRW100 million.

If less than 10% of the voting shares are acquired, the investment may still qualify as FDI if the investment is at least KRW100 million and any of the following:
• A contract for dispatching or electing officers.
• A contract for delivery or purchase of raw materials or products for the period of one year or more.
• A contract for providing or introducing technology, or for joint research and development.

There are no specific restrictions on foreign shareholders once a foreign investment has been properly made.

21. Are there any exchange control or currency regulations?

The Foreign Exchange Transaction Act regulates foreign exchange transactions and includes provisions on:
• Regulatory measures for foreign exchange stability by the Ministry of Strategy and Finance, such as restrictions on foreign exchange rates (Article 5, Foreign Exchange Transactions Act) and suspension of foreign exchange trading (Article 6, Foreign Exchange Transactions Act).
• Registration requirements for foreign exchange-related businesses with the Ministry of Strategy and Finance.
• Reporting requirements to the Bank of Korea or the Ministry of Strategy and Finance on unusual foreign exchange transactions, such as the payment or settlement of foreign currencies through the non-banking system, and complex financial or capital transactions (such as derivatives).
• Reporting requirements for designated FX banks.

22. Are there restrictions on foreign ownership or occupation of real estate, or on foreign guarantees or security for ownership or occupation?

Occupying or owning real estate by foreigners in South Korea is governed by the Foreign Investment Promotion Act, the Foreigner’s Land Acquisition Act, and the Foreign Exchange Transactions Act.

If a foreigner wants to acquire real estate in South Korea, he or she must generally follow certain procedures and report purchases to the appropriate authorities. In some cases, permission in advance is required. Different procedures apply, so careful attention is advised.

In particular, the acquisition of land and buildings and certain real estate rights (right to lease on a deposit basis and to mortgage) in South Korea by a foreign party (that is, individuals, foreign companies, or domestic companies with more than 50% of its shares held by foreigners) must be reported to the local authority with jurisdiction over the real estate, within 60 days of conclusion of the contract (Foreigner’s Land Acquisition Act). The acquisition of other real estate and real estate rights must be reported under the Foreign Exchange Transactions Act.

In addition:
• When a foreign person or foreign government signs a deal to acquire land in South Korea, he, she or it must report the deal to the local mayor, county governor and head of the local authority within 60 days from the date of signing. However, those who have provided a report on a real estate transaction under Article 27 of the Business Affairs of Licensed Real Estate Agents and Report of Real Estate Transactions Act, or a report on a house transaction under Article 80(2) of the Housing Act, do not have to submit a separate report on a foreign person’s land acquisition.
• If a foreign person acquires land in South Korea through inheritance and for auction, he or she must report this to the local mayor, county governor and head of the local authority, within six months of the acquisition.
• If the land to be acquired is in a military facility protection area, permission must be obtained before signing the acquisition deal, except when approval is obtained under Article 118 of the Act on Land Planning and Use.

DIRECTORS

23. Are there any general restrictions or requirements on the appointment of directors?

There are no general restrictions or requirements on the appointment of directors under local law, but such restrictions can be imposed by the articles of association. Further, a corporate body cannot be appointed as a director of a company. There is no regulation of the nationality of a person who can be appointed as a director.

However, with regard to non-executive directors, there are certain restrictions under local law. For example, the following cannot be non-executive directors:

global.practicallaw.com/ebi-guide
• An executive director or a person who was an executive director in the past two years.
• The largest shareholder and his or her spouse and family members.
• If the largest shareholder is a corporate body, its director, auditor, and executive member.
• A spouse or family members of such director, auditor, and executive member.
• A director, auditor, executive member of a holding company or subsidiary company.
• A director, auditor, or executive member of a corporate body which has an important interest in the company.

In a listed company, the following also cannot be non-executive directors:
• Minors or a ward of the court.
• A person who was declared bankrupt and is not reinstated.
• A person who has been convicted and sentenced for committing crimes and has finished the sentence, or has been exempted from the sentence in the previous two years.
• A person who was dismissed due to violation of the law in the previous two years.

**BOARD COMPOSITION**

24. **What are the legal requirements for the composition of a company’s board of directors?**

**Structure**
A board of directors is required under the Commercial Act. Companies in South Korea usually have a unitary board structure. A director automatically becomes a member of the company’s board of directors without any separate procedures.

**Number of directors or members**
The board of directors consists of every director of the company. There must be at least three or more directors, except for a small scale company (total capital under KRW1 billion), which can have one or two directors.

**Employees’ representation**
Employees do not have a statutory right to board representation.

**RERegisterING AS A PUBLIC COMPANY**

25. **What are the requirements for a business to reregister as a public company?**

**Membership**
A joint stock company needs one founder. A general partnership requires two or more members. A limited partnership requires one or more members with unlimited liability and one or more members with limited liability. A private limited company and a limited liability company require one member.

**Share capital**
In relation to listed companies, the Korean Composite Stock Price Index (KOSPI) is the general domestic index of South Korea. The Korea Securities Dealers Automated Quotation (KOSDAQ) is the securities market for small and medium businesses or venture companies. KONEX (Korea New Exchange) is a new market for small and medium businesses. For further information on listing requirements, see http://eng.krx.co.kr/.

For a joint stock company (both listed and unlisted), before the amendment of the Commercial Act in May 2009, the minimum capital required was KRW50 million. After the amendment, the face value of a stock must be more than KRW100, and one founder is sufficient. Theoretically, a company can exist with only one founder and a capital of just KRW100. In other words, there is no requirement for a minimum number of shares to be held by the public. Further, there is no limitation on the amount of gross capital.

**TAX**

26. **What main taxes are businesses subject to in your jurisdiction?**

The main taxes imposed on businesses are as follows.

**Corporate income tax**
Resident companies are subject to corporate income tax. Tax filings and payments are made within three months after the end of the relevant fiscal year. The tax rates are the following:
• For a tax base below KRW200 million: 10%.
• For a tax base over KRW200 million and less than KRW20 billion: KRW20 million plus 20% of the tax base exceeding KRW200 million.
• For a tax base exceeding KRW20 billion: KRW3.98 billion plus 22% of the tax base amount exceeding KRW20 billion.

Capital gains of tax resident companies are included in their taxable income and subject to corporate income tax. Capital gains of tax resident companies from the transfer of certain residential and non-business real estate in specially designated areas is subject to corporate income tax at rates from 10% to 40%.

An individual running his own business in South Korea, or who is a member of a partnership, is subject to personal income tax on his worldwide income (resident individual) and South Korean sourced income (non-resident individual). Personal income tax rates range from 6% to 38%. Tax filings and payments of individual business vehicles should be made in May of the year following the year that the relevant income is earned.

**Value added tax (VAT)**
VAT is imposed at 10% on services and goods provided by a business. VAT filings and payments are made on a quarterly basis each year. The amount of VAT payable is determined by deducting the VAT from sales VAT. If purchase VAT exceeds sales VAT, the difference is refunded.

27. **What are the circumstances under which a business becomes liable to pay tax in your jurisdiction?**

**Tax resident**
A company is tax resident in South Korea and therefore subject to South Korean tax when it has its main office or a place of effective management in South Korea.

**Non-tax resident**
Non-tax resident companies with a permanent establishment in South Korea are subject to corporate income tax on income earned by their permanent establishment in the same way as resident companies, with some exceptions. A permanent establishment means the fixed place of business of a non-tax resident business vehicle, including branches, stores, workplaces and factories.
Non-tax resident companies with no permanent establishment in South Korea are subject to withholding tax on their South Korean source income.

A tax treaty between South Korea and the jurisdiction of the non-resident may apply to reduce the withholding tax.

28. What is the tax position when profits are remitted abroad?

To remit profits, distributions, or fees abroad, South Korean withholding tax is applied at the following rates:
- 0% to 15%, for jurisdictions with tax treaties with South Korea.
- 20% (including local income tax at 10%) for jurisdictions without a tax treaty with South Korea.

29. What thin-capitalisation rules and transfer pricing rules apply?

Certain rules apply when a company's capital is made up of a much greater proportion of debt than equity (thin capitalisation).

If a loan from a foreign parent company to its South Korean subsidiary is more than three times the capital interest in the subsidiary, interest paid by the subsidiary on the excess amount of the loan is not tax deductible for the subsidiary (Article 14.1, Act on the Co-ordination of International Tax Affairs).

Transfer pricing is used by multinational companies to adjust the price of intra-group trade. It is mainly done to transfer profit from a high tax jurisdiction's branch or subsidiaries to a low tax jurisdiction's branch or subsidiaries, or to evade government regulation in an advanced investment country. In South Korea, if taxable income is decreased due to transfer pricing, the tax authorities can re-calculate the taxable income by imposing the normal market price.

Grants and tax incentives

30. Are grants or tax incentives available for companies establishing a business in your jurisdiction?

For foreign investment that meets certain conditions, corporate income tax and customs duties on capital goods are exempted or reduced under the Restriction of Special Taxation Act. Acquisition tax, registration tax, and property tax on properties acquired or held for the operation of the business are exempted or reduced under local government ordinances mandated by the Restriction of Special Taxation Act.

Before the recent revision of the Tax Exemption and Limitation Act, the government granted tax exemptions and reductions to foreign direct investment (see Question 29) in about 250 types of advanced technology. Under the new list, this number has increased to over 400. In addition, nearly 100 new high-technology service businesses (businesses expected to support the international competitiveness of domestic high-technology industries, such as software and electronic commerce) became eligible for tax exemptions and reductions.

The duration of these tax exemptions and reductions has also been extended from eight years to ten years for national taxes, and from eight years to 15 years for local taxes.

For further information, see www.investkorea.org/kiwork/liko/eng/main/index.jsp.

EMPLOYMENT

31. What are the main laws regulating employment relationships?

The main law regulating employment relationships is the Labour Standards Act. The following other laws regulate employment relationships:
- Minimum Wages Act.
- Occupational Safety and Health Act.
- Industrial Accident Compensation Insurance Act.
- Trade Union and Labour Relations Adjustment Act.
- Act on the Promotion of Worker’s Participation and Co-operation.
- Employment Promotion and Vocational Rehabilitation of Disabled Persons Act.
- Act on Prohibition of Age Discrimination in Employment and Elderly Employment Promotion.

With regard to the applicability of the Labour Standards Act to the employees of a foreign corporation in South Korea, the Labour Standards Act will apply to such employees under the territoriality principle, unless there are special regulations expressly allowing personal jurisdiction.

When dispatching employees from a South Korean head office to overseas corporations, overseas branches, or factories supervised by a domestic head office, domestically dispatched employees, as well as South Korean workers employed overseas, are subject to the Labour Standards Act. However, when domestic companies establish independent corporations overseas and hire domestic employees, the Labour Standards Act does not apply.

Under the private international laws of South Korea, certain mandatory provisions of South Korean law will apply, even when a foreign law is designated as the governing.

32. What prior approvals (for example, work permits, visas, and/or residency permits) do foreign nationals require to work in your jurisdiction?

In principle, a foreign national must obtain a visa at a diplomatic mission abroad in advance to enter South Korea. A visa is a certificate of permission for entry into South Korea. Usually, a visa is issued in the form of a sticker or a rubber stamp on the passport, along with a statement of the purpose (status of sojourn) and the period of sojourn.

A foreign person can stay in South Korea in accordance with the scope of his or her sojourn status and sojourn period. All foreign persons who stay in South Korea for 91 days or longer must make a foreign person’s registration, within 90 days of his or her entry, with the head of an immigration office or a branch office with jurisdiction over his or her sojourn place.

When a foreign person intends to change, or has changed reported details of his registration, status of sojourn, workplace, or sojourn place, he or she must make an alteration report or obtain permission for the change.

A foreign investor who has entered South Korea under the sojourn status D-8 must make a foreign person’s registration, and can
change his or her sojourn by acquiring permission for a change to sojourn status or permission to extend his sojourn period.

A business investment (D-8) visa is issued to essential professionals engaged in management, business administration, production, or technology of a foreign-invested company, as prescribed by the Foreign Investment Promotion Act. Employees hired in South Korea, general administrators, or engineers and service providers that can be replaced by domestic human resources are not considered essential professionals.

A business investment (D-8) visa can be obtained as follows.

A foreign person must submit the required documents to a diplomatic mission abroad to apply for visa issuance. The head of a diplomatic mission abroad has the authority to issue business investment (D-8) visas for a period of sojourn of up to one year.

If the authority to issue visas is not delegated to the head of an overseas diplomatic mission, a foreign person can apply for visa issuance after he receives a visa issuance certificate or a certificate number, which an inviting party has obtained from the immigration control office with jurisdiction over the inviter’s sojourn place.

If a foreigner has entered South Korea without a visa or with a short-term visa for unavoidable reasons, he can apply for permission to change the status of sojourn at the immigration control office with jurisdiction over his sojourn place or with Invest Korea.

**PROPOSALS FOR REFORM**

33. Are there any impending developments or proposals for reform?

A major revision of the Commercial Act was done in 2012. Therefore, only minor reforms are expected in the near future. The government is planning to gradually simplify regulations.

---

**THE REGULATORY AUTHORITIES**

**Korea Trade Investment Promotion Agency (KOTRA)**

**Main activities.** KOTRA is the authority handling all details related to foreign investment and permitting reports received.

**W** www.kotra.or.kr

In addition:

- Branches of foreign exchange banks have authority to receive reports for foreign investment companies and domestic branches of foreign companies.
- Competent courts handle details of registrations, such as registration of incorporation and registration to change company names.
- The tax office with jurisdiction handles all details related to tax.

**ONLINE RESOURCES**

**Ministry of Government Legislation, South Korea (English version)**

**W** www.moleg.go.kr/english/korLawEng

**Description.** The official website of the Ministry of Government Legislation, containing English translations of certain statutes. Such translations are for reference purposes only, and may be out of date.

**Invest Korea**

**W** www.investkorea.org/ikwork/ik0/eng/main/index.jsp

**Description.** Introductory site of KOTRA for foreign investment promotion. It is official and up-to-date.

Areas of practice. Foreign/overseas investment; M&A; insurance; finance/securities; international litigation; international arbitration; labour and employment.


Languages. English, French, Korean

Professional associations/memberships.
- Vice Chairman of the American Chamber of Commerce in Korea.
- Board of the Canadian Chamber of Commerce in Korea.
- Special adviser to the Kiwi Chamber of Commerce in Korea.
- Served as the Chairman of the Asia-Pacific Council of the American Chambers of Commerce, an organisation comprised of over 25 American Chambers of Commerce throughout the Asia-Pacific Region.

Publications. Numerous speeches and articles on South Korea-related legal and business issues in various publications, and at a broad variety of venues throughout the world.

---

Eugene Lee, Associate

Barun Law LLC
T +82 2 3479 2488
F +82 2 538 8635
E eugene.lee@barunlaw.com
W www.barunlaw.com

Professional qualifications. South Korea, Attorney at Law, 2011

Areas of practice. M&A; labour and employment.

Non-professional qualifications. Bachelor of Law, Seoul National University, 2008

Languages. Korean and English

---

KI Tai Park, Partner

Barun Law LLC
T +82 2 3479 7515
F +82 2 3478 6222
E kitai.park@barunlaw.com
W www.barunlaw.com

Professional qualifications. South Korea, Attorney at Law, 1982; Public Administration Examination, 1980

Areas of practice. M&A; corporate advisory; real estate; customs; intellectual property rights.

Non-professional qualifications. Bachelor of Law, Seoul National University, 1980; LLM, Columbia Law School

Languages. Korean and English

Professional associations/memberships.
- Administrative Appeals Commission of the Secretariat of the National Assembly, 2012.
- Auditor of Korea Culture and Tourism Institute, 2012.
- Policy consultant at Ministry of Foreign Affairs, 2006 to 2010.
- Consultant of SIFC at Seoul City Hall.