



FAQ

on FDI in KOREA

2023



kotra

Korea Trade-Investment
Promotion Agency

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1. Definition

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1. Definition

Q1. What is Foreign Direct Investment?

A1. According to the Foreign Investment Promotion Act, foreign investment refers to the following: 1) Where a foreigner acquires the stocks or shares of a domestic company or corporation (recognized where the amount of investment is KRW 100 million or more and the foreign investment ratio is 10% or more); 2) Where the overseas company of a foreign-invested company (foreign investor), etc. lends long-term loans of five years or longer to foreign-invested company; 3) Where a foreigner contributes to a non-profit corporation in the field of science and technology (KRW 50 million or more and accounting for 10% or more of the total contribution amount); or 4) Where a foreign-invested company re-invests unappropriated earned surplus in the establishment or expansion of a factory without transferring them to capital.

* In this book, Foreign Direct Investment (FDI) shall be considered foreign investment pursuant to the Foreign Investment Promotion Act.

<Definition of Terms>

| Term | Definition |
|----------------------|--|
| Foreigner | 1) An individual with foreign nationality; 2) A corporation established in accordance with a foreign law; 3) An agency that conducts foreign economic cooperation affairs on behalf of a foreign government; 4) An international organization that deals with affairs concerning development finance (e.g., IBRD, IFC, ADB); 5) An international organization that deals with affairs concerning foreign investment, whether for itself or others (Article 2 (1) 1 of the Foreign Investment Promotion Act and Article 2 (1) of the Enforcement Decree of the Act) |
| Foreign investor | • A foreigner who holds stocks, etc. or has contributed (Article 2 (1) 5 of the Foreign Investment promotion Act) |
| Object of investment | Any object in which a foreign investor invests in order to hold stocks, etc., and which is any of the following (Article 2 (1) 8 of the Foreign Investment Promotion Act, Article 2 (10), (11), (12) of the Enforcement Decree of the Act) |

| Term | Definition |
|----------------------|--|
| Object of investment | <ul style="list-style-type: none"> - A means of international payment as defined under the Foreign Exchange Transactions Act or a means of domestic payment incurred by the exchange of such a means of international payment - Capital goods - Proceeds from the stocks, etc. acquired under the Foreign Investment Promotion Act - Any rights used in the industrial activities among copyrights registered under the Copyright Act and the layout design rights defined under the Act on the Layout-Designs of Semiconductor Integrated Circuits - Where a foreigner closes his/her own branch company or office in Korea and converts the branch company or office into another domestic corporation, or where a domestic corporation, the stocks of which are held by a foreigner, is dissolved, the residual property to be distributed to the foreigner upon liquidation of such branch company, office or corporation - The amount of redemption of loans referred to in subparagraph 4(b) of Article 2 of the Foreign Investment Promotion Act or of other loans from foreign countries - Stocks of foreign companies listed on foreign securities markets - Stocks owned by foreigners under the Foreign Investment Promotion Act or the Foreign Exchange Transactions Act - Domestic real estate owned by a foreigner (a certificate of report on capital transactions according to Article 18 of the Foreign Exchange Transactions Act should be attached) - Proceeds from the sale of stocks and real estate of a Korean corporation or a company held by a foreigner |

Q2. Can a Korean national with permanent residency of a foreign country be considered a foreign investor under the Foreign Investment Promotion Act?

A2. When applying the Foreign Investment Promotion Act, the provisions of the Act concerning foreigners shall apply to individuals prescribed by Presidential Decree among Korean nationals permanently residing in a foreign country.

- “Individuals prescribed by Presidential Decree” among Korean nationals permanently residing in a foreign country means a person who falls under any of the following categories (Article 2 (2) of the Foreign Investment Promotion Act and Article 3 of the Enforcement Decree of the Act):

- A person who has acquired permanent residency in the country where he/she resides in
- A person who has acquired a resident permit for four years or longer in a country without a permanent residency system
- A person who has resided for four years or longer and acquired a resident permit for one or more year(s) in a country without a permanent residency system which only grants a resident permit for less than four years.

* An overseas Korean with permanent residency in a foreign country who intends to invest in Korea as a foreigner should be aware that investment funds should be brought in from a foreign country in foreign currency and that the domestic assets (cash, real estate, etc.) held by such individual are not recognized as an object of investment under the Foreign Investment Promotion Act and subsequently denied recognition as foreign investment.

Q3. What is the “object of investment” that is recognized as foreign investment?

A3. The term “object of investment” means any object in which a foreign investor invests in order to possess stocks, etc. pursuant to Article 2 (1) 8 of the Foreign Investment Promotion Act, and which falls under any of the following:

- A means of international payment as defined under the Foreign Exchange Transactions Act or a means of domestic payment incurred by the exchange of such a means of international payment
- Capital goods
- Proceeds from stocks, etc. acquired under the Foreign Investment Promotion Act
- Industrial property rights, intellectual property rights prescribed by Presidential Decree, other technologies corresponding thereto, and rights pertaining to the use of such rights or technologies
- Where a foreigner closes his/her own branch or office located in Korea and converts the branch company or office into another domestic corporation, or where a domestic corporation, the stocks of which are held by a foreigner, is dissolved, the residual property to be distributed to the foreigner upon liquidation of such branch, office, or corporation
- The amount of redemption of loans prescribed by the Foreign Investment

- Promotion Act or of other loans from foreign countries
- Stocks prescribed by Presidential Decree
 1. Stocks of foreign corporations listed or registered on foreign securities markets
 2. Stocks held by foreigners under the Foreign Investment Promotion Act or the Foreign Exchange Transactions Act
- Real estate located in Korea (required to submit documents certifying the transaction pursuant to the Foreign Exchange Transactions Act)
- Other means of domestic payment prescribed by Presidential Decree (Proceeds from the sale of stocks, etc. of a Korean corporation or a company or of real estate owned by a foreigner pursuant to the Foreign Investment Promotion Act or the Foreign Exchange Transactions Act)

Q4. When two or more foreigners make a joint investment and the total investment amount is not less than KRW 100 million, can this be recognized as foreign direct investment?

A4. It is not recognized as foreign direct investment. When two or more foreigners make a joint investment, the amount invested by each person should be not less than KRW 100 million (Article 2 (3) of the Enforcement Decree of the Foreign Investment Promotion Act).

Q5. Can a foreigner’s contribution to a non-profit corporation in Korea be recognized as foreign direct investment?

A5. It can be recognized as foreign direct investment if either of the following conditions are met:

- Where a foreigner contributes at least KRW 50 million, accounting for at least 10% of the total amount of contributions, to a non-profit corporation (a Korean corporation or a company in the field of science and technology) in order to establish a continuous cooperative relationship with the corporation pursuant to Article 2 (1) 4 (c) of the Foreign Investment Promotion Act, and the corporation meets all of the following requirements:

- It has an independent research facility.
- The number of regular employees as prescribed by Article 11 of the Labor Standards Act who are full-time researchers with a master's degree or higher in the field of science and technology is five or more.
- The corporation engages in 'research and experimental development on natural sciences and engineering' pursuant to the Korean Standard Industrial Classification (KSIC) prepared and publicly announced by the Commissioner of Statistics Korea pursuant to Article 22 of the Statistics Act.
- Where a foreigner contributes at least KRW 50 million, accounting for at least 10% of the total amount of contributions, to a non-profit organization which meets either of the conditions below and the investment is recognized by the Foreign Investment Committee as foreign investment in terms of the type and nature of its business operation (Article 2 (1) 4 (e) of the Foreign Investment Promotion Act):
 - A non-profit organization that has been established with the purpose of promotion, etc. of science, art, medical services, or education, and continuously performs projects for developing experts in the relevant fields and for expanding international exchanges.
 - Local headquarters of an international organization performing international cooperation projects between civilians or governments.

Q6. When a foreigner (individual) registers an individual business in Korea, can this be recognized as foreign direct investment?

A6. Yes, it can be recognized as foreign direct investment.

- The 2020 amendments by the Ministry of Trade, Industry and Energy to the definitions of "foreign investment" under the Foreign Investment Promotion Act (promulgated on February 4, 2020 and enforced on August 5, 2020) confirmed that an individual business (sole proprietorship) established by a foreigner shall be recognized as foreign investment.
 - ※ Clarifications of the definitions of "foreign investment" (Article 2 (1) 3 and Article 2 (1) 4 (a) of the Foreign Investment Promotion Act)
 - The term "Korean corporation or a company" means a corporation established under the laws of the Republic of Korea or a company registered as a business (Article 2 (1) 3 of the Act)

- The term "foreign investment" means where a foreigner holds stocks or shares (hereinafter referred to as "stocks, etc.") of a Korean corporation (including a Korean corporation in the process of establishment) or a company in order to establish a continuous economic relationship with the Korean corporation or company, such as participating in the management of such Korean corporation or company in accordance with this Act (Article 2 (1) 4 (a) of the Act)
- The above amendments to the Foreign Investment Promotion Act were promulgated and enforced in August 2020. Under the authority of the Minister of Justice, however, the current visa system for foreign investors will remain unchanged: D-8 visa will be applied and issued for corporate businesses and D-9 visa for individual businesses in accordance with the Immigration Act. (Please call the 1345 Immigration Contact Center for inquiries.)
 - 1) D-8 (business investment) visa: Issued to a foreigner who invests in a Korean corporation or company.
 - D-8-1: Issued where a foreigner invests not less than KRW 100 million in a domestic corporate business and the investment ratio is not less than 10%
 - D-8-3: Issued where a foreigner partners with a Korean national and each of them invests not less than KRW 100 million with the investment ratio of not less than 10% in a domestic individual business. The joint business agreement (partnership agreement) verifying the investment amount and ratio should be submitted. (The relevant immigration office shall examine the documents verifying that the foreigner and the Korean national each invested not less than KRW 100 million.)
 - 2) D-9 (trade management) visa: Issued where a foreigner invests in a domestic individual business alone or jointly with others.
 - The amount invested by a foreigner should be at least KRW 300 million (a condition for visa issuance) and the investment ratio should be at least 10% for both a sole or joint investment.
 - Pursuant to a court ruling issued in January 2012 that denied the status of a foreign-invested company to a foreign-invested individual business, the Ministry of Justice has issued D-9 (trade management) visa to foreign-invested individual business owners instead of D-8 (business investment) visa since August 29, 2012.

Q7. Is the establishment of a branch in Korea by a foreign corporation subject to the Foreign Investment Promotion Act?

A7. Establishment of a Korean branch by a non-resident is subject to the Foreign Exchange Transactions Act (The Regulation on Foreign Exchange Transactions) instead of the Foreign Investment Promotion Act. A branch established by a non-resident in Korea¹⁾ is divided into a “branch” that engages in sales activities that generate profit in Korea and a “liaison office” that does not engage in sales activities that generate profit in Korea and only executes non-sales business activities including liaison services, market research, and research and development, etc. A foreign corporation establishing a branch or a liaison office in Korea²⁾ should report the establishment to the head of a foreign exchange bank.

* A branch of a foreign corporation is often used interchangeably with a subsidiary of a foreign corporation. However, there is a clear demarcation between the two terms in that a subsidiary of a foreign corporation is a domestic corporation established with capital investment under the laws of Korea (the Foreign Investment Promotion Act or the Foreign Exchange Transactions Act) whereas a branch of a foreign corporation is either a branch (sales office) or a liaison office established without capital investment. Therefore, the two terms should be clearly distinguished.

**¹⁾ Article 9-32 of the Foreign Exchange Transactions Regulations

***²⁾ Article 9-33 of the Foreign Exchange Transactions Regulations

Q8. Compared with foreign investment pursuant to the Foreign Exchange Transactions Act, what benefits or support are provided for foreign investment pursuant to the Foreign Investment Promotion Act?

A8. A foreign-invested company under the Foreign Investment Promotion Act is basically treated in the same manner as purely domestic companies (national treatment) and can receive preferential treatments in terms of taxes and location.

• General benefits

- Guarantee of remittance to foreign countries: Remittance of dividends and proceeds from the sale of the stocks and shares owned by a foreign investor shall be guaranteed in accordance with the details of the report or permission at the time of such remittance.
- National treatment: Except as otherwise explicitly prescribed by law, foreign investors and foreign-invested companies shall be treated in the same manner as Korean nationals or corporations with respect to their business operation.
- Special treatment for import declaration of capital goods: Imported capital goods for which confirmation of review of specification of imported capital goods was obtained pursuant to the Foreign Investment Promotion Act shall be considered as having obtained import approval under the Foreign Trade Act.
- Special treatment for investment in kind: A “certificate of completion of investment in kind” verified by the Commissioner of the Korea Customs Service shall be deemed an “investigation report by inspector” under Article 203 of the Non-Contentious Case Procedure Act to ease the procedures prescribed by the Commercial Act.

• Tax reductions and exemptions

National taxes and local taxes may be reduced or exempted when engaging in businesses subject to tax reductions and exemptions under the Restriction of Special Taxation Act or the Restriction of Special Local Taxation Act (businesses accompanying technologies for new growth engine industries, etc.). However, corporate tax reductions and exemptions were eliminated on December 31, 2018.

• Industrial site support

- The land, factories, or other property owned by the State, local government, or public institution may be used, profited from, lent, or sold to a foreign-invested company by a negotiated contract.
- When State-owned land is rented to a foreign-invested company, its rental charges may be reduced or exempted.

• Exemption of customs duty

Customs duty shall be exempted for capital goods* that are directly used in the business subject to tax reductions or exemptions and are imported within five years from the date of the report** of foreign investment by the acquisition of newly issued stocks. (Individual consumption tax and value-added tax are also exempted for foreign-invested companies that operate in a business accompanying technologies for new growth engine industries and a tenant company of an individual-type foreign investment zone.)

* A means of international payment for the investment by a foreign investor in a foreign-invested company, or capital goods introduced as a means of domestic payment incurred by the exchange of such a means of international payment, or capital goods introduced by a foreign investor as an object of investment.

** The date of notification of alteration (change of information) is not applicable.

Q9. When a foreigner invests at least KRW 100 million and registers a foreign-invested company, can he/she carry out any business in Korea?

A9. No. If separate requirements for minimum capital are prescribed for each business under separate Acts, such requirements should be satisfied.

- Examples of minimum capital requirements under separate laws
 - International logistics brokerage business: Any person who intends to file for registration of international logistics brokerage business with the head of the competent local government shall possess capital of at least KRW 300 million (referring to the appraised value of assets of at least KRW 600 million if he/she is not a juristic person) (Article 43 of the Framework Act on Logistics Policies).
 - Civil engineering business: Any person who intends to file for registration of civil engineering business with the head of the competent local government shall possess capital of at least KRW 500 million (attached Table 2 of the Enforcement Decree of the Construction Technology Management Act).
 - International travel business: Any company that intends to register an international travel business with the head of the competent local government shall possess capital of at least KRW 30 million. (A foreign-invested company shall possess capital of at least KRW 100 million to engage in international travel business.)

Q10. Are there any business categories where a foreigner cannot invest alone and should have a Korean partner to invest in Korea?

A10. In most business categories, a foreigner can invest alone in Korea without a Korean partner. However, a foreigner should have a Korean partner to invest in “restricted business categories” and there are restrictions as to the percentage of stocks or shares that can be held by a foreign investor.

- The restricted and prohibited business categories are revised and announced every year by the Minister of Trade, Industry and Energy through the Integrated Public Notice of Foreign Investment pursuant to Article 4 (4) of the Foreign Investment Promotion Act and Article 5 (11) of the Enforcement Decree of the Act.

• Restrictions on Foreign Investment (Example)

| Business Categories (KSIC) | Overview | Criteria for Permission |
|---|---|---|
| Electric power transmission and distribution (35120) | Industrial activities of transmitting the electric power generated to certain regions or distributing the transmitted electric power to end-users | Permitted only in the following cases: 1. The foreign investment ratio shall be less than 50%. 2. The number of stocks with voting rights held by a foreign investor shall be below that of the largest domestic shareholder. |
| Trade of electricity (35130) | Industrial activities of supplying and selling electricity to household, industrial and commercial users | ※ These criteria only apply to trade of electricity subject to the Electric Utility Act. |
| Collection, treatment and disposal of radioactive nuclear waste (38240) | Industrial activities of collecting, transporting and disposing of radioactive wastes that need to be disposed of | Permitted except for radioactive waste management business pursuant to Article 9 of the Radioactive Waste Management Act |
| Wholesale of meat (46313) | Industrial activities of wholesaling fresh, refrigerated or frozen meat of livestock or other land animals | Permitted if the foreign investment ratio is less than 50%. |

Q11. When a foreigner establishes a Project Financing Vehicle (PFV), can this be deemed foreign investment under the Foreign Investment Promotion Act?

A11. It can be deemed foreign investment because there are no particular restrictions. In accordance with Article 104-31 of the Restriction of Special Taxation Act and Article 104-28 of its Enforcement Decree a PFV is defined as a company whose assets shall be used for investment in facilities and infrastructure, the development of resources, or a specific business requiring substantial time and money, and its profits shall be distributed to its stockholders. It shall hire no staff member or full-time executive and shall entrust the management, operation and disposal of its assets to an asset management company and its treasury management to a financial institution engaging in trust business pursuant to the Financial Investment Services and Capital Markets Act.

Q12. When a foreigner acquires 4,000 shares of a company with total capital of KRW 2 billion (the par value of a share is KRW 5,000 and total number of shares issued is 400,000) at KRW 50,000 per share, can this be recognized as foreign investment under the Foreign Investment Promotion Act?

A12. The investment amount (KRW 200 million) meets the requirement for foreign investment, but the foreign investment ratio of 1% fails to meet the requirement under the Foreign Investment Promotion Act.

- However, even when the amount invested by a foreigner is not less than KRW 100 million but the foreign investment ratio is less than 10%, it can be exceptionally recognized as foreign investment if the foreigner dispatches or appoints an executive officer pursuant to Article 2 (2) 2 of the Enforcement Decree of the Foreign Investment Promotion Act.

Q13. When a subsidiary established in the US by a domestic corporation (holding 100% of its voting stocks) invests in Korea, can this be registered as a foreign-invested company under the Foreign Investment Promotion Act?

A13. Where a subsidiary established by a domestic corporation in a foreign country invests back in Korea, it is referred to as a round trip investment. A round trip investment itself is not prohibited under the Foreign Investment Promotion Act because a foreign corporation established under applicable foreign laws is deemed a “foreign investor” under the Foreign Investment Promotion Act, regardless of the owner of such corporation.

- However, it should be noted that such investment is not recognized as foreign investment in the following circumstances where special benefits are granted to those registered as a foreign-invested company:
 - Tax reductions or exemptions for foreign investment (Article 121-2 (11) of the Restriction of Special Taxation Act and Articles 116-2 (11) and 116-2 (12) of the Enforcement Decree of the Act)
 - Lease and sale of State or public property to foreign-invested companies by a negotiated contract (Article 19 (1) of the Enforcement Decree of the Foreign Investment Promotion Act)
 - Reduction or exemption of rent for foreign investment zones (Subparagraph 6 of Article 2 of the Guidelines for Operation of Foreign Investment Zones)

Q14. Does the Foreign Investment Promotion Act apply to a case where a foreigner intends to acquire 5% of the stocks of an unlisted domestic company owned by a resident for KRW 200 million?

A14. No, in principle. In such case, a report on the acquisition of securities by a non-resident should be filed under the Foreign Exchange Transactions Regulation.*

- For the Foreign Investment Promotion Act to apply, a foreigner should invest at least KRW 100 million and hold at least 10% of the total number of issued voting stocks or the total equity investment of a domestic corporation or a company (including corporations in the process of being established).
- However, where a foreigner owns stocks, etc. of a Korean corporation or a company and dispatches or appoints an executive officer (referring to a director, a representative director, a managing general partner, an auditor, or a person in a similar position, who has the authority to participate in decision-making for important management matters) to such corporation or company, the foreigner can be subject to the Foreign Investment Promotion Act even if he/she holds less than 10% of the total number of issued voting stocks or the total equity investment of such corporation or company. (The investment amount should still be KRW 100 million or greater.)

* Article 9-32 of the Foreign Exchange Transactions Regulation

Q15. Is it considered foreign direct investment when a foreign-invested company invests in another domestic company?

A15. It is recognized as foreign direct investment only when a foreign investor makes a direct investment. A foreign-invested company cannot be a foreign investor because it is classified as a domestic corporation. A foreigner means an individual of foreign nationality or a corporation established under foreign laws. Therefore, another domestic corporation in which a foreign-invested company invests cannot be a foreign-invested company (Article 2 (1) 1 of the Foreign Investment Promotion Act).

Q16. When a foreigner establishes a corporation with wage & salary income earned in Korea, can this be recognized as foreign direct investment?

A16. In principle, an investment made with domestically sourced funds is not recognized as foreign investment. However, if a foreigner deposits the funds into an international bank account for non-residents and then withdraws the funds, it may be recognized as foreign investment. Depositing funds into an international bank account for non-residents has the same effect as a remittance to a foreign country and requires a procedure similar to that of a remittance to a foreign country. This includes the submission of a certificate of earned income, etc. A foreigner intending to make a foreign investment through this method is advised to consult with his/her bank beforehand and also consult with the relevant authority regarding visa applications before proceeding with the investment process.

Q17. When a foreigner acquires stock depository receipts of a Korean corporation, can this be deemed foreign investment?

A17. It is not recognized as foreign investment at the time of the acquisition of stock depository receipts. However, in accordance with the related regulations of the Foreign Investment Promotion Act, where a foreigner meets the foreign investment requirements (investment amount of at least KRW 100 million and acquisition of at least 10% of voting stocks) under the Act at the time when he/she exchanges stock depository receipts for stocks, it can be notified as foreign investment after the exchange is completed.

Q18. When a foreign corporation acquires bonds with warrants issued by a domestic company and exercises the attached warrants, can this be deemed foreign investment?

A18. Bonds with warrants are bonds issued by a domestic company to a creditor (foreigner) with attached warrants which give the creditor the right to receive newly issued stocks of the company. If the acquisition of stocks made through the exercise of such warrants meets the requirements under the Foreign Investment Promotion Act (at least KRW 100 million and acquisition of at least 10% of voting stocks), it can be recognized as foreign investment and the foreign investor should notify the acquisition of stocks, etc. within 60 days from such acquisition.

Q19. When a foreign-invested company pays interest on the loan from its parent company (foreign investment in the form of long-term loans), can the interest rate be determined freely by the parties concerned?

A19. Generally, there are no restrictions. However, a transaction between foreign related parties should be an arm's length transaction. If the overseas parent company constitutes a foreign related party who holds, directly or indirectly, at least 50% of the voting stocks of the foreign-invested company, the foreign-invested company should pay interest computed based on the same interest rate that would apply or be deemed to apply in an arm's length transaction with a person that is not a foreign related party (arm's length price).

- When the use of a price higher or lower than the arm's length price in a transaction with a foreign related party results in a reduction in the taxable income of a company, the tax authorities will reassess the taxable income by applying the arm's length price to the transaction and levy taxes on the recomputed taxable income. This practice is referred to as the transfer price tax scheme.
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Q20. When a foreigner invests in an organization without corporate personality such as a venture investment association can this be recognized as foreign direct investment?

A20. In accordance with the exceptional provision stipulated in Article 64 of the Venture Investment Promotion Act the investment can be considered foreign direct investment when a foreigner invests in investment associations such as a venture investment association and the investment meets the minimum FDI requirements under the Foreign Investment Promotion Act (investment amount of KRW 100 million and investment ratio of 10%).

- Similarly, other exceptional provisions such as Article 53 of the Act on the Special Measures for the Promotion of Specialized Enterprises, etc. for Materials and Components, and Article 24 of the Act on Formation and Operation of Agricultural, Fisheries and Food Investment Funds, etc. can be used as legal grounds for recognizing certain investments as foreign investment.

Q21. Can a foreign investor invest in kind by providing used capital goods?

A21. Yes. In accordance with the definition of “capital goods” under the Foreign Investment Promotion Act, investment in kind of used capital goods is not restricted. When used capital goods are invested, their fair market value can be computed based on the residual value of the goods reflecting depreciation and the current market value at the time of investment.

Q22. Do capital goods only include facilities such as manufacturing machinery?

A22. No. The term “capital goods” means machinery, apparatus, facilities, equipment, parts, and accessories as industrial facilities (including vessels, motor vehicles, aircraft, etc.), livestock, breeds or seeds, trees, fish and shellfish which are necessary for the development of agriculture, forestry, and fisheries, raw materials and reserve stocks deemed necessary by the competent Minister (referring to the head of the central administrative agency in control of the project concerned) for the initial test (including pilot projects) of the facilities concerned, and the fees for transportation and insurance required for the introduction thereof and other know-how or services necessary therefor.

Q23. When a foreign investor acquires a domestic company, should he/she file a report on business combination?

A23. When a foreign investor meets the criteria of a “company required to report its business combination”, he/she shall report its business combination in the same manner as a domestic company under Article 12 of the Monopoly Regulation and Fair Trade Act. Since any business combination that restricts competition is prohibited, all cases of business combination should be examined, in principle. However, in order to reduce unnecessary burden on corporations and raise administrative efficiency, the reporting requirement is imposed only on business combinations meeting certain criteria in terms of size.

• Companies required to report their business combination

- Reporting company (foreign investor): A company whose total assets or sales are KRW 300 billion or more
- Merged company (domestic company): A company whose total assets or sales are KRW 30 billion or more (A business combination by a company whose total assets or sales are KRW 30 billion or more of another company whose total assets or sales are KRW 300 billion or more is also subject to the reporting requirement. The total assets or sales of a company that retains the status of a subsidiary both before and after the business combination should be added.)

• Business combinations required to be reported

- Acquisition of stocks: Where a company acquires 20% or more (or 15% or more in the case of a listed corporation) of the total number of stocks (excluding non-voting stocks) issued by another company (including in the case when it becomes the largest shareholder by acquiring the stocks of that company additionally)
- Concurrent holding of executive position: Where an executive officer of a large company concurrently holds an executive office position in another company
- Merger: In the case of a merger of a company
- Acquisition of business: In the case of acquisition of a business by transfer
- Participation in company establishment: Where a company becomes the largest shareholder by participating in the establishment of a new company

* When the total assets or sales of a foreign investor are not less than KRW 300 billion, its business combination can be reported after it is executed. It should be noted, however, when the total assets or sales of a foreign investor is not less than KRW 2 trillion, its business combination should be reported before the execution of the business combination (prohibition of execution). Even when a prior report is required for a business combination, a delegated agency including a foreign exchange bank can receive a notification of foreign investment. (It does not violate the prohibition of execution.)

Q24. When a business fails to meet the requirements for foreign investment due to partial transfer of stocks or shares or capital reduction, etc. after it has been registered as a foreign-invested company, can the business retain its status as a foreign-invested company?

A24. Even if a registered foreign-invested company fails to meet the minimum FDI requirements due to transfer of shares or capital reduction, the investment shall still be recognized as FDI (Article 2 (2) of the Enforcement Decree of the Foreign Investment Promotion Act).

– Even if a foreign investor's ownership of a foreign-invested company declines in value due to capital reduction without consideration, the total amount invested at the time of initial acquisition of the stocks, etc. is deemed to remain.

※ However, it should be noted that the foreign-invested company can retain its status only within a passive and limited scope, and may face difficulties when seeking active support with matters such as extension of a residence permit for its executive officers and employees.

○ When an existing foreign investor makes an additional investment of less than KRW 100 million, and less than 10% in the foreign-invested company, the additional investment is recognized as subsequent foreign investment by that foreign investor who already satisfies the requirements for foreign investment, and there is no need to check whether it meets the minimum requirements for initial investment.

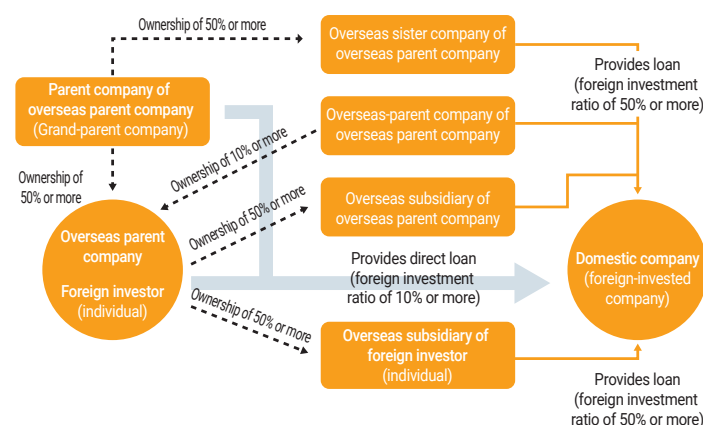
○ When a foreign investor fails to meet the requirements of foreign investment due to partial transfer of stocks or shares to a Korean national or foreigner, or capital reduction, this is also deemed foreign investment (Proviso of Article 2 (2) of the Enforcement Decree of the Foreign Investment Promotion Act).

Q25. Is it considered foreign direct investment when a foreign-invested company borrows capital from its overseas parent company?

A25. Loans with maturity of not less than five years can be recognized as foreign investment when they are extended to the relevant foreign-invested company by a company that meets any of the following conditions (foreign investment in the form of long-term loans):

- The foreign-invested company's overseas parent company, or a company that has an investment relationship with the overseas parent company of the foreign-invested company
- A foreign investor or a company that has an investment relationship with the foreign investor

<Flow of Foreign Investment in the Form of a Long-term Loan by a Foreign-invested Company>



※ (Note) As for notification of a long-term loan under the Foreign Investment Promotion Act, after a foreigner establishes a foreign-invested company by contributing equity capital, the foreigner (foreign investor) may extend a long-term loan in foreign currency with an average maturity of not less than five years to the established foreign-invested company.

- When a foreign currency loan is brought in from a foreign country before any equity investment is made, a domestic company that is a resident should notify the foreign currency loan in accordance with Article 7-14 of the Foreign Exchange Transactions Regulations.

Q26. When a foreign-invested company reinvests its earned surplus in facilities, can this be deemed foreign investment?

A26. With the enactment of the amended Foreign Investment Promotion Act (Aug. 5, 2020), a foreign-invested company's use of unappropriated earned surplus is recognized as foreign investment.

- Where a foreign-invested company uses its unappropriated earned surplus for the purposes prescribed by Presidential Decree, such as the creation or extension of its factory facilities, it shall be defined as foreign investment (Article 2 (1) 4 (d) of the Foreign Investment Promotion Act).
- In this case, the amount of foreign investment shall be recognized as the amount calculated by multiplying the amount of unappropriated earned surplus carried forward used for the above purpose with the foreign investment ratio stated on the foreign-invested company registration certificate.

Q27. Is the acquisition of stocks for the purpose of capital gains, not participation in management, regarded as foreign investment?

A27. Investment in listed stocks (including KOSDAQ-listed stocks) is generally for the purpose of portfolio investment of less than a 10% ownership. Therefore, it fails to satisfy the requirements for foreign direct investment (investment amount of at least KRW 100 million and acquisition of at least 10% of the total voting stocks).

- However, when a foreigner meets both requirements under the Foreign Investment Promotion Act, the investment amount of at least KRW 100 million and the acquisition of at least 10% of the total voting stocks, or the additional acquisition of stocks while the investment ratio is less than 10% brings the foreigner to meet the requirements under the Foreign Investment Promotion Act, the foreigner may have to notify foreign direct investment. In this case, the foreigner shall notify the acquisition of stocks, etc. (existing shares) within 60 days from the acquisition of stocks under Article 5 (2) 1 of the Foreign Investment Promotion Act.
- When trading listed stocks, a foreigner should open an international account and a non-resident's local currency (KRW) account, both dedicated to stock trading (Article 7-37 of the Regulation on Foreign Exchange Transactions). These accounts will be used for receiving foreign currency funds for stock trading from a foreign country, exchanging the foreign currency into Korean won, and sending proceeds from stock trading conducted through a securities trading account with a securities company (investment trader). The foreign investor can use the securities company's foreign currency account dedicated to stock trading to transfer foreign currency funds and perform portfolio investment. In this case, the foreign investor
- does not need to open an international account dedicated to stock trading with a domestic bank (Article 7-38 of the Foreign Exchange Transactions Regulation).
- If a foreigner's acquisition of listed or unlisted stocks does not meet the minimum FDI requirements (investment amount of KRW 100 million and acquisition of at least 10% of voting stocks), the acquisition of stocks by a non-resident should be notified to the head of a foreign exchange bank or the Governor of the Bank of Korea, according to Articles 7-32 (2) or 7-32 (3) of the Foreign Exchange Transactions Regulations.

Q28. Can acquisition of at least 10% of the preferred stocks of a domestic company be considered foreign investment?

A28. Basically, an investment by a foreigner is recognized as foreign investment when the investment amount is not less than KRW 100 million and at least 10% of the voting stocks (common stocks) is acquired.

- In general, as preferred stocks do not have voting rights, an investment in preferred stocks is not recognized as foreign investment. However, when preferred stocks with voting rights (redeemable convertible preference shares, etc.) are acquired, they are treated equally as common stocks and such investment is recognized as foreign investment if it meets the requirements under the Foreign Investment Promotion Act.
- Even if a foreigner acquires less than 10% of the total stocks of a domestic company regardless of the type of the stocks (common or preferred stocks), as long as the investment amount is not less than KRW 100 million and the foreigner dispatches or appoints executive officers as prescribed in Article 2 (2) 2 of the Enforcement Decree of the Foreign Investment Promotion Act, such investment can be exceptionally recognized as foreign investment.

Q29. When a foreigner intends to invest in Korea via a paper company established in a tax-haven for the purposes of tax avoidance, etc., is such investment restricted?

A29. Under Article 2 (1) 1 of the Foreign Investment Promotion Act, a foreigner is defined as an individual with foreign nationality, a foreign corporation established under applicable foreign laws or other international organizations for economic cooperation.

- If a paper company established in a tax haven is a corporation founded pursuant to applicable foreign laws, it is considered a foreigner under Article 2 (1)1 of the Foreign Investment Promotion Act and subsequently not restricted from investing in Korea.

- However, an investment by a foreign corporation established by a Korean national or a Korean corporation is deemed a round-trip investment and is, therefore, excluded from the amount of foreign investment when incentives are granted pursuant to the Restriction of Special Taxation Act.
 - Tax reductions and exemptions for foreign investment (Article 121-2 (11) of the Restriction of Special Taxation Act and Articles 116-2 (11) and 116-2 (12) of the Enforcement Decree of the Act)
 - Lending or selling State and public property to foreign-invested companies by a negotiated contract (Article 19 (1) of the Enforcement Decree of the Foreign Investment Promotion Act)
 - Reductions or exemptions for rental charges in foreign investment zones (subparagraph 6 of Article 2 of the Guidelines for Operation of Foreign Investment Zones)

Q30. When a foreign investor notifies foreign investment in the form of a long-term loan, borrows Korean won funds from a domestic bank and converts it to foreign currency in an external account, then uses that foreign currency to extend a loan, can this be recognized as foreign investment?

A30. Although a certificate of purchase/deposit of foreign currency was issued for the loan by the bank, because the funds used are obviously domestically sourced, it is deemed unlawful or unjust and subsequently not recognized as foreign investment by the Ministry of Trade, Industry and Energy in accordance with Article 28 (5) 1 of the Foreign Investment Promotion Act*.

* Article 28 (5) of the Foreign Investment Promotion Act: The Ministry of Trade, Industry and Energy may issue a corrective order or take other necessary measures against foreign investors, foreign-invested companies, persons who have introduced or used the funds or capital goods invested by the foreigner, and other interested parties.

2. FDI Notification & Registration

2023
FAQ on FDI in Korea



2. FDI Notification & Registration

Q31. A foreign investment in the form of a long-term loan is not recorded as the amount of foreign investment on a certificate of registration of foreign-invested company. What is the reason?

A31. A foreign investment in the form of a long-term loan is recognized as foreign investment under Article 2 (1) 4 (b) of the Foreign Investment Promotion Act. But, because it does not constitute a foreign investment in the form of equity investment which is recorded on the certificate of registration of a foreign-invested company (Articles 2 (1) 4 (a), 2 (1) 4 (c), and 2 (1) 4 (e) of the same Act), it is not recorded as the amount of foreign investment on the certificate of registration.

- Also, under Article 21 (1) of the Foreign Investment Promotion Act, foreign investments eligible for registration of a foreign-invested company are limited to the following: where a foreign investor has completed payment for the object of investment (new shares); where a foreign investor has completed the acquisition of stocks, etc. (existing shares); or where a foreign investor has completed contribution to a non-profit organization.

Q32. Is it possible to notify foreign investment online or in foreign countries?

A32. Currently, notification of foreign investment cannot be filed online. In principle, foreign investment cannot be notified in countries outside of Korea, either.

- However, a foreign investment notification can be filed in certain countries where the Korea Trade-Investment Promotion Agency (KOTRA) operates overseas FDI offices to render support to foreign investors. The

list of such overseas FDI offices is available on the Invest KOREA website (www.investkorea.org ▶ About Us ▶ Contact Us ▶ KOTRA's overseas Offices Dedicated to Investment)

<KOTRA's 36 Overseas FDI Offices (As of September 2022)>

| Region | Overseas FDI Offices (Cities) |
|----------------------------------|---|
| North America(9) | - US(7): New York, Silicon Valley, LA, Chicago, Dallas, Detroit, Washington - Canada(2): Toronto, Vancouver |
| Europe(13) | - Germany(3): Frankfurt, Hamburg, Munich - UK(London), France(Paris), Sweden(Stockholm), Denmark(Copenhagen), Spain(Madrid), Netherlands(Amsterdam), Belgium(Brussels), Italy(Milan), Switzerland(Zurich), Austria(Vienna) |
| Southeast Asia-Oceania(3) | - Singapore(Singapore) - Australia(2): Sydney, Melbourne |
| Japan(4) | - Japan(4): Tokyo, Osaka, Fukuoka, Nagoya |
| China(6) | - Hong Kong, Shanghai, Beijing, Qingdao, Guangzhou - Taiwan(Taipei) |
| Middle East(1) | UAE(Dubai) |

Q33. Is it mandatory for a foreigner to file for registration as a foreign-invested company after completing an investment?

A33. In accordance with Article 21 (1) of the Foreign Investment Promotion Act, a "foreigner" is required to file for registration as a foreign-invested company within 60 days (30 days in case of contributions) from the occurrence of the following events: where he/she has completed payment for the object of investment (new stocks); where he/she has completed the acquisition of stocks, etc. (existing stocks); where he/she has completed his/her contributions to a non-profit organization.

- In accordance with Article 21 (2) of the same Act, when a foreigner making an investment meets the requirements for foreign investment, he/she may file for registration as a foreign-invested company even prior

to completing the acquisition of stocks or payment for the object of investment (partial registration).

Q34. Are there any disadvantages when a foreign investor fails to register as a foreign-invested company?

A34. A foreign investor who fails to register as a foreign-invested company cannot prove that his/her foreign investment has been completed. As a result, matters such as visa applications for a stay in Korea or the transfer of dividends or proceeds from the sale of stocks to foreign countries cannot be processed.

- Therefore, all foreigners who have completed a foreign investment (including partial execution of investment satisfying the requirements for foreign investment under the Foreign Investment Promotion Act) should apply for registration (registration of alteration) as a foreign-invested company within 60 days from the occurrence of relevant events*, as prescribed by Article 21 of the Foreign Investment Promotion Act.

* Occurrence of relevant events: The completion of payment for the object of investment, the completion of acquisition of stocks, etc. (settlement of payments), or the completion of contributions

- In addition, a delay or other disadvantages may be experienced in cases requiring a certificate of the registration of a foreign-invested company (when renting an office or a facility in a foreign investment zone or applying for exemption from the mandatory bond purchase under the Housing Act or the Urban Railroad Act)

Q35. When a certificate of registration of a foreign-invested company is lost, can it be reissued?

A35. The Foreign Investment Promotion Act does not specify whether or not a certificate of registration of a foreign-invested company can be reissued when it is lost or damaged.

- However, as Article 21 (6) of the Foreign Investment Promotion Act prescribes that the certificate of registration of foreign-invested company shall not be transferred to any other third person or be used unjustly, there is no problem with reissuance of the certificate. Therefore, it can be reissued when an application for reissuance is filed with a delegated agency, together with a statement detailing the cause of loss.

Q36. Can a long-term loan or a foreign loan be converted into capital through set-off? If yes, what is the procedure for notification of foreign investment?

A36. A long-term loan or a loan from a foreign country is not included in the definitions of object of investment* under the Foreign Investment Promotion Act. However, an amendment made in April 2020 to the Commercial Act introduced a provision that allows a set-off against payment for shares based on an agreement with the corporation (Article 334 deleted and Article 421 (2) added). An authoritative interpretation of this provision recognizes as foreign investment conversion of a loan into capital via a set off between the amount of loan payment (principal) and payment for shares.

* In accordance with Article 2 (1) 8 (f) of the Foreign Investment Promotion Act, only “the amount of redemption of loans or other loans from foreign countries” constitutes an object of investment

- When the principal of a long-term loan prescribed by the Foreign Investment Promotion Act is converted into capital
 1. Notify change of information for a long-term loan to reflect the redemption of the loan through a conversion into capital
 - Attach the revised loan contract
 2. Notify the acquisition of stocks under the Foreign Investment Promotion Act (Object of investment: debt; Amount to be notified: the amount of the foreign currency loan arrived)
 - Attach the agreement on the conversion of the loan into capital and a written consent on the set-off

3. Apply for registration (registration of alteration) of a foreign-invested company (the capital registration date is deemed as the date of the arrival of investment)
 - Attach a certificate of corporate registration that reflects a cancellation resulting from the investment in kind with the long-term loan and a shareholder register
- When a loan from foreign countries prescribed by the Foreign Exchange Transactions Act is converted into capital
 1. Notify the designated foreign exchange bank (or the Bank of Korea) of the modifications to the reported details of the loan from a foreign country under the Foreign Exchange Transactions Act (by attaching a certificate of the initial loan notification) and prepare an agreement on the conversion of the loan into capital and a written consent on the set-off
 2. Notify the acquisition of stocks under the Foreign Investment Promotion Act (Object of investment: debt; Amount to be notified: the initial amount of loan)
 - Attach a certificate of the initial loan notification under the Foreign Exchange Transactions Act and a copy of a document certifying the arrival of the loan, the agreement on the conversion of the loan into capital and a written consent on the set-off
 3. Apply for registration (change of information) of a foreign-invested company (capital registration date to be deemed the date of arrival of investment)
 - Attach a certificate of corporate registration that reflects cancellations resulting from investment in kind with the loan and a shareholder register

Q37. What is the procedure under the Foreign Investment Promotion Act when a foreign-invested company carries out capital increase without consideration?

A37. If a foreign investor acquires stocks, etc. free of charge from the relevant foreign-invested company, the foreign investor shall notify the acquisition of stocks, etc. under Article 5 (2) 2 of the Foreign Investment Promotion Act within 60 days from the acquisition of stocks. (The amount of foreign investment does not increase because there is no infusion of new investment funds.)

- The foreign-invested company should file for registration of alteration. Although there is no increase in the actual amount of investment by the foreign-invested company, the total par value of the stocks held by the foreign-invested company rises due to an increase in the number of stocks. This increase should be reflected in the registration.
- Documents certifying the acquisition of stocks such as the statement of resolution of a shareholder meeting on the capital increase without consideration, a certificate of corporate registration and a shareholder register issued after the execution of the capital increase should be submitted.

Q38. Is it possible for a foreign-invested company to take out a short-term loan with a redemption period of not more than one year?

A38. According to Article 7-14 of the Foreign Exchange Transactions Regulations, when a resident that is a for-profit corporation (including a foreign-invested company) intends to borrow foreign currency funds from a non-resident, the resident may do so by notifying such loan with the head of a designated foreign exchange bank regardless of the maturity of the loan.

- However, if the amount to be loaned exceeds USD 30 million (including the cumulative amount borrowed over the past year from the date of the

loan notification), it should be notified to the Minister of Economy and Finance via a designated foreign exchange bank.

- A foreign-invested company intending to take out a short-term, foreign currency loan that exceeds USD 30 million can do so by notifying the loan only to the head of a foreign exchange bank.

<Foreign-invested companies allowed to borrow short-term foreign currency loans exceeding USD 30 million and the upper limit of loan>

| Permitted companies | Foreign investment ratio | Allowed limits |
|---|--------------------------|--|
| Foreign-invested companies engaging in general manufacturing business | - | Within 50% of the foreign investment amount |
| Foreign-invested companies eligible for tax reduction or exemption that engage in high-technology accompanying industry-supporting service businesses (replaced by "businesses accompanying technologies for new growth engine industries" as of February 2017) | Less than one third | Within 75% of the foreign investment amount |
| | One third or greater | Within 100% of the foreign investment amount |

Q39. What procedure should a foreigner follow when converting his/her individual business into a corporation?

A39. When a foreigner intends to convert an individual business he/she has invested in under the Foreign Investment Promotion Act into a corporation, the general practice is to liquidate the individual business registered as a foreign-invested company and to establish a new corporation by investing the residual assets (cash in Korean won).

- The foreign-invested company can close his/her individual business (by reporting the closure to a regional tax office) and establish a corporation by filing for a cancellation of the registration of a foreign-invested company and notifying foreign investment simultaneously with delegated agencies.

- If the residual assets of the individual business fails to meet the foreign investment requirements under the Foreign Investment Promotion Act (at least KRW 100 million and acquisition of at least 10% of voting stocks), the foreigner can establish a corporation only after bringing in foreign currency funds to fill the amount in short and making a payment for shares to a relevant bank (or submitting a certificate of balance). After a corporation is established and business registration is completed, the corporation should be registered as a foreign-invested company with the submission of all required documents of proof.
- An individual business can be converted into a corporation through investment in kind instead of through the common practice of cash investment after business closure and liquidation. In case of the establishment of a stock company, a corporation can be established under Article 290 (Matters on Irregular Incorporation) of the Commercial Act after an appraisal by a certified appraisal agency and an application for registration of alteration of foreign-invested company can be submitted together with documents certifying the changed details. (The foreign-invested company registration number remains unchanged; a certified copy of corporate registration, a certificate of business registration and a shareholder register should be submitted and the original copy of the certificate of the registration of a foreign-invested company of the individual business should be returned.)

Q40. Can a foreign-invested company redeem whole or part of its long-term loan within five years before maturity?

A40. Yes, early redemption is possible.

- In accordance with Article 2 (1) 4 (b) of the Foreign Investment Promotion Act, a loan with maturity of not less than five years is based on the loan maturity prescribed in the first loan contract. Therefore, early redemption of loans (within five years) is permitted for loans that satisfy the qualifications for foreign investment prescribed by Article 2 (2) of the Enforcement Rule of the same Act and introduced after notifying foreign investment in the form of long term loans.

- However, for early redemption of loans, a notification of change of information of foreign investment in the form of long term loans shall be completed (the revised loan contract shall be attached) pursuant to Article 5 (3) of the Act and Article 2 (3) of the Enforcement Rule of the Act, and overseas remittance procedure shall be completed according to Article 4-2 (procedures for payment, etc.) of the Foreign Exchange Transactions Regulations.

Q41. Can the foreign currency funds remitted from a foreign country prior to notification of foreign investment be used in establishing a foreign-invested company?

A41. The Foreign Investment Promotion Act provides that a foreign investment made by a foreigner in the form of the acquisition of new or existing stocks, etc. of a Korean corporation or a company shall be notified prior to the investment. However, there is no specific regulation on the timing of introduction of funds used for the acquisition of the stocks.

- Therefore, in accordance with the Foreign Investment Promotion Act, if a foreigner opens a non-resident foreign currency account (external account) before or after notification of FDI and deposits funds in the account, or if he/she deposits funds in a special bank account (reserved for deposits for securities subscription), the funds can be recognized as investment funds.
- However, when the foreign currency funds deposited in a domestic bank account are converted into Korean won and used for other purposes or proceeds accrue as a result of such use (e.g., interest received from a bank deposit), it shall not be recognized as the amount of foreign investment. Therefore, the foreigner is advised to notify foreign investment as soon as possible and use the funds for foreign investment immediately.

Q42. When a foreign investor does not remit or hand carry funds in person, and instead they are remitted under the name of a third party or hand carried by a third party, are those funds recognized as foreign investment funds?

A42. When investment funds are remitted under the name of, or hand carried by an agent or a third party, the foreign investor should submit documents certifying that the funds were remitted or hand carried by an agent or a third party on behalf of him/her, including documents proving that the funds belong to the foreign investor (Article 17 (1) 1 of the Enforcement Rules of the Foreign Investment Promotion Act).

- When a foreign investor remits investment funds in person, he/she can receive a certificate of the purchase (deposit) of foreign currency verifying the remitter. When the foreign investor hand carries the foreign currency funds through customs in person, he/she can receive a certificate of the purchase (deposit) of foreign currency after declaring the funds at the customs office and depositing the funds into a foreign currency account for non-residents at a domestic bank under the investor's name.
- When investment funds are remitted in the name of a third party or hand carried by a third party, whether the funds remitted or hand carried belong to the foreign investor or not cannot be confirmed. That the funds are the foreign investment funds reported on [Date/Month/Year] by the foreign investor can be confirmed by the pertinent remittance statement ("sent on [Date/Month/Year] on behalf of [Name of the Foreign Investor]"), or by notarized documents certifying that the funds hand carried by a third party belong to the foreign investor him/herself.

Q43. Is partial registration of a foreign-invested company allowed when a foreigner notifies an acquisition of the existing stocks of a domestic company and pays for the stocks in installments?

A43. Under Article 21 (2) of the Foreign Investment Promotion Act, a foreign investor may partially register as a foreign-invested company before he/she has completed the payment for the object of investment or the acquisition of stocks if the partial investment that he/she has executed satisfies the minimum requirements for foreign investment (partial registration).

- In other words, if the partial investment is not less than KRW 100 million and the ratio of the stocks acquired is not less than 10%, the actual amount paid (in KRW and USD) for the investment is indicated as the investment amount and the percentage of stocks corresponding to the actual amount paid as the investment ratio on the certificate of registration of a foreign-invested company.
- When a foreign investor is entitled by contract to receive the entire stocks before making a full payment, the investment ratio agreed by contract can be partially registered as an exception. However, as long as a foreign-invested company remains in a state of partial registration where the payment for the stocks has not been fully settled, a transfer of stocks or a capital reduction shall not be recognized.

Q44. How can investment funds be transferred if there is no bank account under the name of the company to be established?

A44. A foreign investor should notify foreign investment and use the notification form as a basis to open a temporary account at a domestic bank and remit funds to the account under his/her name.

- Or a foreign investor can open an international account (a non-resident foreign currency account) under his/her name in advance and remit

funds to the account. This method is more complicated because several documents are required by the bank.*

* Required documents: A certificate of nationality (a certificate of business registration for the foreign corporation, a certified copy of corporate registration, a foreigner's passport, etc.), a notarized power of attorney, the corporate seal of foreign corporation and an ID card of an agent, etc.

- Transferring funds directly to a bank account under the name of a domestic corporation that has been established is not recommended because the funds can be misappropriated for purposes other than share subscription payment. If a direct transfer to a domestic company's bank account is inevitable (some governments require foreign investment funds to be transferred directly to a bank account of a domestic company) and if such transfer is made and can be verified (submission of both a remittance statement certifying the investment and a certificate of purchase/deposit of foreign currency), such investment can be recognized as foreign investment.

Q45. Should a foreigner disclose the source of the funds when transferring investment funds?

A45. In principle, the source of funds does not have to be disclosed.

- Exceptionally, however, a foreign-invested company may have to disclose the source of funds when applying for a permission to establish a casino in Jeju Special Self-Governing Province. According to Article 243 of the Special Act on the Establishment of Jeju Special Self-Governing Province and the Development of Free International City, the investment funds must not pertain to criminal proceeds in accordance with the final ruling of a trial following Article 2 (4) of the Act on the Regulation and Punishment of Concealment of Gains from Crimes.
- When a foreigner who is an individual living in a country that prohibits foreign investment by individuals (e.g., China) hand carries investment funds instead of remitting them, he/she may not be able to submit a permit issued by his/her home country for carrying the funds out of the country. In this case, when issuing a foreign investor visa (D-8), the Immigration Office requires the foreigner to submit other documents

(e.g., a bank statement for the account under his/her name in which the funds were deposited for a considerable period of time) certifying that the foreigner is the owner of the funds.

Q46. When a foreign investor remits investment funds in Korean won from a foreign country, can it still be recognized as foreign investment?

A46. In order to be recognized as foreign direct investment, investment funds should be remitted in foreign currency from a foreign country and exchanged into Korean won in Korea. It is because a certificate of purchase of foreign currency or a certificate of deposit of foreign currency should be submitted for the registration of a foreign-invested company.

- Nowadays, many foreign banks hold Korean won bank accounts in Korean banks. When a foreign investor visits a bank in his/her country to remit investment funds, the bank may suggest that the investor exchange the foreign currency funds into Korean won in their bank on the condition that the Korean won funds will be withdrawn in their corresponding bank in Korea. The foreign investor should reject this offer and transfer the funds in foreign currency.

Q47. Is there a penalty provision for a failure to execute an investment after notifying foreign investment?

A47. Notification of foreign investment is mandatory, but there are no penalty provisions for failure to notify foreign investment. Therefore, when it is inevitable to change the information of the notified matters, a notification of change of information can be filed any time.

- Changes requiring notification of change of information
 - The trade name, name or nationality of the foreign investor
 - Foreign investment amount, foreign investment ratio and form of investment

- Business that the investor intends to engage in
- Transferor of stocks, etc.
- Types of investment, purpose of investment, address of the foreign-invested company, etc.

Q48. A foreigner intends to acquire 20% of the total shares of a domestic unlisted company and the acquisition cost is about KRW 90 million. Is it impossible for the foreigner to acquire the shares because the investment does not meet the requirement under the Foreign Investment Promotion Act?

A48. Such investment can be carried out under a different law. Where a foreigner (non-resident) acquires local currency-denominated stocks or shares of an unlisted or unregistered domestic corporation from a resident as an object of investment prescribed by the Foreign Investment Promotion Act and such acquisition does not constitute foreign investment prescribed by the Act, it should be reported to the head of a foreign exchange bank (Article 7-32 of the Regulation on Foreign Exchange Transactions).

※ If the investment cannot be notified under the Foreign Investment Promotion Act because the amount of investment is less than KRW 100 million, a notification of acquisition of stocks by a non-resident should be filed to a foreign exchange bank pursuant to Article 7-32 of the Foreign Exchange Transactions Regulations.

Q49. What procedures and documents are required for a foreign investor intending to transfer its shares to a Korean national or a foreigner?

A49. When a foreign investor transfers the stocks, etc. acquired pursuant to the Foreign Investment Promotion Act to another person (a Korean national or a foreigner), the acquiring foreigner or foreign-invested company should report the acquisition of the stocks, etc. and register change of information of foreign-invested company to a delegated agency within 60 days of the signing of the stock transfer contract.

1) When the foreign investor transfers the stocks to a foreigner:

- The acquiring foreigner: Two copies of the form of notification of foreign investment by acquisition of stocks, etc. or contribution (certificate of nationality and stock transfer contract to be attached)
- The foreign-invested company: An application for alteration of registration of a foreign-invested company (the original certificate of registration of a foreign-invested company should be returned and a shareholder register should be attached)

2) When the foreign investor transfers the stocks to a Korean national:

- The foreign-invested company should apply for alteration of registration of foreign-invested company to reflect the transfer of the stocks of the foreign investor. However, if the entire stocks held by the foreign investor are transferred, registration of foreign-invested company shall be cancelled.
- The foreign-invested company: An application for alteration of registration of foreign-invested company (the original certificate of registration of a foreign-invested company should be returned and a shareholder register should be attached)

Q50. What is the reporting procedure for notifying foreign investment in case of a merger between foreign-invested companies?

A50. Where foreign-invested company B acquires another foreign-invested company C and foreign-invested company C ceases to exist

- The merged company C should file for cancellation of registration of a foreign-invested company (reason: merged by another company and extinguished).
- Foreign investor A of the merged company C should notify the acquisition of the stocks of the surviving corporation B depending on the merger ratio. (The original amount of foreign investment shall be succeeded.) (Article 5 (2) 3 of the Foreign Investment Promotion Act)
- The surviving corporation B should notify modifications to the registration of a foreign-invested company.

* In this case, foreign investor A's investment in foreign-invested company B does not entail an actual capital infusion and the amount of foreign investor A's investment in the merged foreign-invested company C shall be succeeded.

Q51. What are the administrative procedures under the Foreign Investment Promotion Act in case of splitting a foreign-invested company?

A51. When foreign-invested company A establishes new company B through a corporate split (a spin-off)*, this results in a capital reduction for the surviving foreign-invested company A. In this case, the foreign investor of company A should alter a registration of a foreign-invested company pursuant to Article 21 of the Foreign Investment Promotion Act to reflect the reduced amount of capital for the foreign investor and subtract the amount from the foreign investment amount.

- The foreign investor of new company B is also the foreign investor of foreign-invested company A and should notify the acquisition of the stocks of the new company B with the investment amount corresponding to the amount reduced by the spin-off and register the new company B as a foreign-invested company pursuant to Article 5 (2) 3 of the Foreign Investment Promotion Act.

* Company splits are divided into spin-offs and split-offs. Only spin-offs where paid-in capital (at par value) is divested are subject to notification under the Foreign Investment Promotion Act.

- 1) Spin-offs: All of the existing shareholders (including the foreign investor) of foreign-invested company A receive the stocks of new company B, equivalent to the number of total stocks and the amount of total capital reduce from the spin-off, in proportion to their shareholding ratios of foreign-invested company A. New company B is required to notify the reduced number of stocks and the reduced investment amount for the foreign investor pursuant to the Foreign Investment Promotion Act.
- 2) Split-offs: New company B is not subject to notification under the Foreign Investment Promotion Act because foreign-invested company A owns 100% of the stocks of new company B as its subsidiary without any reduction in the total par value of paid-in capital.

Q52. What are the notification and registration procedures for foreign investment when foreign investor A is merged by foreign company (or existing foreign investor) B and ceases to exist?

A52. If foreign investor A is acquired by foreign company (or existing foreign investor) B, B will succeed to be the new shareholder (or share increase) of foreign-invested company C. Therefore, an application for alteration of registration of foreign-invested company should be filed.

- By merging A, foreign company (or foreign investor) B shall succeed to be the shareholder of foreign-invested company C without a separate acquisition of stocks. Therefore, notification of acquisition of stocks, etc. (Form 1) is not required.

- Foreign-invested company C (or foreign investor B) should apply for alteration of registration of foreign-invested company (Form 17)
 - Reason for alteration: Change of the foreign investor
 - Required documents: A modified shareholder register, documents certifying the merger, a certificate of nationality of B (not required for an existing foreign investor), and the existing certificate of registration of foreign-invested company (to be returned)

※ The registration of alteration is required pursuant to Article 21 (3) 4 of the Foreign Investment Promotion Act as it is the case of a change to the “trade name, name or nationality of the foreign investor” as prescribed in Article 2 (3) 2 of the Enforcement Rule of the Foreign Investment Promotion Act.

Q53. What are the notification and registration procedures for foreign investment when foreign investor A invests in kind all of the stocks of foreign-invested company C in foreign company B?

A53. If foreign investor A invests in kind the entire stocks of foreign-invested company C in foreign company B, foreign company B should acquire the stocks of foreign-invested company C through succession by notifying the acquisition of stocks, etc. and foreign-invested company C should apply for registration of alteration to reflect the change of foreign investor.

- Because foreign company B acquires the stocks of foreign-invested company C through the investment of foreign investor A, it should file a report on the acquisition of stocks, etc. (Form 1)
 - Method of acquisition (Paragraph 19) Others - A's investment in kind of C's stocks
 - Required documents: A certificate of nationality of B, and documents verifying the investment in kind
- Foreign-invested company C (or foreign company B) should apply for registration of alteration (Form 17).
 - Reason for registration of alteration: Change of foreign investor
 - Required documents: The modified shareholder register, the existing certificate of registration of foreign-invested company (to be returned)

Q54. What are the notification and registration procedures for foreign investment when foreign investor A invests in kind all of the stocks of foreign-invested company B in domestic company C?

A54. What are the notification and registration procedures for foreign investment when foreign investor A invests in kind all of the stocks of foreign-invested company B in domestic company C?

- Foreign-invested company B should cancel the registration of foreign-invested company through registration of alteration (Form 17)
 - Reason: Domestication
 - ※ This constitutes a case “where a foreign investor has transferred all of the stocks, etc. owned by himself or herself to a Korean corporation or company” as prescribed in Article 21 (4) 2 of the Foreign Investment Promotion Act.
- As foreign investor A invests in kind all of the stocks of foreign-invested company B in domestic company C, foreign investor A should file a report on the acquisition of stocks, etc. of domestic company C (Form 1)
 - Object of investment: Domestic stocks
 - ※ Constitutes “stocks owned by foreigners under the Foreign Investment Promotion Act or the Foreign Exchange Transactions Act” as prescribed in Article 2 (11) 2 of the Enforcement Decree of the Foreign Investment Promotion Act (satisfies the requirements of investment of not less than KRW 100 million and acquisition of not less than 10% of the total voting stocks)
 - Required documents: Certificate of nationality of A, appraisal report on the stocks of foreign-invested company B
- Domestic company C (or foreign investor A) should apply for registration of foreign-invested company (Form 17)
 - Reason: New foreign investment
 - Required documents: Certificate of corporate registration, certificate of business registration, and shareholder register (or documents certifying the stock transfer)

Q55. What are the notification and registration procedures for foreign investment when foreign investor A transfers all of the stocks of foreign-invested company C to its overseas parent company B in the form of dividend in kind?

A55. If foreign investor A transfers all of the stocks of foreign-invested company C to its overseas parent company B in the form of dividend in kind, overseas parent company B can acquire the stocks of foreign-invested company C through succession by notifying the acquisition of stocks, etc. and foreign-invested company C should apply for registration of alteration due to the change of foreign investor.

- Because foreign company B receives the stocks of foreign-invested company C owned by foreign investor A in the form of dividend in kind, foreign company B should notify the acquisition of stocks, etc. (Form 1)
 - Method of acquisition (Article 19) Others - C's stocks paid as dividend in kind by A
 - Required documents: Certificate of nationality of B and documents verifying the dividend in kind
- A or foreign parent company B need to apply for registration of change of foreign-invested company (Form 17)
 - Reason for registration of alteration: Change of foreign investor
 - Required documents: A modified shareholder register, the existing certificate of registration of foreign-invested company (to be returned)

Q56. My company has a foreign-invested company registration certificate issued by KOTRA and wishes to register change of information of registration of foreign-invested company at its primary bank instead of KOTRA for the sake of convenience. What is the procedure for this?

A56. It is possible to change the management institution for foreign investment and this is referred to change of delegated authority. You can submit the application form for change in delegated authority to the original institution by using attached Form 2: Application for change in delegated authority of the standards for handling business affairs related to foreign investment.



Downloadable at
www.investkorea.org/kr/published/presentation.do

3. Establishment of Corporation

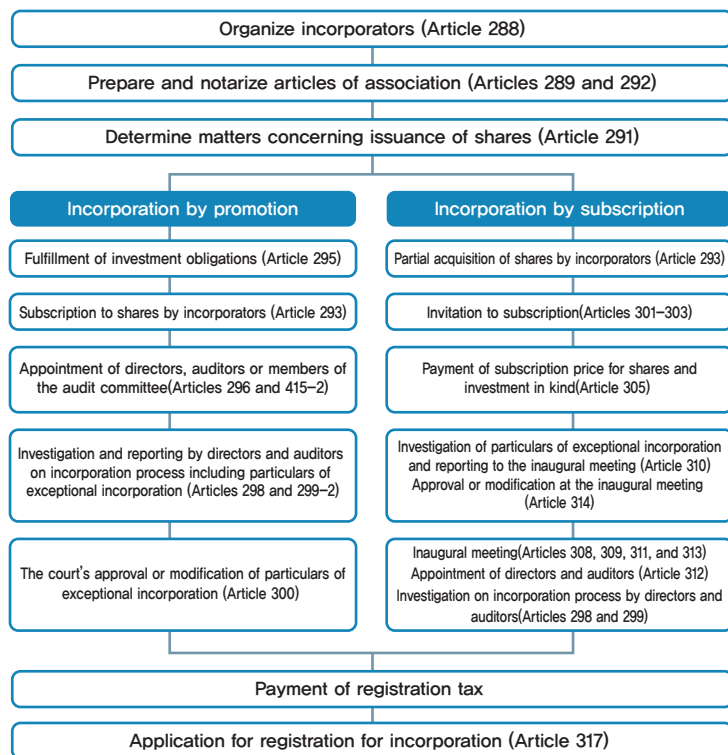


3. Establishment of Corporation

Q57. What is the process of establishing a corporation in Korea?

A57. There are four types of corporations - general partnership company, limited partnership company, stock company, limited company and limited liability company – that can be established under the Commercial Act of Korea. As a stock company represents an absolute majority, the process of establishing a stock company is explained below (the “Act” refers to the Commercial Act).

<Process of Establishing a Stock Company>



Q58. What are the differences between an individual business and a corporation?

A58.

• Differences in terms of nature of business

- (1) An individual business: An individual engages in business under his/her name and has full ownership of the business as well as unlimited liability for business debts.
- (2) A corporation: A corporation is an entity completely different from individuals, and its operation is run by the representative director under the name of the corporation. A corporation limits its liability and guarantee to the amount of its assets and the representative director, directors and shareholders that are the members of the corporation are not liable to its debts.

• Differences in terms of establishment procedures

- (1) An individual business: An individual business can carry out business after notifying foreign investment and receiving a certificate of business registration from the competent tax office, without additional procedures.
- (2) A corporation: A corporation is required to undergo incorporation procedures (incorporation registration, business registration) and the process may take around two more weeks due to document preparations and procedural matters for registration.

<Individual Business vs. Corporate Business>

| | Individual Business | Corporate Business |
|---------------------------|--|---|
| Applicable laws | Income Tax Act | Corporate Tax Act |
| Taxable income | Income tax is imposed only on the types of income listed in the Income Tax Act | Income tax is imposed on the entire amount of an increase in net assets in the relevant business year |
| Obligation of tax payment | Tax owed for only for the income in the relevant year | Tax owed for business income and liquidated income of each business year |
| Tax rates | 6-45%* | 9-24% |

| | Individual Business | Corporate Business |
|--|---|--|
| Fiscal year | The taxable period is determined so that tax on income earned from January 1 to December 31 of each year can be paid pursuant to the Income Tax Act | The business year can be decided arbitrarily by the articles of association |
| Obligation of bookkeeping | Only individual businesses of a certain size or larger are obligated to prepare financial statements | Every corporation is obligated to prepare financial statements |
| Subject of rights and obligations | The owner of an individual business is the subject of all and any of the rights and obligations related to the profit-generating activities of the individual business. The business can be attributed to the owner's income, but the owner becomes a directly involved party to a default, etc. and assumes unlimited liability. | The responsibility of investors is limited to the amount of their investment except otherwise prescribed in the Commercial Act |
| Use of property | Profits earned from business belong to the business owner as an individual | Profits earned from business primarily belong to the corporation. |

* If the tax base is not high according to the tax rate table, an individual business has an advantage in tax payment, but if the taxable income is above a certain threshold, a corporate business is at an advantage. An individual business may save taxes if it transitions to a corporation.

Q59. What are the advantages of establishing a domestic branch vs. establishing a foreign-invested company?

A59.

• A domestic branch of a foreign company (branch office or liaison office)

- Establishing a branch is relatively simple, as capital is not required and only the necessary expenses can be remitted.
- For operating income, corporate tax should be paid in Korea, but profit is non-taxable when it is remitted overseas.

• Foreign-invested company (local company)

- A foreign-invested company is treated as a domestic company when it is incorporated, so when certain conditions are met, it can receive government support as both a foreign-invested company and a domestic company.
- In particular, if the parent company is an SME, the foreign-invested company can receive various benefits as a start-up SME such as tax reduction/exemption when certain qualifications are met.

Q60. What are the differences among a local corporation, a branch office and a liaison office?

A60.

• A foreign-invested company (a local corporation)

- An investment of at least KRW 100 million per foreign investor is required to establish a foreign-invested company under the Foreign Investment Promotion Act and the Commercial Act.

• A branch office or liaison office of a foreign company

- A branch office: When engaging in a business that generates profits in Korea, it is classified as a "branch office" under the Foreign Exchange Transactions Act. Because a branch office is a foreign corporation, it is not recognized as foreign direct investment.
- A liaison office: A liaison office is different from a branch office in that it does not carry out business that generates profits in Korea, but instead undertakes "non-sales" activities such as liaison work, market research, research and development activities. Unlike a branch office, a liaison office is assigned a serial number equivalent to a business registration number by a competent tax office without a registration process in Korea.

<Foreign-Invested Company vs. Branch Office vs. Liaison Office>

| | Foreign-Invested Company | Branch | Liaison Office |
|-------------------------------------|--|--|--|
| Applicable laws | Foreign Investment Promotion Act | Foreign Exchange Transactions Act | |
| Type of corporation | Domestic corporation | Foreign corporation | |
| Company name | No restrictions | Must be identical to that of the headquarters | |
| Scope of business activities | No restrictions within the permitted scope | Restricted to the same activities as the head office, within the permitted scope | Not permitted to generate profits and restricted to activities related to establishing business contacts |
| Capital requirement | KRW 100 million or greater | No restrictions | |
| Legal liability | Liability limited to the domestic corporation | Liability extends to the headquarters | |
| Independence | Independent by law | Subordinated to the headquarters | |
| Loans in Korea | Possible depending on its credit rating | Almost impossible | Impossible |
| Establishment procedures | 1. Foreign investment notification 2. Registration for incorporation 3. Business registration 4. Registration of foreign-invested company | 1. Notification of branch establishment 2. Court registration 3. Business registration | 1. Notification of branch establishment 2. Registration of serial number |
| Accounting and taxation | Obligation of bookkeeping according to Korean GAAP and external audit for certain conditions | Obligation of bookkeeping according to Korean GAAP, but no obligation of external audit | No bookkeeping obligation |

| | Foreign-Invested Company | Branch | Liaison Office | | | | | | | | | | |
|---|---|--|-------------------|----------|-----------------------|----|--|-----|---|-----|------------------|-----|------------------------------------|
| Corporate tax rate | <table><tr><th>Tax base</th><th>Tax rate</th></tr><tr><td>Not over KRW 200 mil.</td><td>9%</td></tr><tr><td>Over KRW 200 mil. and not over KRW 20 bil.</td><td>19%</td></tr><tr><td>Over KRW 20 bil. and not over KRW 30 bil.</td><td>21%</td></tr><tr><td>Over KRW 30 bil.</td><td>24%</td></tr></table> | | Tax base | Tax rate | Not over KRW 200 mil. | 9% | Over KRW 200 mil. and not over KRW 20 bil. | 19% | Over KRW 20 bil. and not over KRW 30 bil. | 21% | Over KRW 30 bil. | 24% | No obligation to pay corporate tax |
| | Tax base | Tax rate | | | | | | | | | | | |
| | Not over KRW 200 mil. | 9% | | | | | | | | | | | |
| | Over KRW 200 mil. and not over KRW 20 bil. | 19% | | | | | | | | | | | |
| | Over KRW 20 bil. and not over KRW 30 bil. | 21% | | | | | | | | | | | |
| | Over KRW 30 bil. | 24% | | | | | | | | | | | |
| * Local corporate tax equivalent to 10% of the calculated corporate tax amount is separately imposed. | | | | | | | | | | | | | |
| | | | | | | | | | | | | | |
| | | | | | | | | | | | | | |
| | | | | | | | | | | | | | |
| | | | | | | | | | | | | | |
| Taxable income | Total income based on all profits made by the local corporation | Profit from all domestic-source income of local branch is combined. Branch tax applies in some countries | No taxable income | | | | | | | | | | |

Q61. Is it true that a foreign-invested company cannot use the same trade name that is already used in Korea?

A61. Article 29 of the Commercial Registration Act (Unregistrable Trade Names) prescribes “No trade name same as a trade name registered by another merchant for the same type of business shall be registered in the same Special Metropolitan City, Metropolitan City, Special Self-governing City, Si (including an administrative Si) or Gun (excluding a Gun within the jurisdiction of a Metropolitan City).”

- Therefore, when selecting a trade name, a foreign-invested company should check whether the selected trade name already exists at the Registrar of Supreme Court Internet Register Office at (<http://www.iros.go.kr>).

Q62. When registering incorporation of a foreign-invested company, can the trade name be registered in English?

A62. A trade name in English cannot be registered. However, it is possible to use a Korean trade name and put an English trade name in parentheses.

- Only Korean characters and Arabic numerals are allowed in filling out the application form or other documents related to the registration for incorporation.
- However, a trade name and the name of a foreigner should be recorded in Korean characters or Korean characters and Arabic numerals in accordance with the established rules of the Supreme Court and the Roman alphabet, Chinese characters, Arabic numerals and symbols may be entered side-by-side (Article 2 of the Rules on Commercial Registration).

Q63. What documents are required in registration of incorporation of a stock company?

A63. In the event of incorporation by promotion, registration for incorporation should be completed within two weeks of the date of the completion of the inspection on the incorporation process and in the event of incorporation by subscription, within two weeks of the date of the completion of the inaugural meeting.

- The composition of incorporators and existence of the same trade name should be reviewed prior to the registration of incorporation. A stock company requires one or more incorporators who are required to acquire stocks in writing and become the shareholders of the newly created corporation.

<Documents Required for registration of incorporation>

| | |
|----|---|
| 1 | An application for registration of incorporation |
| 2 | Articles of incorporation (notarized when the total capital is not less than KRW 1 billion) |
| 3 | A copy of document certifying the acquisition of stocks |
| 4 | The stock subscription agreement (in the case of incorporation by subscription) |
| 5 | Written consent to matters concerning issuance of stocks |
| 6 | Written consent to a reduction of the notice period for the inaugural meeting (in the case of the reduction of the notice period) |
| 7 | The minutes of the inaugural meeting or the minutes of the incorporators' meeting (notarized when the total capital is not less than KRW 1 billion) |
| 8 | The minutes of the board of directors' meeting (notarized when the total capital is not less than KRW 1 billion) |
| 9 | A certificate for custody of stock subscription payment (can be substituted by a certificate of balance when the total capital is less than KRW 1 billion) |
| 10 | An inspection report by directors, auditors, or the audit committee |
| 11 | A certificate of transfer of assets (in case of investment in kind) |
| 12 | A report on the particulars of exceptional incorporation prepared by a notary |
| 13 | An appraisal report by a certified appraiser |
| 14 | A certified copy of an investigation report by an inspector |
| 15 | A certificate of notification of foreign investment |
| | A certificate of inauguration acceptance for executive officers* |
| | a. Korean nationals should affix his/her seal on the certificate, and attach a |
| 16 | certificate of the seal impression and a certified copy of resident registration. |
| | b. Foreigners should attach a notarized original certificate of signature, and a |
| | copy of his/her passport. |
| 17 | A certificate of registration of seal impression (notarization of signature)* |
| 18 | A certified copy of resident registration (a certificate of address)* |
| 19 | Translations of the required documents (In case where the required documents including the directors' inauguration acceptance are written in a foreign language) |
| 20 | A certificate of payment of registration tax (issued by the tax department of the Gu office having jurisdiction over the area in which the business' headquarters is located) |
| 21 | Supreme Court revenue stamp |
| 22 | A power of attorney (where an agent makes the application)* |
| 23 | Corporate seal |
| 24 | An application for issuance of a corporate seal card (after the registration for incorporation) |

※ Items 11, 12, 13 and 14 apply only where particulars of exceptional incorporation exist such as investment in kind. Items 16, 17, 18 and 22 require notarization in the investor's country and an apostille or a confirmation by the Korean consulate.

Q64. What information should be recorded in the articles of association?

A64. The following information need to be included in the articles of association.

- Matters absolutely required to be entered (Article 289 (1) of the Commercial Act):
 - If any of the following matters is omitted in the articles of association, the establishment of the company shall become null and void.
 - a. Objectives
 - b. Trade name
 - c. The total number of shares authorized to be issued
 - d. Par value per share: At least KRW 100
 - e. Total number of shares to be issued at the time of incorporation
 - f. The location of a principal office
 - g. Method of giving a public notice by the company
 - h. The name, resident registration number and address of each incorporator
- Relative matters required to be entered (Article 290 of the Commercial Act):
 - ① Particulars of exceptional incorporation ② Other relative matters required to be entered

* “Particulars of exception incorporation” refers to matters that may be abused by incorporators at the time of incorporation, which may undermine capital adequacy and that will take effect upon entry into the articles of incorporation (Article 290 of the Commercial Act)

- a. Any special benefits to be received by incorporators and names of such incorporators
- b. The name of a person who is to make an investment in kind, the type, quantity and value of the subject matter of such investment in kind and the class and number of shares to be given in consideration thereof
- c. The class, number and value of the assets agreed to be transferred to the company after its incorporation and the name of the transferor
- d. The expenses for incorporation to be borne by the company and the amount of remunerations for the incorporators

- The particulars of exceptional incorporation shall be entered into a share subscription form signed by incorporators and be reviewed by inspectors (Article 299 and Article 302 (2) 2 of the Commercial Act)

- Optional matters that can be entered
 - Optional matters have no specific impact on the effects of the articles of association or on the business activities of a company when they are not entered into the articles of association, but will have the same legal effect as other matters upon entry into the articles of association. Optional matters differ from relative matters in that the latter takes effect only upon entry into the articles of association.
 - Optional matters include matters on business operations (e.g., the number of directors/auditors, a schedule of general meetings, business year, opening/relocation/closure of branches, etc.) within the boundaries that do not counter the essence of a stock company, imperative provisions of laws, and social order and take effect upon entry into the articles of association.

Q65. What documents should a foreign investor prepare when establishing a corporation?

A65. Documents a foreign investor should prepare in his/her country vary depending on whether the investor is an individual or a corporation. The document requirements for foreign investors from Japan or Taiwan are the same as those for a Korean national or corporation. In addition, some of the documents required should be apostilled or notarized by a public notary and subsequently by the Korean consulate located in the home country of the foreign investor in case of a non-signatory nation of the Apostille Convention.

<Documents Required for Individual Investors>

| | |
|--|---|
| Application for registration of corporate seal impression | Affix the personal seal or signature of the representative director on the application of registration of corporate seal impression and have it notarized (notarization required for countries without a seal certification system) |
| A certificate of acceptance of inauguration / a certificate of seal impression | For all individuals to be inaugurated as executive officers of the corporation to be established: <ol style="list-style-type: none"> 1. Korea/Japan/Taiwan: put the personal seal on a certificate of inauguration acceptance and attach a certificate of seal impression. 2. Other countries without a seal certification system: sign a certificate of inauguration acceptance and have it notarized. |

| | |
|---|---|
| A certificate of resident register (abstract) or a certificate of address (for a representative director) | Attach the following documents to a certificate of inauguration acceptance: 1. Korea/Japan/Taiwan: a certificate of resident register (abstract) or a resident registration card 2. Other countries: proof of address from the relevant country and a notarized certificate of address (not required for non-representative directors and auditors) |
| A power of attorney | When delegating foreign investment notification, etc. to an agent 1. Japan/Taiwan: put the seal on the power of attorney and attach a certificate of seal impression 2. Other countries without a seal certification system: put the signature on the power of attorney and have it notarized. |
| A copy of passport | For all foreigners |

<Documents Required for Individual Investors>

| | |
|---|--|
| A certified copy of corporate registration (an investor corporation) | 1. Japanese/Taiwanese corporations: a certified copy of corporate registration 2. Other countries: a certificate of corporation from the relevant country or a notarized certificate that proves the existence of business |
| Application for registration of corporate seal impression (for the newly-founded corporation) | Affix the personal seal or signature of the representative director on the application for registration of corporate seal impression and have it notarized (notarization required for countries without a seal certification system.) |
| A certificate of acceptance of inauguration/a certificate of seal impression | For all individuals to be inaugurated as executive officers of the corporation to be established 1. Korea/Japan/Taiwan : put the personal seal on a certificate of inauguration acceptance and attach a certificate of seal impression. 2. Other countries without a seal certification system: sign a certificate of inauguration acceptance and have it notarized. |
| A certificate of resident register (abstract) or a certificate of address (for a representative director) | Attach the following documents to a certificate of inauguration acceptance 1. Korea/Japan/Taiwan: a certificate of resident register (abstract) or a resident registration card. 2. Other countries: proof of address from the relevant country and a notarized certificate of address (not required for non-representative directors and auditors) |

| | |
|---------------------|--|
| A power of attorney | When delegating a foreign investment report to an agent 1. Japan/Taiwan: put the corporate seal on the power of attorney and attach a certificate of corporate seal impression 2. Other countries without a seal certification system: put the signature of the representative director of an investor corporation on the power of attorney and have it notarized. |
| Copy of passport | For all foreigners |

Q66. Should a foreign-invested company attach its office lease contract when applying for registration of incorporation?

A66. Although the submission of a lease contract is not mandatory, a fixed address is required. However, a lease contract should be submitted when applying for business registration with the competent tax office after the registration of incorporation is completed with the registry office.

Q67. What are the precautions for a foreigner intending to establish a corporation by investing capital goods instead of cash?

A67. Since capital goods can be an object of investment in establishing a foreign-invested company, the foreigner should notify foreign investment to a delegated agency (a bank or KOTRA, etc.). The foreigner should prepare a written specification of the goods, etc. to be introduced into Korea and apply for the examination and confirmation thereof to the delegated agency before their import declarations are accepted by a competent customs office. Despite the related regulations of the Foreign Trade Act, a written specification of the goods, etc. to be introduced, which has been examined and confirmed by the delegated agency, shall be deemed an import approval.

- After import declarations are accepted, the foreigner should receive a certificate of completion of investment in kind from the Commissioner of the Korea Customs Service (or a Korea Customs Service officer dispatched to KOTRA) by submitting a certificate (copy) of the completion of import declaration. Despite Article 299 and 299-2 of the Commercial Act, a certificate of completion of investment in kind which certifies that the Commissioner of the Korea Customs Service (or a Korea Customs Service officer dispatched to KOTRA) has confirmed the execution of the investment in kind and the type, amount and price of the object of investment shall be deemed an inspection report by inspector following the Non-Contentious Case Procedure Act and can be submitted for registration of incorporation and for registration of foreign-invested company.

Q68. I am aware that 0.4% of the paid-in capital should be paid as registration license tax when establishing a foreign-invested company and the tax payable triples to 1.2% when the address of the head office is located in the Seoul Metropolitan over-concentration control region. Is there a way to avoid such heavy taxation?

A68. According to Article 28 (2) of the Local Tax Act, the heavy taxation rate shall not apply to the types of business specified as those for which it is unavoidable to establish business facilities in a large city, and an amount equal to 0.4% of the paid-in capital shall be paid as license registration tax. Around 30 business types are subject to this exception, which are listed in Article 26 (Exception from Heavy Taxation on Corporations in Large Cities) of the Enforcement Decree of the Local Tax Act.

Q69. What is the cost of incorporating a stock company?

A69. The cost of incorporation includes the capital registration tax, local education tax, and fees for application for registration.

<Example of the incorporation cost (with capital of KRW 100 million, in an overconcentration control zone of the Seoul Metropolitan area)>

| Tax/Fee | Description | Amount (KRW) |
|------------------------------|---|-------------------|
| Registration and license tax | 0.4% of the capital, tripled to 1.2% since the company is established in an over-concentration control zone | 1,200,000 |
| Local education tax | 20% of the registration tax | 240,000 |
| Supreme Court revenue stamp | Commission of registration application | 30,000 |
| Notarization fee | Articles of association (Some documents are exempt from notarization in case of incorporation by promotion with capital of KRW 1 billion or less) | approx. 1,000,000 |
| Total | | approx. 2,470,000 |

※ Legal fees are not included.

- Seoul Metropolitan Overconcentration Control Zones
 - Seoul, Incheon, Uijeongbu-si, Guri-si, Namyangju-si, Hanam-si, Goyang-si, Suwon-si, Seongnam-si, Anyang-si, Bucheon-si, Gwangmyeong-si, Gwacheon-si, Uiwang-si, and Gunpo-si, Siheung-si – Enforcement Decree of the Seoul Metropolitan Area Readjustment and Planning Act [attached Table 1]

Q70. A foreign-invested company should pay registration license tax and associated costs before registering the incorporation of a company. However, the funds deposited in a bank for the purpose of incorporation cannot be withdrawn before the corporation is registered. What is the solution for this?

A70. There is a regulation that allows a foreign-invested company to receive remittance from the parent company for incorporation costs and repay the amount upon the corporation's registration, which is separate from the foreign investment fund. According to subparagraph 6 of Article 4-3 (1)-1 of the Foreign Exchange Transactions Regulations, it is permitted to make the payment to return the expenses borne by non-residents to incorporate a foreign-invested company under the Foreign Investment Promotion Act.

- Once the company is registered, expenses spent prior to the incorporation should be recorded in the book as business startup costs. The amount received from the parent company can be transferred back via wire transfer. In this case, the parent company should have recorded the remittance to the subsidiary or branch for its establishment as a receivable. For accounting purpose after incorporation, the initial expenditure received from the parent company should be spent under the name of the representative of the established corporation, and the supporting documents should be prepared.

Q71. What is the difference between the stock subscription payment method and the balance certificate method when establishing a corporation?

A71. When registering a company's incorporation, a certificate of deposit for payment for stock subscription should be submitted to the court. However, if the capital is less than KRW 1 billion, a balance certificate may be submitted instead.

- Once the foreign investment is notified, a temporary account should be opened at a designated foreign exchange bank under the foreign investor's name. The temporary account serves to deposit foreign-currency investment funds for stock subscription payment, and the designated bank can issue a certificate of payment for stock subscription.
- A balance certificate can be submitted for a stock company whose initial capital is less than KRW 1 billion. The investment fund should be deposited into a foreign currency account under the investor's name, and the bank can issue the balance certificate. The balance certificate is deemed to have the same effect as the certificate of deposit for payment for stock subscription to be submitted to the court registry office.

Q72. When do the funds invested by a foreigner become available for withdrawal?

A72. Generally, in the event of an investment in a stock company, a foreigner can complete the registration of capital increase by submitting a certificate for custody of stock subscription payment received from the beneficiary bank (or a certificate of balance) and other required documents to the competent court. In this case, the domestic stock company can request a transfer of the funds in the bank's custody to its corporate account. Upon the completion of the transfer, the funds become available for withdrawal. (In the case of the certificate of custody of stock subscription payment, withdrawal can be made after capital registration is completed; but in the case of the certificate of balance, withdrawal is possible for business purpose starting from the day after the date of certification.)

4. Real Estate Acquisition

2023
FAQ on FDI in Korea



4. Real Estate Acquisition

Q73. What is the procedure for a foreign investor's acquisition of real estate in Korea?

A73. When a foreigner acquires real estate, applicable laws and procedures vary depending on the purpose of acquisition, residency status, and whether the buyer is a corporate or an individual.

- The Act on Report on Real Estate Transactions, etc. stipulates only the procedures for a foreigner to acquire real estate in Korea. When the real estate acquisition is for-profit such as property rental, in addition to the registration of real estate acquisition by a foreigner, foreign-invested company registration through foreign investment notification under the Foreign Investment Promotion Act is required. If the investor is a non-resident under the Foreign Exchange Transactions Act, an additional registration should follow for the acquisition of the real estate.
- When a foreign company sets up a branch in Korea, branch establishment notification under the Foreign Exchange Transactions Act is required instead of foreign investment notification under the Foreign Investment Promotion Act. After registration of a branch, purchase the real estate under the name of the branch.

<Foreigners' real estate acquisition and related Acts>

| | Act on Report on Real Estate Transactions, etc. | Foreign Exchange Transactions Act (Real estate) | Foreign Investment Promotion Act |
|----------|---|---|--|
| Acquirer | <ul style="list-style-type: none"> • Foreigner <ul style="list-style-type: none"> - Foreign nationals - Foreign corporations - Corporations or organizations whose employees and executives with foreign nationality account for 50% or more of the organization | <ul style="list-style-type: none"> • Non-residents <ul style="list-style-type: none"> ※ Excluding permanent residence card holders | <ul style="list-style-type: none"> • Foreigner <ul style="list-style-type: none"> - Foreign nationals - Foreign corporations ※ Including permanent residence card holders |

| | Act on Report on Real Estate Transactions, etc. | Foreign Exchange Transactions Act (Real estate) | Foreign Investment Promotion Act |
|--------------------------------|--|--|---|
| Acquirer | <ul style="list-style-type: none"> - Corporations or organizations with 50% or more shares or voting rights held by foreigners (※ Excluding permanent residence card holders) | | |
| Subject | Acquisition of real estate | Acquisition of rights to land, building and real estate | Registration of a foreign-invested company |
| Reporting authority and timing | <ul style="list-style-type: none"> • Land registration department of the city, provincial, and district offices having jurisdiction over the real estate • Within 30 days of the date the contract is signed ※ Within 60 days for the acquisition under Article 8 (1), within 6 months under Article 2. | <ul style="list-style-type: none"> • Foreign exchange bank's HQ/branches • The Bank of Korea (in case of domestically generated funds) • Upon withdrawal of fund for real estate purchase | <ul style="list-style-type: none"> • Foreign exchange bank's HQ/branches, KOTRA • Before the investment fund is transferred to Korea |
| Contents | Procedures for foreigners to acquire real estate in Korea | Matters related to the inflow and outflow of foreign currencies for real estate purchase in Korea by foreigners | Foreign investment notification procedure, tax reduction & exemptions, and benefits on state property sales when a foreign-invested company acquires real estate in Korea |

Q74. As a foreigner intending to purchase land in Korea, what should I be most cautious of when signing the contract?

A74. Where parties to a transaction, including a foreigner, etc.*, enter into ① a real estate sales contract or ② a contract for supply of real estate under the Housing Site Development Promotion Act or the Housing Act, they are required to notify the relevant authority within 30 days of the date of signing the contract. (Article 3 (1) of the Act on Report on Real Estate Transactions, etc. If the real estate acquisition is pursuant to Article 8 (1), notification should be filed within 60 days. If the acquisition is pursuant to Article 8 (2) of the same Act or Article 5 (2) of the Enforcement Decree of the Act, notification should be made within six months.)

- It is necessary to check in advance whether the land is acquirable only by reporting or is subject to prior permission for transaction. If a foreigner enters into a purchase contract without the transaction permission for the property subject to prior approval, the contract shall be nullified, and imprisonment or a fine sentence may be imposed, making it challenging to acquire the real estate.
- Land requiring permission for transaction by foreigners (Article 9 of the Act on Report on Real Estate Transactions, etc.)
 1. Military bases and installation protection zones defined in subparagraph 6 of Article 2 of the Protection of Military Bases and Installations Act, and such other areas as may be especially necessary to limit land acquisition by a foreigner, etc. for the purposes of national defense
 2. Designated cultural heritage defined in Article 2 (3) of the Cultural Heritage Protection Act, and protective facilities or protection zones therefor
 3. Ecological and scenery conservation areas set in subparagraph 12 of Article 2 of the Natural Environment Conservation Act
 4. Special districts for protection of wildlife under Article 27 of the Wildlife Protection and Management Act
- Penalty provision: A foreigner, etc. who enters into any land acquisition contract without obtaining permission or after obtaining permission by illegal means shall be subject to imprisonment with labor for not more than two years or by a fine not exceeding KRW 20 million.

*The term "foreigner, etc." means any of the following individuals, corporations, or organizations:

- (a) An individual who is not a national of the Republic of Korea
- (b) A corporation or organization incorporated under the statutes of a foreign State
- (c) A corporation or organization at least a half of whose employees or members fall under item (a)
- (d) A corporation or organization at least a half of whose executive officers, such as managing general partners or directors, fall under item (a)
- (e) A corporation or organization in which persons falling under item (a) or corporations or organizations falling under item (b), hold at least a half of its capital or a half of the voting rights
- (f) A foreign State
- (g) An international organization prescribed by Presidential Decree

Q75. If a foreigner signs a contract to acquire real estate in Korea, must he/she report it?

A75. Yes.

- Parties to a transaction including a foreigner, etc., entering into a contract to acquire real estate in Korea shall report to the relevant report-receiving authority within 30 days from the transaction contract date. (Article 3 (1) of the Act on Report on Real Estate Transactions, etc.)
- However, when a foreigner, etc. enters into a contract on acquisition of any real estate under Article 8 (1) of the Act on Report on Real Estate Transactions, etc., he/she shall file a report thereon with the report-receiving authority within 60 days from the acquisition date of the real estate. If the real estate acquisition is by means of inheritance, auction, or any cause other than contracts under Article 2 of the Act on Report on Real Estate Transactions or Article 5 (2) of the Enforcement Decree of the Act on Report on Real Estate Transactions, the report shall be made to the report-receiving authority within six months.

- If a national of the Republic of Korea who possesses any real estate within the territory of the Republic of Korea or a corporation or organization incorporated under the statutes of the Republic of Korea becomes a foreigner, etc., and if the relevant foreigner, etc. intends to possess the relevant real estate, etc. continuously, the foreigner, etc. shall file a report thereon with the report-receiving authority within six months from the date of change to a foreigner, etc. as prescribed by Presidential Decree.
- Penalty for failure to report acquisition
 1. A person who fails to report the real estate transaction under a contract shall be punished by an administrative fine not exceeding KRW 5 million, and a person who files a false report by an administrative penalty not exceeding 5% of the acquisition value of the relevant real estate, etc. (Article 28 (2), 28 (3) of the Act on Report on Real Estate Transactions)
 2. A person (foreigner, etc.) who fails to file a report under Article 8(1) or files a false report shall be punished by an administrative fine not exceeding KRW 3 million (Article 28 (4) of the Act on Report on Real Estate Transactions).
 3. A person (foreigner, etc.) who fails to report a real estate acquisition by means of inheritance, auction, or any cause other than contracts or files a false report shall be punished by an administrative fine not exceeding KRW 1 million (Article 28 (5) of the Act on Report on Real Estate Transactions).
 4. A person (foreigner, etc.) who fails to file a report on continuous possession of land or files a false report shall be punished by an administrative fine not exceeding KRW 1 million (Article 28 (5) of the Act on Report on Real Estate Transactions).

Q76. Is it necessary for a domestic branch of a foreign corporation to report real estate acquisition by foreigners? Also, how can the acquisition cost be introduced?

A76. A domestic branch of a foreign corporation should report real estate acquisition by foreigners.

- Under the Act on Report on Real Estate Transactions, etc., a foreign corporation's domestic branch is deemed a foreigner, hence reporting of a real estate acquisition is required.
- In this case, when introducing funds into Korea from overseas to acquire domestic real estate, the domestic branch is classified as a resident under the Foreign Exchange Transaction Act. In this regard, the branch can introduce the operational funds from its overseas headquarters through a designated foreign exchange bank without reporting the real estate acquisition under the Foreign Exchange Act (Article 9-34 of the Foreign Exchange Transactions Regulations).

Q77. If a majority of executives for a Korean corporation are foreign nationals, should the company report the real estate acquisition?

A77. Yes, a report of real estate acquisition by a foreigner is required.

- Even if a company is a domestic corporation, if half or more of its executives are foreign nationals or half or more of its shares are held by foreign nationals or foreign corporations, the domestic corporation is classified as foreigner, etc. under the Act on Report on Real Estate Transactions, etc. Therefore, the company is subject to report real estate acquisition by foreigners.

Q78. If a domestic corporation with a foreign ownership ratio of 50% or more acquires real estate in Korea, should the company report the real estate acquisition under the Foreign Exchange Transactions Act?

A78. The company should report real estate acquisition by foreigners under the Act on Report on Real Estate Transactions, etc. However, real estate acquisition report under the Foreign Exchange Transactions Act is not necessary.

- In this case, the company is classified as a foreigner under the Act on Report on Real Estate Transactions, etc., but as a resident under the Foreign Exchange Transactions Act. Therefore, the company does not need to report the real estate acquisition stipulated in the Foreign Exchange Transactions Act.
 - It is important to note that foreign investors who plan to register a foreign-invested company will be subject to the Foreign Investment Promotion Act. That means if the company intends to bring in capital or long-term loans for the real estate purchase, the foreign funds can be transferred to Korea only after the notification of foreign investment.
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Q79. Should a foreigner obtain permission from the head of the relevant local government when partitioning land within a Foreign Investment Zone (FIZ)?

A79. The foreigner does not need to obtain permission from the head of the relevant local government.

- Under Article 56 (1)4 of the National Land Planning and Utilization Act, a person who intends to engage in certain development activities shall obtain permission for development activities from the head of the local government. Certain development activities mentioned above include construction of buildings, erection of structures, changes in the form and quality of any land, extraction of earth and stone, and partition of

land. However, the partition of land within an FIZ is possible without permission from the head of the local government (Article 20(1) of the Foreign Investment Promotion Act).

Q80. Can a foreign-invested company own farmland?

A80. According to Article 6 (1) of the Farmland Act, farmland shall be owned only by a person who uses or will use it for his/her own agricultural management. Therefore, only agricultural corporations may own farmland. An agricultural corporation can register as a foreign-invested company by receiving equity investment from foreigners, such a foreign-invested agricultural company can own farmland.

- The Rules on Foreign Investment (the Ministry of Trade, Industry and Energy, 2021) specify that foreign investment is permitted in agricultural business with the exception of rice and barley cultivation. Consequently, a foreign-invested agricultural company may be restricted in its ownership of rice and barley farmland.
 - According to the Farmland Act, only agricultural corporations can own farmland. However, Article 6 (2) of the same Act lists exceptions that allow a person to own farmland even if it is not used for his/her own agricultural management. A non-agricultural corporation may acquire farmland if the land has obtained permission or completed consultation to divert, which means the purpose of the land use is changed from farmland such as field or rice field to land on which construction is permitted.
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Q81. Can a foreigner acquire real estate in Korea and engage in real estate lease business?

A81. A foreigner intending to engage in real estate lease business in Korea can establish a foreign-invested company and acquire real estate in the name of the company. In this case, rental income can be transferred to foreign countries in the form of dividends after the settlement of accounts.

- However, an individual foreigner or a foreign corporation intending to engage in real estate lease business by directly acquiring real estate can engage in real estate lease business under the name of a foreigner after acquiring real estate pursuant to the Foreign Exchange Transactions Act or the Act on Report of Real Estate Transactions, Etc. and appointing a tax manager. This does not constitute a foreign investment under the Foreign Investment Promotion Act.
- When intending to acquire real estate for the purpose of possession, a foreigner (individual or foreign corporation) should notify the acquisition of real estate to the head of a foreign exchange bank in accordance with the Foreign Exchange Transactions Act, together with document certifying the real estate transaction.

<Domestic Laws related to Real Estate Acquisition>

| | Act on Report of Real Estate Transactions, Etc. | Foreign Investment Promotion Act | Foreign Exchange Transactions Act (Real Estate) |
|--------------------|--|--|---|
| Applicable parties | A foreigner, etc. (an individual of foreign nationality, a foreign corporation, a domestic corporation with not less than 50% foreign ownership, a foreign government, an international organization, etc.) | A foreigner, etc. (an individual of foreign nationality, a foreign corporation, a permanent resident of a foreign country, and an international organization for economic cooperation) | A non-resident |
| Key regulations | Notification required when real estate in Korea is acquired by a foreigner | Notification required when a foreigner acquires real estate through a foreign-invested company after reporting on foreign investment and the registration of a foreign-invested enterprise | Notification required when a non-resident acquires rights related to real estate in Korea (a right to use property based on lump-sum deposit (jeonse) contract, mortgage, etc.) |

| | Act on Report of Real Estate Transactions, Etc. | Foreign Investment Promotion Act | Foreign Exchange Transactions Act (Real Estate) |
|-----------------------|--|--|---|
| Where to report | Si/Gun/Gu office having jurisdiction over the property | Foreign exchange bank and KOTRA | Foreign exchange bank and Bank of Korea |
| Reporting period | Within 30 days of the conclusion of a contract | Prior to bringing in investment funds | At the time of withdrawal of funds |
| Governing authorities | Ministry of Land, Infrastructure and Transport | Ministry of Trade, Industry and Energy | Ministry of Economy and Finance |

5. Taxation and Accounting



5. Taxation and Accounting

Q82. What are the types and rates of taxes levied on foreign-invested companies (corporations)?

A82. Foreign-invested companies bear the same tax burden as domestic companies. In general, corporations are subject to corporate tax, corporate local income tax, value-added tax (VAT), and additional taxes that may be imposed on specific cases according to tax laws.

- **Corporate tax**

- The following tax rates shall apply according to the income bracket:
 - Not over KRW 200 mil.: 9%
 - Over KRW 200 mil. and not over KRW 20 bil.: 19%
 - Over KRW 20 bil. and not over KRW 300 bil.: 21%
 - Over KRW 300 bil.: 24%

- **Local corporate tax**

- The following tax rates shall apply according to the income bracket:
 - Not over KRW 200 mil.: 0.9%
 - Over KRW 200 mil. and not over KRW 20 bil.: 1.9%
 - Over KRW 20 bil. and not over KRW 300 bil.: 2.1%
 - Over KRW 300 bil.: 2.4%

- **Value added tax**

- Tax levied on the supply of goods and services and the import of goods
- Tax rate: 10% (0% for exported goods)

Q83. Are foreign-invested companies subject to external audits?

A83. A stock-listed corporation, a company that intends to be a stock-listed corporation, and other companies that meet the standards prescribed by Presidential Decree in terms of assets, liabilities, number of employees, or sales at the end of the immediately preceding business year shall undergo an audit performed by an external auditor. In this regard, foreign-invested companies that meet certain criteria are subject to external audit just as purely domestic companies are. From the business commencement year starting on November 1, 2019 or after, limited companies shall also receive an external audit. Limited companies that transitioned from stock companies on November 1, 2019 or after should meet the external audit requirements for the following five years from the date of registration of the change*.

<Companies subject to external audit >

| Category | Stock company | Limited company |
|---------------------------|--|---|
| Criteria | Asset | KRW 12 billion or more |
| | Liability | KRW 7 billion or more |
| | Sales | KRW 10 billion or more |
| | No. of employees | 100 or more |
| | No. or shareholders | 50 or more |
| Standards (Small company) | Subject to external audit if meeting at least 2 out of 4 criteria | Subject to external audit if meeting at least 3 out of 5 criteria |
| Large-sized company | Subject to external audit if the asset or sales is KRW 50 billion or greater | |

* Article 4, 5 of the Act on External Audit of Stock Companies

Q84. What is the difference between an individual business and a corporate business in terms of taxation?

A84. In terms of a simple comparison of the tax rate, a corporate business pays less tax than an individual business if the tax base is higher than KRW 12 million. It appears advantageous as the reduced taxation may translate into higher net profit, more reinvestment, and consequent expansion of the business. However, there are other aspects to consider from a more holistic view, including limited options to recover business profits (salary, retirement income, dividend, and others) and taxes on other income (earned income, retirement income, dividend income, etc.) imposed at each step.

<Individual Business vs. Corporate Business >

| | Individual business | Corporate business | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
|---|---|---|------|-------------------|----|---|--|---|--|--|--|---|--|---|--|---|---|-----------------|---|---|----------|----------|-----------------------|----------------|--|---|---|---|-------------------|--|
| Taxable income | Specific incomes listed in the Income Tax Act (income source) | The whole amount of increased net assets in the corresponding business year (increased net asset) | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Taxation scope | Income from the corresponding year | Business income and liquidated income from each business year | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Bracket | <table><tr><th>Tax base</th><th>Rate</th></tr><tr><td>Up to KRW 14 mil.</td><td>6%</td></tr><tr><td>Over KRW 14 mil. and not over KRW 50 mil.</td><td>KRW 840,000 + (15% of amount over KRW 14 mil.)</td></tr><tr><td>Over KRW 50 mil. and not over KRW 88 mil.</td><td>KRW 6.24 mil. + (24% of amount over KRW 50 mil.)</td></tr><tr><td>Over KRW 88 mil. and not over KRW 150 mil.</td><td>KRW 15.36 mil. + (35% of amount over KRW 88 mil.)</td></tr><tr><td>Over KRW 150 mil. and not over KRW 300 mil.</td><td>KRW 37.06 mil. + (38% of the amount over KRW 150 mil.)</td></tr><tr><td>Over KRW 300 mil. and not over KRW 500 mil.</td><td>KRW 94.06 mil. + (40% of the amount over KRW 300 mil.)</td></tr><tr><td>Over KRW 500 mil. and not over KRW 1 bil.</td><td>KRW 174.06 mil. + (42% of amount over KRW 500 mil.)</td></tr><tr><td>Over KRW 1 bil.</td><td>KRW 384.06 mil. + (45% of amount over KRW 1 bil.)</td></tr></table> | Tax base | Rate | Up to KRW 14 mil. | 6% | Over KRW 14 mil. and not over KRW 50 mil. | KRW 840,000 + (15% of amount over KRW 14 mil.) | Over KRW 50 mil. and not over KRW 88 mil. | KRW 6.24 mil. + (24% of amount over KRW 50 mil.) | Over KRW 88 mil. and not over KRW 150 mil. | KRW 15.36 mil. + (35% of amount over KRW 88 mil.) | Over KRW 150 mil. and not over KRW 300 mil. | KRW 37.06 mil. + (38% of the amount over KRW 150 mil.) | Over KRW 300 mil. and not over KRW 500 mil. | KRW 94.06 mil. + (40% of the amount over KRW 300 mil.) | Over KRW 500 mil. and not over KRW 1 bil. | KRW 174.06 mil. + (42% of amount over KRW 500 mil.) | Over KRW 1 bil. | KRW 384.06 mil. + (45% of amount over KRW 1 bil.) | <table><tr><th>Tax base</th><th>Tax Rate</th></tr><tr><td>Not over KRW 200 mil.</td><td>9% of tax base</td></tr><tr><td>Over KRW 200 mil. and not over KRW 20 bil.</td><td>KRW 18 mil. + (19% of amount over KRW 200 mil.)</td></tr><tr><td>Over KRW 20 mil. and not over KRW 30 bil.</td><td>KRW 3,780 mil. + (21% of amount over KRW 20 bil.)</td></tr><tr><td>Over KRW 300 bil.</td><td>KRW 62.58 bil. + (24% of amount over KRW 300 bil.)</td></tr></table> | Tax base | Tax Rate | Not over KRW 200 mil. | 9% of tax base | Over KRW 200 mil. and not over KRW 20 bil. | KRW 18 mil. + (19% of amount over KRW 200 mil.) | Over KRW 20 mil. and not over KRW 30 bil. | KRW 3,780 mil. + (21% of amount over KRW 20 bil.) | Over KRW 300 bil. | KRW 62.58 bil. + (24% of amount over KRW 300 bil.) |
| | Tax base | Rate | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| | Up to KRW 14 mil. | 6% | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| | Over KRW 14 mil. and not over KRW 50 mil. | KRW 840,000 + (15% of amount over KRW 14 mil.) | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| | Over KRW 50 mil. and not over KRW 88 mil. | KRW 6.24 mil. + (24% of amount over KRW 50 mil.) | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| | Over KRW 88 mil. and not over KRW 150 mil. | KRW 15.36 mil. + (35% of amount over KRW 88 mil.) | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| | Over KRW 150 mil. and not over KRW 300 mil. | KRW 37.06 mil. + (38% of the amount over KRW 150 mil.) | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| | Over KRW 300 mil. and not over KRW 500 mil. | KRW 94.06 mil. + (40% of the amount over KRW 300 mil.) | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| | Over KRW 500 mil. and not over KRW 1 bil. | KRW 174.06 mil. + (42% of amount over KRW 500 mil.) | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| | Over KRW 1 bil. | KRW 384.06 mil. + (45% of amount over KRW 1 bil.) | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Tax base | Tax Rate | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Not over KRW 200 mil. | 9% of tax base | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Over KRW 200 mil. and not over KRW 20 bil. | KRW 18 mil. + (19% of amount over KRW 200 mil.) | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Over KRW 20 mil. and not over KRW 30 bil. | KRW 3,780 mil. + (21% of amount over KRW 20 bil.) | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Over KRW 300 bil. | KRW 62.58 bil. + (24% of amount over KRW 300 bil.) | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| * Local corporate tax equivalent to 10% of the calculated corporate tax amount is separately imposed. | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |

| | Individual business | Corporate business |
|---|---|--|
| Bracket | ※ Individual local income tax equivalent to 10% of the calculated general income tax is imposed | ※ Individual local income tax equivalent to 10% of the calculated corporate tax is levied. |
| Representative's salary and severance pay reserve | Exclusion from necessary expense, not subject to set an account | Included in the deductible expense, subject to set an account |
| Deemed interest on suspense payment | Not included in the calculation (withdrawal of investment) | Calculated (Loan) |
| Deemed rent calculation | All real estate leasing businesses | All corporations are subject in case of estimated tax return. but only domestic for-profit corporations with excessive loan in real estate business are subject in case of tax return by bookkeeping |
| Establishment procedure | Simple | Relatively complicated; incurs costs such as registration tax |
| Business operations | Few restrictions | Bound by resolution of general shareholder meetings or the board of directors meetings |
| Recovery of profits | Few restrictions | Restricted to salary, severance pay, dividends and others |
| Liabilities for debt from business operations | Unlimited | Limited |

Q85. What are the documents required when a foreign-invested corporation applies for business registration, and how long does the registration process take?

A85. The following documents are required for application for business registration. The processing period is three days.

- A copy of corporate establishment notification and application for business registration
- A certified copy of corporation registration
- A copy of the lease contract (in case the place of business is rented)
- A list of shareholders or investors
- A copy of certificate of completion of business approval, registration or notification (For the registering business. If applying for business registration before completing business approval, registration or notification, a copy of an application for business approval, registration, etc. or a business plan may be submitted instead.)
- A statement of investment-in-kind (for corporations invested in-kind)
- A copy of certificate of foreign investment notification or foreign currency purchase
- A copy of alien registration card or passport (if the representative is non-resident)

Q86. What methods of calculating the arm's length price (ALP) do the Korean tax authority recognize?

A86. The Korean tax law (the Adjustment of International Taxes Act) requires companies to select and apply the most reasonable method among the following:

1. Comparable uncontrolled price method
2. Resale price method
3. Cost-plus method
4. Profit split method
5. Transactional net margin method
6. Other methods deemed reasonable in the light of actual transaction practices

*The sixth method is applied only when any of the five methods above cannot be used to calculate ALP.

Q87. What is the transfer price tax system?

A87. The transfer price tax system is applied when a company pays a higher or lower price in doing transactions with foreign parties of special interests, resulting in lower taxable income. The tax authorities recalculate the taxable income based on the arm's length price and impose the tax.

Q88. What are the differences in taxation between a foreign-invested company and a foreign corporation's branch office in Korea?

A88. There is no difference in the rate, reporting, and payment procedure of taxes between a foreign-invested company and a foreign corporation's branch office. The only difference is the scope of the tax obligation coming from the different nature of the two.

- A foreign-invested company is a domestic corporation. Therefore, it is required to pay corporate taxes for all the income generated at home and abroad. However, a foreign corporation's branch office in Korea is a foreign corporation and shall only pay taxes for domestic-source income.
- A branch office in Korea may be subject to the branch tax depending on the tax treaty with the relevant country. It shall not benefit from tax reductions or exemptions under the Restriction of Special Taxation Act offered to Korean corporations.

Q89. What are the criteria to classify a foreigner as a resident obliged to pay taxes under the Income Tax Act of the Republic of Korea, and what is the scope of the taxable income?

A89. According to the Income Tax Act, a resident is not defined by nationality. Any individual who has his/her domicile or place of residence in Korea for at least 183 days is a resident under the Income Tax Act. .

- Under the Income Tax Act, a domicile refers to a principal place of living based on the objective facts of the living relationship, such as the existence of a family member who shares a livelihood in Korea and whether there is property located in Korea. A place of residence means a place where a person has lived for a long time besides his/her domicile, and in which there is no general living relationship as close as a domicile.
- A resident is obliged to pay tax on all income prescribed by the Income Tax Act. As for a foreign resident who has had his/her domicile or place of residence for not more than five years in total from 10 years before the end of the relevant taxable period, tax shall be imposed only on his/her income paid in or remitted to the Republic of Korea, in cases of taxable income from foreign sources.

Q90. What is the ceiling and scope of entertainment expenses that can be included as deductible expenses?

A90. Entertainment expense means entertainment expenses, social expenses, a recompense, and other expenses in a similar nature regardless of the pretext thereof. A domestic corporation disburses the entertainment expense to facilitate business with those directly or indirectly involved with her/her business. The ceiling of entertainment expense is as follows: .

• Ceiling of entertainment expense

- Ceiling = Basic limit (KRW 12 million, KRW 36 million for SMEs) X Number of months in the corresponding business year / 12 + Income x Rate)

| Income | Rate |
|---|---|
| Up to KRW 10 billion | Total income x 0.3% |
| Above KRW 10 billion & up to KRW 50 billion | KRW 30 million + (Amount exceeding KRW 10 billion x 0.2%) |
| Above KRW 50 billion | KRW 110 million + (Amount exceeding KRW 50 billion x 0.03%) |

• Evidentiary documents of entertainment expenses

- Appropriate evidentiary materials for entertainment expenses exceeding KRW 30,000 at one occasion include the tax invoice, cash receipt, and corporate credit card bill (including a company card in an employee's name). Expenses over KRW 30,000 paid in cash or by personal credit card are not recognized as deductibles. In case of disbursement on congratulatory or condolence occasions, wedding invitations or other relevant proof may serve as evidentiary documents as long as the entertainment spending does not exceed KRW 200,000 at one occasion.

Q91. How is a foreign company or non-resident taxed for capital gains on securities sourced domestically?

A91. In principle, the lesser of the following shall be reported and paid:

- ① Sale price of shares × 10%
- ② Profit from sale of shares (Income – Acquisition price and sales expense) × 20%

However, if there is a tax treaty between the resident country of the foreign company or non-resident and the country where income originated (Korea) does not have taxation rights for income from stock transfer under the tax treaty, the income is not taxed.

Q92. Does the scope of payment guarantee for overseas controlling shareholders which applies to the thin capitalization rule only apply when a payment guarantee certificate, etc. was issued to a third party?

A92. The scope of payment guarantee for overseas controlling shareholders applied to the thin capitalization rule includes all payment guarantee regardless of whether there is a payment guarantee certificate, the type of payment guarantee certificate or payment guarantee method, as long as the payment guarantee is in the form that requires the de facto overseas controlling shareholder to fulfill payment obligations where the domestic company, etc. defaults.

Q93. Can a foreign corporation (foreign business) that came to Korea for a meeting receive value added tax (VAT) refund for products or services provided in Korea for business?

A93. VAT is refundable for food, lodging, services, and advertisement services provided in Korea.

- A foreign corporation without a place of business in Korea or a non-resident who runs business outside Korea ("foreign business" hereunder) is eligible for VAT refund for one of the following goods or services either purchased or received for business purposes. However, if the total refund amount of the foreign business does not exceed KRW 300,000 for the calendar year, the VAT will not be refunded.
 - Food and lodging service
 - Advertisement service
 - Electricity and communications service
 - Real estate rental service
 - Goods or services necessary for the operation and maintenance of domestic offices of foreign companies defined by Ordinance of the Ministry of Economy and Finance

- The VAT refund mentioned above applies only to foreign businesses whose country refunds VAT to Korean businesses in the same manner (principle of reciprocity).

Q94. What is the tax base for value added tax (VAT) imposed on imported goods?

A94. The tax base for VAT on the importation of goods shall be the total sum of customs value, customs duties, individual consumption tax, liquor tax, education tax, special rural development tax, and traffic, energy and environment tax on such goods.

- EVAT is imposed on the supply of goods or services by entrepreneurs and importation of goods.* For the supply of goods or services, entrepreneurs are liable to pay VAT, and in principle, only for the goods or services supplied in Korea. For importation of goods, however, the importer of goods is liable for VAT regardless of the purpose or whether the importer is an entrepreneur.
- VAT is imposed on imported goods as an indirect tax for the goods consumed or used in Korea. This is to apply the same tax treatment applied to goods produced in Korea to imported goods as well, assuming the imported goods will be used or consumed in Korea.
- The tax base for VAT on the importation of goods shall be the total sum of the taxable value for customs duties, individual consumption tax, liquor tax, education tax, special rural development tax, and traffic, energy and environment tax on such goods.**

* Article 4 of the Value-Added Tax Act

** Article 29 (2) of the Value-Added Tax Act

Q95. What are the types of taxes levied on the importation of alcoholic beverages in the context of wholesale of imported alcoholic beverages?

A95. Customs duty, liquor tax, education tax, and VAT are imposed on imported alcoholic beverages.

• Procedures according to relevant laws

- 1) The Liquor Tax Act: The business should have a trader's identification number under the Foreign Trade Act and a license for alcoholic beverage sales.
 - Enforcing authority: National Tax Service (www.nts.go.kr)
- 2) The Food Sanitation Act: The import declaration for food should be approved by the Minister of Food and Drug Safety or the head of the National Quarantine Office. Customs clearance is possible only after passing the quarantine inspection.
 - Enforcing authority: The Ministry of Food and Drug Safety (www.kfda.go.kr), National Quarantine Office (nqs.cdc.go.kr)
- 3) The Act on the Promotion of Saving and Recycling of Resources: The Korea Environment Corporation needs to check whether the bottles of imported alcoholic beverage are subject to a contribution charge.
 - Enforcing authority: Korea Environment Corporation (www.keco.or.kr).

• Customs clearance procedure

- Upon the arrival of goods that meet the requirements above, import declaration, goods inspection, and customs duty payment should follow.

• Types and calculation method of taxes on importation

- For the example of vodka (HSK2208.60-0000), tariff rate (refer to the rate set by FTA), liquor tax (72%), and VAT (10%) are imposed. The tax is calculated as follows:9)
 - Customs duty = Dutiable value (Value of goods + Transportation cost + Insurance premium) x Tariff rate (refer to the rate set by FTA)
 - Liquor tax = (Dutiable value + Customs duty) x Liquor tax rate (72%)
 - Education tax = 30% of Liquor tax
 - VAT = (Dutiable value + Customs duty + Liquor tax + Education tax) x VAT rate (10%)

Q96. What is the thin capitalization rule?

A96. Under the thin capitalization rule, the interest expense on loans from foreign controlling stockholders exceeding a certain amount is not recognized as deductible expense.

- To save tax, companies tend to increase loans and pay interest expense to increase expenses instead of raising paid-in capital. The thin capitalization rule is a system to prevent this by not recognizing as deductible expenses the interests on loans from foreign controlling stockholders exceeding a certain amount.
- The thin capitalization rule
 - Where a domestic corporation borrows funds from a foreign controlling stockholder or a third party under a payment guarantee by a foreign controlling stockholder, and such borrowings exceed twice (six times for a financial business) the amount invested by the foreign controlling stockholder, the interest and discount fees paid in relation to the excess amount shall be excluded from deductible expenses of the domestic corporation and shall be deemed to have been disposed of as a dividend of or an outflow from the domestic corporation.*
 - The term “foreign controlling stockholder” means any of the following persons who substantially controls either a domestic corporation or a domestic place of business of a foreign corporation:
 - (1) In the case of a domestic corporation, a foreign stockholder or investor (hereinafter “foreign stockholder”) or a foreign corporation financed by such foreign stockholder
 - (2) In the case of a domestic place of business of a foreign corporation, the head office or a branch of the foreign corporation (located overseas), a foreign stockholder of the foreign corporation, or a foreign corporation financed by the foreign corporation or the foreign stockholder

* Article 22 of the Adjustment of International Taxes Act

Q97. What is the preferential treatment of earned income tax for foreigners working at foreign-invested companies?

A97. Foreigners are liable to pay tax on their wage and salary income for providing service in Korea in the same way as Korean workers. However, unlike Korean workers, foreign workers can choose to pay the flat tax rate (19%) instead of the progressive tax rate (6-45%) according to income amount.

- Those who are eligible for tax reduction or exemption are foreign workers (executives or employees), and the income eligible is the wage and salary income paid for working in Korea. Therefore, foreigners working for purely domestic corporations and local branches of foreign corporations as well as foreign-invested companies are eligible.
- Notwithstanding Article 55 (1) of the Income Tax Act, income tax for wage & salary income received from the first day of providing service in Korea until the taxable year in which the date on which 20 years elapses from such date falls, the tax amount can be the amount calculated by multiplying 19/100 (flat tax rate) with the wage & salary income.

Q98. What is the preferential treatment of wage and salary income tax for foreign engineers working at foreign-invested companies?

A98. Wage & salary income paid to a foreign engineer for providing labor to a domestic person in Korea which was generated for 10 years starting from the date on which labor was first provided in Korea (on or before Dec. 31, 2023) shall be reduced by 50%.

- Foreign engineer: A person who is not a Korean national and meets one of the following criteria:
 - 1) Persons providing technology in Korea under an engineering technology introduction contract (contract amount of USD 300,000 or more) in Korea

2) Foreign engineers meeting all of the following conditions:

- ① The person holds a bachelor's degree or higher in the field of natural science, engineering and medicine
- ② The person has experience in R&D and technology in an overseas university or research institution
- ③ The person does not have family relations or has management relations with the company receiving service as of the last day of the relevant taxable year.
- ④ The person is working as a researcher (not including persons only managing administrative affairs) at a company-affiliated research center or government-funded research institution.

Q99. What are the reasons for the additional collection of tax that had been exempted on the grounds of foreign investment (e.g., exempted corporate tax)?

A99. The general reasons for the additional collection are listed below. More details can be found in Article 121-5 of the Restriction of Special Taxation Act. Corporate tax exemption for foreign investment was repealed on January 1, 2019. However, additional collection is still applicable to the corporate tax that had been exempted before the abovementioned date.

- In case of cancellation of registration or business closure
- Where the company fails to meet the requirements for tax reduction or/and exemption for foreign-invested companies prescribed in the Restriction of Special Taxation Act
- Where a person, who has received a corrective order due to nonfulfillment of notification, fails to comply with it
- Where a foreign investor transfers the stocks which he/she owns to a Korean national or a Korean corporation
- Where the foreign-invested company fails to meet the requirements within five years (or three years for requirements for tax reduction or/and exemption relating to employment) from the date it notified foreign investment, in terms of payment of the object of investment, acquisition of loans, or the number of workers it has employed

- The object of investment is disposed of or used for purposes other than those notified
- The foreign investor's ratio of stocks, etc. falls short of the ratio of stocks, etc., at the time of reduction or/and exemption

Q100. Once tax reduction or exemption is granted, how long is the foreign-invested company eligible for exemption of customs duty on imported capital goods?

A100. The company is exempt from customs duty on capital goods whose import declaration is completed within five years from the date of foreign investment notification. It should be noted that the starting date of the five years is not the date of the decision to grant tax reduction or exemption nor the first day of commencing business operation, but the date of the foreign investment notification. Therefore, it is safe for foreign-invested companies such as general resort complex businesses which require a long time to obtain licenses to put off the foreign investment notification as long as possible.

Q101. Should a foreign-invested company that moves into an individual-type Foreign Investment Zone (FIZ) designated and publicly announced by the provincial governor make a separate application for tax reduction and exemption?

A101. Even if an FIZ is designated and publicly announced as an individual-type FIZ, companies in the FIZ shall make a separate application for tax reduction and exemption to the Minister of Economy and Finance. Tax reduction will not be granted without such an application.

- Required documents when applying for tax reduction and exemption (for submission to the International Economic Affairs Division of the Ministry of Economy and Finance)
 - The tax reduction and exemption application form
 - Notification of foreign investment by acquisition of stocks or contribution
 - Documents that prove the FIZ has been designated as an individual-type FIZ (e.g., an official announcement of the local government)
 - Documents demonstrating the business sector (e.g., project plan)
 - Documents proving the installation of new production facilities

Q102. If a foreign-invested company operates both a business eligible for tax reduction and exemption and a business which is not eligible, how is the tax reduction amount calculated for the company?

A102. Such a foreign-invested company should keep the accounting records for the business eligible for tax reduction separately from the business that is not. The tax reduction amount is calculated by multiplying the assessed corporate tax amount by a ratio of the tax base from the eligible business to the total corporate tax base and then by the reduction rate.

- The calculation formula is as follows:
 - Tax reduction amount = Assessed corporate tax amount × (Tax base from the business eligible for tax reduction ÷ Total corporate tax base) × Reduction rate
 - Reduction rate = Ratio of foreign investment × reduction rate (100%, 50%)

Q103. Can a foreign-invested company receive tax reduction or exemption for foreign investment under Article 121-2 of the Restriction on Special Taxation Act as well as the tax reduction or exemption applicable to startup small and medium-sized enterprises under Article 6 of the same Act?

A103. When a foreign-invested company is eligible for tax reduction or exemption for both foreign investment and startup small and medium-sized enterprises, the company may choose only one advantageous reduction or exemption.

- However, if the company keeps the book for its business eligible for foreign investment tax reduction or exemption completely independent from the other operations and their income sources can be separated, tax reduction or exemption for foreign investment and tax credit and tax reduction or exemption for other businesses can both apply.
-

Q104. When is the deadline for a foreign-invested company to apply for tax reduction or exemption? If the company submits the application past the deadline, can the company still receive tax reduction or exemption?

A104. The deadline for applying for tax reduction is the last day of the taxable year in which the foreign-invested company's business was commenced. If a foreign-invested company applies for and is granted tax reduction or exemption after the deadline, the company can receive a tax reduction or exemption for the tax year in which the application was submitted and for the remaining reduction or exemption period. However, the tax paid before the tax reduction or exemption decision will not be refunded.

Q105. Once the Ministry of Economy and Finance approves the tax reduction or exemption application of a foreign-invested company, will that company be granted reduction or exemption of registration tax when acquiring real estate?

A105. Registration tax was repealed and integrated into acquisition tax when the Local Tax Act was revised on March 31, 2010 (enforced on January 1, 2011). Registration tax is effectively reduced or exempted since it has become a part of acquisition tax, which is reduced or exempted. However, it is technically incorrect to say that registration tax is exempted or reduced as such a tax no longer exists, and it is advised to refrain from mentioning the registration tax.

Q106. I understand that a foreign-invested company that applied for tax reduction or exemption on or after January 1, 2020 and was granted the tax relief can receive reduction or exemption of local taxes and customs duties (e.g., VAT, individual consumption tax), but not reduction or exemption of corporation tax. However, according to the Restriction of Special Taxation Act, the reduction or exemption of local taxes was revoked on January 1, 2020. Does it mean that a foreign-invested company is no longer eligible for reduction or exemption of local taxes as well?

A106. Registration tax was repealed and integrated into acquisition tax when the Local Tax Act was revised on March 31, 2010 (enforced on January 1, 2011). Registration tax is effectively reduced or exempted since it has become a part of acquisition tax, which is reduced or exempted. However, it is technically incorrect to say that registration tax is exempted or reduced as such a tax no longer exists, and it is advised to refrain from mentioning the registration tax.

Q107. Is it possible for a foreign-invested company that was not granted tax reduction or exemption to have the acquisition tax reduced or exempted if it moves into a complex-type foreign investment zone (FIZ)?

A107. According to Article 78 of the Restriction of Special Local Taxation Act, 50% of the acquisition tax is exempted on land purchased to build industrial buildings or on industrial buildings either newly built or expanded in an industrial complex designated under the Industrial Sites and Development Act. An additional tax reduction of up to 25% can be granted under a local ordinance. A complex-type FIZ is designated in a national industrial complex or general industrial complex; hence the company is eligible for acquisition tax reduction or exemption.

Q108. If a foreign-invested company moving into a complex-type foreign investment zone (FIZ, general industrial complex) is unable to receive tax reduction or exemption for foreign investment or local tax reduction or exemption available for startup small and medium-sized companies, is there any way for this foreign-invested company to receive a local tax reduction?

A108. Moving into an industrial complex itself may warrant local tax reduction or exemption as long as the given criteria are met.

Local tax reduction or exemption

• Eligible areas

- Industrial complexes under the Industrial Sites and Development Act (national industrial complex, general industrial complex, urban high-tech industrial complex, and agro-industrial complex)

- Host areas under the Industrial Cluster Development and Factory Establishment Act
- Technoparks created under the Act on Special Cases concerning Support for Technoparks

• **Eligible real estate**

- Land purchased to build industrial buildings, etc.
- Industrial buildings, etc. acquired by either new construction or expansion (including the case of building or expanding factory buildings to rent to an SME)
- Industrial buildings, etc. acquired after a considerable renovation in an industrial complex, etc.

• **Details of local tax reduction**

- Acquisition tax

| Type | | Reduction rate (%) | | | Reduction period |
|-----------------|-----------------------------|---|------------|-----------------|---------------------|
| Land | | Restriction of Special Local Taxation Act | Ordinance* | Total (Maximum) | |
| Buildings, etc. | New construction, expansion | 50 | 25 | 75 | Until Dec. 31, 2025 |
| | Renovation | 25 | 15 | 40 | |

* Only when the local government offers additional reduction by an ordinance (e.g., Article 8 of the Tax Reduction Ordinance of Gangwon Province)

- Property tax
 - Reduction period: Five years from the date on which tax obligations are established for the first time
 - Reduction rate: 35% in the Seoul metropolitan area, 75% in other regions

Q109. Is a foreign-invested company eligible for local tax reduction or exemption if the company is a startup small and medium-sized enterprise (SME)?

A109. Even if a foreign-invested company fails to satisfy the conditions for tax reduction or exemption for foreign investment, it can receive the same tax reduction or exemption benefits that apply to purely domestic companies.

- Companies eligible for local tax reduction (including foreign-invested companies): companies established under subparagraph 1 of Article 2 of the Support for Small and Medium Enterprise Establishment Act falling under one of the following:
 - An SME that has started up its business* ("Startup SME") in an area other than the Seoul Metropolitan Overconcentration Control Zone** by December 31, 2023

* For corporations, the date of registration of incorporation is considered the start-up date. Attention: If a company registers its establishment in Seoul and then moves to another area, it will lose eligibility for tax reduction or exemption.

** Seoul Metropolitan Overconcentration Control Zone: Refer to attached Table 1 - Overconcentration control zone, growth management zone, and nature preservation zone - of the Enforcement Decree of the Seoul Metropolitan Area Readjustment and Planning Act.

- Definition of business start-up: Establishing a new small and medium-sized enterprise and commencing its business operations, which does not fall into any of the following cases (Article 2 of the Enforcement Decree of the Support for Small and Medium Enterprise Establishment Act):
 - Where a person succeeds a business from a third party and continues the same type of business
 - Where the small and medium enterprise operated by a sole proprietor is changed into a corporation or the company form is changed through reorganization, and it continues the same type of business
 - Where a person commences another business after closing a business, but continues the same type of business

① Acquisition tax

- Eligibility: Real estate acquired to continue the same business as the one operated on the date of establishment
- Reduction period and rate: 75% for four years from the first day on which reduction applies
- First day on which reduction applies: Date of incorporation registration

② Property tax

- Eligibility: Real estate used for its own business. In the case of land annexed to a building, only the standard area of a factory site (Article 102 (1)1 of the Enforcement Decree of the Local Tax Act) or the area within the applicable multiple by specific-use area (Article 101(2) of the Enforcement Decree of the Local Tax Act)
- Reduction period and rate: Exempted for three years from the date of establishment and reduced by 50% for the subsequent two years

Q110. Is the registration license tax paid for a foreign-invested company's capital increase considered a local tax that may be reduced or exempted?

A110. The registration license tax associated with a foreign-invested company's capital increase is not a local tax that may be reduced or exempted.

- Under Article 78-3 (1) 1 of the Restriction of Special Local Taxation Act, in regard to real estate acquired within five years from the date of commencement of business for use in a business notified by the foreign-invested company concerned, 100% of the amount calculated by multiplying the acquisition tax pursuant to the Local Tax Act with the foreign investment ratio will be exempted, and 50% of the amount of acquisition tax subject to reduction or exemption shall be reduced for real estate acquired for two years thereafter. In subparagraph 2 of the same Article, in regard to real estate that a foreign-invested company is directly using for the business for which foreign investment was notified as of the basic date for taxation, 100% of the tax amount calculated by multiplying the calculated property tax pursuant to the Local Tax Act with the foreign investment amount for five years from the date property tax obligations occur for the first time after the business commencement date, and 50% of the property tax amount subject to reduction or exemption shall be reduced for two years thereafter.

- Accordingly, acquisition tax and property tax can be reduced or exempted, but not business license tax associated with a foreign-invested company's registration of capital increase.

Q111. Should a foreign employee or foreign executive of a foreign-invested company pay his/her income tax in Korea as well as in his/her home country?

A111. It cannot be generalized since each country has its own tax rules. However, it is very likely that the foreign employee or foreign executive may have to report and pay the income tax in his/her home country.

- However, most countries have a tax system that deducts the tax amount that has already been paid abroad (in Korea in this case) to prevent double taxation.

Q112. Under what circumstance is a foreigner who has worked in Korea exempted from taxation?

A112. It may differ slightly depending on the tax treaties with other countries. However, a non-resident who meets all the following requirements is generally exempted from wage & salary income tax in the country where the work is rendered.

- Where a non-resident has stayed in Korea for less than 183 days of the calendar year concerned or out of any 12 months
- Where a person who is not a resident of Korea paid the income concerned
- Where the income concerned was not burdened by the fixed place of business in Korea owned by the employer

Q113. If a foreigner is sent to work in Korea and paid by the foreign parent company for the work performed in Korea, is he or she obligated to pay tax in Korea?

A113. According to tax treaties, dependent personal services (labor) of a non-resident are subject to taxation in the country where such services were rendered. Therefore, the labor performed in Korea is subject to taxation regardless of whether its payment comes from abroad or within Korea..

- In this case, the foreigner's income constitutes domestically sourced income of a non-resident under the Korean Income Tax Act, so the foreigner is required to report and pay income tax.
- However, if the foreigner meets specific requirements set by the tax treaty with the corresponding country (e.g., short-term stay of less than 183 days), he/she is not subject to taxation in Korea.

6. Factory Establishment and Location



6. Factory Establishment and Location

Q114. If a company wishes to move into a foreign investment zone (FIZ), does the entire amount of the investment need to be executed by the time when the tenancy contract is signed?

A114. For a manufacturing company, not all of the minimum investment amount needs to have arrived when the tenancy contract is signed.

- According to Article 12 of the Guidelines for Operation of Foreign Investment Zones, a tenant company has to be a company invested solely by foreigners, or a joint venture company in which the share of a foreign-invested company is at least 30% of the total number of voting stocks or the total amount of contribution and the amount of foreign investment therein is at least KRW 100 million. A company whose foreign investment meeting the conditions listed above has been notified may sign the FIZ tenancy contract.
- The minimum investment amount for moving into an FIZ should arrive within the execution period of five years from signing the tenancy contract.

Q115. What is the status of complex-type foreign investment zones (FIZs)? What are the qualifications for tenancy and what benefits do tenant companies enjoy?

A115. There are 30 complex-type FIZs in Korea as follows (As of Aug. 2022):

| No. | Name | First designated on | Designated size (1,000㎡) | Management authority |
|-----|------------------------------|---------------------|--------------------------|--|
| 1 | Jangan 1 (Gyeonggi) | 2004-09-30 | 418.2 | FIZ center of Gyeonggi Housing & Urban Development Corporation |
| 2 | Dangdong (Gyeonggi) | 2005-09-12 | 239.4 | |
| 3 | Jangan 2 (Gyeonggi) | 2006-12-29 | 369.0 | |
| 4 | Oseong (Gyeonggi) | 2009-09-03 | 353.9 | |
| 5 | Ochang (Chungbuk) | 2002-11-06 | 495.3 | Chungbuk office of Korea Industrial Complex Corporation |
| 6 | Jincheon-Sansu (Chungbuk) | 2014-08-20 | 108.4 | |
| 7 | Chungju (Chungbuk) | 2016-07-18 | 334.7 | |
| 8 | Eumseong-Seongbon (Chungbuk) | 2021-07-08 | 165.3 | |
| 9 | Cheonan (Chungbuk) | 1994-10-13 | 492.5 | Chungcheong office of Korea Industrial Complex Corporation |
| 10 | Inju (Chungbuk) | 2004-12-21 | 164.8 | |
| 11 | Cheonan 5 (Chungbuk) | 2012-12-21 | 336.6 | |
| 12 | Asan-Tanjeong (Chungnam) | 2021-09-10 | 85.3 | |
| 13 | Songsan 2 (Chungnam) | 2015-10-12 | 134.0 | Dangjin office of Korea Industrial Complex Corporation |
| 14 | Songsan 2-1 (Chungnam) | 2017-01-31 | 165.3 | |
| 15 | Songsan 2-2 (Chungnam) | 2019-03-20 | 117.9 | |
| 16 | Woljeon (Gwangju) | 2013-05-15 | 99.1 | Gwangju-Jeonnam office of Korea Industrial Complex Corporation |
| 17 | Nat'l food cluster (Jeonbuk) | 2015-10-12 | 116.0 | Iksan office of Korea Industrial Complex Corporation |
| 18 | Daebul (Jeonnam) | 1998-08-29 | 1,163.5 | Daebul office of Korea Industrial Complex Corporation |
| 19 | Dalseong (Daegu) | 2008-09-10 | 104.2 | Dalseong office of Korea Industrial Complex Corporation |
| 20 | Gumi (Gyeongbuk) | 2002-11-06 | 332.4 | Daegu-Gyeongbuk office of Korea Industrial Complex Corporation |
| 21 | Gumi parts (Gyeongbuk) | 2009-03-09 | 246.3 | |
| 22 | Sacheon (Gyeongnam) | 2001-08-17 | 495.9 | Sacheon office of Korea Industrial Complex Corporation |
| 23 | Munmak (Gangwon) | 2013-12-10 | 84.1 | Gangwon office of Korea Industrial Complex Corporation |

| No. | Name | First designated on | Designated size (1,000㎡) | Management authority |
|-----|-----------------------------|---------------------|--------------------------|-----------------------------------|
| 24 | Iksan parts (Jeonbuk) | 2010-03-12 | 169.8 | Iksan-si |
| 25 | Daejeon Int'l (Daejeon) | 2020-09-16 | 83.6 | Daejeon metropolitan city |
| 26 | Pohang parts (Gyeongbuk) | 2009-09-03 | 264.9 | Pohang-si |
| 27 | Gwangyang Sepoong (Jeonnam) | 2017-11-02 | 82.6 | Gwangyang port area FEZ authority |
| 28 | Jisa (Busan) | 2005-11-30 | 298.1 | Busan-Jinhae FEZ authority |
| 29 | Mieum parts (Busan) | 2011-11-28 | 299.6 | |
| 30 | Changwon parts (Gyeongnam) | 2010-10-14 | 71.3 | |

- To qualify as a tenant of a complex-type FIZ, the company should be registered as a foreign-invested company with a minimum foreign investment ratio of 30% and engage in the business categories (mainly the manufacturing industry) set by the basic management plan. The requirements for occupancy (minimum investment amount and factory building area) have been recently relaxed. The tenant company should invest an amount at least equal to the factory land price within five years from the date of signing the tenancy contract, and the construction of a factory that meets the minimum area ratio for the business type should be completed within five years.
- Rent for tenant companies in a complex-type foreign investment zone can be reduced or exempted pursuant to Article 19 of the Enforcement Decree of the Foreign Investment Promotion Act.

| Reduction rate | Type of business | Conditions | | Note |
|----------------|---------------------------------------|---------------------------------------|--------------------------|---------------------------|
| | | Investment | No. of full-time workers | |
| 0% | Tenant companies | Normal rent (1% of acquisition price) | | - |
| 75% | Manufacturing | USD 5 mil. or more | - | - |
| | | USD 2.5 mil. or more | 70~149 | - |
| 90% | Manufacturing | USD 2.5 mil. or more | 150~199 | - |
| 100% | Manufacturing | USD 5 mil. or more | - | Parts & materials complex |
| | Manufacturing | USD 2.5 mil. or more | 200 or more | - |
| | New growth driver technology industry | USD 1 mil. or more | - | - |

Q116. Is there a limit on sale or rent of site in a complex-type foreign investment zone (FIZ)?

A116. A complex-type FIZ restricts companies from renting a factory site that is bigger than necessary and encourages companies to secure the plot suitable for the size of the factory building. It applies the standard factory area ratio and the minimum investment amount by sector to maximize the efficiency of land usage. Foreign-invested companies that wish to move into a complex-type FIZ shall meet the following two conditions:

- FIZs limit the size of the leased site by the standard factory area ratio under Article 15 of the Guidelines for Operation of Foreign Investment Zones. The area of the site is calculated by applying the standard area ratio of a factory in the relevant business category. (In the case of a category of business whose standard area ratio of a factory is not more than 12%, the area ratio of 12% shall apply.)
- The limit on lease area for each company in a complex-type FIZ shall be determined by a master plan for management, taking into consideration the characteristics of each complex within an area not exceeding the value corresponding to 100/100 of the amount of foreign investment made by the tenant company.

Q117. What measures are taken against a foreign-invested company in a foreign investment zone (FIZ) that does not fully execute its project plan?

A117. A company that moves into an FIZ should completely carry out its business plan submitted at the time of signing of the tenancy contract within five years of the date of concluding the contract. In accordance with Article 26-2 (5) and (6) of the Enforcement Decree of the Foreign Investment Promotion Act, a company that failed to do so within five years is subject to termination of the tenancy contract.

- If the project plan is not implemented due to unavoidable reasons, a grace period of up to one year may be granted. During the grace period, a non-fulfillment rent (5% of the site price) is imposed on the excess area compared to the project plan. If the company fails to attract foreign investment even after the grace period, the non-fulfillment rent is charged on the entire site.

Q118. What is the procedure for establishing a factory?

A118. Individual sites (sites other than industrial complexes) refers to any site other than planned sites, and the investor develops the factory site to establish a factory. The investor needs to check in advance whether a factory is allowed to be built on the site and obtain approval from the relevant local government (city, Gun, or Gu). The next steps are: factory construction, installation of manufacturing facilities, registration of the factory, and factory operation. If the factory construction area is 500 m² or larger, the company should obtain approval for the factory construction from the relevant local government. A company whose factory construction area is below 500 m² may obtain factory establishment approval, should the company seek the legal fiction of authorization or permission for factory establishment.

Q119. Do all factories have to follow the procedure of factory establishment approval?

A119. If the total area of all the floors of buildings housing manufacturing equipment or machine plus the horizontal projected area of outdoor manufacturing structure is smaller than 500 m², factory establishment approval is unnecessary. However, even if the size is smaller than 500 m², the company may apply for factory establishment approval if it wishes to process all the factory related permits through the legal fiction of authorization or permission.

- If a factory that is registered with a factory area less than 500 m² is expanded and as a result the factory construction area increases to 500 m² or larger, the factory should apply for the new establishment of a factory, not for the expansion of the factory.
- The following cases do not need a separate factory construction approval as it is regarded such approval has already been given:
 - Where a manufacturer signed the tenancy contract with the management agency of an industrial complex
 - Where a company develops an industrial complex upon the approval of implementation of an industrial complex development plan instead of moving into a free trade zone, obtaining approval on its venture business plan, or moving into an industrial complex

Q120. Where can I find information on the current state of foreign investment zones (FIZs) and national industrial complexes?

A120. You can find information on FIZs and national industrial complexes in Korea at the website of Korea Industrial Complex Corporation (www.kicox.or.kr).

- For information on FIZs, log on to the website and go to: Major Project ► Foreign Investment Zone ► Designation and Management Organization. For information on the current state of industrial complexes, go to: Major Project ► Research and Study of Industrial Location ► Industrial Complex Statistics & Periodicals.

* You can check more detailed information such as the basic management plan for each industrial complex at the industrial site information system website (www.industryland.or.kr) operated by the Ministry of Land, Infrastructure and Transport.

Q121. Should a company have land ownership over the site when applying for factory establishment approval?

A121. A company does not need to have ownership over the land when applying for factory establishment approval. Only the right to use the land is necessary. Once it is confirmed a factory can be built on the site after examining the requirements for moving into the site, the company can apply for factory establishment approval after obtaining the land owner's permission to use it even before the land ownership is transferred.

Q122. Is it possible to process factory construction permit at the same time as factory establishment approval in an area where factory establishment is allowed?

A122. In the case of factory establishment approval under Article 13 of the Industrial Cluster Development and Factory Establishment Act, the construction permit is deemed to be obtained through the legal fiction of authorization or permission. (The legal fiction of authorization or permission is the system that collectively handles separate authorization and permit processes under different laws to improve administrative work efficiency and services for the public.) By doing so, the company can apply for factory establishment permit and construction permit for factory building concurrently, hence shortening the factory's construction period.

- According to Article 17 (1) of the Foreign Investment Promotion Act, associated licensing and permit requests for factory establishment approval shall be deemed to have been granted through the legal fiction of authorization or permission, which effectively shortens the time taken for the administrative work.

Q123. What are the regulations on establishing factories in the Seoul Metropolitan Area?

A123. The Seoul Metropolitan Area Readjustment Planning Act regulates the total number of factories established in the Seoul Metropolitan area, while the attached Tables of the Enforcement Decree of the Industrial Cluster Development and Factory Establishment Act define rules on the establishment, expansion, or relocation of factories in three zones: overconcentration control zone, growth management zone, and nature preservation zone.

※ Note: Restrictions on factory locations in the Seoul Metropolitan Area

- The Seoul Metropolitan Area refers to Seoul Special Metropolitan City, Incheon Metropolitan City, and Gyeonggi-do (Article 2 of the Seoul Metropolitan Area Readjustment and Planning Act).
- For the appropriate dispersion of population and industries within the Seoul Metropolitan area, the Seoul Metropolitan area shall be divided into overconcentration control zone, growth management zone, and nature preservation zone (Article 6 of the Seoul Metropolitan Area Readjustment and Planning Act).

| Zone | Designation | Restricted Activities |
|--------------------------------|--|---|
| Overconcentration control zone | The area in which population and industries are, or are likely to be, excessively concentrated in such a way, that transfer out of which, or readjustment of which, is deemed necessary | <ul style="list-style-type: none"> • Designation of an industrial area • Designation of industrial areas within such an extent that does not increase the total area of the existing industrial areas is permitted after obtaining approval of the Seoul Metropolitan Area Readjustment Committee |
| Growth management zone | The area into which the population and industries transferring out of the overconcentration control zone shall be intentionally solicited, and for which proper management of the accommodation of industries and of urban development is required | <ul style="list-style-type: none"> • To designate an industrial area, the matters prescribed by Seoul metropolitan area readjustment plan should be complied with. |
| Nature preservation zone | The area in which preservation of the natural environment, such as the water of the Han River system and green belt areas, is required | <ul style="list-style-type: none"> • Businesses for the purpose of creation of housing sites, industrial sites, tourist sites that meet the types and minimum area prescribed by Presidential Decree |

※ Relaxation of the restrictions: Articles 26, 27, 27-2, 27-3, and attached Tables 1, 2, 3 of the Enforcement Decree of the Industrial Cluster Development and Factory Establishment Act

Q124. If a tenant company in an industrial complex intends to sell its factory after construction, what is the procedure?

A124. A tenant company that wishes to sell its factory after construction should submit to the management agency documents prescribed by the Ordinance of the Minister of Trade, Industry, and Energy under Article 39 (3) of the Industrial Cluster Development and Factory Establishment Act.

- If a company intends to sell the industrial land acquired under Article 39 (2) of the Industrial Cluster Development and Factory Establishment Act or under Article 50 of Enforcement Decree of the same Act within five years from reporting the completion of the factory construction, the company should declare the ownership transfer to the management agency.
 - In this case, the industrial complex's transfer price is the acquisition price multiplied by the producer price index from the date of acquisition to the transfer date plus the industrial complex's maintenance costs. The transfer value of the factory may be based on the market value appraisal.
-

Q125. What is the procedure for factory acquisition in an industrial complex through auction or other means?

A125. Under Article 40 of the Industrial Cluster Development and Factory Establishment Act, any person who has acquired an industrial site or a factory from a tenant company or support agency by auction or other associated laws should sign a tenancy contract within a year from the date of acquisition. Otherwise, the asset has to be transferred to a third party within the following year.

Q126. Should a company continue to meet the standard factory area ratio even after the factory has been built and registered according to the standard factory area ratio?

A126. The standard factory area ratio is enforced to prevent factory establishment for the purpose of speculation. Therefore, the company needs to maintain the construction area equal to or greater than the standard factory area ratio even after reporting the construction and filing factory registration.

Q127. Can a company that does not have a factory in Korea but owns one abroad register its factory?

A127. Factory registration means the act of an administrative institution recording in the official registry (the factory registration catalog) that the concerned place of business defined by Article 2 of the Industrial Cluster Development and Factory Establishment Act and Article 2 of the Enforcement Decree of the same Act is established and meets the legal requirements. Therefore, if the factory does not exist in Korea, it cannot be registered.

Q128. What is the factory registration procedure if a factory site has several plot numbers due to factory expansion and facility additions?

A128. A factory site consisting of several plot numbers can still be registered as one factory as long as the plots are adjacent, only divided by roads or drains, and connected physically or functionally by building or expanding manufacturing facilities and additional facilities. The precondition is that such plots are put on one tenancy contract, which will not cause trouble in industrial complex management. However, a factory that is not adjacent to the other should have a separate tenancy agreement and factory registration.

Q129. Can a local government purchase land or building in an industrial complex and rent it to a company?

A129. Article 46-6 of the Industrial Sites and Development Act states that the State or local governments may have an agency falling under Articles 16 (1) 1 and 16 (1) 2 designate and operate a part of an industrial complex as an industrial complex for lease only to revitalize the regional economy and to supply inexpensive industrial locations.

- Accordingly, the State and local governments may purchase industrial land or factory to lease to a company. In that case, the company should sign a tenancy contract with the relevant management agency under Article 38 of the Industrial Cluster Development and Factory Establishment Act.

Q130. What are the types and characteristics of industrial locations to attract foreign investment?

A130. Industrial locations to support foreign investors are classified into foreign investment zones (FIZ), free economic zones (FEZ), and free trade zones (FTZ). In these areas, benefits such as discounts on rent and reductions on local tax and customs duty are offered.

- FIZs are categorized into individual-type, complex-type, and service-type. The head of a regional or local government designates and announces an FIZ after deliberation by the Foreign Investment Committee. The individual-type FIZ was introduced to attract large-sized investors after the 1997 Asian financial crisis. The complex-type FIZ set out to attract SMEs in the high-tech industry but became a part of FIZ in 2004, given it shared the same purpose of promoting foreign investment. As of August 2022, 77 individual-type FIZs, 30 complex-type FIZs, and three service-type FIZs are in operation.

- An FEZ is a special economic zone designed to actively attract foreign investment by enhancing foreign-invested companies' business environment, improving their employees' living conditions, and relaxing various regulations. Starting with Incheon FEZ in 2003, Busan/Jinhae FEZ, Gwangyang Bay FEZ, Yellow Sea FEZ, Daegu-Gyeongbuk FEZ, North Chungcheong Province FEZ, and East Coast FEZ were added, and a total of seven FEZs are currently in operation. FEZs are different from FIZs in that they tend to be larger than local governments, are empowered with administrative authority by the local government, and are focused on creating a foreigner-friendly environment by granting exceptional establishment of foreign schools or hospitals.
- An FTZ is the first special zone introduced in 1970 at a time when Korea was going through industrialization. It is a tariff reserve area where raw material imports and goods exports go through simplified customs clearance, promoting the import and export business. Initially, FTZs were free export zones focused on the manufacturing industry, and then no tariff zones for logistics were added. They were consolidated as FTZ in 2004. FTZs are categorized into industrial-type, airport-type, logistics-type, and seaport type. FTZs are similar to FIZs in that they offer similar benefits to tenant companies such as a reduction in factory land lease. Still, they are clearly distinguished in that FTZs operate as a no-tariff zone to promote trade.

Q131. Is a foreign-invested company moving into a national industrial complex eligible for a reduction in land rent?

A131. A foreign-invested company operating a business that meets certain criteria is eligible for a rent reduction for the state-owned land.

- Cases where a foreign-invested company receives 100% rent exemption:
 - Where a foreign investor makes an investment according to specific criteria and the foreign-invested company operates in the area where the foreign investor wishes to invest in (individual-type foreign investment zone)

- Where a business has been approved for a tax reduction or exemption under Article 121-2 (1)1 of the Restriction of Special Taxation Act and its foreign investment amount is USD 1 million or more
- Where a business produces components or materials
- Where a business manufacturing materials and equipment pursuant to subparagraphs 1 or 2 of Article 2 of the Act on Special Measures for Strengthening the Competitiveness of Materials, Components and Equipment Industries is in an industrial complex created exclusively for lease to a foreign-invested company manufacturing materials, parts and equipment, and the amount of foreign investment in the business is USD 5 million or more
- Where a business operates a business prescribed under subparagraphs 1 through 3 or facility under subparagraph 4 of Article 25 of the Enforcement Decree of the Foreign Investment Promotion Act, has foreign investment of at least USD 2.5 million, and employs 200 or more full-time employees (for businesses with 150 or more full-time employees, the rent reduction rate shall be 90/100, and 75/100 for businesses with 70 or more employees)
- Where a business significantly contributed to expansion of social overhead capital, change of industrial structure or financial independence of a local authority and has been prescribed by the Minister of Trade, Industry and Energy after the deliberation of the Foreign Investment Committee
- Cases where the foreign-invested company receives a 75% reduction of the rent:
 - Where a business intends to engage in the manufacturing sector and its foreign investment amount is USD 5 million or more
 - Where a business determined by the Minister of Trade, Industry & Energy after the Foreign Investment Committee's deliberation to be contributing significantly to the social overhead capital, industrial restructuring, or financial independence of the local government
- Cases where the foreign-invested company receives a 50% reduction of rent:
 - For land in a national industrial complex under Article 6 of the Industrial Sites and Development Act
 - For land in a general industrial complex, urban high-tech industrial complex or agro-industrial complex under Articles 7, 7-2, and 8 of the Industrial Sites and Development Act

* For other public land managed by a local government, land rent reduction is available according to the ordinance announced by the relevant local government.

Q132. If a tenant company of a foreign investment zone (FIZ) that moved into the FIZ by establishing a joint venture with a foreign investor increased its capital to expand its business and its foreign investment ratio was lowered to below 30%, should the tenant company pay the market rent price due to non-compliance with the tenancy qualification?

A132. If the foreign investment ratio of a tenant company of an FIZ falls below 30% before implementing the project plan, the company should pay the market rent due to non-compliance with the tenancy qualification. In this case, the company may reinstate the tenancy qualification within two years after consultation with the Minister of Trade, Industry and Energy.

- The reduced rent shall continue to be applied if the tenant company fails to maintain its tenancy qualification by increasing domestic capital to install the plant or machinery, facilities, and devices without reducing the amount of foreign investment after the project plan has been implemented. Even in this case, the foreign investment ratio should be maintained at 10% or higher.

Q133. How long is a tenant company of a foreign investment zone (FIZ) given for implementing the investment?

A133. The tenant company of an FIZ should complete its investment (implementation period of the project plan) within five years from signing the tenancy agreement. The investment's fulfillment is determined based on the balance of foreign investment and the construction area after the five years.

Q134. If a tenant company moved into a foreign investment zone (FIZ) by meeting the foreign investment requirements with a long-term loan and the loan matures, can the tenant company continue to stay in the FIZ? Also, is the company still eligible for a rent reduction?

A134. Long-term loans can be repaid to maturity under the Foreign Investment Promotion Act. If such repayment leads the tenant company to fail to meet the tenancy requirements per project plan, it can be a cause for the tenancy agreement's termination, and the market rent (5% of the land acquisition price) will be applied.

Q135. How long is a tenant company of a service-type foreign investment zone (FIZ) given for implementing the investment according to the project plan?

A135. The tenant company of a service-type FIZ should implement the project plan (in terms of the foreign investment amount, building construction area, and minimum number of hires) within three years from the date of signing the tenancy agreement. However, for complex-type and individual-type FIZs, tenant companies should implement the project plan within five years.

Q136. Is a tenant company of a service-type foreign investment zone (FIZ) eligible for tax reduction or exemption?

A136. No tax reduction or exemption benefits are provided for service-type FIZ tenant companies under the Restriction of Special Taxation Act.

- The Restriction of Special Taxation Act defines individual-type FIZ and complex-type FIZ tenant companies as eligible for tax reduction or exemption under Article 121-2 (1) 2 and Article 121-2 (1) 2-5. Service-type FIZ tenant companies are not included.

Q137. Can a company that moves in and benefits from rent reduction in a foreign investment zone (FIZ) also apply for a cash grant?

A137. An FIZ tenant company that is provided a leased site may apply for cash grant. However, calculation of the cash grant ceiling shall be based on the Operation Guidelines for the Cash Grant System, and the amount of reduced or exempted rent that the FIZ tenant company has received until the cash grant contract is signed shall be included in the cash grant ceiling, resulting in a reduced cash grant amount.

※ Related regulations: Article 10 of the Operation Guidelines for the Cash Grant System

Q138. Are there specific restrictions on the business category for tenant companies of a complex-type foreign investment zone (FIZ)?

A138. There are restrictions, but they are limited to restriction of permitted business categories, which are also applied in general industrial complexes.

- The following business categories are eligible for occupancy in a complex-type FIZ. Business categories allowed to move into each FIZ are determined by the basic management plan for each complex-type FIZ, under Article 10 of the Guidelines for Operation of Foreign Investment Zones.
 - Businesses involving technologies for new growth engine industries prescribed under Article 121-2 (1) 1 of the Restriction of Special Taxation Act
 - Businesses applying or manufacturing advanced technologies or advanced products defined under Article 5 of the Industrial Development Act
 - Research institutes affiliated with enterprises under subparagraph 3 (c) of Article 2 of the Special Act on Support of Scientists and Engineers for Strengthening National Science and Technology Competitiveness and research and development businesses under subparagraph 4 (a) of Article 2 of the same Act

- Businesses prescribed by Articles 25 (1) 3 (a) and 25 (1) 3 (b) of the Enforcement Decree of the Foreign Investment Promotion Act
 - Other business categories that a management agency determines, taking account of the industrial characteristics of the relevant region
- Before signing the tenancy contract, a company shall review the basic management plan of the FIZ that it wishes to move into and check which business categories are permitted.

Q139. US investor A invested USD 15 million to establish foreign-invested company AK to operate a manufacturing business, and Japanese investor J also invested USD 15 million to establish foreign-invested company JK for manufacturing. In this case, is it possible to combine the business sites of AK and JK and designate an individual-type foreign investment zone (FIZ)?

A139. It is possible. In the case of a manufacturing business, a foreign-invested company has to invest a minimum of USD 30 million to be designated as an individual FIZ. However, provided certain requirements are met, two or more foreign-invested companies can combine their invested amounts to meet the requirements for an individual-type FIZ designation.

- TArticle 18 (2) of the Foreign Investment Promotion Act stipulates the designation of an individual-type FIZ by two ore more foreign investors. Article 25 (5) of the Enforcement Decree of the same Act defines specific requirements as follows:
 - The total amount invested by two or more foreign investors shall be no less than the amount of foreign investment for the business category in the individual-type FIZ.
 - The business operated shall be a business subject to designation as a an individual-type FIZ.
 - The facilities shall be placed adjacent to each other.

Q140. If a foreign-invested company acquires an existing factory, removes all the production facilities inside, and installs new manufacturing facilities in the existing factory building to manufacture different products, can this be recognized as "installation of a new factory facility" and can the company apply for designation as a foreign investment zone (FIZ)? (The foreign investment amounts is USD 50 million and the business category is manufacturing.)

A140. Yes, but only when recognition of the foreign investment committee it is obtained. Article 23(3) of the Guidelines for Operation of Foreign Investment Zones defines the case of installing new factory facilities and the case of installing new facilities as follows:

- Where factory facilities (referring to a place of business in the case of a business other than manufacturing business categorized in the Korean Standard Industrial Classification) are newly installed or where any machinery or installations, equipment are newly installed in an existing building
- Where the same corporation installs any factory facilities, or any machinery, installations or equipment, which are recorded on a separate accounting book from that of the existing factory facilities
- Where business activities are conducted after obtaining an approval to use a building under the Building Act after acquiring a building the construction of which is incomplete (However, the Foreign Investment Committee may choose not to acknowledge it depending on the stage of progress of the construction work.)

Q141. Is it possible for a purely domestic corporation to move in a foreign investment zone (FIZ)?

A141. It is possible if an FIZ tenant company with a foreign investment ratio of 30% or higher requests that its contractor without any foreign investment be permitted to use a part of the tenant company's factory facilities in order to shorten the process and cut costs, and obtains the agreement of the Minister of Trade, Industry and Energy. At the request of the tenant company, the FIZ management agency may sign a contract with the tenant company's contractor permitted to move in. The contract should be renewed every five years, and its period should be within the remaining period of the contract with the tenant company. The contractor is allowed to occupy up to 30% of the total factory area of the tenant company.

Q142. A foreign-invested company that moved into an individual-type foreign investment zone (FIZ) acquired its FIZ status based on the commitment of a USD 100 million foreign investment for operating a construction materials manufacturing business. However, the foreign investment amount was reduced to USD 50 million due to inevitable circumstances. What procedures should the individual-type FIZ tenant follow?

A142. A reduction in the foreign investment amount by more than 30% is a significant change, not a minor one. In this regard, the foreign-invested company and the local government should hold a preliminary meeting with the Ministry of Trade, Industry and Energy to revise the project plan and submit the amended project plan to the Ministry of Trade, Industry and Energy for the foreign investment committee's deliberation. The mayor/provincial governor should subsequently put up a notice of change in FIZ designation. The foreign-invested company should attach the notice of change and report a change in tax reduction or exemption and then attach the notice of change and report change of tax reduction or exemption to the Minister of Economy and Finance.

7. Labor



7. Labor

Q143. What is the discrimination rectification system for non-regular workers?

A143. The discrimination rectification system was newly introduced under the Act on the Protection, etc. of Fixed-Term and Part-Time Workers and the Act on the Protection, etc. of Temporary Agency Workers. It was introduced to prohibit unfavorable treatment against non-regular workers on the ground of his/her employment status compared with other workers engaged in the same or similar kind of work at the business concerned in terms of wages or other working conditions without any justifiable reasons. The aforementioned non-regular workers include fixed-term employees, part-time employees, and temporary agency workers, while the aforementioned other workers include non-fixed term contract workers, full-time employees, and directly-employed workers. Any non-regular worker who has received discriminatory treatment may request a correction to the Labor Relations Commission.

- The prohibition of discriminatory treatment against non-regular workers is not meant to demand the same treatment as regular workers in all working conditions, but to ban unfavorable treatment without any reasonable ground. Different treatments are allowed on reasonable grounds, such as differences in labor intensity, labor quality, authorities, and responsibilities. The discrimination rectification system for non-regular workers applies to all businesses or places of business with five full-time employees or more.

Q144. Is it regarded as a discriminatory treatment if the regulations on holiday and leave are not applied to a part-time employee who works less than 15 hours per week?

A144. A part-time employee means an employee whose contractual work hours per week are shorter than those of a full-time employee engaged in the same kind of work at the workplace concerned. Some regulations do not apply to part-time employees whose work hours are significantly shorter than those of a full-time employee (those who work less than 15 hours per week). The relevant laws are as follows:

- Article 8 (2) of the Act on the Protection, etc. of Fixed-Term and Part-Time Workers states that no employer shall give discriminatory treatment to any part-time employee on the ground of his/her employment status compared with full-time employees engaged in the same or similar kinds of work at the business or workplace concerned. There is no different treatment per the length of the work hours among part-time employees.
- The Labor Standards Act states that the terms and conditions of employment of part-time employees shall be determined on the basis of the relative ratio computed in comparison to those work hours of full-time employees engaged in the same kind of work at the pertinent workplace. It also states that the criteria and other necessary matters to be considered shall be prescribed by Presidential Decree. However, according to Article 18 (3) of the same Act, holidays (Article 55) and annual paid leaves (Article 60) do not apply to employees whose contractual work hours are significantly short (those who work less than 15 hours per week). Therefore, not applying the holiday and annual paid leave clauses to employees who work less than 15 hours per week on an average of four weeks cannot be considered discriminatory treatment.

Q145. Can a fixed-term worker whose two-year contract has expired be hired as a temporary agency worker?

A145. If the employment status has been modified from a fixed-term worker to a temporary agency worker merely to evade the maximum contract period limit for a fixed-term worker (two years), this is technically considered a measure to avoid the regulations of Article 4 of the Act on the Protection, etc. of Fixed-Term and Part-Time Workers. In this case, it should be deemed that the fixed-term worker is hired for more than two years under Article 4 (2) of the same Act, and it is reasonable to regard the worker as having signed a non-fixed term employment contract.

Q146. What is the relationship between the labor-management council and the trade union?

A146. A labor-management council refers to a consultative body formed to help promote peace in industry and to contribute to the development of the national economy by increasing common interests of labor and management through mutual participation and cooperation operation by workers and employers under Article 1 of the Act on the Promotion of Workers' Participation and Cooperation. According to Article 4 of the same Act, the labor-management council shall be established at each business or workplace which is vested with the right to decide working conditions; provided that this shall not apply to any business or workplace employing less than 30 people on a regular basis.

- A trade union refers to an organization aimed at maintaining and improving the working conditions of workers and enhancing their economic and social status by guaranteeing the rights of association, collective bargaining, and collective action as prescribed in the Constitution, and contributing to the maintenance of industrial peace and the development of the national economy by preventing and resolving

industrial disputes through the fair adjustment of the labor relations under Article 1 of the Trade Union and Labor Relations Adjustment Act. According to Article 5 of the same Act, workers shall be free to establish a trade union or to join it:

- The labor-management council represents all workers in activities that promote the common interests of labor and management, and in consultations or decisions for labor and management. In contrast, the trade union represents its members in collective bargaining and making a collective agreement for maintenance and improvement of working conditions. Particularly, the rights to collective actions such as industrial actions are guaranteed for the trade union.

| | Labor-management consultation | Collective bargaining |
|--------------------|--|---|
| Relevant law | The Act on the Promotion of Workers' Participation and Cooperation | The Trade Union and Labor Relations Adjustment Act |
| Purpose | Enhance productivity, improve workers' welfare, increase common interests of labor and management | Maintain and improve working conditions |
| Representation | Represent all workers of the business or workplace | Represent the union members |
| Parties | Workers' members and employers' members | Trade union and employer (employer's association) |
| Activities | Report overall management plans and actual results, consult and resolve between the labor and management on the agenda | Reach a collective agreement through collective bargaining |
| Industrial actions | Not allowed | Industrial actions are possible in case bargaining efforts fail to reach an agreement |

Q147. Is it a violation of the law if a regular labor-management council is not held because the workers' members have not been organized?

A147. Article 6 of the Act on the Promotion of Workers' Participation and Cooperation states that a council shall be composed of the same number of members representing workers and employers, and each number of members shall be not less than three but not more than 10 persons. Also, Article 12 (1) of the same Act states that a council shall hold meetings regularly every three months.

- The labor-management council meetings shall open with the attendance of the respective majorities of autonomously elected (commissioned) workers' members and employers' members. If the meeting fails to be held on the ground deemed not to be the fault of the employers, such as workers' failure to elect workers' members, it does not constitute failure to fulfil the obligation to hold the labor-management council meeting set by Article 12 (1) of the same Act.
- Article 10 (1) of the same Act states that any employer shall neither intervene in nor interfere with an election of workers' members. However, if the labor-management council is not organized for reasons such as workers' reluctance to elect the workers' members, the employer should make reasonable efforts to inform through internal communications and company notice boards the need of the labor-management council and autonomous election of the workers' members. If needed, the employer should make reasonable efforts such as asking the regional employment and labor agency governing the concerned workplace to support the workers' members' election.

Q148. What is the specific scope of matters that are discussed and resolved by the Labor-Management Consultation Council?

A148. The matters discussed and decided by the Labor-Management Consultation Council are prescribed in Article 20 (Matters for Consultation), Article 21 (Matters for Resolution) and Article 22 (Matters for Reporting) of the Act on the Promotion of Workers' Participation and Cooperation.

<Agendas of the Labor-Management Consultation Council >

Matters for Consultation (Article 20)

- Improvement of productivity and distribution of attained results
- Recruitment, placement, education, and training of workers
- Resolution of workers' grievances
- Improvements in working environment such as safety and welfare; promotion of workers' health
- Improvement of human resources and labor management systems
- Adjustment of general employment rules, such as manpower repositioning, retraining, and dismissal for managerial or technological reasons
- Administration of work hours and break times
- Improvement of systems, such as wage payment method and structure
- Introduction of new machinery and technologies; improvement of work processes
- Establishment or amendment of work/operation rules
- Employee stock ownership plan and other assistance to build workers' assets
- Matters on remuneration for an employee invention, etc.
- Improvement of workers' welfare
- Installation of surveillance equipment for workers within a workplace
- Protection of motherhood for female workers; assistance in balancing work and home life

- Prevention of sexual harassment in the workplace or sexual harassment by customers, as per subparagraph 2 of Article 2 of the Equal Employment Opportunity and Work Family Balance Assistance Act
- Other matters regarding cooperation between labor and management

Matters for Resolution (Article 21)

- Establishment of a basic plan for education/training and capability development of workers
- Establishment and management of welfare facilities
- Establishment of an in-house employee welfare fund
- Matters that are not resolved by the grievance handling committee
- Establishment of various labor-management joint committees

Matters for Reporting (Article 22)

- Matters concerning overall management plans and actual results
- Matters concerning quarterly production plans and actual results
- Matters concerning manpower plans
- Economic and financial conditions of the enterprise

Q149. When a labor contract that has a defined work period is expired, does an advance notice of termination have to be made to the employee?

A149. The causes for terminating a labor contract are as follows: 1) The termination is made based on the will or intent of the employee (retirement: voluntary retirement, mandatory retirement); 2) The service is terminated without the consent, or against the intent, of the worker (dismissal: regular dismissal, dismissal as part of punishment, dismissal due to a management reason); 3) The employment relationship ends regardless of the intent of the employee and employer (automatic dissipation: expiration of contract period, completion of project, death of worker, termination of company).

- For contracts with a defined period, or contracts with a term as prescribed in the subparagraphs of Article 4 (1) of the Act on the Protection etc. of Fixed Term and Part-Time Employees, when the term of the labor contract is terminated, in principle, the labor service is terminated unless there are special circumstances that render otherwise.
- Therefore, if the contract period expires, there is no obligation for management to send out an advance dismissal notice. However, making a pre-notice may reduce the possibility of conflict between the parties, as it announces that the labor service shall be terminated with the expiration of the work period.

Q150. Can lunch time be used as recess?

A150. According to Article 54 of the Labor Standards Act, an employer shall allow employees a recess of not less than 30 minutes where work hours are four hours, and a recess of not less than one hour where work hours are eight hours. Recess hours may be freely used by employees.

- According to the Labor Standards Act, "recess" refers to break time, waiting time, etc., during which the employee leaves the sphere of instruction and monitoring by the employer and spends the time freely.
- If the employee leaves the sphere of instruction and monitoring by the employer and spends the break time as he/she wishes, lunch time can be regarded as recess.

Q151. Is there extra pay if a worker has worked on Workers' Day?

A151. The Designation of Workers' Day Act prescribes that "The first day of May each year shall be designated as Workers' Day, which shall be a paid holiday under the Labor Standards Act."

- A "paid holiday" is a day on which there is no obligation to provide labor service, while receiving a payment that would have been received if the labor had been accomplished.

- When labor is provided on Workers' Day, a paid holiday, an additional 150% of pay for holiday labor shall be made in addition to the wage (100%) that would have been paid out, even if there was no labor service on that day, as per Article 56 of the Labor Standards Act.

※ "Workers' Day" is a legal holiday, and is prescribed as a special day to commemorate a certain fact, and therefore this holiday cannot be replaced with another day.

Q152. Are "Regulations on Holidays of Government Offices" also applied to holidays of regular business sites?

A152. Holidays can be divided into legal holidays and contractual holidays according to whether it is legally binding for the employer to grant them or not. Legal holidays include weekends, Labor Day, and public holidays of government offices. Holidays for government offices include national holidays, and are granted to public servants. Consequently, in the case of private companies, company regulations and collective agreements have been used to establish contractual holidays.

- With the amendment of the Labor Standards Act on Mar. 20, 2018, the Act was applied to private companies with five or more full-time employees. However, the Act allows that it shall be implemented in phases depending on the size of the company.

| | | |
|---------------------|--|--------|
| Public Holidays | ① National holiday: Independence Movement Day, Liberation Day, National Foundation Day, Korean Alphabet Day ② January 1, ③ Lunar New Year, Chuseok Holidays (3 days), ④ Buddha's Birthday, ⑤ Children's Day, ⑥ Memorial Day, ⑦ Christmas | 15days |
| | - The election day for each election to be held at the expiration of the term per Article 34 of the Public Official Election Act - Other days designated by the government as needed (temporary public holidays) | — |
| Substitute holidays | In the following cases, the first non-public holiday after the public holiday shall be a substitute holiday - Where Independence Movement Day, Liberation Day, National Foundation Day, Hangul Proclamation Day and Children's Day fall on a Saturday or Sunday - Where Seollal and Chuseok holidays (3 days) fall on a Sunday | |

| | |
|---------------------|---|
| Substitute holidays | <p>- Where Independence Movement Day, Liberation Day, National Foundation Day, Hangul Proclamation Day, Children's Day and Seollal and Chuseok holidays (3 days) fall on another public holiday that is not a Saturday or Sunday</p> <p>※ Where two substitute holidays fall on the same day, the first non-public holiday after the substitute holiday shall be a holiday.</p> |
|---------------------|---|

Q153. Can intra-company email be used instead of written letters to urge employees to take annual paid leave as prescribed by the Labor Standards Act?

A153. According to Article 61 of the Labor Standards Act, the employer is to inform each employee of unused paid leave, and urge the employee in written form to notify the period for using the leave. The employee that has received such a notice/letter must determine the period for using the leave, and if he/she does not, the employer shall prescribe the period for using the unused paid leave, and notify the employee "in written form".

- The regulation that the employer must urge or notify the employee in "written form" is to ensure that measures to promote the use of paid leave are surely implemented, and the intention is to strengthen protection of workers' rights and prevent conflict between parties due to unclear measures. Notifying employees with use of intra-company email, or posting official notifications on the non-used paid leave of each employee on the company bulletin board cannot be recognized as clear measures in comparison to urging or notifying "in written form" to each individual employee.
- However, there has been a case in which a notification through the company intranet system was recognized as a written inform. The legality of each case can be determined by considering the purpose of the related law, etc.

※ Measures to urge or notify the use of paid leave is not an obligation for the employer. Therefore, when the employer has not taken measures to urge or notify the use of paid leave, and the employee does not designate a period for using paid leave and does not use the paid leave, annual paid leave allowance must be paid for the unused leave.

Q154. When making an advance notification of dismissal, the legal period for advance dismissal notice is 30 days. When five days are lacking among the total of 30 days, does the employer have to pay an allowance for those five days?

A154. Article 26 of the Labor Standards Act prescribes that when an employer intends to dismiss an employee (including dismissal for management reasons), he/she shall give the employee a notice of dismissal at least 30 days in advance of such dismissal, and, if the employer fails to give such advance notice, he/she shall pay such employee 30 days' ordinary wage at the least.

- The period for advance notice of dismissal must be calculated based on calendar days instead of working days, and therefore cannot be extended even when there is a holiday. When calculating, the first day is not included and calculation shall begin from the following day based on calendar days. If even one day is lacking during the legal period for advance notification of dismissal, regular wages pertaining to 30 days - the entire statutory period - or more must be paid.

- * If the employer wants to dismiss an employee, the reason and period for dismissal must be stated in written form.
- * Once the advance notice of dismissal is given, it cannot be withdrawn unless there is the consent of the employee.
- * The effect of the termination shall occur when the notification has been delivered to the counterparty.
- * During the advance notice period, the employment relationship is maintained, and if the employer continues to use the employee after the advance notification period has been expired, the dismissal process must be undertaken again.

Q155. When an employee has submitted a letter of resignation, when is that employee officially no longer part of the company?

A155. Resignation is the termination of labor services due to the unilateral expression of such an intent by the employee. This can be divided into voluntary retirement, agreed retirement and mandatory retirement due to reaching the retirement age. There are no provisions in the Labor Standards Act in regard to the retirement procedure. When the parties concerned did not stipulate the related regulations in the rules of employment, collective agreement, etc., the provisions of the Civil Act shall apply.

- According to the Civil Act, when the employee expresses his intention to resign (submission of letter of resignation) and the employer accepts (acceptance of letter of resignation), the resignation becomes effective when the employer accepts the letter of resignation.
- If the company does not accept the letter of resignation of the employee, the point at which the resignation becomes effective shall differ according to the method in which the wages are paid. When the wages are paid on a term-basis, such as monthly, and if, after the term in which the resignation has been submitted (that month, in the case of monthly payment system), one wage payment term (meaning the next month) has passed, the resignation becomes effective. When wages are not paid on a term-basis, the effect begins when one month has passed after the employer receives notification from the employee of his/her will to resign.

Q156. What are the conditions that must be satisfied in order to make an interim settlement of severance payments?

A156. Article 8 (2) of the Act on the Guarantee of Employees' Retirement Benefits stipulates that "Any employer may, upon request by an employee due to a ground prescribed by Presidential Decree, pay such employee a retirement allowance for his/her continuous service period prior to his/her retirement. In such cases, the continuous service period to be used for the calculation of the amount of a retirement allowance accumulated thereafter shall be reckoned anew from the time when the balance is settled."

- "Grounds prescribed by Presidential Decree" (as in Article 3 of the Enforcement Decree of the Act on the Guarantee of Employees' Retirement Benefits) are as follows:
 1. Where an employee who is a non-homeowner purchases a house in his/her own name
 2. Where an employee who is a non-homeowner pays a tenancy deposit under Article 303 of the Civil Act or a security deposit under Article 3-2 of the Housing Lease Protection Act for residential purposes. In such cases, the number of such occurrences shall be limited to one time while the employee works in the same business
 3. Where an employee pays the medical care costs incurred for convalescence from illness or injury of any of the following persons, which requires at least six months of convalescence:
 - a. The employee himself/herself
 - b. The spouse of the employee
 - c. The family members dependent on the employee or on the spouse of the employee
 4. Where an employee is declared bankrupt pursuant to the Debtor Rehabilitation and Bankruptcy Act within five years retroactively from the date he/she applies for interim settlement of a retirement allowance
 5. Where an employee receives a decision to commence individual rehabilitation procedures pursuant to the Debtor Rehabilitation and Bankruptcy Act within five years counted retroactively from the date he/she applies for interim settlement of a retirement allowance

- 6-1. Where an employer implements a system of reducing wages based on a particular age, length of consecutive service, or amount of wage through a collective agreement, employment rules, etc. on the condition of extending or guaranteeing the current full retirement age
 - 6-2. Where an employer reduces contractual work hours by one hour per day or five hours per week or longer according to an agreement with the employee, and the employee agrees to work for three months or longer according to the reduced contractual work hours.
 - 6-3. Where an employee receives a reduced retirement allowance due to shortened working hours as the Labor Standards Act (No. 15513) enters into force
 - 7. Where damage was caused due to disaster and the cause falls under those publicly announced by the Minister of Employment and Labor.
- In addition, the following special conditions must be met for interim settlement:
 - ① Interim settlement of severance pay is possible "only when there is such a demand from the employee." When there is no such demand from the employee, the employer's unilateral payment of severance pay as interim settlement is not effective.
 - ② There must be approval by the employer for interim settlement of severance pay. The employer is not obligated to make an interim settlement of severance pay, and he/she can refuse the demand of the employee for mid-term settlement when there are justifiable business reasons to do so.

※ When severance pay has been settled mid-term with the consent of the employer, in order to pay the remaining severance pay, the number of continuous years of service must be calculated anew from the time of interim settlement. Even if the severance pay has been settled mid-term, the employee has not actually left the company. Therefore, interim settlement of severance pay will not affect the calculation of the employee's continuous service period for HR management such as calculation of annual paid leave days, certification of career, or promotions.

Q157. When an employee's work attitude and performance are poor, can he/she be dismissed?

A157. In Article 23 (1) of the Labor Standards Act, it is prescribed that "An employer shall not, without justifiable cause, dismiss, lay off, suspend, or transfer an employee, reduce his/her wages, or take other punitive measures (hereinafter referred to as "unfair dismissal, etc.") against him/her."

- Therefore, for the dismissal to be justified, there must be an accountable reason "that prohibits the continued service of the employee according to social norm." This is judged based on various overall circumstances, such as the purpose of the punitive measures, nature of the business, status of the employee, and the motivation for engaging in inappropriate behavior, and whether the order of the company has been disrupted.
- In addition, as per subparagraph 12 of Article 93 of the Labor Standards Act, the rules of employment must prescribe "matters regarding reward and punishment". In terms of procedure, they can have legitimacy only when they are impartially exercised according to the prescriptions made by an institution of authority in a collective agreement or rules of employment.
- Poor work attitude is generally a behavior in which the employee does not focus on his/her work and undermines efficiency or production. Of course, poor work attitude and negative performance alone can not be sufficient reasons for the employee to be subject to punitive treatment. However, when the employee continues to show lack of diligence or improvement despite numerous instructions for correction and orders for participation in training, he/she could be subject to punitive measures.

*In this case, some time should be given to the employee to prepare materials to explain him/herself. He/she should be given the opportunity to present him/herself in front of the Disciplinary Committee to provide an explanation/excuse for his/her behavior. This would reduce the chance of legal disputes from arising.

Q158. As it is difficult to hire an employee that is suitable for a position, and to dismiss an employee that is not suitable for a position, can the company assign a period in which to test the capabilities of a new employee?

A158. A probation period can be established in the labor contract to give the company time to test the capabilities of the new employee. In general, probation refers to "a form of labor in which a definitive labor contract has been established, and the purpose of which is to promote work skills and capabilities." The Labor Standards Act is also fully applied to probationary employees, and they can only be dismissed if there is a valid reason.

- The Labor Standards Act does not stipulate separately on the training period. However, based on subparagraph 1 of Article 26 of the Labor Standards Act, "where the period during which the employee has worked continuously is less than three months", the obligation to provide a 30 day advance dismissal notice is not applied. As a result, a probation period of three months is set in most cases.

Q159. The minimum wage was calculated based on statutory monthly work hours of 209 hours. How were the work hours calculated?

A159. According to Article 50 of the Labor Standards Act, work hours should not exceed 40 hours a week. Based on this, the average monthly fixed work hours were calculated as follows:

- The monthly average number of weeks in a year is 4.345 weeks (365 days ÷ 7 days ÷ 12 months). Including eight work hours per day and eight hours of weekly holiday, the total work hours comes to 48 hours per week. Therefore, if the monthly average number of weeks is multiplied with 48 hours per week, the total monthly work hours comes to 208.59 hours (4.345 X 48 = 208.56). In other words, the hourly minimum wage was calculated based on 209 hours of statutory monthly work hours.

Q160. A worker works 15 hours a day three days a week, and the total weekly work hours are 45 hours, which is within the total weekly work hour limit of 52 hours. Is this still a violation of work hour regulations?

A160. According to Article 50 of the Labor Standards Act, the statutory work hours cannot exceed eight hours a day and 40 hours a week excluding recess hours. Also, Article 53 of the Labor Standards Act limits weekly extended work hours to 12 hours.

- In the above case, the worker has worked seven hours in excess of eight hours per day, which makes the extended work hours a total of 21 hours (7 hours x 3 days). Therefore, even if the total weekly work hours is within 52 hours, if weekly extended work hours exceed 12 hours, it constitutes a violation of the law.

Q161. Should only Sunday be designated as the weekly holiday?

A161. According to Article 55 of the Labor Standards Act, a day of paid leave must be guaranteed for an average of at least once a week. However, it does not prescribe a certain day as the weekly holiday. This means Sunday does not necessarily have to be the designated weekly holiday. The day which marks the beginning of a week can be designated through a discussion among labor and management in accordance with internal provisions, the rules of employment, labor contract and collective agreements.

Q162. Can executives of foreign-invested companies subscribe to employment insurance?

A162. The employee of a business that has employment insurance becomes the insured person of the employment insurance, but the representative director, etc. is not. The employee provides labor under the instruction and supervision of the business owner, and receives wages in return. Directors, auditors and representatives of a corporation, or a person in the position of an executive body are not employees. However, even if one holds the title of a managing director or executive vice-president, if he/she does not have actual authority to execute operations and is not accountable for the business of the company, but provides services in a subordinate role, he/she is an employee, and therefore his actual status should be judged based on such specific facts.

Q163. In what cases can a foreign employee be exempted from subscribing to national pension?

A163. Foreigners residing in Korea must subscribe to national pension, just as domestic persons. When a foreigner aged 18 or older but younger than 60 is employed by a business that subscribes to national pension, he/she becomes classified as a business subscriber, while other foreigners become local subscribers.

- In the following cases, persons are exempted from national pension subscription:
 - ① Trainees from abroad (employment as trainee requires subscription), foreign students, diplomats, and other cases in which legislation excludes persons from mandatory National Pension subscription
 - ② Nationals of countries that do not require mandatory subscription to a pension system like the Korean national pension
 - ③ When an employee has been dispatched to Korea from a country that has established a social security agreement with Korea submits a certificate of subscription of his/her home country

※ One must inquire with the National Pension Service to check on national pension subscription requirements per country of origin and sojourn status

<Example: Types of sojourn statuses that are exempted from national pension subscription >

Diplomat (A-1), Government Official (A-2), International Agreement (A-3), Visa Waiver Program (B-1), Tourist/Transit (B-2), Short-term News Coverage (C-1), Short-term General (C-3), Short-term Employee (C-4), Culture and Art (D-1), Student (D-2), Technical Training (D-3), General Training (D-4), Religious Worker (D-6), Family Visitor (F-1), Dependent Family (F-3), Miscellaneous (G-1)

Q164. As a foreigner who works for a foreign-invested company (D-8 Visa holder), is it mandatory to subscribe to national health insurance?

A164. In principle, mandatory subscription applies in this case. However, according to Article 109 (5) of the National Health Insurance Act and Article 61-4 of the Enforcement Rules of the same Act, a foreigner residing in Korea can receive substantial medical coverage amounting to recuperation pay in accordance with foreign laws, foreign insurance or a contract with the employer. When the employer or subscriber has applied for subscription exemption, the person need not subscribe.

<Procedure for application for exemption from subscription >

When a foreigner is eligible to apply for exemption from subscription to national health insurance, the employer shall submit the Report on Disqualification from Workplace Subscription to the National Health Insurance Service by attaching the following forms:

- ① When receiving medical coverage pursuant to the laws, decrees and insurance of the foreign country
 - A copy of a certificate confirming applicability of foreign laws, or a document proving that the foreigner can receive medical coverage domestically such as an insurance policy (including Korean translation)
 - A copy of a document that indicates the intent of the foreigner to withdraw from health insurance
- ② When receiving medical coverage pursuant to a contract with the employer, etc.
 - A copy of a document such as labor contract that can prove that the foreigner can receive medical coverage domestically (including Korean translation)
 - A copy of a document certifying that medical expenses have been paid to the foreign employee by the pertinent business site (including Korean translation)
 - A copy of a document that indicates the intent of the foreigner to withdraw from health insurance

※ Working level matters such as specific procedures or required documentation must be confirmed by the National Health Insurance Service.

Q165. If a foreigner returns to his/her home country, can he/she receive a refund for his/her national pension contributions?

A165. When a foreigner returns to his/her home country, a refund to the foreign subscriber of national pension fund in the form of a lump sum payment shall be granted only in the following cases (source: www.nps.or.kr, Foreigners and Lump Sum Refund):

- ① When the foreigner's home country's law provides for the payment of an allowance to a Republic of Korea citizen that is tantamount to a lump sum refund paid by the Korean system
- ② When a social security agreement on the payment of a lump sum refund has been established between Korea and the home country of the foreigner
 - ※ Countries that are party to a social security agreement (Jul. 2022, 22 countries): Germany, US, Canada, Czech Republic, Hungary, Australia, France, Belgium, Bulgaria, Poland, Slovakia, Romania, Austria, India (Nov. 1, 2011), Türkiye (formerly Turkey, Jun. 1, 2015), Switzerland (Nov. 1, 2015), Perum Luxemburg, Slovenia, Croatia, Uruguay
 - ※ There are other countries that are parties to a reciprocity recognition agreement with Korea (24 countries), and since recognition may be determined depending on the minimum subscription period, it is necessary to inquire the National Pension Service on whether a lump sum refund can be made.
- ③ When a foreigner with status of stay of E-8 (Industrial Trainee), E-9 (Non-Professional), or H-2 (Work and Visit) has subscribed to national pension
 - ※ When a foreigner claims a lump sum refund on the ground that he/she has to return to his/her home country, the lump sum refund is paid only when it is confirmed that he/she has departed. However, when a document is submitted proving that the person plans to leave the country within one month such as a plane ticket, a claim for a refund can be filed before departure.

Q166. Is payment of retirement allowance mandatory for an employee that is leaving the company?

A166. In accordance with Article 34 of the Labor Standards Act and Article 4 of the Act on Guarantee of Retirement Allowance to Employees, when an employee retires after working for at least a period of one year, retirement allowance pertaining to the average wage of at least 30 days must be paid for one year of continuous service. There are no restrictions to the reason for retirement, and the retirement allowance must be paid in all cases in which the labor contract is terminated, such as when the employee resigns, dies, reaches the retirement age, is dismissed upon disciplinary action, or the company ceases to exist. However, when an employee's continuous service period is less than one year, or when an employee's weekly average work hours for four weeks is less than 15 hours, retirement allowance need not be paid.

- The retirement allowance system was adopted on Dec. 1, 2005. All employers must adopt the retirement allowance or retirement pension system. When an employee has retired, the employer shall pay a retirement allowance within 14 days from the day that the cause of the payment has occurred. Under special circumstances, the payment deadline can be extended upon discussion among the parties concerned.

Q167. Are newly established foreign-invested companies obligated to hire Korean employees?

A167. There are no provisions under labor laws that stipulate that it is mandatory for foreign-invested companies to hire Korean employees. However, when it comes to visa issuance for hiring foreign professionals, the number of Korean employees could be an important benchmark. When issuing an E-7 (Specific Activity) visa, the number of recipients can be restricted to within 20% of the number of Korean employees. In order to hire foreign professionals, it is advised to check the specific visa-related matters in advance with the immigration office.

Q168. When due to poor sales and financial difficulty, a business shuts down temporarily, does shutdown allowance still have to be paid?

A168. A temporary shutdown means that even though an employee wishes to provide labor as per the labor contract, such a provision of labor is not possible or the employer refuses to receive service. According to Article 46 of the Labor Standards Act, when a business shuts down due to a cause attributable to the employer, he/she shall pay the employees concerned allowances of not less than 70% of their average wages during the period of shutdown. If that amount exceeds the amount of ordinary wage, ordinary wage can be paid as shutdown allowance.

- A cause attributable to the employer can be considered as a business disruption that is caused within the scope of the authority of the employer. Therefore, although each matter requires careful individual judgment, 1) poor sales and financial difficulty; 2) lack of raw materials; 3) transfer of factory; 4) market recession and production volume reduction, etc. have been recognized as causes attributable to the employer.

Q169. Are there data on the wage levels and other measures of comparison regarding the executives or employees of foreign-invested companies?

A169. Data on wages are considered sensitive and confidential, so it is hard to access data on the wages the employees of foreign-invested companies. However, some consulting companies or head-hunting companies might have their own comparative data on such wages. Also, the Ministry of Employment provides statistical data on labor and employment through its website (laborstat.moel.go.kr) where users can access information on the wages of Korea classified by industry, size of business, type of employment, business type, etc.

8. Environment



8. Environment

Q170. When intending to establish a factory, what environment-related laws should be complied with?

A170. Before establishing a factory, if the manufacturing facilities, etc. that are to be established within the factory fall under the category of "facilities that discharge environmental pollutants" as defined by environment-related laws, a prior permit/approval must be acquired regarding establishment of discharging facilities as prescribed by such laws.

- Environmental pollutant emission facilities and related laws
 - Air pollutant emission facilities, fugitive emission discharge facilities, VOC emission facilities, fugitive dust emission facilities: Clean Air Conservation Act, Special Act on the Improvement of Air Quality in Air Control Zones
 - Wastewater emission facilities, non-point pollution source:
 - Noise and vibration emission facilities: Noise and Vibration Control Act
 - Malodor emission facilities: Malodor Prevention Act
 - Persistent organic pollutant emission facilities: Persistent Organic Pollutants Control Act
 - Specified facilities subject to the control of soil contamination: Soil Environment Conservation Act
 - Waste treatment facilities: Waste Control Act

※ For details regarding permits and approvals for installation of facilities that discharge environmental pollutants as prescribed by environmental laws, refer to the book "Environmental Policies in Korea 2022" available in PDF format on the Invest Korea website (www.investkorea.org).

Q171. What is the Integrated Environmental Permission System (IEPS)? What are the applicable businesses and what is the permission process?

A171. The Integrated Environmental Permission System (IEPS) is permit system under which a single environmental permit is given for each place of business instead of permitting and managing wastes by type such as air pollutants, wastewater, waste discharge facilities, etc., so that facilities can be managed in an integrated manner.

The system comprehensively analyses the effects that pollutants have on air, water, and other environments and peoples' health, and ensures that the discharge of pollutants can be minimized using the best available techniques economically achievable (BAT) in the place of business as a whole.

The businesses subject to IEPS are those that have a significant influence on the environment, such as power generation and petrochemical. Type 1 and type 2 places of business generating annual air pollutants of 20 tons or more or discharging daily waster of 700 m³ or more are subject to IEPS.

The basic process is identical to the current permission system: ① Application for integrated permission → ② Review of integrated permission and decision to grant permission → ③ Confirmation of permitted matters → ④ Post-management, and the entire process of permission and management encompassing application for permission, review and decision of permission, and post-management are processed one-stop, on-line through the IEPS.

Q172. What should a company manufacturing (or importing) chemical substances remember in terms of registration and report?

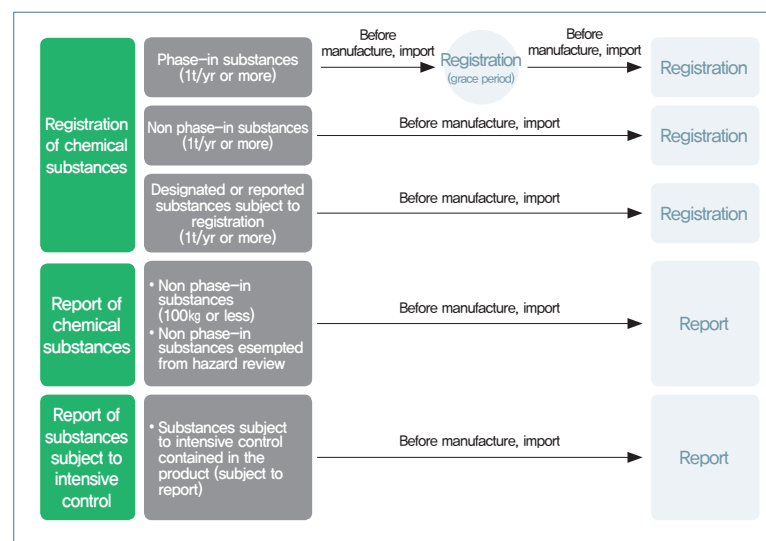
A172. [Registration of chemical substances]

When intending to manufacture or import 1 t or more of phase-in chemical substances or 100 kg or more of non phase-in substances per year, a registration should be filed with the President of the National Institute of Environmental Research (NIER). However, in the case of phase-in chemical substances of 1 t or more per year, manufacturing or importing is permitted without registration during the grace period for registration. To have the grace period applied, a report should be filed to the CEO of Korea Environment Corporation.

[Report of chemical substances/substances subject to intensive control]

Where intending to manufacture and import non phase-in substances subject to reporting, a report should be filed to the President of NIER. Where intending to manufacture and import non phase-in substances contained in a product, a report should be filed to the river basin environmental office or regional environmental office if reporting is required.

[Related law: Act on Registration, Evaluation, etc. of Chemicals]



Q173. What are the matters that should be observed when handling hazardous chemical substances?

A173. Where operating a business handling hazardous chemical substances (e.g., import, manufacture, use, storage, transport, sale), the jurisdictional environment authority's sales permission should be obtained.

The company that intends to import or manufacture chemical substances should submit a specification of confirmation of chemical substances to the Korea Chemicals Management Association, and all handlers of such substances should prepare and keep a chemical substance management log, and register statistical records of chemical substances on the system every two years. Also, where a chemical substance accident has occurred, a report should be filed to the district environmental office and fire department within 15 minutes.

[Related law: Chemical Substances Control Act]

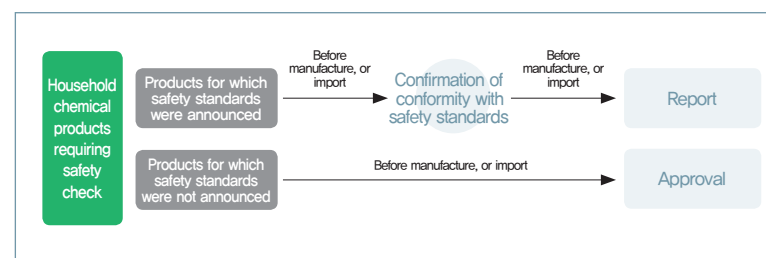
※ The Chemical Substances Control Act prescribes the various obligations that a person handling chemical substances should comply with in order to prevent and adequately manage the risks to people's health and the environment due to chemical substances. In particular, if the chemical substances are hazardous chemical substances (i.e., toxic substances, restricted substances, banned substances, substances subject to permission, accident-prone chemicals), stricter regulations apply in consideration of their risks and hazardousness.

Q174. What are the types of consumer safety products subject to safety verification and what products are subject to reporting and approval?

A174. "Household chemical products that require safety check" are household chemical products that are recognized as having risk as a result of risk evaluation and designated and publicly announced as such by the Minister of Environment. As of the end of June 2020, 43 items including cleaners and laundry detergents have been designated and announced. Also, to manufacture or import such products of which the safety standards have been publicly announced, a confirmation of conformity by a testing or inspection agency is required.

When a household chemical product that requires safety check received confirmation of conformity with safety standards, a report should be filed to the President of the Korea Environmental Industry & Technology Institute (KEITI). To manufacture or import household chemical products for which safety standards have not been publicly announced, an approval of the President of the National Institute of Environmental Research should be obtained.

[Related law: Consumer Chemical Products and Biocides Safety Control Act]



<Types of Household Chemical Products that Require Safety Verification>

| Classification | Item |
|--|---|
| Cleaning products | 1. Cleaner 2. Remover |
| Laundry products | 1. Laundry detergent 2. Bleach 3. Fabric softener |
| Coating products | 1. Gloss coating product 2. Special purpose coating product 3. Rust preventer 4. Lubricants 5. Ironing auxiliaries 6. Finishing product 7. Stiffening agent |
| Adhesive/bonding products | 1. Adhesive 2. Bond 3. Hardening accelerator |
| Air freshening/deodorant products | 1. Air refreshener 2. Deodorant |
| Dyeing and painting products | 1. Dye 2. Paint |
| Automobile products | 1. Washer fluid for automobiles 2. Antifreeze for automobiles |
| Printing and document related products | 1. Ink and toner for printers 2. Red stamp ink 3. Correction fluid and correction tape |
| Beauty products | 1. Beauty adhesive 2. Dye for tattoo |
| Leisure goods maintenance product | 1. Sports goods cleaning and shining products |
| Disinfecting products | 1. Disinfectant 2. Algicide 3. Antibiotic/disinfectant for humidifiers 4. Sterilizer/disinfectant to prevent infectious disease |
| Extermination products | 1. Repellant 2. Extirpator, inhibitor, attractant insecticide for public health 3. Repellant for public health 4. Disinfectant to prevent infectious disease 5. Rodenticide to prevent infectious disease |
| Preservative/preservative-treated products | 1. Preservative for wood 2. Preservative-treated filter product |
| Others | 1. Candle 2. Moisture remover 3. Artificial spray for eyes 4. Fog spray for performances 5. Household chemical products for humidifiers |

Q175. What are the types of biocidal substances and products subject to safety verification and what are the standards for reporting and approval?

A175. Biocides are classified into "biocidal substance" which means any chemical substance, natural substance, or microbe used to remove, render harmless, or deter any harmful organism; "biocidal product" which means any product with the main purpose of removal, etc. of harmful organisms; and "biocide-treated product" which means any product in which a biocidal product has been used for an ancillary purpose of removal, etc. of harmful organisms other than the main function of the product, and are controlled accordingly.

※ Example of biocidal substances: PHMG, PGH, CMT/MIT, lavender oil, insecticides,

※ Example of biocidal products: disinfectants, insect repellents, preservatives, disinfectants for humidifiers, ozone ionizers

A company that intends to manufacture or import biocidal substances for use in biocidal products should submit an application for approval of biocidal products to NIER and obtain a safety verification to manufacture, import, or distribute the products.

[Related law: Consumer Chemical Products and Biocides Safety Control Act]

<Classification of biocidal products>

| Product | Item |
|----------------------------|---|
| Germicides (disinfectants) | 1. Germicides 2. Algicides |
| Exterminators | 3. Rodenticides 4. Other vertebrate pest control 5. Insecticides 6. Other non-vertebrate pest control 7. Repellents |
| Preservatives | 8. Preservatives for products 9. Preservatives for product surface treatment 10. Preservatives for textile and leather 11. Preservatives for wood 12. Preservatives for construction material 13. Preservatives for materials and equipment 14. Preservatives for cadavers or taxidermy |
| Others | 15. Preventatives for contamination of vessels or underwater facilities |

Q176. What rules apply to the collection, transport, storage and recycling of waste that is subject to restrictions on cross-border transfer?

A176. In regard to the collection, transport and recycling of waste that is exported or imported, the Wastes Control Act or the Act on the Promotion of Saving and Recycling of Resources is applied.

- herefore, when intending to collect, transfer and export wastes, a permission for waste collection and transfer pursuant to Article 25 of the Wastes Control Act should be obtained. Where interim waste treatment is required, a permission for interim waste treatment business should be acquired.
- In addition, where a permission to import wastes is obtained, the imported wastes should be treated by the importer or commissioned to a legitimate treatment entity in accordance with Article 18-3 of the Act on the Control of Transboundary Movements of Hazardous Wastes.

※ Refer to the Notice on the Items of Waste Subject to the Act on the Transboundary Movement of Hazardous Wastes and Their Disposal on whether an item is a waste subject to control (Notice of the Ministry of Environment, no. 2020-292).

Q177. What is the scope of application of Korea's GHG emission trading scheme and its operation process?

A177. Korea has been operating the GHG emission trading scheme since Jan. 1, 2015 pursuant to the Act on the Allocation and Trading of Greenhouse-gas Emission Permits legislated in 2012.

Businesses emitting large amounts of GHG belonging to the sectors of transition, transport, industry, building and other public areas are subject to the GHG emission trading scheme and are allocated emission permits. More specifically, a business whose total annual average GHG emission for a certain period is 125,000 tons, or businesses emitting large amounts of GHG owning a place of business with total annual average GHG emission of 25,000 tons or more are designated as businesses subject to allocation and are subject to the GHG emission trading scheme.

Under Korea's GHG emission trading scheme, emission rights are allocated to GHG emitting businesses every five years, and the outcomes of compliance shall be managed. The five years which are the unit of allocation and management are referred to as "commitment period". Before the beginning of each commitment period, the master plans for emissions trading scheme and the plans to allocate national emission allowances are established. When the master plan and the allocation plan of emissions trading scheme are established, the businesses subject to allocation are designation and GHG emission permits are allocated. If a business subject to allocation requests allocation permits to the government before the beginning of each commitment period,

※ It is currently the third commitment period (2021-2025).

"Compliance year" is each year during a commitment period set to allocate emission permits to business entities producing GHG and to manage their outcomes of compliance every five years to achieve national GHG reduction targets. Businesses subject to allocation should submit GHG emission permits matching their GHG emission amount to the government at the end of each compliance year, and the GHG emission report shows the amount of GHG emissions by companies eligible for allocation. When a business receives confirmation of a confirmation agency and submits

A177. the GHG emission report and the confirmation report, the government can check the business's emission amount and notify the business. Then, the business can submit their GHG emission permits that match their final certified GHG emission amount to the government.

(Reference: GHG emission trading, a key to carbon neutrality (Ministry of Environment, August 2021))

Q178. What projects are subject to environmental impact assessment, and what is the procedure?

A178.

- In accordance with the Environmental Impact Assessment Act, environmental impact assessment means the provision of a plan to avoid, eliminate or reduce damaging environmental impact by making an advance investigation, prediction and evaluation of the impact a project or business can have on the environment. This is conducted when providing a permit, approval, license or decision ("approval, etc.") of execution plans that can have an impact on the environment.
- The projects subject to environmental impact assessment are classified into 81 subcategories in 17 categories such as urban development, and are prescribed in Article 22 of the Environmental Impact Assessment Act and attached Table 3 of the Enforcement Decree of the same Act.
- The environmental impact assessment procedure is as follows:
 - ① Prepare a draft environment impact assessment report
 - The project implementer must prepare a draft of the environmental impact assessment report and collect the opinions of the residents.
 - ② Prepare the environmental impact assessment report and request launch of consultation
 - A project implementer that should receive an approval, etc. shall prepare an environmental impact assessment report and submit it to the head of the approving authority. The head of the approving authority must request consultation with the Minister of Environment.
 - A project implementer that does not require approval shall prepare an environmental impact assessment report and submit it to the Ministry of Environment.

- ③ Notification and implementation of matters of consultation
 - The Minister of Environment must notify the head of the approval authority or project implementer ("head of the approval authority, etc.") within 45 days from the date of receiving a request for consultation (for unavoidable cases, the period can be extended to 60 days) of the details of the consultation that was conducted.
- ④ Implementation and report of consultation matters that were notified
 - The head of the approving authority, etc. shall take the necessary measures to reflect the consultation matters that were reported into the relevant business plan. When an approval or confirmation has been made for a business plan, the results shall be reported to the Minister of Environment.

Q179. What plans are subject to strategic environmental impact assessment, and what is the procedure?

A179.

- "Strategic environmental impact assessment" means an assessment conducted to determine the feasibility of a plan, the appropriateness of a site location, etc. from an environmental perspective by verifying whether the plan conforms to the relevant environmental conservation plan and by developing and analyzing alternatives to promote sustainable development of national land when it is intended to formulate a plan that has an environmental impact.
- The plans subject to strategic environmental impact assessment are classified into 'government plan' and 'master development plan', and are prescribed under Article 9 of the Environmental Impact Assessment Act and Table 2 of the Enforcement Decree of the same Act.
 - ※ **Government plan:** A plan that generally indicates the basic direction-setting for, or guidelines for, the development and conservation of all or some national land (33 plans in 9 fields)
 - ※ **Master development plan:** A plan for the designation of a particular development zone or a plan that is required to be formulated by a specific statute or regulation before formulating an implementation plan to form the basis for a standard for an implementation plan (84 plans in 16 fields)

- The strategic environmental impact assessment procedure is as follows:

① **Prepare a strategic environment impact assessment report and request consultation**

- The head of the administrative agency who intends to formulate a government plan shall draw up a strategic environmental impact assessment report and request a consultation with the Minister of Environment. When requesting a consultation, he/she shall give preliminary administrative notice pursuant to the Administrative Procedures Act.
- The head of the administrative agency who intends to formulate a master development plan shall draw up a draft and gather consensus from the head of the relevant administrative agency and residents of the assessed area and draw up a strategic environmental impact assessment report reflecting the consensus and request a consultation with the Minister of Environment.

※ However, in the case of a master development plan formulated through a suggestion of a person other than an administrative agency, the person who made the suggestion shall draw up a draft and submit it to the head of the administrative agency formulating the master development plan.

- The head of the administrative agency formulating the government plan or master development plan that requires approval shall draw up a strategic environmental impact assessment report and submit it to the head of the approving authority, and the head of the approving authority shall request a consultation with the Minister of Environment before approving the plan.

② **Notification and implementation of matters of consultation**

- The Minister of Environment shall, within 30 days of receiving a request for consultation (40 days where the period is extended for unavoidable reasons), inform the details of the consultation that was conducted to the head of the relevant administrative agency.

③ **Implementation of consultation matters that were notified**

- The head of the relevant administrative agency shall take the necessary measures to reflect the consultation matters that were reported into the relevant business plan, and report the Minister of Environment of the results.

[Related law: Environmental Impact Assessment Act]

Q180. A company in Korea represented by a foreigner who owns a 100% stake in the company has an environment-related patent. Is this company eligible for receiving policy funding or other funding?

A180. The Ministry of Environment has secured funds to nurture environmental companies and offers such companies funds in the form of long-term, low-interest loans, so that such funds can be invested for the promotion of green businesses, green facilities and green management in the field of green industries that contribute to solving environment and climate problems and create jobs.

[Environmental policy funds: support of future environmental industry (loans)]

Long-term low-interest loans are provided to SMEs and middle-standing environmental companies to fund facility installation and provide management stability funds

[Environmental policy funds: investment in eco-friendly facilities (loans)]

Long-term low interest installing facilities for reduction of GHG in SMEs and middle-standing companies' places of business

[Green policy fund, eco-friendly facility investment (loans)]

For businesses emitting large amounts of GHG such as businesses subject to the Emissions Trading Scheme and Target Management System, lower interest rates and interest rate subsidies are applied for loans from financial institutions for expansion or establishment of GHG reduction facilities in their place of business.

[Loans for facilities for clean air]

For facilities emitting large amounts of fine dust such as cement kilns, support is provided for establishment and installation of high-efficiency air pollution prevention facilities.

Q181. Can a foreigner or a foreign company operate a business specializing in environmental construction?

A181. A business specializing in environmental construction is a business that specializes in construction work related to the design and construction of air pollution prevention facilities, water quality pollution prevention facilities and noise/vibration prevention facilities. In order to engage in this business, a registration must be made at the city mayor or provincial governor's office. Foreigners or foreign corporations must also register its business specializing in environmental construction in order to conduct this business.

9. Visa



9. Visa

Q182. What are the types and classifications of visas?

A182.

1. Types of visas

• Single-entry visa

- Entry limited to one occasion within the expiration period
- Expiration period: 3 months from the date of issuance

• Multiple-entry visa

- The visa holder can enter the country on two or more occasions within the expiration date.
- Expiration period: Entry is permitted for the following period from the date of issuance:
 - Multiple entry visas pertaining to Diplomat (A-1), Government Official (A-2), International Agreement (A-3): Within 3 years
 - Multiple entry visas pertaining to Visiting Employee (H-2): Within 5 years
 - Multiple entry visas issued under an agreement for the issuance of multiple entry visa: The period prescribed in the agreement
 - Other visas mostly have an expiration period of one year.

2. Classification of short-term sojourn and long-term sojourn visas

• Short-term sojourn visa

- Short-term visas issued to foreigners who intend to stay short-term (within 90 days): Short-term Press Coverage (C-1) Visa, Short-term Visit (C-3) Visa, Short-term Employee (C-4) Visa

• Long-term sojourn visa

- Visas issued to diplomats, foreign government officials, those exempted in accordance with international agreements (persons subject to SOFA) and their family members: Diplomat (A-1) Visa, Government Official (A-2) Visa, International Agreement (A-3) Visa
- Visas that are issued to persons that can engage in employment (visa with E type sojourn status): Professor (E-1) Visa, Foreign Language Instructor (E-2) Visa, Researcher (E-3) Visa, Technical Instructor/

Technician (E-4), Professional (E-5) Visa, Arts/Athlete (E-6) Visa, Foreign National of Special Ability (E-7) Visa, Seasonal Worker (E-8) Visa, Non-professional (E-9) Visa, Vessel Crew (E-10), Working Holiday (H-1) Visa, Work and Visit (H-2) Visa

* Resident (F-2) visa, Overseas Korean (F-4) Visa, and Spouse of a Korean National (F-6) visa holders may engage in employment regardless of the type of business.

- Other general visas: Korean Arts and Culture (D-1) Visa, Student (D-2) Visa, Industrial Trainee (D-3) Visa, General Trainee (D-4) Visa, Long-term News Coverage (D-5) Visa, Religious Worker (D-6) Visa, Intra-company Transferee (D-7) Visa, Business Investment (D-8) Visa, International Trade (D-9) Visa, Family Visitor (F-1) Visa, Resident (F-2) Visa, Dependent Family (F-3) Visa, Overseas Korean (F-4) Visa, Permanent Resident (F-5) Visa, Miscellaneous (G-1) Visa

* For further questions, inquire at the Ministry of Justice's 1345 Immigration Contact Center (1345 without an area code), or visit Hi Korea (<http://www.hikorea.go.kr/>).

Q183. What is the visa issuance certificate?

A183. If deemed necessary, the Minister of Justice may issue a visa issuance certificate to a foreigner who intends to enter the Republic of Korea, upon application of the foreigner, before an overseas diplomatic mission issues a visa. An application for a visa issuance certificate may be filed by any person who intends to invite a foreigner to the Republic of Korea on behalf of the foreigner (Article 9 of the Immigration Act). The purpose of issuing a visa issuance certificate is to simplify the visa issuance procedure and to shorten the visa issuance period in order to enhance the convenience of foreigners and their inviters in Korea. When the visa issuance certificate is issued, the inviter sends the issuance number and documents to the foreigner living abroad. When the foreigner applies for a visa at an overseas diplomatic mission of Korea, he/she can receive the visa if he/she submits the documents and the issuance number of the certificate.

※ A foreigner who wishes to receive a visa issuance certificate must submit the application form and required documents to the immigration office with jurisdiction over the residence of the person who wishes to invite him/her. The effective period of the visa issuance certificate is three months from the date of issuance.

Q184. What is the status of stay?

A184.

- The Republic of Korea has the status of stay system as a basic system for managing the entry and departure of foreigners and their stay in Korea (Article 10 of the Immigration Act and Article 12 of the Enforcement Decree of the Act)
- A status of stay is a classification of the types of social activities that foreigners staying in Korea can engage in and the status of foreigners in Korea.
- As long as a foreigner who entered Korea with a specific status of stay maintains the activities or status permitted under that status of stay, his/her stay in Korea shall be guaranteed. However, where a foreigner intends to change his/her status of stay to another one or intends to engage in an activity that is not covered by his/her current status of stay, permission should be obtained beforehand.

Immigration Act

▶ Article 10 (Status of Stay)

A foreigner who intends to enter Korea should obtain the status of stay prescribed by Presidential Decree.

1. Standard status of stay: a status of stay by which a period of stay in the Republic of Korea is limited pursuant to this Act
2. Status of permanent residency: a status of stay by which permanent residency in the Republic of Korea is permitted.

▶ Article 10-2 (Standard Status of Stay)

- ① The standard status of stay under subparagraph 1 of Article 10 (hereinafter referred to as "standard status of stay") shall be classified as follows:
 1. Status of short-term stay: a status of stay by which it is permitted to stay in the Republic of Korea for not more than

90 days (where a period of stay exceeds 90 days pursuant to a visa exemption agreement or the reciprocity, such period of stay) for the purpose of tourism, visit, etc.

2. Status of long-term stay: a status of stay by which is permitted to stay in the Republic of Korea within a maximum period exceeding 90 days prescribed by Ordinance of the Ministry of Justice for the purpose of study, training, investment, presence for business, marriage, etc.

- ② Types of status of short-term stay and status of long-term stay under paragraph (1), persons eligible for any type of status of stay or extent of activities under such status shall be prescribed by Presidential Decree in consideration of the purpose of stay, whether employment activities are permissible, etc.

▶ Article 10-3 (Status of Permanent Residency)

- ① Limitations on the extent of activities and the period of stay shall not apply to an alien granted the status of permanent residency under subparagraph 2 of Article 10 (hereinafter referred to as "status of permanent residency"),
- ② Persons who intend to acquire the status of permanent residency shall be persons eligible for the status of permanent residency prescribed by Presidential Decree and meet each of the following requirements:
 1. He or she shall be of good conduct, such as observing the Acts and subordinate statutes of the Republic of Korea.
 2. He or she shall be able to make a living, relying on the income, assets, etc. of his or her own or a family member with whom he or she share livelihood.
 3. He or she shall have basic knowledge necessary to continuously live as a national of the Republic of Korea, such as Korean language capability and the understanding of Korean society and culture.
- ③ Notwithstanding paragraph (2) 2 and 3, the Minister of Justice shall wholly or partially alleviate or exempt the requirements referred to in paragraph (2) 2 and 3 for the persons prescribed by Presidential Decree, such as those rendering distinguished services to the Republic of Korea, those with excellent capabilities in a specific field, including science, management,

education, culture and arts, and athletics, and those making investment of a certain amount or more in the Republic of Korea.

- ④ Matters necessary for the standards, extent, etc. of the requirements under each subparagraph of paragraph (2) shall be prescribed by Ordinance of the Ministry of Justice.

► **Enforcement Decree of the Immigration Act**

Article 12 (Status of General Stay)

Types of the status of short-term stay under Article 10-2 (1) 1 of the Act, and types of the status of long-term stay and persons falling under each type of status of stay or scopes of activities by type of status of stay under subparagraph 2 of the same paragraph, are as specified in attached Tables 1 and 2, respectively.

► **Enforcement Rules of the Immigration Act**

Article 18-3 (Upper Limit of the Period of Stay Granted to Each Status of Stay)

The upper limit of the status of stay for each type of status of stay pursuant to Article 10-2 (1) 2 of the Act shall be as prescribed by attached Table 1. However, the Minister of Justice may set the upper limit differently when it is deemed necessary under international customs, the principle of reciprocity or national interest.

Q185. If a foreigner entered Korea with a Tourist/Transit (sojourn status: B-2, 30 days or 3 months) visa, when is the first and last day when calculating the period of stay?

A185. When calculating the period of stay, the date of entry is not included, and the period is calculated from the day following the date of entry. When the date of expiration of the period of stay falls on a public holiday, the following day shall be the expiration date. If it falls on a Saturday, two days later (Monday) shall be the expiration date.

- For example, when a foreigner has entered the country with a Tourist/Transit (B-2, 30 days) visa on March 31, 2023, the effective period of the visa shall begin from the following day, April 1, and the expiration date of the stay shall be April 30. However, since the day after April 30 is a public holiday, the day after the following day (May 2) shall be the expiration date.
- On the other hand, if the foreigner has entered the country on March 31, 2023 with a Tourist/Transit (B-2, 3 months) visa, the effective stay period shall be calculated in months, and the expiration date shall be June 30, 2023. If the expiration date is a public holiday, the following day shall be the effective expiration date, while if the end of the visa period lands on a Saturday, the following Monday shall be the effective expiration date. This is because Korea's Civil Act prescribes that if a period has been fixed by the week, month or year, the first day of such period shall not be included in the computation, and it shall be computed according to the calendar.

Q186. What are the visa-related services provided by KOTRA's Foreign Investor Support Center?

A186. In order to facilitate the domestic business activities of foreign investors in Korea, KOTRA's Foreign Investor Support Center (FISC) provides one-stop services to Business Investment (D-8) visa holders. In particular, officials dispatched from the Minister of Justice process visa and sojourn matters on the same day of application if there are no problems with documentation and evaluation.

※ **Visa and sojourn services provided by FISC**

- Granting of status of stay, permission of change of status of stay, alien registration (re-issuance), permission of re-entry, permission of extension of period of stay, report of change in alien registration matters, report of change of place of stay, permission of activities outside the ones permitted under the current status of stay, addition or change of workplace, certificate of entry & exit, certificate of alien registration (including perusal of information)

- FISC also provides services for Dependent Family (F-3) members of Business Investment (D-8) visa holders. The services include alien registration, permission of change of status of stay, permission of extension of period of stay, permission of re-entry, and issuance of certificate of entry & exit and alien registration certificate.

Q187. What is the eligibility for a Business Investment (D-8) visa?

A187. A Business Investment visa is issued to indispensable professional specialists engaged in the management, business administration, production and technology, or persons who own industrial property rights or intellectual property rights and established a venture company with advanced technology and received confirmation of venture company.

- Where a foreigner has introduced investment funds of KRW 100 million or more pursuant to the Foreign Investment Promotion Act and has established a foreign-invested company, he/she can apply for a Business Investment (D-8) visa.
- A person dispatched as an indispensable professional specialist from the overseas parent company of a foreign-invested company established in Korea can apply for a Business Investment visa. The employees of affiliated companies can be dispatched, but in this case, the dispatch order should be issued by the head company and the dispatch period must be stated.

* Indispensable professional specialists refer to executives, senior managers and professional technicians working in the field of management, business administration, or manufacturing and technology, and excludes persons who engage in work that is generally replaceable in Korea.

- Where to apply: immigration office having jurisdiction over the residence of the applicant or foreign-invested company, KOTRA's Investment Consulting Center

Q188. What foreigners are subject to alien registration and what are the documents required for registration?

A188. A foreigner who is staying in Korea for 91 days or more must register as an alien at the immigration office having jurisdiction over his/her place of stay, within 90 days from the date of entry into Korea.

- Just as Korean citizens are issued a resident registration card, foreigners are issued an alien registration card. The card is issued for the safe management of foreigners staying in Korea by clarifying their residence and status of stay.

<Foreigners subject to alien registration>

- A foreigner who intends to stay more than 90 days from the date of entry in Korea (holders of long-term visas)
- A foreigner staying without being granted a status of stay, and a foreigner staying without being granted a status of stay due to any other ground such as loss or renunciation of the nationality of Korea while staying in Korea shall register as an alien within 60 days from the date on which such ground occurs.
- A foreigner who is born in the Republic of Korea and stays more than 90 days in the country shall register as an alien within 90 days of the date of birth
- A foreigner who is staying in Korea for more than 90 days from the date of entry into Korea by obtaining permission to change his/her status of stay
- ※ Alien registration is exempted for holders of Diplomat (A-1), Government Official (A-2), and International Agreement (A-3) visas.

<Timing of alien registration>

- Within 90 days of the date of entry for foreigners who intend to stay in Korea for more than 90 days
- On being granted a status of stay or receiving a permission to change status of stay (immediately)
- ※ Foreigners who do not register as an alien within the above period are subject to penalty.

<Attachments>

For documents required to be submitted when applying for each type of status of stay, refer to attached Table 5-2 of the Enforcement Rules of the Immigration Act.

On the Invest Korea website (www.investkorea.org), you can find foreigner registration forms to be submitted when visiting the Investment Consulting Center of KOTRA in relation to Business Investment (D-8) or Dependent Family (F-3) visa application.

<Fee>

– KRW 100,000 for permission for change in status of stay; KRW 30,000 for issuance of certificate (holders of Business Investment (D-8) visa are exempt)

※ When registering as an alien after acquiring a Business Investment (D-8) visa from overseas, a certificate of foreign-invested company registration, a certificate of business registration, and other documents necessary when changing the status of stay should be submitted.

Q189. I am a foreigner who intends to establish and operate a company in Korea. Am I eligible for a status of stay?

A189. To establish and operate a company in Korea, a foreigner should complete the FDI investment process pursuant to the Foreign Investment Promotion Act and apply for a Business Investment (D-8) visa at an overseas diplomatic mission. If a foreigner has to enter Korea without a visa, he/she can apply for change of status of stay to Business Investment (D-8) visa at the jurisdictional immigration office after completing the FDI process.

- Additionally, where a foreign investor intends to establish a foreign-invested company by investing KRW 100 million or more or intends to invest in a company managed by a Korean national to manage the company jointly, her/she can apply for a Teade Investment (D-9) visa.

* If a foreigner wishes to obtain a Trade Management (D-9) visa, the investment amount should be at least KRW 300 million.

Q190. In order to receive a Business Investment (D-8) visa, what is the minimum amount of investment, and can a foreigner receive the D-8 visa for investing in an individual company instead of establishing a company?

A190. In order to acquire qualification for issuance of a Business Investment (D-8) visa, the applicant should invest in a corporation of the Republic of Korea (this includes establishment of a new corporation) and the investment amount should be at least KRW 100 million. The foreigner should own at least 10/100 of the voting shares or total capital of the invested corporation (Article 2 (2) 1 of the Enforcement Decree of the Foreign Investment Promotion Act)

* In accordance with the Enforcement Rules of the Foreign Investment Promotion Act, the foreign ownership of a local headquarters designated by the Minister of Trade, Industry and Energy (Article 9-3) should be at least 50%, and at least 30% in the case of research and development facilities (Article 16).

- However, a D-8 visa is granted when an individual business entity invests at least KRW 100 million in a company that is managed by a Korean national and engages in joint management of the company (D-8-3: the foreigner must be registered as a joint representative together with the Korea national on the business registration certificate). The Korean national who is the joint representative must have business funds of at least KRW 100 million.
- If a foreign individual invests independently an amount of at least KRW 300 million and establishes an individual business, he/she can apply for an International Trade (D-9) visa.

Q191. When a foreigner has a one year single-entry visa with Business Investment (D-8) status of stay, and is a national of a country that is exempt from the requirement to receive a re-entry permit, what happens if he/she leaves the country before registering as an alien?

A191. If a long-term visa holder wishes to stay in Korea for longer than 90 days, alien registration should be completed at the jurisdiction immigration office within 90 days of the date of entering Korea. A single visa is a visa that expires with a single entry, and even if a foreigner entered Korea with a Business Investment (D-8) visa that expires after one year, a foreigner who departed Korea without completing alien registration should have a visa re-issued by an overseas diplomatic mission.

* For inquiries on matters related to the permission of re-entry of registered aliens, call the 1345 Immigration Contact Center (call 1345 without an area code).

※ **Effective period of visa and sojourn**

- Effective period: The period during which it can be used is indicated on the visa, such as three months or one year. The period is calculated from the visa issuance date. Single-entry visas allow one entry/departure, while multiple-entry visas allow unlimited number of entries/departures within the effective period.
- Sojourn period: The permitted sojourn period after entering the country is written on the visa, such as 30 days, 90 days or one year. The calculation of the period of sojourn in terms of days shall begin from the day following the date of entry, and months and years shall be calculated based on the calendar.

Q192. If a foreigner has entered Korea with a single-entry visa (period of stay of 90 days or less) or without a visa and establishes a foreign-invested company, does he/she have to depart from the country in order to have a Business Investment (D-8) visa issued from an overseas diplomatic mission of Korea?

A192. When a foreigner who entered Korea with a single-entry visa or without a visa establishes a foreign-invested company and then intends to change his/her status of stay to Business Investment (D-8), he/she should visit the immigration office having jurisdiction over his/her place of stay or KOTRA's Foreign Investor Support Center and receive permission of change to Business Investment (D-8) status or apply for a visa at an overseas diplomatic mission of Korea after departing from the country.

※ For documents required when applying for permission for change of status of stay, refer to Q196.

- However, among Chinese nationals who entered Korea with a Short-Term Visit (C-3) visa as part of a tourist group or for purely tourism purposes, foreigners with an Industrial Training (D-3) visa, Non-Professional Employment (D-9) visa, Vessel Crew (E-10), Others (G-1), Working Holiday Program (H-1), Work and Visit (H-2) visa holders may not be permitted to change their status of stay to Business Investment (D-8) or may face restrictions, so it is advised to inquire your jurisdictional immigration office in advance.

Q193. When a foreigner who is an individual investor establishes a corporation in Korea and registers another foreigner who is not an investor as an executive in the corporate register, can that foreigner be invited with a Business Investment (D-8) visa?

A193. When a foreigner who is an individual investor establishes a corporation in Korea and registers another foreigner who is not an investor as an executive in the corporate register and invites that foreigner to Korea, it constitutes a foreign-invested company's direct employment of a foreigner in Korea, and therefore the foreigner is not eligible for a D-8 visa.

Q194. If a foreigner is dispatched as an indispensable professional specialist from the overseas parent company of a foreign-invested company established domestically, can he/she receive a permission to change his/her status of stay to Business Investment (D-8)?

A194. A foreigner with Business Investment (D-8) status is a person recognized by the Minister of Justice (excluding persons hired in Korea) as an indispensable professional specialist (executive, senior manager or expert) pursuant to the Foreign Investment Promotion Act who wishes to engage in the business/management or production/technology of a foreign-invested company. Corporate investors who have invested at least KRW 100 million, persons who have invested at least KRW 100 million in a company run by a Korean national, and persons who have been dispatched as indispensable professional specialists to the overseas parent company of a foreign-invested company established in Korea or the local subsidiary or branch of a third country of the head office of such a company are also included.

※ Documents required to apply for change to Business Investment (D-8) status (Refer to the answer to Q196)

- Application form, passport, certificate of employment, dispatch order (with the period specified)
- Copy of certificate of foreign-invested company registration, copy of business license, and certificate of incorporation registration
- Copy of office lease agreement, documents showing business performance (import/export records), etc

* When the need arises in the evaluation process, the documents to be submitted can be adjusted.

Q195. What are the documents to be submitted when applying for a visa issuance certificate related to Business Investment (D-8)?

A195. In the case of investing in a corporation (D-8-1) and investing in an individual business (D-8-3), the investment amount is KRW 100 million or more, and the documents required in common in both cases are as follows:

<Basic documents >

- Application form, passport, copy of passport, standard photograph (3.5x4.5cm)
- Copy of foreign-invested company registration certificate
- Copy of business registration certificate, original copy of incorporation registration certificate (in the case of corporations), original copy of specifications of changes in stock ownership
- Dispatch order (with dispatch period specified) in the case of employees residing in the country, and certificate of employment

<Documents certifying investment funds>

- In the case of cash investment
 - Permission to carry Certificate of permission or report of carrying out foreign currency or report of carrying out foreign currency (issued by the tax office or bank of the home country)
 - Description of introduction of investment funds (remittance confirmation slip, foreign exchange purchase certificate, tax office report form, etc.)

- In the case of investment in kind
 - Copy of confirmation of completion of investment in kind (issued by head of the Korea Customs Service)
 - Copy of certificate of completion of import declaration

<Other documents>

- Certificate of tax payment (if required)
- Documents proving expenditure of capital (goods purchase receipt, record of deposit and withdrawal of domestic bank account, etc.)
- Documents proving existence of business site (office lease agreement, etc.)
- Document proving business experience in the relevant industry or area in one's home country (submit if necessary)

※ More or less documents may be required if deemed necessary by the head of the overseas diplomatic mission of Korea or relevant immigration office.

Q196. If a foreigner who has been dispatched from the head office or overseas branch of a foreign company wishes to change his/her status of stay to that of Business Investment (D-8) and apply for a permission for extension of period of stay, what are the required documents?

A196. :

Required documents when applying for change of status of stay

<Corporate business>

- ① When the corporation is established by a foreign company
 - Integrated application form, passport, copy of passport, one photo (3.5x4.5cm)
 - Foreign-invested company registration certificate
 - Certificate of corporate register
 - Business registration certificate
 - Dispatch order and certificate of employment

※ Dispatch order refers to the dispatch order issued by the head office. However, a dispatch order (which specifies the dispatch period) issued by the local subsidiary in a third country of the overseas head office is also permitted. Documents showing the relationship between the head office and the overseas branch must be attached and submitted.

- Documents proving person is an indispensable specialist: Diploma, certificate of special skills, certificate showing professional experience, organizational chart, etc.
- Certificate of tax payment for corporate taxpayers
- Income statement
- Office lease agreement

* The required documents may change in the evaluation process.

- ② When the corporation is established by a foreign individual
 - Integrated application form, passport, copy of passport, one photo (3.5x4.5cm)
 - Foreign-invested company registration certificate
 - Business registration certificate
 - Certificate of corporate register
 - Certificate of purchase of foreign currency
 - Certificate of specification of transaction of foreign currency (where foreign currency is remitted)
 - Certificate of foreign currency declaration (where foreign currency is hand-carried)
 - Permission (report) of transfer of foreign currency issued by the tax office or bank of foreigner's home country
 - Documents certifying business performance
 - Certificate of payment of corporate tax
 - Income statement
 - Certificate of payment of tax (value added tax, income tax)
 - Certificate of tax base for value added tax
 - Certificate of confirmation of export declaration (import/export permit)
 - Documents certifying receipt of payment for exports (account showing receipt of remitted foreign currency, bankbook)
 - Tax invoice
 - Office lease contract
 - Photograph of place of business
 - Residence lease contract

* The required documents may change in the evaluation process.

Extension of period of stay

<Corporate business>

- ① When the corporation is established by a foreign company
- Application form, passport, copy of passport, alien registration certificate
 - Foreign-invested company registration certificate
 - Certificate of corporate register
 - Business registration certificate
 - Dispatch order and employment certificate
 - ※ Dispatch order refers to the dispatch order issued by the head office. However, a dispatch order (which specifies the dispatch period) issued by the local subsidiary in a third country of the overseas head office is also permitted. Documents showing the relationship between the head office and the overseas branch must be attached and submitted.
 - Individual tax payment certificate, or receipt of income tax withholdings
 - Corporate tax payment certificate
 - Income statement

* The required documents may change in the evaluation process.

- ② When the corporation is established by a foreign individual
- Integrated application form, passport, copy of passport, alien registration certificate
 - Foreign-invested company registration certificate
 - Certificate of corporate register
 - Business registration certificate
 - Individual tax payment certificate or receipt of income tax withholdings
 - Documents proving business performance
 - Corporate tax payment certificate
 - Income statement
 - Certificate of export declaration (export/import permit)
 - Documents proving receipt of payment for export (account showing receipt of remitted foreign currency, bankbook)
 - Tax invoice
 - Documents showing employment of Korean nationals (description of subscription to employment insurance, etc.)
 - Office lease agreement
 - Photo of place of business
 - Residence lease contract

* The required documents may change in the evaluation process.

Q197. A foreigner's Business Investment (D-8) visa and his family's Dependent Family (F-3) visa are to be expired in May 2023. The foreigner who is the D-8 visa holder is planning to return to his home country in January 2023 and his wife and children (middle school and high school students) are planning to stay in Korea until June 2023 due to the children's school schedule. In this case, what should be done?

A197. If a family's D-8 visa holder finishes his/her activities in Korea and permanently departs from the country, the visa holder's status of stay and period of stay expire with his/her departure, and his/her family members' status of stay as Dependent Family (F-3) is affected as well. If the remaining family members wish to remain in Korea due to the children's school schedule, they should visit the immigration office having jurisdiction over their place of stay and inquire whether the wife can change to Residence (F-1) visa and the children to Elementary/Middle/High School Student (D-4-3) visa.

Q198. When a foreigner that has registered as an alien changes his/her place of stay, how does one report his/her move of residence?

A198. When a foreigner who has registered as an alien changes his/her place of stay, a report on move-in must be made within 15 days from the date of move-in. The report on move of residence must be made to the head of the relevant district (city/gun/gu, or eup/myeon/dong) of the new place of sojourn, or the head of the Foreigner's Department of the Immigrations Office that governs the new place of sojourn.

※ Required documents upon report: Passport, alien registration certificate, report on change in place of sojourn, documents proving change in place of sojourn (copy of lease agreement, etc.).

☞ When a registered alien does not file a report within 15 days from the date of change in place of stay, he/she shall be subject to punitive measures (fine) due to violation of Article 36 of the Immigration Act.

Q199. When a foreigner who has registered as an alien undergoes a change in personal information, renews his/her passport, or changes the name of the organization he/she belongs to, how does he/she report this?

A199. The following are instances that require reporting. When one of them occurs to a foreigner who has registered as an alien, a report must be filed to change alien registration information within 15 days from the day on which the cause has occurred, to the head of the immigration office having jurisdiction over his/her place of stay..

※ Report of change in alien registration information as per Article 35 of the Immigration Act

- ① When the name, gender, birthdate and/or nationality has been changed
- ② When the passport number, issuance date and/or effective period has been changed
- ③ When the name of the alien's company has been changed in the case of business investment

※ Documents to be attached: Passport and alien registration certificate, report of change in alien registration information, documents proving change in information

☞ When a registered alien does not report the above changes in the alien registration information to the relevant immigration office within 15 days of the day on which such change has occurred, he/she shall be subject to punitive measures (fine) for violating Article 35 of the Immigration Act.

Q200. Is there an exclusive immigration checkpoint to provide convenience to foreign investors and the executives/employees of foreign-invested companies when they enter or depart from the country?

A200. The Ministry of Justice operates an exclusive immigration checkpoint (exclusive lane for D-8 visa holders, ABTC card holders, Immigration Priority Card holders, diplomats, flight crew, etc.) at Incheon International Airport for foreign investors, employees and executives of foreign-invested companies (D-8 visa holders), and APEC Business Travel card holders in order to expedite their immigration inspection process..

※ APEC Business Travel Card (ABTC)

- Card holders from member nations (19 nations*) can receive visa exemption and expedited immigration inspection through an exclusive immigration lane when entering the country.
- For every single entry into the country, a stay period of 90 days is granted (same as multiple-entry visas)
- The effective period is five years from the card issuance date. When the effective period of the passport is expired, the card also expires, so the card must be reissued after passport renewal.
- Webpage: <http://abtc.kita.net> (refer to related information and issuance procedure)

* Member nations (19 nations): Korea, Japan, Australia, Taiwan, New Zealand, Hong Kong, Philippines, Thailand, Malaysia, Brunei, Peru, Chile, China, Indonesia, Papua New Guinea, Singapore, Vietnam, Mexico, Russia

Q201. In order to help promote the convenience of a foreign employee dispatched to a foreign-invested company, can a domestic helper be hired overseas?

A201. A foreigner who invested USD 500,000 or more and the executives dispatched to a foreign-invested company that invested USD 500,000 or more can apply for a visa issuance for a domestic helper who he/she hired overseas at least one year ago from the date of visa application. Also, businesses that invested USD 100,000 or more but less than USD 500,000 that are high-tech businesses* hiring three or more full-time domestic employees can apply for a visa application for a domestic helper as well.

* High-tech businesses are the eight high-tech businesses (i.e., IT, technology management, nano, digital electronics, transport and machinery, new materials, environment and energy) eligible for KOTRA's Gold Card issuance.

- The invited domestic helper can submit the following documents to the South Korean embassy or consulate in his/her country, and enter Korea by applying for and receiving a Household Assistant (F-1) visa. (However, if he/she is residing in a third country for a long period due to acquisition of permanent resident status or employment, the person may apply at the South Korean mission located in the country of residence.)
- The invited domestic helper must notify the immigration office governing his/her place of stay when the cause for visa issuance becomes invalid, such as expiration of employment contract, termination of employment, loss of employer's Business Investment (D-8) status, etc.

<Documents to be submitted>

- Visa issuance application, passport, one standard photograph, fee
- Copy of foreign-invested company registration certificate, certificate of corporate register, or copy of business registration certificate
- Employment contract, employer's recommendation letter and letter of guarantee
- Document certifying employment of at least one year (proof that the person has been employed overseas for at least one year from the point of application)

- Documents certifying educational background of domestic helper
- Employment certificate in the case of executives/employees
- Documents proving the income conditions of the employer (receipt of income tax withholdings, certificate of income amount, salary payment statement, copy of bankbook, etc.)
- Document proving full time employment of Korean nationals under employment (person with investment amount of less than USD 500,000)

* When recognized as especially necessary in the evaluation process, some of the document requirements can be adjusted.

Q202. What is the process of granting status of stay to a child born in Korea to a foreigner residing in Korea with a Business Investment (D-8) visa holder?

A202. A foreigner who is born in Korea and wishes to receive status of stay must report to the immigration office having jurisdiction over his/her place of stay within 90 days from the date of birth. If an application for grant of status of stay is not filed within that period, a penalty shall be imposed for violating the Immigration Act (Article 79). However, if the child departs from the country within 90 days from the date of birth, he/she can leave without being granted a status of stay.

<Documents to be submitted>

- Application form
- Passport of foreigner's child (When an application for a passport is being processed at an embassy: Register with passport application receipt slip, and submit passport after registration)
- One copy of the alien registration card of the child's father or mother
- Birth certificate of child (※ Certified copy of family register in the case of Japan, Taiwan)
- One color photograph of child, 3cm x 4cm
- Fee: Grant of sojourn status (KRW 80,000)

Q203. If an illegal resident undergoes a change in status to that of Non-professional Employment (E-9) due to government measures to legalize the status of illegal residents, can he/she receive permission for change in status of stay to Business Investment (D-8) without leaving the country?

A203. In the case of Non-professional Employment visa, the process for changing the status of stay is restricted in Korea, so it is advised to complete the processes required to acquire a status of stay (e.g., foreign investment notification, registration of foreign-invested company, registration of corporate register certificate), depart the country, and then re-enter Korea after receiving a visa from a diplomatic mission from the home country. However, it should be noted that the funds created through employment in Korea cannot be recognized as foreign investment funds.

- Foreign investment under the Foreign Investment Promotion Act means a foreigner (individual or corporation)'s remittance of investment funds from overseas for investment in a Korean corporation or company. After the required investment processes are completed and a visa is issued from an overseas diplomatic mission of Korea or a visa is not issued for inevitable causes, an application for change of status of stay to Business Investment (D-8) can be filed at an immigration office having jurisdiction over the place of stay in Korea.

Q204. Can a foreign investor establish a traditional Thai massage house in Korea and hire foreigners as a foot masseur/masseuse, skin care specialist, or spa employee?

A204. In order to work as a masseur/masseuse in Korea, one must be visually-impaired and hold a qualification certificate as a masseur/masseuse. According to the Medical Service Act, only visually-impaired persons are allowed to be a masseur/masseuse. In order to receive a certificate for qualifying as a masseur/masseuse, one must complete the prescribed training and will then receive a qualification certificate from the city mayor or provincial governor. Therefore, if a foreign investor establishes a massage shop in Korea and hires foreigners as employees, it constitutes a violation of the law.

※ When a non-disabled person (including foreigners) engages in the massage business, he/she can be subject to up to three years of imprisonment or a fine of up to KRW 30 million for violating the Medical Service Act.

Q205. When a person invites a foreigner with false guarantee of identity or applies for visa issuance under false grounds, what punitive measures are imposed?

A205. According to Article 7-2 of the Immigration Act (Prohibition of false invitations, etc.), it is prohibited to engage in the following acts in order to enter a foreigner into the country:

- Recording false information, providing false guarantee of identity, or engaging in other illegal acts to invite a foreigner or mediating such an act
- Applying for a visa or confirmation of visa issuance under false grounds, or mediating such an act

※ Persons that engage in the above acts are subject to imprisonment of up to three years or fine of up to KRW 30 million.

Q206. What are the services provided by KOTRA's Foreign Investor Support Center?

A206. KOTRA's Foreign Investor Support Center (FISC) is comprised with government officials from the central and local governments, officials from relevant government agencies, and KOTRA staff members who are experts in various fields. In addition to general investment consulting, FISC provides various services ranging from foreign investment notification to administrative services required for operation of business. The following services are provided for walk-in visitors (refer to Table 3 of the Enforcement Decree of the Foreign Investment Promotion Act).

<Services provided by FISC and the relevant authorities>

| Type of Services | Governing Law | Relevant Authority |
|---|--|------------------------|
| Registration and notification of foreign-invested company | Article 40 (2), Enforcement Decree of the Foreign Investment Promotion Act | KOTRA FISC |
| Confirmation of investment-in-kind | Article 30 (3), Foreign Investment Promotion Act | Korea Customs Service |
| Business Registration | Article 8, Value Added Tax Act | National Tax Service |
| Permission of activities other than those permitted in the current status of stay | Article 20, Immigration Act | Ministry of Justice |
| Change or addition of place of work | Article 21, Immigration Act | |
| Granting of status of stay | Article 23, Immigration Act | |
| Granting of change of status of stay | Article 24 (1), Immigration Act | |
| Granting of extension of status of stay | Article 25, Immigration Act | |
| Re-entry permit | Article 30 (1), Immigration Act | |
| Alien Registration | Article 31, Immigration Act | |
| Notification of change of alien registration information | Article 35, Immigration Act | |
| Report of change of place of residence | Article 36 of the Immigration Act | Road Traffic Authority |
| Issuance and viewing of certifications | Article 88 of the Immigration Act | |
| Exchange of foreign driver's license to a Korean one | Article 84, 86, 87, 95 of the Road Traffic Act | |

Q207. The passport of the spouse of a foreign investor (F-3) expires in six months. Can the spouse have her stay period extended by one year just like the foreign investor (D-8)?

A207. When granting permission of stay such as extending the period of stay, permission of stay is granted within the period of validity of the passport. Therefore, even if the foreign investor (D-8)'s period of stay is extended by one year, the stay period of investor's spouse (F-3) can only be extended up to the expiration date of the passport. Considering such, a registered alien should renew his/her passport and then apply for a permission of stay.

Q208. Is there a due date for which a short-term visa holder can apply for change of status of stay to Business Investment (D-8)?

A208.

A foreigner with a short-term status of stay (B-1, B-2, C visas) can apply for a change of status of stay before his/her period of stay expires if he/she is qualified as a Business Investment (D-8) visa holder by completing the FDI procedure, etc.

- Where applying for change of status of stay to Business Investment within 30 days of the date of entry, business investment related activities that were done while having a short-term stay visa shall be considered permitted activities.
- If an application for change of status of stay to Business Investment after 30 days have passed since the date of entry, the applicant may be screened for whether he/she engaged in employment activities and other matters during the period from the date of entry to the application date, so it is advised to make an application within 30 days of entry.

※ Example: Where a German national who entered Korea with a Visa Exempted (B-1) status engaged in Business Investment (D-8) activities and applied for changed to D-8 status within one month, the activities that the German engaged in under the B-1 status shall be considered as those permitted under his/her status of stay.

Q209. If a foreigner has tax arrears while staying in Korea, are there disadvantages for his/her stay?

A209. - Since May 2017, the Ministry of Justice has been checking whether a foreigner has arrears in national taxes, local taxes and national insurance premium when screening foreigner's applications on stay in Korea. For foreigners in arrears, the Ministry restricts the extension of their stay period so that they can pay their arrears.
 - Foreigners with a Business Investment (D-8) status should pay their arrears before applying for visa extension, etc. If arrears are found in the screening process, you may receive an order to pay tax arrears or be granted only a short stay period.

Q210. When proceeding with an FDI procedure to obtain a Business Investment (D-8) visa, can the investment funds be remitted from the investor's home country through an agent?

A210. In principle, when a foreigner invests in Korea, the investment funds should be remitted under the name of the investor, except for the introduction and remittance of investment funds by proxy through the spouse or underage child of the investor. Also, for investors investing KRW 300 million or more, the scope of permitted remittance by proxy is expanded to include introduction and remittance by the investor's parents and the parents of the investor's spouse.

※ In the case of remittance by proxy, 1) a statement of cause for remittance by proxy (including reason why it is inevitable) and 2) a statement of remittance issued by a bank (should state "△△△ is remitting on behalf of investor ○○○") should be submitted.

10. Settlement

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10. Settlement

Q211. What does a foreigner have to do to get a cell phone plan in Korea?

A211. The process is different depending on the status of stay, but in most cases, if one holds an alien registration certificate, he/she can visit a local telecom store to subscribe to a cell phone plan.

<Documents required (for foreign subscribers)>

| Individual | Corporation | Minor |
|-------------------------|--|--|
| Alien registration card | - Corporate certificate of seal impression - Copy of business registration certificate ID of representative ※ When an applicant's agent visits (additional documents) - Power of attorney (with corporate seal imprinted) - ID of agent | When visiting in person: - Alien registration card - Certificate of seal impression of the legal agent - Subscription agreement - Documents confirming family relations When statutory representative of a minor who is 14 years or older visits: - Certificate proving alien registration - Subscription agreement - Alien registration certificate of statutory representative - Alien registration card of applicant (minor) |

※ If a foreigner does not have an alien registration certificate or has not more than 60 days left until his/her expiration of legal stay in Korea, a pre-paid mobile phone can be used (purchase pre-paid card issued from mobile carrier).

※ Refer each mobile carrier's website for the subscription process, payment plans, suspension and cancellation of subscription, etc.

Q212. Can a foreign driver's license be exchanged with a Korean driver's license?

A212. The holder of a driver's license issued from an organization of authority from overseas can have the validity of the license confirmed through document submission, such as a confirmation notice from the Embassy. When the foreign driver's license is confirmed to be valid, the license holder can have it exchanged with a Korean license by undergoing an aptitude test, or an aptitude test and a simplified written exam..

– In the case of a license issued by a country that recognizes a Korean driver's license, the license holder only needs to take an aptitude test (physical examination). The list of countries that recognize the Korean driver's license can be viewed at the Road Traffic Authority's public website for safe driving (<https://www.safedriving.or.kr>).

– The holder of a license that has been issued by a country that does not recognize the Korean driver's license must take an aptitude test and a simplified written exam. Foreign investors with status of stay of D-8, his/her spouse and his/her children younger than 19 (not married) are exempt from the written examination. They can have their license exchanged at KOTRA's Investment Consulting Center.

– Documents to be submitted: Original copy of foreign driver's license, original copy of passport, alien registration card, 3 sheets of color photo taken within 6 months (3.5cm x 4.5cm), Embassy's confirmation of validity of driver's license or apostille, certificate of entry and exit (from the date of birth to the application date for license issuance), issuance fee of KRW 10,000.

※ There is no physical examination room in KOTRA's Investment Consulting Center. A D-8 visa holder visiting the Investment Consulting Center in order to have his/her driver's license exchanged shall receive an eye examination at a nearby eye hospital (corrected vision recognized), after which he/she shall submit the examination report.

※ In the case of holders of driver's license from Poland, Belgium, Italia, Spain and Ireland, the required physical examination conditions may be different, so inquire the nearest driving test center.

※ Standards for passing the physical examination

- Visual acuity of 0.5 or higher in one eye and 0.1 or higher in the other eye. If one eye is blind, visual acuity of the other eye should be at least 0.6.

※ In the case of foreign licenses, the effectiveness is acknowledged only for full licenses with the expiration period still remaining. Temporary, learner, provisional, probationary licenses or driver permits or certificates cannot be exchanged into a Korean license.

Q213. Can a foreigner receive benefits for medical expenses for pregnancy and childbirth?

A213. If a foreigner is a national health insurance subscriber or a dependent family member of a national health insurance subscriber, she can receive the same benefits for medical expenses for pregnancy and childbirth as Korean nationals.

- Benefits for medical expenses for pregnancy and childbirth under the national health insurance system (Article 50 of the National Health Insurance Act; Article 23 of the Enforcement Decree of the same Act)
 - In order to reduce the medical costs for pregnancy and childbirth, and to create a more pregnancy-friendly society, the government provides a voucher (National Happiness Card*) that can be used to pay for the medical costs for pregnancy and childbirth (expenses both covered/uncovered by insurance) when settling co-payment expenses (implemented on December 15, 2008)

* National Happiness Card: A voucher card combining various vouchers provided by the government.

• Eligibility

- National health insurance subscriber or a subscriber's dependent whose pregnancy or childbirth has been confirmed (including miscarriage and ectopic pregnancy)

• Payment amount

- For each case of pregnancy, KRW 1,000,000 per fetus (KRW 1.4 million in the case of multiple fetuses)
- Pregnant women residing in a region without reliable delivery facilities* at the time of application with the residing period lasting at least 30 consecutive days receive additional payment of KRW 200,000.

* 'Regions without reliable delivery facilities' are prescribed by the Ministry of Health and Welfare's "Guide to Programs for Assisting Regions without Reliable Delivery Facilities", and are subject to change each year.

• Period of use

- ① Date of commencement: Voucher issuance date
 - ※ If there is a National Happiness Card that has been issued previously, the voucher may be used from the date of application (date when credit points start to accumulate) with no additional issuance.
- ② Expiration date:
 - Application before childbirth: Two years from the expected birth date
 - Application after childbirth: Two years from the date of birth (or date of miscarriage or stillbirth)

• Scope of usage

- When paying copayment for medical services (for covered and not covered services) from a pregnant woman's pregnancy/birth, and purchasing prescribed medicine and treatment
- When paying partial copayment for medical services (including not covered services) to infants of less than two years of age, and purchasing prescribed medicine and treatment

• How to use the card

- Medical costs are paid at the medical/treatment agency with the use of voucher (National Happiness Voucher)

• **Method of application** Apply by visiting the National Health Insurance Service or its webpage.

※ For details, visit the webpage of the National Health Insurance Service (www.nhis.or.kr) ▶ Cyber Help Center.

Q214. What are the documents that need to be submitted when applying for national health insurance subscription?

A214. Alien registration card, documents that can replace family relations certificate when registering family members, and power of attorney when an agent is making the application are needed.

- Health insurance application: Submit to a nearby National Health Insurance office or Help Center for Foreigners. In the case of applying as an employee subscriber, the National Health Insurance office governing the location of the workplace provides assistance.

• Application procedure

- When the foreigner is making the application in person: Submit alien registration card to have the application processed on the spot.
- When registering family members: Bring documents that can confirm your family relations (Documents issued from home country require the Republic of Korea's Ministry of Foreign Affairs' verification or apostille received within nine months from the date of issuance. Korean translation must be included. Documents issued domestically have an effective period of three months.), as well as alien registration card of each family member to be registered.
- When delegating application: Power of attorney, alien registration card of person delegating and person delegated, documents regarding cause of delegation (e.g., document proving that person cannot apply in person due to hospitalization) -> Delegation only possible to family members (bring documents proving family relations)

• For questions regarding national health insurance subscription

- National Health Insurance webpage (www.nhis.or.kr)
- National Health Insurance Service customer center: 1577-1000 ▶ extension no. 7
- Foreign language operator: 033-811-2000 (English, Chinese, Vietnamese, Uzbek available)

※ NHIS center for foreign residents

- Seoul residents: Seoul NHIS Center
- Ansan, Siheung, Gunpo residents: Incheon Gyeonggi NHIS Center (Ansa)
- Suwon, Yongin, Hwasung, Osan, Seongnam residents: Incheon Gyeonggi NHIS Center (Suwon)
- Incheon, Bucheon, Gimpo, Gwangmyeong: Incheon Gyeonggi NHIS Center (Incheon)
- Euijeongbu, Namyangju, Gapeyong, Pocheon, Dongducheon, Yeoncheon, Yangju, Guri, Goyang, Paju residents: Gyeonggi NHIS Center (Euijeongbu)

※ Matters handled by the NHIS center for foreigners

- Foreigners' subscription to NHIS (employee-insured and self-employed insured), loss of eligibility, exclusion from subscription
- Foreigners' application for voluntary continued subscription
- Matters related to foreign subscribers (merge of households, change of address, change of status of stay, etc.)
- Adjustment of insurance premium for self-employed foreigners (visit required)
- Foreigners' payment of insurance premium, application for automatic withdrawal, issuance of certificates

Q215. Can the children of foreigners living in Korea eligible for childcare subsidies as well?

A215. In general, childcare subsidies (for use of daycare centers) are provided by the local governments. Only children who are Korean nationals with a resident registration number are eligible for the subsidies. However, in some local government districts, children of foreigners can receive childcare subsidies according to the local ordinance.

Childcare subsidies for foreigners in the city of Ansan (as of September 19, 2022)

• Eligibility

- Qualification: Children of foreigners aged 0 to 5 years using the local daycare center, whose registered place of stay is Ansan City
- Assistance period: Subsidy provided during period of stay (from the month following the first three-month stay in Ansan City)

• Details

- Subsidy amount: KRW 240,000 per month (per person)
- Method of payment: When payment is settled with the Children's Happiness Card, the subsidized amount is deposited into the daycare center's account
- How to apply: The child's guardian submits the application form and required documents to the daycare center.

• Inquiries: Ansan City's Women & Family Division (☎ 031-481-3323)

Childcare subsidies for pre-school children registered as foreigners in the city of Bucheon (as of September 19, 2022)

• Eligibility

- Qualification for receiving assistance: Children of foreigners aged 3 to 5 years using the local daycare center, whose registered place of stay is Bucheon City (the guardian must also reside in Bucheon City)
- Assistance period: Subsidy provided during period of stay (from the month following the first three-month stay in Bucheon City)

• Details

- Subsidy amount: KRW 240,000 per month (per person)
- Method of payment: When payment is settled with the Children's Happiness Card, the subsidized amount is deposited into the daycare center's account

- How to apply: The guardian submits the application form and required documents to the daycare center.

• **Inquiries:** Bucheon City's Childcare Support Team (☎ 032-625-4810)

Childcare expense subsidy program for foreigners provided by Gimpo City (Sep. 19, 2022)

• **Eligibility**

- Eligible children: Foreign children aged up to five attending a daycare center in Gimpo who have stayed in Gimpo for more than 90 days and whose residence is registered in Gimpo.
- Support period: Throughout the period of stay

• **Subsidies**

- Amount: KRW 280,000 per month/ child
- Payment: Subsidies for daycare expenses are paid through the I-Happiness card
- How to apply: The child's guardian should submit the application form and other required documents to the daycare center

• **Inquiry:** Jangibon-dong, Gimpo (☎ 031-5186-3569)

Subsidies for foreign children's daycare expenses (as of Sep. 19, 2022)

• **Eligibility**

- Eligible children: Foreign children aged up to five attending a daycare center in Jeongeup who have stayed in Jeongeup for more than 90 days and whose residence is registered in Jeongeup.
- Support period: Throughout the period of stay

• **Subsidies**

- Amount: KRW 280,000 per month/ person
- Payment: Subsidies for daycare expenses are paid through the I-Happiness card
- How to apply: The child's guardian should submit the application form and other required documents to the daycare center

• **Inquiry:** Jeongwoo-myeon, Jeongeup-si (☎ 063-539-7391)

Q216. What is the application procedure for issuance of a Korean credit card?

A216. Foreigners residing in Korea can apply for credit card issuance, and the issuance criteria differs depending on the card company.

• **Eligibility**

- Foreigners with an alien registration card employed in Korea

• **Required documents**

- Document certifying income (for at least the past 6 months), labor contract, alien registration card

• **Procedure for issuance**

- The credit card evaluation team conducts the document evaluation. When the applicant does not pass the evaluation, a credit card can be issued with a deposit as collateral. In the case of corporations, it is possible to apply for a credit card exclusively for foreign-invested companies (such cards are issued by Shinhan Bank, Hana Bank).

Q217. What is the difference between a foreign school and a foreign educational institution?

A217. Although foreign schools, foreign educational institutions, and Korea International School (Jeju Campus) have similar names, the classification, legal basis and entry qualifications are all different.

<Types of Schools>

| Foreign education institute | Foreign education institute | Foreign school | Jeju Int'l school |
|-----------------------------|---|--|---|
| Governing law | Special Act on Establishment and Management of Foreign Educational Institutional Institutions in Free Economic Zones and Jeju Free International City | <ul style="list-style-type: none"> - Article 60-2, Elementary and Secondary Education Act - Regulations on the establishment and operation of foreign schools and foreign kindergartens - Article 16, Early Childhood Education Act | Special Act on Establishment and Management of Foreign Educational Institutional Institutions in Free Economic Zones and Jeju Free International City |

| Foreign education institute | | Foreign education institute | Foreign school | Jeju Int'l school |
|------------------------------|---------------------------|--|--|--|
| Qualification | | Non-profit school juristic person | Foreigners, non-profit school juristic persons, domestic school juristic persons | Government, Jeju Special Self-Governing Province |
| Conditions | Purpose | Investment attraction by improving the living environment for foreigners | Education for the children of foreigners residing in Korea or Koreans who returned to Korea after residing overseas | Improving the people's foreign language skills and nurturing global talents |
| | Available areas | Jeju Special Self-Governing Province, Administrative City, INNOPOLIS enterprise cities, Saemangeum area, Pyeongtaek-si | Around the nation | English education city in Jeju Special Self-Governing Province |
| | Approval of establishment | Outside Jeju - Elementary, middle schools: Superintendent of education in city or province - High school: Minister of Education Jeju-do - Elementary, middle schools: Superintendent of education in Jeju - High school: Jeju provincial governor | Superintendent of education | Jeju province superintendent of education - If school was established by a for-profit company, the Minister of Education's consent is required. |
| Qualifications for admission | | None | - Children of foreigners - Children of Koreans who resided overseas for 3 yrs or longer - Children of persons who naturalized to Korea who is considered to have difficulty in a general elementary or middle school | None |
| Ratio of domestic students | | - Elementary/middle schools: Up to 30% of all students - Middle school: No limits | 30% of all students (can be raised to 50% according to city/province education rules) | None |

| Foreign education institute | Foreign education institute | Foreign school | Jeju Int'l school |
|-----------------------------|---|--|---|
| Current status | [Kindergarten, elementary & middle school (2)] Chadwick Songdo Int'l School Daegu Int'l School | Foreign kindergarten (1) Foreign schools (38) | Korea International School, Jeju Campus NLCS Jeju Branksome Hall Asia SJA Jeju |
| | [Higher education (5)] SUNY Korea SBU (Incheon) SUNY FIT (Incheon) George Mason Univ. (Incheon) University of Utah (Incheon) Kent Univ. (Incheon) | | |

※ The Ministry of Education's general information site (www.isi.go.kr) has various information regarding foreign educational institutions, from foreign kindergartens to foreign schools, international schools, etc.

Q218. Is there a Korean language class for foreigners living in Korea?

A218. Korean language institutes of major universities nationwide, as well as foreigner support centers and private educational institutes provide on/offline classes.

<Free Korean language classes>

1. Offline classes

- Seoul Global Center: <http://global.seoul.go.kr>
- Incheon Free Economic Zone Global Center: www.ifez.go.kr
- Busan Foundation for International Cooperation: www.bfic.kr

2. Online classes

- Barunsori, National Institute of the Korean Language: www.korean.go.kr/hangeul/cpron/main.htm
- KBS Let's Learn Korean: http://rki.kbs.co.kr/learn_korean/lessons/e_index.htm
- Talk to Me in Korean: <https://talktomeinkorean.com>
- Nuri, King Sejong Institute: www.sejonghakdang.org

<Paid Korean language classes>

1. Offline classes

- Institute of International Education, Kyung Hee University: www.iie.ac.kr
- Korean Language Institute, Yonsei University: www.yskli.com
- Korean Language Classes, Sogang University: klec.sogang.ac.kr
- Korean Language Center, Korea University: <http://klc.korea.ac.kr>
- Language Education Institute, Busan National University: [https://lei.pusan.ac.kr](http://lei.pusan.ac.kr)
- Korean Language Institute, Hansei University: <http://www.hansei.ac.kr/kor/471/subview.do>
- Easy Korean Academy: www.edukorean.com

Q219. What type of housing lease systems exist in Korea?

A219. The major ones are Jeonse, monthly rent, and semi-Jeonse.

1. Jeonse

- This is a lease method that is unique to Korea. A lump-sum amount is given to the owner of the house as a key money deposit. The tenant resides in the house for a certain period. After the contract period is over, he/she receives the full amount of the key money deposit from the owner. The Jeonse contract is usually for a term of two years, and it is prescribed in the law that the house owner cannot terminate the contract within two years unless the tenant so agrees. Thus, pursuant to the Housing Lease Protection Act, even in the case of a one year contract, the tenant can reside in the same house for two years.
- A contract renewal claim right is a right that tenants can exercise once if he/she wishes to renew his/her lease contract, which guarantees a tenant's lease period for up to two years. In accordance with the contract renewal claim right, the landlord cannot reject the tenant's claim to renew his/her lease contract if the claim is filed from six months to two months before the end of the lease period.

2. Monthly rent

- This is a lease contract in which the lessee pays a monthly rent to the lessor. In the case of a 'rent with deposit', a certain amount is paid as a key money deposit along with a fixed monthly rent, while 'rent with no deposit' refers to paying only the monthly rent. In general, in the case of monthly rent, a deposit is paid together with a monthly rent, and maintenance costs are paid in addition.

3. Semi-Jeonse

- This is a mixed type of lease contract. In the above two cases, the full amount of the Jeonse deposit is given to the house owner in order to lease the house. Or, a monthly contract is established based on which a monthly rent is paid. In the case of semi-Jeonse, a certain deposit amount is paid, and a monthly rent is paid, and thus this is the same idea as the 'rent with deposit'. But at the point of renewing the Jeonse contract, if the landlord demands an increase in the Jeonse deposit, the additional Jeonse deposit can be paid by making a tantamount raise in the monthly rent.

Q220. Is there a list of realtors that can use a foreign language?

A220. The webpage of the Korea Association of Realtors shows a list of the global realtors in Korean, English, Japanese and Chinese. In addition, the Seoul city government webpage, and other webpages of each local government provide information on licensed real estate brokerages that use foreign languages.



* List of global realtors:
www.kar.or.kr/pbusiness/network_korea.asp

※ In addition, there are various applications showing real estate offerings available on the market.

- Zigbang: www.zigbang.com
- Dabang: www.dabangapp.com
- Hanbang: www.karhangbang.com
- Naver Real Estate: land.naver.com

※ Real estate brokerage fee

- The real estate brokerage fee is set according to the transaction amount. The rates also differ according to the regulations of the city or province. The webpage of the Korea Association of Realtors (www.kar.or.kr) has information on the real estate brokerage fee of each city or province.

<Upper limit of real estate brokerage fee pursuant to Table 1 of the Enforcement Rules of the Licensed Real Estate Agents Act>

| Transaction | Amount | Max. rate | Max. amount |
|-----------------|--|-----------|-------------|
| Sales, exchange | Under KRW 50 mil. | 6/1,000 | KRW 250,000 |
| | Not under KRW 50 mil. to under KRW 200 mil. | 5/1,000 | KRW 800,000 |
| | Not under KRW 200 mil. to under KRW 900 mil. | 4/1,000 | - |
| | Not under KRW 900 mil. to under KRW 1.2 bil. | 5/1,000 | - |
| | Not under KRW 1.2 bil. to under KRW 1.5 bil. | 6/1,000 | - |
| | Not under KRW 1.5 bil. | 7/1,000 | - |
| Lease, etc. | Under KRW 50 mil. | 5/1,000 | KRW 200,000 |
| | Not under KRW 50 mil. to under KRW 100 mil. | 4/1,000 | KRW 300,000 |
| | Not under KRW 100 mil. to under KRW 600 mil. | 3/1,000 | - |
| | Not under KRW 600 mil. to under KRW 1.2 bil. | 4/1,000 | - |
| | Not under KRW 1.2 bil. to under KRW 1.5 bil. | 5/1,000 | - |
| | KRW 1.5 bil. or more | 6/1,000 | - |

※ The real estate agent fee shall be negotiated between the client and certified real estate agent within the ceiling calculated by "Transaction amount X Maximum rate"
- Articles 20 (1), (4) of the Enforcement Rules of the Licensed Real Estate Agents Act

Q221. If a foreigner moves in Korea, must he/she report change in address?

A221. When a foreigner who has registered as an alien changes his/her place of stay, he/she must report change of place of stay to the head of the district (si/gun/gu or eup/myeon/dong) or the head of the immigration office governing the place of stay within 15 days from the date of move-in.

• **Report period:** Within 15 days from moving to the new place of stay

• **Documents to be submitted:**

- When applying in person: Passport or alien registration certificate, integrated application form (Attached form 34 of the Enforcement Rules of the Immigration Act), document proving place of stay
- If an agent is applying: Power of attorney, agent's ID, family relations registration document or other document confirming family relations (for foreigners under the age of 17, his/her parent can report on his/her behalf)

* Document proving place of stay (example) - Lease agreement, document confirming provision of lodging, mail showing pre-notice of termination of stay period, utilities payment receipt, dormitory expense receipt, and other documents proving that the foreigner is residing in the place indicated by the address

※ When a foreigner that has made an alien registration does not report within 15 days from changing his/her place of stay, he/she shall be imposed a penalty of up to KRW 1 million for violating Article 36 of the Immigration Act.

Q222. How is waste sorted out and disposed of in Korea?

A222. Korea has the 'volume-based waste fee' system, under which a fee is imposed based on the amount of waste. Waste is sorted out and recyclables are separated and then disposed of. Waste should be disposed of in a designated area in a designated bag according to the type of waste.

1. General waste (for disposal)

- Unrecyclable waste should be disposed of in a designated bag.
- Volume-based waste bags can be purchased at supermarkets or discount marts nearby. The color and size of general waste bags and food waste bags differ by district, so make sure to purchase waste bags that match your district.

2. Recyclable garbage (for recycling)

- Paper, bottles, scrap metal, cans, vinyl, plastic, etc. can be recycled, and must be disposed of in the designated collection area for recyclables. Some large apartment complexes have a day of the week designated for collection of recyclables.

3. Food waste

- When disposing of food waste, foreign substances and liquid must be removed. Then the waste must be put in the food waste collection bin or discharged in a bag exclusively for food waste.
- Each local government has a volume-based food waste collection system based on RFID.

※ General waste that can be mistaken as food waste

- The following items must be placed in a general waste bag:

| Type | Items |
|--------------------|---|
| Vegetables | Onion peel, corn peel, corn stem, pepper stem |
| Fruit | Hard shell of dry fruits as walnuts, chestnuts, peanuts, acorns |
| | Hard seeds of stone fruits such as peaches, apricots, persimmon |
| Meat | Hair and bones from cows, pigs, chicken |
| Fish and shellfish | Shell of shellfish, such as clam, turban shell, abalone, sea squirt, oyster |
| Residue | Contents from single-use tea bags (green tea, Oriental medicine, etc.) |

4. Large-sized waste (furniture, home appliances, etc.)

- Large-sized waste such as old furniture or electronic appliances that can no longer be used cannot be put in a volume-based bag. In such case, they are disposed of after reporting to the governing district. First, a sticker must be purchased at the district (dong) community center, apartment community center, or district (gu/gun) webpage. After attaching this sticker, the item can be disposed of on the designated date for collection.

Q223. In the case of an emergency, where can foreigners who do not speak Korean call?

A223. Foreigners who cannot speak Korean can call 112 or 119 or use the bbb free interpretation service around the clock.

- When a foreigner calls the 112 emergency number, a three-way call is set up with the caller, 112 personnel and interpreter.
- In the case of fire or an emergency medical situation, you can call the Safety Report Center at 119. You can report the emergency through the same interpretation services that are provided at 112.

- To use bbb Korea's service, call their representative number at 1588-5644 and select the extension number of the language that you speak, and you will be connected to the volunteer interpreter's cell phone (services in 20 languages).

※ How to use the bbb mobile application

- Connect to the smartp application of bbb, and select the extension number of the language that needs interpretation. Without going through the automatic response system, you are immediately and conveniently connected to the mobile phone of the volunteer that provides interpretation for that language.

※ Emergency Ready application: Disaster and emergency alert for foreigners

- The Emergency Ready application was developed by the Ministry of Interior and Safety. It can be used to make a 119 report or receive various push notification services in English and Chinese, including information on locations of emergency medical facilities, police stations, fire stations, embassies, and emergency situations regarding COVID-19.

※ Inquiries on living in Korea: 110 Kookmin Call

- Not urgent inconveniences experienced while living in Korea and other general issues (20 languages supported)

The FAQ on FDI in Korea was published by KOTRA's Invest Korea based on the Foreign Investment Promotion Act and other Acts. If the contents of this book contradicts the related ministry's interpretations, the ministry's interpretations shall prevail.

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