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SWITZERLAND GLOBAL ENTERPRISE

Republic of Korea
Legal Provisions

Compiled by:

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GENERAL REMARKS

The Republic of Korea - also referred to as Korea or South Korea - is a constitutional, democratic republic with a presidential system. The government is divided into three branches: executive, judicial and legislative. The 17 local governments are semi-autonomous and contain executive and legislative bodies of their own.

South Korea and Switzerland have bilateral agreements like the Free Trade Agreement between EFTA and ROK (2006), the Avoidance of Double Taxation Agreement (1980), the Korean-Swiss science and Technology Agreement (2008), but also several bilateral treaties on social security, intellectual property, etc. For more information, go to www.eda.admin.ch.

In 2013, South Korea and Switzerland have celebrated the 50th anniversary of bilateral relations between the two countries and the 60th anniversary of the Swiss Neutral Nations Supervisory Commission (NNSC) in Korea, which was created pursuant to the ceasefire agreement of 1953. In the absence of a peace agreement, this is the only legal instrument to date preventing further outbreaks of hostilities on the Korean peninsula.

There is an Act that has taken effect since October 2016 to prevent corruptions in Korea, being also called "Kim Young-Ran Act". The Act prohibits public officials, educators, and journalists from receiving unlawful requests to establish a discipline in the public society.

If you would like to find related laws and regulations with English information, please go to www.klri.re.kr/eng/category/main.do.

FREE-TRADE AGREEMENTS

Korea has signed the Free Trade Agreements with a total of 52 countries: (Chile, Singapore, EFTA (4 countries), ASEAN (10 countries), India, EU (28 countries), Peru, USA, Turkey, Australia, Canada, China, New Zealand, Vietnam, and Columbia. These markets account for more than 73.4% of the world population and for 77.3% of the global GDP. 67.8% of the Korean trade covered through FTAs.

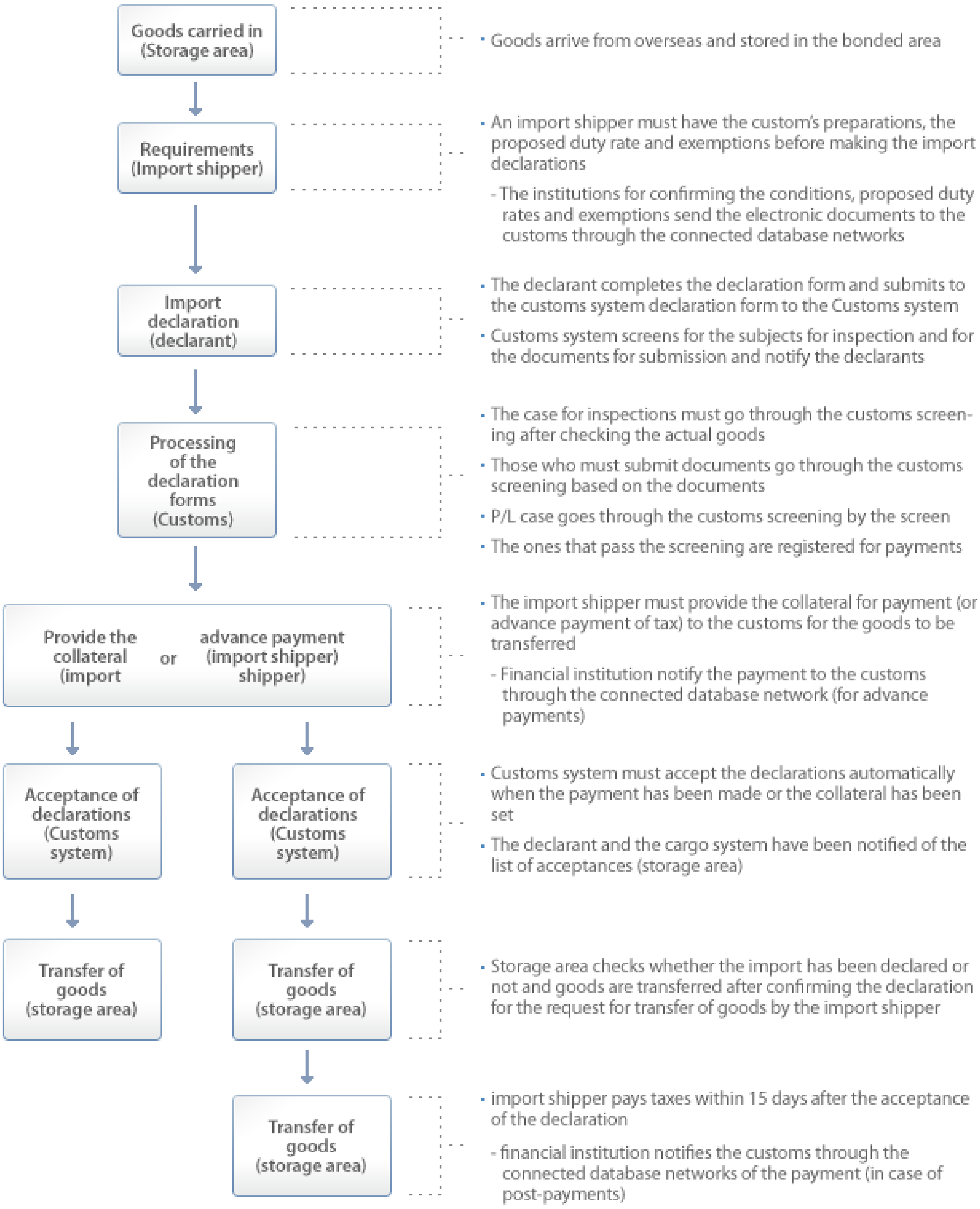
The free trade negotiations between the Member States of the European Free Trade Association (EFTA) - Iceland, Norway, Liechtenstein and Switzerland - and the Republic of Korea were launched by ministers from the EFTA States and Korea in December 2004. The Agreement was signed in December 2005 and entered into force on September 1, 2006. It covers all major areas of trade relations including trade in goods, trade in services, government procurement, competition and intellectual property. It also contains a chapter on dispute settlement. Switzerland and Korea also concluded bilateral agreements on basic agricultural products, and Korea concluded an agreement on investment with Switzerland, Iceland, and Liechtenstein.

For legal provisions, please refer to the EFTA website:
http://www.efta.int/free-trade/free-trade-agreements/korea.aspx

For tariff rates under ROK-EFTA FTA, please check the database of Korea customs services (www.customs.go.kr), using the HS code of your product.

CUSTOMS

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



Source: Korea Customs Service, www.customs.go.kr

IMPORT AND EXPORT REGULATIONS

The Korea Food and Drug Administration of the Ministry of Food and Drug Safety is the authority which is in charge of safety and registration of cosmetics, food, medicines. For more information on the KFDA, go to www.mfds.go.kr/eng.

In an effort to safeguard public health and safety, Korea requires that companies obtain prior certification in the form of a Korea Certification (KC) Mark from authorized testing centers before certain products can be sold in Korea. Some items or products that are subject to legal compulsory certification are specified in related laws and ordinances pertaining to safety, health, environment and quality. The final product testing is the basic principle and the marking shall be located at a conspicuous place on the product or packaging by printing or engraving in a non-removable way. It is basically impossible to replace the KC mark by the European Conformity (CE) mark. For more information on the KC mark, go to www.kats.go.kr.

The FTA partner country applies preferential tariff treatment to the products, provided that the products fulfill preference criterion set out in the Agreement and Certificate of Origin for the products specified in the Agreement is prepared also. For more information, go to www.customs.go.kr.

For more information, the practical laws and regulations for import & export, go to oneclick.law.go.kr.

TAXES

In Korea, taxes are classified according to tax-levying government authorities, purpose of tax and income based tax levy, etc.

National tax	**Internal tax**	Income tax, corporate tax, inheritance tax, gift tax, gross real estate tax, value added tax, individual consumption tax, liquor tax, transportation, energy and environmental tax, stamp tax, securities transaction tax, education tax, farming and fishing village special tax
	Customs duty	Customs duty
Local tax	Acquisition tax, registration and license tax, leisure tax, tobacco consumption tax, local consumption tax, resident tax, local income tax, property tax, automobiles tax, common facilities tax, local education tax	

Source: www.Investkorea.org

Corporate Tax

Domestic businesses are obligated to pay corporate tax for all income generated domestically and in foreign countries, and foreign businesses are obligated to pay corporate tax for income from domestic sources.

Taxation is based on the business year income. Since most foreign investors are companies and thus liable to pay it, corporate tax takes up the largest portion of the total taxes related to foreign investment. Under the tax agreement, only the income from a permanent establishment of a foreign company is taxable. Permanent establishments here refer to branches, warehouses, stores, or other establishments for installment or construction projects. A company which has the right to enter into contracts or which conducts its business and trade through an agent who on behalf of the company buys or sells its stocks is also subject to tax.

There are three types of taxable income falling under the corporation tax category: income of each business year, liquidation income, and capital gains from the transfer of property. Income of each business year is calculated by deducting the total amount of deductible expenses from the total amount of gross income. Liquidation income refers to the residual property value of a dissolved (merged or divided) corporation exceeding the total amount of equity capital. In cases where transferring property, specific houses, or non-business land in areas where land values have skyrocketed, taxes are imposed on margin from transfer for the purpose of suppressing speculation. Corporate tax on capital gains from the transfer of land, etc. and corporate tax on income of each business year overlap as double taxation.

Tax base	Tax rate
Less than KRW 200 million	10% of the tax base
More than KRW 200 million	KRW 20 million + 20% of the amount in exceeding KRW 200 million
More than KRW 20 billion	KRW 3.98 billion + 22% of the amount exceeding KRW 20 billion

Source: www.Investkorea.org

SETTING UP COMPANIES

There are three types of a foreigner's advancement into Korea for the purpose of operating business: the establishment of a local corporation or a private business by a foreign national or a foreign corporation; or the establishment of a local branch or a liaison office in Korea by a foreign corporation.

	Type	Act	Note
1	Local Corporation	Foreign Investment Promotion Act	Recognized as a foreign investment
2	Branch	Foreign Exchange Transaction Act	Categorized as a domestic branch of the foreign corporation
3	Liaison Office		

Comparison of a Foreign-invested Company and a Domestic Branch

A Foreign-Invested Company under the Foreign Investment Promotion Act

Establishment of a local corporation in Korea by a foreign national or a foreign corporation is regulated by the Foreign Investment Promotion Act (FIPA) and the Commercial Act. A foreigner shall invest not less than KRW 100 million for the local corporation concerned to be recognized as foreign investment under the FIPA.

Private business established by a foreigner with the investment of not less than KRW 100 million is also recognized as foreign investment under the FIPA. (If an investee corporation is a private business, the company cannot issue a business investment D-8 visa. A trade D-9 visa shall be issued if it invests KRW 300 million or more.)

The FIPA also regulates the 'direct foreign investment,' which are foreign investors invest at least KRW 100 million to obtain more than 10% of local stocks, or foreign-invested companies to introduce long-term loans of over 5 years from overseas parent companies. For more information, go to www.fdiservice.com.

Domestic Branch of a Non-resident under the Foreign Exchange Transaction Act

A 'branch' of a non-resident (a foreign company etc.) operates business that generates profits in Korea, and is not recognized as foreign direct investment.

A 'liaison office' does not carry out business that generates profits in Korea, but instead undertakes a non-sales function such as market research, R&D etc. An 'office' is granted a distinct number, equivalent to business registration, at a jurisdictional tax office in Korea without the need for registration, which is different from a 'branch.'

Category	Foreign-Invested Company	Domestic Branch of a Foreign Company
Act	Foreign Investment Promotion Act	Foreign Exchange Transactions Act
Corporation Type	Domestic corporation	Foreign corporation
Identity	Foreign investors and foreign-invested companies are of separate entities (independent accounting & settlement)	Headquarters and branches are of a single entity (the same accounting & settlement)
Authorities in charge of accepting registration and granting permission	Invest KOREA (KOTRA) or headquarters of a foreign exchange bank	A branch of a foreign exchange bank for notification, the Ministry of Strategy and Finance for permission to operate financial business, etc.
Minimum/Maximum Investment	Minimum of KRW 100 million per investment (No upper limit)	No limit in investment amount
Scope of Tax	Tax obligations for all domestic and	Tax obligations for income from

Obligations	overseas income Corporate tax rate: 10% for KRW 200 million or less, 20% for over KRW 200 million and 20 billion or less, and 22% for over KRW 20 billion	domestic sources only Corporate tax rate: 10% for KRW 200 million or less, 20% for over KRW 200 million, 22% for over KRW 20 billion and in some cases branch tax shall be paid.

Source: www.Investkorea.org

FREE ECONOMIC ZONES UNDER THE SPECIAL ACT ON DESIGNATION AND MANAGEMENT OF FREE ECONOMIC ZONES

Korean Free Economic Zones (KFEZ) are specially assigned areas created to advance the business and environment for foreign-invested companies in Korea. Since the 2003 inauguration of KFEZ in Incheon, the number of KFEZs in operation has grown to 8: Incheon, Busan-Jinhae, Gwangyang Bay Area, Daegu-Gyeongbuk, Saemangeum-Gunsan, Yellow Sea, East Coast and Chungbuk.

Based on the Special Act on Designation and Management of FEZs and Restriction of Special Taxation Act, the KFEZs offer exemptions or reductions in corporate tax, income tax, tariffs, acquisition tax and property tax for foreign-invested resident companies and developers.

Category	Benefits		Investment Requirements
National Tax	**Corporate tax** **Income tax**	Tax benefits for 5 years • First 3 years : 100% exemption • The following 2 years : 50% reduction	Manufacturing : $10 million or more Tourism : $10 million or more Logistics : $5 million or more Medical institutions : $5 million or more R&D : $1 million or more Service : $10 million or more
		Tax benefits for 7 years • First 5 years : 100% exemption • The following 2 years : 50% reduction	Manufacturing : $30 million or more Tourism : $20 million or more Logistics : $10 million or more R&D : $2 million or more
	Tariff	100% exemption for 5 years	Imported capital goods only
Local Tax	**Acquisition tax**	100% tax exemption for up to 15 years in accordance with local ordinances	
	Property tax	Tax reductions for up to 15 years in accordance with local ordinances	

Source: www.fez.go.kr

PROMOTION OF INVESTMENT BY LEGAL ASSISTACE

The Foreign Investment Promotion Act (implemented since 1998) is the basic law governing the grant of incentives to foreign investors. FIPA delegates certain items to its Enforcement Decree and Enforcement Regulations and the Regulation of Foreign Investment and Technology Importation.

The Foreign Exchange Transactions Act (implemented since 1998) governs foreign exchange transactions related to foreign investment, and the Special Tax Treatment Control Act, its Enforcement Decree and Enforcement Regulations and the Regulation on Tax Exemptions or Reductions for Foreign Investment provide exemptions and reductions of applicable taxes related to foreign investment.

The Special Act on Designation and Management of Free Economic Zones (implemented since 2003) is the special law for foreign-invested companies to promptly create the foreigner-friendly economic and conditions in Korea which are intended to facilitate more foreign investment. It regulates certain incentives and special treatments for foreign investors and companies such as exemptions in corporation tax.

To foster foreign investors' understanding of Korean Laws and to increase their investment in Korea, the English web services of the translation of current major statutes of the Republic of Korea is currently provided. For more information, go to elaw.klri.re.kr.

INTELLECTUAL PROPERTY PROTECTION

Korean Intellectual Property Office (KIPO) is the major governmental authority in charge of intellectual property matters in Korea (www.kipo.go.kr). According to the “Special 301” Report of USTR, announced on April 30, 2009, Korea was removed from the Watch List in recognition of the significant improvements it has made during the past year, and the Korean Government’s policy direction of continuing to place a priority on improving its IPR regime.

The KIPO provides an internet-based patent document search service available to public and international since 2016. It covers Korean IRP applications, legal statues, information, trial information, etc. For more information, go to eng.kipris.or.kr .

ENTRY CONDITIONS, VISA APPLICATION

Foreigners must carry a valid visa to enter Korea. Swiss citizens are exempt from this rule, unless they stay longer than 90 days. For other exemptions, go to www.hikorea.go.kr. A foreigner who has entered Korea with a long-term (91 days or more) visa should apply for alien registration at the immigration control office with the jurisdiction over the sojourn place within 90 days. Foreigner over the age of 18 should visit in person to register their fingerprints.

Korea has 36 types of visas reflecting specific social activities and residency purposes for foreigners. Any foreigner residing in Korea must obtain permission from the relevant authorities for any activity different from what is permitted under the assigned visa. A foreign applicant for a visa should confirm his/her eligibility for staying in Korea according to the purpose of his/her entry into the country, and should submit an application along with the corresponding documents to an overseas Korean consular office. For more information, go to www.hikorea.go.kr or contact the Korean Embassy in Bern: Kalcheggweg 38, 3006 Bern, Switzerland, Tel: (+41) 31 356-2444, http://che-berne.mofat.go.kr/

LABOUR LAW

The Korean Labour Law is largely divided into four categories: Individual Labour Relations Law, Collective Industrial Relations Law, Cooperative Industrial Relations Law and Employment Law. Depending on its characteristics, each law sets the standards for labour contracts and relations between employers and workers, enables autonomous dispute resolutions between labour and management by guaranteeing worker’s right to organize a union and ensures mutual benefits to labour and management by promoting the participation and cooperation of both employers and workers.

The standard working hours set by the Labor Standards Act are 8 hours per day and 40 hours per week. The working hours prescribed by the Act shall not be exceeded. The standard annual paid leave is 15 days with one day to be added every two years of consecutive work after the initial year, up to a total of 25 days.

Korea has four key social insurance programs: employment insurance, industrial accident compensation insurance, national pension and health insurance.

Migrant workers have equal status with Korean workers. Accordingly, the basic labor rights of migrant workers are protected by the Labor Standards Act, Minimum Wages Act, Wage Claim Guarantee Act, and other relevant labor laws.

A Severance Pay is a unique institution of Korea, regulated by the Guarantee of Workers' Retirement Benefits Act. All full-time employees, either national or international, are entitled to receive a Severance Pay at the rate of 30 days' 'average wage' for each continuous year of service. Since a Severance Pay is a legal mandatory benefit given to the employees when they leave employment at a company, it must be offered for those who either resign or are fired, regardless of the circumstances. For more information, go to www.moel.go.kr.

MINIMUM WAGE & MAXIMUM WORKING HOURS

In January 2018, the minimum hourly wage will be KRW 7,530. The minimum wage covers all the employees as defined in the Labor Standards Act of Korea regardless of their status, contract, or nationality. However, there are some exceptions; the businesses that only employ family members or relatives living in the same residence; domestic service users; and the seamen who are governed by the Seamen Act. Any employers who fail to pay the minimum wage are subject to punishment by Ministry of labour.

From July of 2018, the maximum weekly working hours of will be 52 hours, consisting of 40 regular hours and 12 overtime hours; it will not be possible the maximum workweek from 68 hours consisting of 40 regular hours, 12 overtime hours, and 16 hours of day-off any longer.

On February of 2018, the Labor Standards Act of Korea was amended to settle a long-standing controversy over the treatment of weekend working hours. Before it was amended, 16 working hours on the paid day-off (weekends) was possible even though the Act restricted the only 12 overtime working hours a week because the related of the Act was interpreted that 12 overtime work hours were not included the 16 hours of weekends.

The new rules will be applied to the workplaces with more than 300 workers from July this year, those with 50 to 299 employees from January 2020 and those with 5 to 49 employees from July 2021. And all employees who work less than 8 hours on a public holiday must be paid 150 percent of their regular wage and 200 percent if 8 hours are exceeded.

But 21 industrial categories that will be exempted from restricted working weeks, including financial and insurance services, research and development, broadcasting, and accommodation, were removed from the list, and 5 categories such as shipping and health care services will be considered exceptional cases.

IMPROPER SOLICITATION AND GRAFT ACT (KIM YOUNG-RAN ACT)

There is an Act that has taken effect since October 2016 to prevent corruptions in Korea, being also called "Kim Young-Ran Act". The Act prohibits public officials, educators, and journalists from receiving unlawful requests to establish a discipline in the public society.

It is regulated to put anyone working in public office, the media, and education accepting KRW 1 million or more in bribes in jail for up to 3 years, regardless of whether the money was related to an official's duties or position, or whether favors were given in return. At the same time, even if a gift of money or other articles worth less than KRW 1 million are received, they are subject to punishment if it has duty relations or relations for compensation attached. Not only the public official who receive money but also the givers of such money or valuables will be punished.

But there are exceptions to the prohibition of graft for the purpose of smooth job performance. Socialization, rituals, and relief money without direct relevance to an official's duties or position;

sociable drinks and snacks are permitted up to KRW 30,000, personal gifts up to a value of KRW 50,000 are acceptable, and condolence money or flowers are permitted up to KRW 100,000.

The Act is expected to cause quite a stir in the bureaucratic society and business behaviors of Korea. For more information, go to www.acrc.go.kr.

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