

Republic of Korea

Introduction

Our Location Offer

Korea occupies a strategic location with East Asia. The East Asian region is home to two-thirds of the world's population, produces one-fifth of the world's goods, and exhibits some of the world's highest economic growth rates. East Asia is expected to become the world's largest market and production center and the principal growth engine for the world economy. There are more than 61 metropolitan cities with population of at least 1 million within a three-hour flight radius of Seoul. That makes Korea a gateway to all the promising investment destinations in East Asia.

Korea's success story, which saw GNI increase 200-fold in only 40 years, is known as the "Miracle on the Han River." Over the past 30 years, Korea's industrial structure has undergone fundamental changes - we are now emphasizing manufacturing and services instead of agriculture. And our major export items have shifted from agricultural products to semiconductors and automobiles.

The number of foreign-invested companies in Korea has increased exponentially. In 1997 the number was as low as 2,000, but this year it reached 14,000. This shows the prominence foreign-invested companies are gaining within the Korean economy.

Korea possesses some of the world's best industries. These include automobiles, steel, shipbuilding, semiconductors, displays and IT. Not only that, but Korea's construction companies are doing extremely well overseas. Audiences throughout the wider Asian region enthusiastically welcome Korean dramas and pop songs. And Korea's online gaming industry is now the second largest in the world. Clearly, investing in Korea's advanced and rapidly growing industries is a wise choice for the future.

Korea is one of the most active economies in terms of pursuing FTAs with large economic blocs. Korea and the United States have already struck a deal, which is awaiting ratification in the legislatures of both economies. FTA negotiations with the European Union are complete, and we are getting ready to begin negotiations with China and Japan. In this way, we are striving to meet global standards of transparency and openness. Korea's active pursuit of FTAs will help foreign investors based here to do business more effectively in the world market.

Also among Korea's greatest strengths are its excellent pool of human resources and its optimal business environment. Korea's passion for education is well known through the world, and Korea produces more than 100,000 science and engineering graduates every year. You will be able to draw on world-class human capital if you invest in Korea. Also, Korea boasts the highest Internet penetration rate in the world - thanks to this ubiquitous Internet presence, you can get down to business as soon as you arrive.

Creating a business-friendly environment is the highest priority for the Korean government. Deregulation efforts are under way, and we have already succeeded in reducing the corporate tax rate from the 2009 level of 25 percent to 22 percent for 2010. We are hoping to reduce it to only 20 percent in 2011.

The Korean government currently offers tax relief to foreign companies with the potential to make major contributions to the Korean economy, provides them with affordable or free land, assists them with administrative procedures, and provides cash grants and other financial support under certain conditions.

Key factors affecting the attractiveness of an economy to investment are:

- access to export markets
- openness to trade and investment
- a skilled/educated labor force
- the size and purchasing power of the local market
- the quality and accessibility of its infrastructure
- investment incentives

Introduction to investment regime

Republic of Korea

Since the financial crisis of 1997, the Korean government has been active in its efforts to attract foreign direct investment to Korea. The enactment of the Foreign Investment Promotion Act in 1998 was an important step that facilitated these efforts. As a result, FDI has jumped over the past decade and now constitutes a major pillar of the Korean economy.

Foreign investment played a pivotal role in overcoming the economic hardships of the late 1990s. Throughout this process, Korea encountered advanced technologies, innovative production methods and improved business strategies, which in turn contributed to its economic growth.

Korea is open to all kinds of foreign investment. In particular, we are hoping to see increased investment in areas such as green growth, which is among our top priorities at the national level, and in sectors such as parts and materials where additional investment is needed to strengthen the economy's industrial structure. We also wish to promote employment and therefore are paying considerable attention to the service sector, which has immense potential to create new jobs.

All Korea's government ministries play a part in promoting FDI, and a team of high-level government officials is working to improve the economy's foreign investment environment and resolve any grievances investors may have. Korea has taken an important step toward a world-class foreign investment environment by establishing the Free Economic Zones, where investors can enjoy the benefits of deregulation and various forms of assistance and support. Furthermore, we are building infrastructure and revising outdated and cumbersome regulations concerning land development. The government is also committed to improving living conditions for foreign nations - for example, by establishing more international schools for the children of foreign business people.

Investment priority plan/equivalent policy

More information

Korea Portal: www.korea.net

Ministry of Knowledge Economy: www.mke.go.kr

Korea Trade-Investment Promotion Agency: www.kotra.or.kr

Invest KOREA: www.investkorea.org

Office of the Investment Ombudsman:

<http://www.investkorea.org/InvestKoreaWar/work/ombsman/eng/index.jsp>

Regulation of foreign investment

Process for foreign entities/nationals to invest in our economy

The procedures to establish a foreign investment consist of foreign investment notification, remittance of the investment capital, registration of incorporation & business registration, and FDI company registration. The procedures applied to foreigners are basically the same as for Koreans except for the two additional steps which are foreign investment notification and FDI company registration. However, in the case of registration as a private business, the step of 'registration of incorporation' is not required.

1) Foreign Investment Report

Foreign investors or their agents can notify their investment at Invest KOREA (KOTRA) or Korea Business Centers (KBC) of KOTRA, headquarters and branches of domestic foreign exchange banks, or domestic branches of designated foreign banks.

Since November 1998, the principle of simplified notification policy has been applied to foreign investments. The investment notification types are divided into pre-notification prior to the acquisition of shares, equity, etc. and post-notification following the acquisition of shares or the conclusion of a contract. The details are as follows:

(Pre-Notification)

- Foreign investment through acquisition of new shares etc. or subscription and changes in investment details

Republic of Korea

- Foreign investment through acquisition of existing shares etc. or change in investment details
- Foreign investment through long-term loan or changes in investment details

(Post-Notification)

- Acquisition of shares etc. through mergers etc.
- Acquisition via the issue of new shares such as reserves, revaluation reserves, etc. of foreign-invested companies
- Acquisition through mergers, spin-off, and comprehensive interchange and transfer of shares, etc.
- Investment with profits (dividends) from acquired shares
- Acquisition through purchase/inheritance/testation/donation
- Acquisition through conversion, interchange and acquisition of CBs, EBs and DRs
- Transfer of shares etc.
- Decrease in shares etc.
- Application for registration, change of registration, or registration cancellation of a foreign-invested company

2) Investment Fund Remittance

In principle, investment funds must be remitted through a foreign currency bank under the very foreign investor's name. Funds from domestic sources are not recognized as foreign investments. In the process of paying for stock subscription, the bank issues a stock deposit certificate for subscription payment (required for corporation establishment registration) and a foreign exchange purchase certificate (required for registering a foreign-invested company).

3) Corporate Establishment Registration & Business Registration

Various required documents shall be taken to the district court and tax office to conclude registration of incorporation and business registration.

4) Foreign-Invested Company Registration

For the following cases, a foreign investor (or their agent) or a foreign-invested company must register the foreign-invested company at the entrustment institution within 30 days of the occurrence of the causes as follows.

- Completion of payment for the investment object (new share acquisition)
- Acquisition of existing shares (existing share acquisition)
- Acquisition of shares through mergers etc. (new acquisition of CB conversion, spin-off etc.)
- Completion of a contribution to an NPO (new acquisition through contribution)

Does this apply to all investment or, are there differential treatment?

Conditions of investment

Unless otherwise stipulated by law, a foreigner may carry out foreign investment activities in Korea without restrictions.

Out of a total of 1,145 categories under the Korean Standard Industrial Classification, the Foreign Investment Promotion Act protects 62 categories including public administration, diplomacy, national defense, etc. from foreign investments. Although foreigners may invest in all of the 1,083 investment categories, 28 categories such as the generation and transmission of electricity, broadcasting, telecommunications, publishing of newspapers and air transport remains have restrictions on the foreign investment ratio.

Investment promotion and facilitation

Republic of Korea

Invest Korea (IK), established in 2003, is the government organization officially charged with attracting foreign direct investment to Korea. IK provides a comprehensive suite of one-stop services to meet the diverse needs of foreign investors, ranging from investment and incorporation consultations to information on available incentive programs, assistance with the selection of plan sites and license and permit applications, as well as practical support related to living in Korea and post-investment support - all of which are intended to speed up the process of adaptation and settling in.

IK assigns a project manager to each of the foreign companies it assists in order to offer more personalized service throughout the entire process of investing in Korea, from investment consultations to the issuance of business licenses and permits, the launch of operations, and post-investment management. Currently, about 100 such project managers are working with foreign investors at various stages of investment to facilitate the process and ensure that investors are receiving all the benefits for which they are eligible. Project managers receive ongoing training to upgrade their skills, and new project managers are regularly recruited to expand Invest Korea's capacity for service.

The Office of the Investment Ombudsman was established within IK in accordance with the Foreign Investment Promotion Act of 1998 to resolve practical and administrative difficulties encountered by foreign-invested firms in Korea. The Ombudsman, who is appointed by the President of Korea, works in close cooperation with a team of specialists in various related fields and together they suggest appropriate solutions. In some cases, the Ombudsman recommends changes to the government's foreign investment policy or to its procedures, and delivers those recommendations to the Foreign Investment Committee. By working closely with FDI policy makers, the Ombudsman's office has successfully intervened on behalf of many foreign companies in Korea. The Office of the Investment Ombudsman's impressive track record in assisting investors has earned it the Best Post-Investment Service Award by the World Association of Investment Promotion Agencies (WAIPA), presented during the Geneva conference in March 2007.

Invest Korea Plaza is a business incubation facility dedicated exclusively to foreign investors located within a state-of-the-art intelligent building. As this building is just a stone's throw away from KOTRA's headquarters, where IK's offices are located, tenants of IKP have access to its comprehensive services. These include feasibility studies and consulting services by IK's staff of experts, as well as by representatives of Korea's government ministries and affiliated agencies. Meanwhile, the Investor Support Center with IKP provides settling-in support to foreign investors and their families to facilitate the transition.

More information about the process of investing in our economy

Invest Korea: <http://www.investkorea.org>

Ministry of Knowledge Economy: <http://www.mke.go.kr>

Investment protection

Protection of property rights and conditions for expropriation

Article 23 of the Korean constitution guarantees property rights of citizens, and states as follows: (1) The right of property of all citizens shall be guaranteed. The contents and limitations thereof shall be determined by Act; (2) The exercise of property rights shall conform to the public welfare; (3) Expropriation, use or restriction of private property from public necessity and compensation therefor shall be governed by Act: Provided, That in such a case, just compensation shall be paid.

According to this regulation, Korea permits expropriation, use or restriction of property rights from public necessity only when constitutional requirements are fulfilled while ensuring free use, profiting, and disposition of specific property rights of all citizens within the principle of private ownership.

In other words, Korea rigorously protects property rights by stipulating that (1) The contents and limitations shall be determined by Act; (2) Restrictions on existing property rights shall be governed by Act; (3) The Act that restricts property rights shall be based on constitutional principles (Article 10, 11, 34, etc. of the Constitution), and limitations (Article 126, 23 of the Constitution); (4) Infringement of property rights through retroactive legislation shall not be permitted.

More information

Republic of Korea

Constitution of the Republic of Korea, accessible from: <http://elaw.klri.re.kr>

Ministry of Justice: <http://www.moj.go.kr>

Protection of IPRs

Korea's long-term goal is to lead the world in the protection of intellectual property rights. Since 1987, we have made continual efforts to raise public awareness of counterfeit products through various campaigns. In 2009, we expanded our network of regional anti-counterfeiting offices; implemented a system to monitor the online distribution of counterfeit goods; and sought police powers for our IPR enforcement staff.

(Improving the Laws and Systems)

Despite the government's efforts to strengthen anti-counterfeiting measures, enforcement actions were limited to administrative measures until recently. However, owing to the need for more foreign investment as well as a higher international credit rating, there was a call from international companies for a greater level of IP enforcement. Accordingly, we worked to obtain police authority for our enforcement staff - that is, for the authority to investigate alleged offences, to execute search warrants and to seize evidence. On April 21, 2010, the National Assembly passed the relevant bill, which took effect in August 2010. We will now be able to crack down on counterfeit goods in a prompt, efficient and effective manner.

Trademarks have gained greater significance with the growth of the trademark design market, and Korea has reflected this in its domestic trademark laws. Furthermore, Korea's IPR laws are under revision in an effort to reflect the FTA between Korea and the United States.

(Prevention of Counterfeiting)

To reinforce our anti-counterfeiting campaign, we increased the number of enforcement officers from four to 13 in 2009. We also established permanent enforcement squads in many local areas. The targeting of areas adjacent to subway stations and areas with large floating populations led to a dramatic increase in the number of warnings issued. Our enforcement officers issued 2,849 warnings in 2009, which represents a 150 percent increase over the previous year. Joint crackdowns with other investigative agencies in 2009 led to the filing of 122 criminal charges - a huge increase of 358 percent over the previous year.

In 2009, we asked the Korea Communications Standards Commission to shut down 130 websites that were being used to sell counterfeit goods. We also launched a 24 hour system to monitor suspicious online transactions. All these efforts reflect our commitment to the eradication of counterfeiting.

(Educating the Public About IPR Protection)

Public awareness is essential to our efforts to safeguard intellectual property rights. Patent holders must know their rights and what steps to take to redress infringements, and the general public must be persuaded to reject counterfeit goods. The Korean government has produced and distributed educational videos with these purposes in mind, including material that targets teenagers. Recent PR activities have included portal site banners and quizzes and public service announcements in a variety of media. Our ads have been broadcast on trains as well as on network and cable television, and have also been featured as part of multimedia displays in subways and other public places.

Moreover, to create a new culture of IPR protection, we are encouraging bloggers to write about counterfeiting. We also work with consumer groups to urge consumers to buy genuine goods.

More information

Korean Intellectual Property Office: <http://www.kipo.go.kr/en/>

Flow of funds

After the Asian financial crisis in 1997, measures to limit exchange rate fluctuations were revoked. Korea's exchange rate is now determined by economic fundamentals, and supply and demand in the market.

Republic of Korea

Korea's exchange rate policy reflects market principles, but the government undertook a smoothing operation in response to the excessive volatility and market disruptions that arose as a result of the global financial crisis, offshore speculation and other factors.

The Foreign Investment Promotion Act provides foreign direct investment with a higher level of protection than indirect investment - that is, investment in the form of securities and bonds.

With respect to the proceeds that come from the stocks, acquired by a foreign investor, proceeds from the sale of stocks, the principal, interest and service charges paid in accordance with the contract for such a loan as prescribed by the Foreign Investment Promotion Act, and the compensation paid in accordance with a contract for the introduction of technology, their remittance to foreign countries shall be guaranteed in accordance with the contents of the permission or report of the contract for foreign investment or for the introduction of technology, as of the time for the said remittance.

Under the Foreign Exchange Trade Act, the Ministry of Strategy and Finance may temporarily suspend or restrict foreign exchange transactions if such action is deemed unavoidable due to force majeure (war, natural disaster, etc.), substantial and drastic changes to internal and external economic conditions, or other equally grave circumstances. However, under the terms of the Foreign Investment Promotion Act, foreign investment is an exception to this clause in the Foreign Exchange Trade Act.

And if managed, under what circumstances or purposes does your government/central bank intervene?

Are there any restrictions on the repatriation of funds related to a foreign investment (e.g. profits, dividends, royalties, loan payments)?

Mechanisms to review decisions, and settle disputes

Korea has had a simplified notification system in place since November 1998. Under the current system, investors are merely required to notify the government of their intentions to invest, rather than to seek approval for the investment as was the case prior to 1998.

Foreign investors may choose to settle disputes either through litigation or through alternative means such as arbitration, mediation or conciliation. As a member of both the 1958 New York Convention and the Washington Convention, and having fully adopted the UNCITRAL Model Law on International Commercial Arbitration and revised its Arbitration Act accordingly, Korea has a highly arbitration-friendly environment. The Korean Commercial Arbitration Board, the only authorized non-profit arbitration institution in Korea, has a long history and extensive experience of resolving international arbitration cases impartially and promptly. The Korean courts favor arbitration and willingly enforce the Board's decisions.

What, if any, mechanism do you have for foreign investors to settle disputes?

ICSID

Korea signed the Convention on the Settlement of Investment Disputes Between States and Nationals of Other States on April 18, 1966 and Korea's membership entered into force on March 23, 1967.

No disputes involving Korea have even been brought before ICSID.

More information

The Korean Commercial Arbitration Board provides useful information for foreign investors investing in Korea or working with Korean corporations or government agencies. Detailed information on resolving disputes in Korea can be found at www.kcab.or.kr.

International investment agreements

With;

Republic of Korea

Albania; Algeria; Argentina; Austria; Azerbaijan; Bangladesh; Belarus; Bolivia; Brunei Darussalam; Bulgaria; Burkina Faso; Cambodia; China, People's Republic of; Costa Rica; Croatia; Czech Republic; Denmark; Dominica; Egypt; El Salvador; Finland; France; Gabon; Germany; Greece; Guatemala; Guyana; Honduras; Hong Kong, China; Hungary; India; Indonesia; Iran, Islamic Republic of; Israel; Italy; Jamaica; Japan; Jordan; Kazakhstan; Kuwait; Kyrgyzstan; Lao, People's Democ. Rep.; Latvia; Lebanon; Libya; Lithuania; Malaysia; Mauritania; Mauritius; Mexico; Mongolia; Morocco; Netherlands; Nicaragua; Nigeria; Oman; Pakistan; Panama; Paraguay; Peru; Philippines; Poland; Portugal; Qatar; Romania; The Russian Federation; Saudi Arabia; Senegal; Slovakia; South Africa; Spain; Sri Lanka (ex-Ceylon); Sweden; Switzerland; Tajikistan; Thailand; Trinidad & Tobago; Tunisia; Turkey; Ukraine; United Arab Emirates; United Kingdom; United States; Uzbekistan; Viet Nam;

Please provide a brief description of these IIAs, or your IIAs in general.

Korea has IIAs with 85 countries, as indicated in the chart above. The specific details of these agreements vary, but their main features can be summarized as follows. Please note that the benefits of the IIAs apply only to those investments which are admitted in accordance with the laws and regulations of both Parties.

- National treatment and most-favoured-nation treatment are guaranteed. Investors of the other Party are ensured treatment no less favourable than the treatment accorded to domestic investors or investors of any third country.
- Expropriation of investments is generally not permitted. It is allowed only if all four conditions below are satisfied:
 1. The expropriation must be carried out to serve the public interest.
 2. It must be carried out according to due process of law.
 3. It must be carried out on a non-discriminatory basis.
 4. It must be accompanied by prompt, adequate and effective compensation.
- Investors are guaranteed the right to transfer any payments related to the investment freely in and out of the country.
- Investor-State Dispute Settlement provisions are included, enabling the investor to request international arbitration in the event that a dispute related to the investment agreement arises between one Party and an investor from the other Party.

More information

Movement of persons

Treatment of foreign nations or personnel of foreign firms

A corporate investment (D-8) visa, conferring a maximum stay of five years, is issued to foreign nationals who qualify as essential specialists and who intend to work in foreign-invested companies in any of the following capacities: business administration, management, production or technology.

However, for D-8 applicants applying from abroad, the period of sojourn may be limited to a year at the discretion of the concerned Korean diplomatic office. D-8 visa holders may extend their stay for up to five years at a time provided that they are engaged in normal business activities in Korea. There is no limit to the number of extensions possible.

An eligible foreign national who has entered Korea on a short-term business (C-2) visa and completed the necessary foreign investment procedures set forth in the Foreign Investment Promotion Act (which are explained in detail in response to the third question in this questionnaire) can apply for D-8 status. Extensions of the sojourn period are available for C-2 visa holders as well.

Republic of Korea

More information

Korea Immigration Service : www.immigration.go.kr

Invest KOREA : <http://www.investkorea.org>

Taxation

Taxation of foreign nationals and foreign firms

(Company profits)

A company's taxable income is the remaining balance following the addition or deduction of exclusions stated in the tax law from the increased amount of net assets (in a financial year) calculated by the generally accepted accounting principle.

A 10 percent tax rate is imposed for taxable income of no higher than 200 million won; for income higher than this, the rate is 22 percent. In addition, the company has to pay 10 percent of the corporate tax as local tax.

(Personal income/profits)

In accordance with the tax law, either a separate taxation or comprehensive taxation method is applied to the different types of income obtained by an individual in a calendar year. For financial income of up to 40 million won and transfer income, a separate taxation method is applied, whereas the amount of financial income exceeding 40 million, business profits, real estate income, earned income and others are subject to comprehensive taxation.

Tax rates range from 6 to 35 percent according to the type of income, and 10 percent of the tax on personal income is local tax.

(Funds for repatriation)

Dividends that a non-resident receives from a Korean corporation or an organization deemed as a corporation are defined as Korean-source income and subject to deduction of withholding tax at a 20 percent rate. When the receiver's country of residence has a tax treaty with Korea, separate taxation and a limited tax rate is applied in accordance with the treaty.

A foreign-invested company's remittance of profits, which has been notified in accordance with the Foreign Investment Promotion Act, is guaranteed under all circumstances such as emergency measures imposed by the Foreign exchange Transaction Act.

Is the basis for taxation economy or global? If the basis for taxing is global, with whom do you have tax treaties?

When taxing a Korean based global company, Korea applies an aggregate income tax rate to the total of its global taxable income, but provides credit for the taxes it paid overseas with the domestic tax rate as a ceiling.

Incomes generated overseas - for example, interests, dividends and royalties - are totalled and taxed in the financial year the company acquired it or obtained rights for acquiring it. The income of the company's foreign branch, however, is deemed as part of its domestic income even when the branch did not send it to the Korean headquarters.

Taxation of dividends

- To adjust for double taxation on dividends a company receives from an overseas subsidiary in which it invested a share of over 10 percent, Korea deducts a considerable amount of the corporate tax that the company paid overseas.

- When an interest or dividend earned from overseas becomes exempt from taxation, the company will receive foreign tax credit for the exempt amount from that country in accordance with the tax treaty it has in place with Korea.

Currently, tax treaties with 72 countries are in place.

Republic of Korea

More information

Introductory level information can be obtained from Invest Korea at <http://www.investkorea.org>.

More detailed information can be obtained from the Ministry of Strategy and Finance at <http://english.mosf.go.kr>.