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SWITZERLAND GLOBAL ENTERPRISE

Republic of Korea
Legal Provisions

Compiled by

Swiss Business Hub Korea

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GENERAL REMARKS

The Republic of Korea (ROK) - 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 their executive and legislative bodies.

South Korea and Switzerland have bilateral agreements, including the Free Trade Agreement between EFTA and ROK (2006), the Avoidance of Double Taxation Agreement (1980), the Korean-Swiss Science and Technology Agreement (2008), as well as several bilateral treaties such as social security and intellectual property treaties. For more information, visit the website of the Federal Department of Foreign Affairs of Switzerland.

In 2013, Korea and Switzerland celebrated the 60th anniversary of bilateral relations between the two countries and the 70th anniversary of the Swiss Neutral Nations Supervisory Commission (NNSC) in Korea, which was created under 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.

COVID-19 UPDATE

Currently there are no PCR test or quarantine requirements for entering Korea. Please consult the website of the Swiss Embassy in Seoul which provides all latest updates on Korea and Switzerland's travel requirements.

FREE-TRADE AGREEMENTS

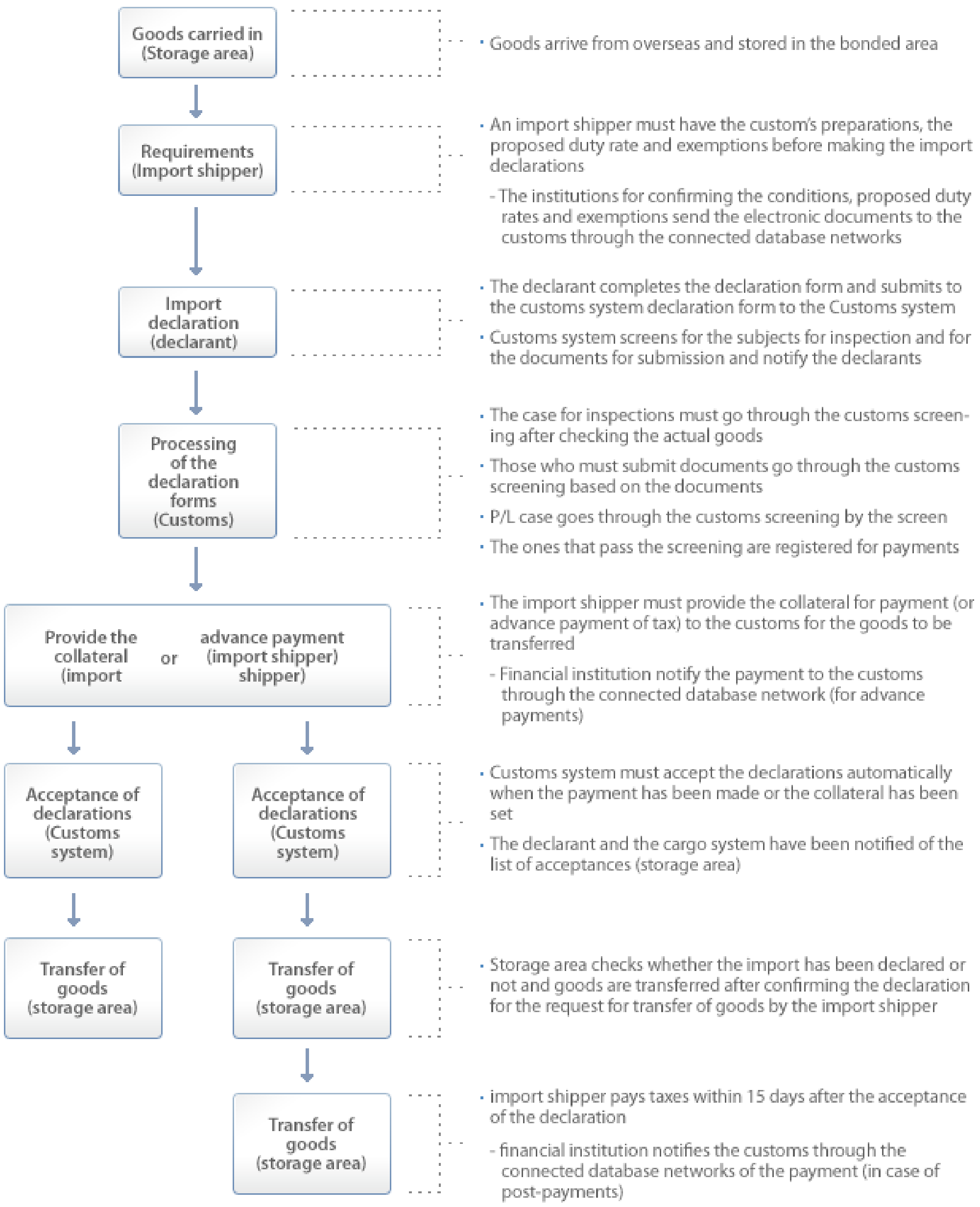
As of February 2023, South Korea has signed 21 Free Trade Agreements with a total of 59 countries: Chile, Singapore, EFTA (4 countries), ASEAN (10 countries), India, EU (27 countries), Peru, USA, Turkey, Australia, Canada, China, New Zealand, Vietnam, Columbia, and the UK. These markets account for over 73.4% of the world population and 77.3% of the global GDP. In 2021, Korea's trade with its FTA partners represented about 77% of its total foreign trade.

The free trade negotiations between the European Free Trade Association (EFTA) - Iceland, Norway, Liechtenstein, and Switzerland - and Korea were launched by ministers of both parties in December

2004. The Agreement was signed in December 2005 and entered into force on 1 September 2006. It currently covers all significant trade relations, including goods, services, government procurement, competition, and intellectual property, and also contains a chapter on dispute settlement. Switzerland and Korea also entered into bilateral agreements on primary agricultural products, and Korea agreed on investment with Switzerland, Iceland, and Liechtenstein. For legal provisions, please refer to the EFTA website. For tariff rates under ROK-EFTA FTA, please check the Korea Customs Services (KCS) database using the HS code of your product.

CUSTOMS

All goods imported from foreign countries can be brought into Korea if the customs duties are paid in advance. The entire customs process is portrayed below:



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 schedule reflects the tariff rates categorised into 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 determined based on the item's taxable value. An ad-valorem tariff is levied based on the item's value, and a specific commercial duty is assessed based on the item's quantity. The value, which is the tax base of the ad valorem duty, is the taxable value. Korean customs valuations on taxable values reflect the relevant provisions of the WTO Valuation Agreement and have the same principles of international tariff valuation. The KCS offers further information on its website.

IMPORT AND EXPORT REGULATIONS

The Ministry of Food and Drug Safety (MFDS) is responsible for the safety and registration of cosmetics, food, and medicines.

To safeguard public health and safety, Korea requires that certain consumer products, children's goods, and electronic products be certified with a Korea Certification (KC) Mark from authorised testing centres before they can be sold in Korea. Some items or products subject to compulsory legal certification are specified in related laws and ordinances on safety, health, environment, and quality. The final product testing is the basic principle. The marking shall be located conspicuously on the product or packaging by printing or engraving in a non-removable way. Replacing the KC mark with the European Conformity (CE) mark is impossible. Please check the Korean Agency for Technology and Standards (KATS) website for more information on the KC mark.

The FTA partner country applies preferential tariff treatment to the products if (1) the products fulfil the preference criterion set out in the Agreement; (2) a Certificate of Origin for the products specified in the Agreement is prepared. For more information, visit the KCS website. Laws and regulations for import & export can be found here.

Amended the Country-of-Origin Labelling Requirements

The Ministry of Trade, Industry, and Energy (MOTIE) amended the Foreign Trade Act to establish legal grounds for enforcement actions against non-compliance with the country-of-origin (COO) labelling requirements for goods produced in Korea. Effective as of 11 December 2022, the key provisions of the amended Act include the following:

- Establishing a label basis for enforcement actions against non-compliance with COO labelling requirements for domestically produced goods.
  Traders and distributors of goods may be sentenced to imprisonment up to 5 years or a fine of up to KRW 100 million for violating the COO labelling requirement by mislabelling or causing damage or alterations to the COO labels.
- Specifying domestically produced goods as being eligible for certificates of origin.

Source: Kim & Chang

TAXES

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

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

Korea's domestic businesses must pay corporate tax for all income generated domestically and in foreign countries. Foreign companies are obligated to pay corporate tax for income from Korean sources.

Corporate income tax (CIT) is imposed on a company's taxable income. Since most foreign investors are companies and thus liable to pay it, corporate tax takes up the most considerable portion of the total taxes related to foreign investment. Under tax treaties, only the income from a permanent establishment of a foreign company is taxable. Permanent establishments refer to branches, warehouses, stores, or other establishments for installation or construction projects. A company with the right to enter into contracts or conduct its business and trade through an agent, who buys or sells its stocks on behalf of the company, is also subject to tax. Three types of taxable incomes fall under the corporation tax category: annual business income, liquidation income, and capital gains from property transfer. The annual business income is calculated by deducting the total deductible expenses from the gross revenue. Liquidation income refers to the residual property value of a business's dissolved (merged or divided) parts exceeding the total equity capital. Capital gains are generally taxed at the same CIT rate as ordinary taxable income. However, capital gains from the sale of non-business-purpose real estate are subject to additional capital gains tax at 10%.

Tax Reform 2023

Item	Tax Reform effective on 1 January 2023
Change in corporate income tax rates	Maintain the current tax bracket and reduce the corporate income tax rate by 1% for each taxable income bracket
Accumulated earnings reserve tax	Extend the sunset date of accumulated earnings reserve tax and limit the application of the tax to companies belonging to business groups subject to restrictions on cross-shareholdings
Application of flat income tax rate to foreign employees	The extended application period of the flat income tax rate to 20 years and the deletion of the sunset date

Changes in CIT rates

Tax Base	Tax Rate (Progressive)	
	Until December 2022	Effective on 1 January 2023
Less than KRW 200 million	10% of the tax base	9% of the tax base
More than KRW 200 million	KRW 20 million + 20% of the amount exceeding KRW 200 million	KRW 20 million + 19% of the amount exceeding KRW 200 million
More than KRW 20 billion	KRW 3.98 billion + 22% of the amount exceeding KRW 20 billion	KRW 3.98 billion + 21% of the amount exceeding KRW 20 billion
More than KRW 300 billion	KRW 65.58 billion + 25% of the amount exceeding KRW 300 billion	KRW 65.58 billion + 24% of the amount exceeding KRW 300 billion

Source: KPMG

In addition, there is a local surtax of 10% on the preceding rates resulting in the final rates ranging from 11% to 27.5% on the tax base.

New Rules for International Transactions in 2022

The 2022 Tax Reform	Details/Submission Due Date	Effective Date
New obligation to submit information regarding the status of a liaison office of a foreign company (e.g., basic information of the liaison office, status of foreign headquarters and other domestic branches, among others)	10 February of the following year	Effective for submission of the status information relevant to taxable years beginning on or after 1 January 2022
New obligation to submit transaction details by foreign companies supplying electronic services	- Simplified Value Added Tax (VAT) registrant maintains electronic service transaction details for five years after the due date of the final VAT return - A simplified VAT registrant is required to submit a transaction statement within 60 days of receiving a request from the Commissioner of the National Tax Service (NTS)	Effective for the supply of electronic services on or after 1 July 2022
Establishment of grounds for ex officio cancellation of simplified VAT registration	The NTS Commissioner may cancel a simplified VAT registration if the registrant closes its business	Effective on or after 1 January 2022
The current Enforcement Decree of Adjustment of International Taxes Act applies a penalty for late or false filing of transfer pricing (TP) documentation (e.g., Master/ Local files, Country-by-Country Report) of up to KRW100 million (US$87,000) The 2022 Tax Reform introduces new rules reducing the penalties for negligence for submitting revised or late TP documentation	30% to 90% reduction in penalties for the submission of revised or late TP documentation before the penalty is imposed	Effective for submissions of TP documentation on or after the date of enactment of the Enforcement Decree

Source: Ernst & Young LLP

FOREIGN DIRECT INVESTMENT

Foreign Direct Investment (FDI) refers to foreigners' acquisition of the stocks or shares of a South Korean company to build lasting economic relations and generally involves participation in management or technology transfer. The amount of foreigners' investment should be at least KRW 100 million or more; the investor should also own at least 10% of the total number of voting stocks issued by a Korean corporation or company or its entire equity investment. If the investor owns less than 10% of the voting stocks of a company or its total equity investment, the investor must dispatch or appoint an executive to the Korean company.

According to the Foreign Investment Promotion Act, FDI incentives include tax support, cash grants, and industrial site support. Unless otherwise prescribed by the acts and laws, any foreigner may conduct business without restraint in Korea. However, there are prohibited and restricted business categories under the FDI. For more information, visit Invest Korea or KOTRA.

Types	Business Category	
Prohibited Business categories	- Postal services, central banking, individual mutual aid organisations, pension funding, financial market administration, activities auxiliary to financial services, etc. - Legislative, judiciary, administrative bodies, foreign embassies, extra-territorial organisations and bodies - Education (pre-primary, primary, secondary, higher education, universities, graduate schools, schools for people with disabilities,etc.)	
	- Artistic, religious, business, professional, environmental advocacy, political, labour organisations, etc.	
Restricted Business Categories	Not-opened	Nuclear power generation, radio broadcasting, over-the-air broadcasting.
	Permitted where the Foreign Investment Ratio is less than 50%	Livestock farming, meat wholesale, transmission and distribution of electric power, trade of electricity, coastal water passenger/freight transport, passenger/freight air transport, publication of magazines and periodicals, etc.
	Permitted where the Foreign Investment Ratio is 49% or less	Program distribution, cable networks, broadcasting via satellite and other forms of broadcasting, wired/wireless and satellite communications and other electronic communications.
	Permitted where the Foreign Investment Ratio is 30% or less	Hydroelectric power/firepower/solar and sunlight power and other power generation.
	Permitted where the Foreign Investment Ratio is less than 25%	News agency business.
	Partially Permitted	Growing of cereals and other food crops, manufacture of other basic inorganic chemicals, manufacture of other smelting refining and alloys of non-ferrous metals, disposal of radioactive waste, domestic commercial bank except the National Agricultural Cooperative Foundation and the National Federation of Fisheries Cooperative (finance)

Source: www.kotra.or.kr

COMPANY ESTABLISHMENT

Prospective foreign investors intending to do business in Korea may choose to establish an entity in a subsidiary, branch or liaison office.

A Foreign-Invested Company under the Foreign Investment Promotion Act

Establishing an entity 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 entity to be recognised as a foreign investment under the FIPA.

Private business established by a foreigner with an investment of not less than KRW 100 million is also recognised as a foreign investment under the FIPA. (If an investee entity is a private business, it 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 Foreign Direct Investment (FDI), where 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.

There are the following FDI incentives:

- Guaranteed overseas wire transfer / remittance: in the case of companies registered as FDI companies, overseas wire transfer / remittance of profit dividend, liquidated amount, sales number of shares, other principal, interest, and commissions, among others, is guaranteed.
- Tax support: Korean and local governments offer tax discounts for corporate tax / income tax, local tax, and customs duty and tariff following the relevant laws and conditions.
- Visa and stay in the country: For FDI companies, their officers and employees can receive D-8 visas and thereby freely enter, leave, and stay in the country.

For more information, go to www.fdiservice.com.

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

A 'branch' of a foreign company operates a business that generates profits in Korea. A branch office's net income is automatically viewed as being included in the headquarters balance sheet, and thus a branch is not recognised as foreign direct investment.

A 'liaison office' can only conduct marketing and support, not drive direct sales. A liaison office is subject only to the tax code of the headquarters country. Unlike a branch, a liaison office is granted a specific number, equivalent to business registration, at a jurisdictional tax office without the need for registration.

Comparison of Foreign-invested Company, Domestic Branch, and Liaison Office

Category	Foreign-Invested Company	Domestic Branch	Liaison Office
Governing law	Foreign Investment Promotion Act	Foreign Exchange Transaction Act	Foreign Exchange Transaction Act
Type of corporation	Domestic	Foreign	Foreign
Recognised as FDI	Yes	No	No
Company name	No restrictions	Must be identical to that of the headquarters	Must be identical to that of the headquarters
Scope of business activities	No restrictions within the permitted scope	Restricted to same activities as headquarters, within the permitted scope	Not permitted to generate profit, only to establish business contacts
Minimum investment amount	KRW 100 million	No restrictions	No restrictions
Independence	Separated from headquarters	Subordinated to headquarters	Subordinated to headquarters
Loans in Korea	Possible depending on the credit rating of the domestic corporation	Almost impossible	Impossible

Establishment procedures	1. FDI notification 2. Remittance of investment funds 3. Registration of incorporation 4. Business registration 5. Registration of a foreign-invested company	1. Notification of domestic branch establishment 2. Registration of incorporation 3. Business registration	1. Notification of domestic branch establishment 2. Registration of identification number
Accounting and taxation	Obligation of bookkeeping according To Korean Accepted Accounting Principle and external audit for certain conditions	Obligation of bookkeeping according to Korean Accepted Accounting Principle, but no obligation of external audit	No bookkeeping obligation
Corporate tax rate	Tax obligation (refer to pages 4~5)	Tax obligation(refer to pages 4~5)	No tax obligation
Taxable income	Total income based on all profit made by the domestic corporation	Total income based on all profit made by the domestic corporation. Branch tax payment occurs in some countries.	No taxable income
Tax benefits	Tax benefits for foreign-invested companies and small and middle-sized businesses according to the Restriction of Special Taxation Act	No benefits	No benefits

Source: www.investkorea.org

Guidelines on Corporate Governance Disclosure to Strengthen Shareholder Protection

The Financial Services Commission (the FSC) and the Korean Fair Trade Commission (the KFTC) announced the revised guidelines on corporate governance disclosure for listed companies. Effective on and afterwards 31 May 2022, KOSPI-listed firms with a total asset of KRW 1 trillion or more must file their compliance with the core principles of corporate governance or provide explanations in case of non-compliance.

(1) Rules on shareholder protection in business split-off
- Companies must describe internal shareholder protection policy when their ownership structure changes following a split-off, merger, transfer, etc.
- Companies will disclose internal measures for shareholder protection, including a collection of opinions from minority shareholders and protection of rights of shareholders that are opposed to changes in ownership structure or otherwise provide explanations for non-compliance.
- Companies will report details of communication with minority shareholders.

(2) Duty to explain internal transactions with affiliated firms
- Companies will need to more actively explain to their shareholders any details and reasons for board decisions on internal transactions with affiliated firms and self-dealings involving the management and controlling shareholders.

CEO succession policy and audit committee
- Companies will indicate critical details about their CEO succession policy.
- Companies with KRW 1 trillion or more assets and below KRW 2 trillion must provide plans for setting up an audit committee if they have plans.

FREE ECONOMIC ZONES

Korean Free Economic Zones (KFEZ) are specially assigned areas 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.

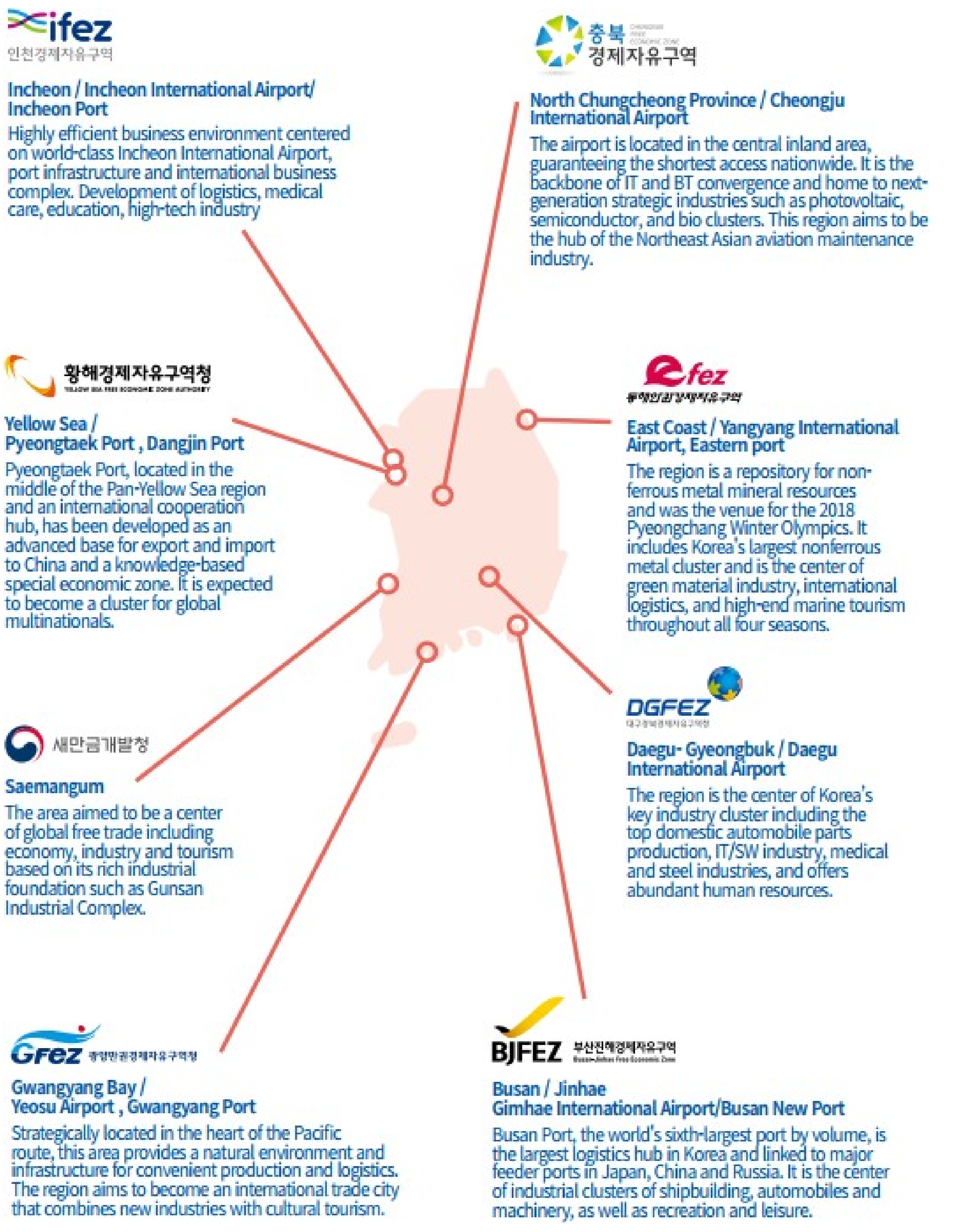
Based on the Special Act on Designation and Management of FEZs and Restriction of Special Taxation Act, the KFEZs had offered exemptions or reductions in corporate tax, income tax, tariffs, acquisition tax, and the property tax for foreign-invested resident companies and developers.

However, in 2017, the EU designated Korea as a "watch list country for the tax breakers" since it saw that tax reductions on foreign investment in KFEZ were a harmful taxation system that discriminates between domestic and foreign companies. The government was urged to negotiate with the EU and, in return, promised to revise the taxation system of KFEZ. According to the new policies of KREZ, tax reduction of corporation tax and income for new foreign investment was abolished in 2019. However, the tax benefits of foreign companies that have already invested remain unchanged, and tax reductions on tariff and local tax are still maintained.

Category	Existing Benefits		Investment Requirements
National Tax	Tariff	100% exemption for 5 years	Imported capital goods only
Local Tax	Acquisition Tax	100% tax exemption for up to 15 years per local ordinances	
	Property Tax	Tax reductions for up to 15 years following local ordinances	

Source: www.fez.go.kr

Map of Free Economic Zones in South Korea



Source: www.fez.go.kr

NEW GROWTH ENGINE INDUSTRIES AND SOURCE TECHNOLOGIES

Since 2008, the Korean government has been intensively supporting industries and technologies that can lead to the continuous growth of the Korean economy and job creation. In 2021, 11 categories, 40 fields, and 173 technologies were designated New Growth Engine Industries and Source Technologies. Project expenses and tax reductions were provided to foreign investment in New Growth Engine Industries and Source Technologies.

Based on the government's support policy, foreign-invested corporations that install or operate factory facilities with investments of US 2 million dollars or more in the field of New Growth Engines Industries and Source Technologies are entitled to a corporate tax cut or reduction for 7 years following the Restriction of Special Taxation Act.

New Growth Engine Industries and Source Technologies (11 categories, 40 fields)

Category	Fields
Future Vehicles	Autonomous vehicles, electric vehicles
Intelligent Information	Artificial intelligence, IoT, cloud, big data, wearable smart appliances, IT convergence, blockchain, quantum computer
Next-generation Software & Security	Software technology, convergence security
Content	Realistic content, cultural content
Next-generation Electronic Information Devices	Intelligent semiconductors and sensors, materials for semiconductors, etc., high-performance displays like OLED, 3D printing, AR devices
Next-generation Broadcasting and Telecommunication	5G mobile telecom, UHD
Bio & Health	Bio-medicine, compound medicine, medical devices, healthcare products, biotechnology for agricultural, marine, and food products, materials for biocosmetics
New Energy Business, Environment	ESS, new and renewable energy, enhancement of energy efficiency, greenhouse gas reduction, carbon capture and sequestration, nuclear energy
Composite & Integrated Materials	High-performance textiles, ultra-light metal, hyper-plastic, titanium
Robots	High-tech manufacturing robots, medical robots, service robots, robots in general
Aerospace	Unscrewed vehicles, space technology

In addition, Seoul recently announced that it would provide up to KRW 200 million in employment maintenance support for foreign-invested companies in New Growth Engines Industries and Source Technologies shrunken by the recent COVID-19 crisis. According to Seoul's employment maintenance support policy, foreign-invested companies invested in IT convergence, digital content, green industry, business services, fashion design, financial industry, tourism conventions or bio-metallic fields are entitled to a maximum of 6 months of employment subsidies. For more information, visit the website of the Ministry of Trade, Industry and Energy (MOTIE) and the Seoul Metropolitan Government.

INVESTMENT PROMOTION WITH LEGAL SUPPORT

The Foreign Investment Promotion Act (implemented in 1998) is the primary 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 in 1998) governs foreign exchange transactions related to foreign investment. 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 in 2003) is a special law for supporting foreign-invested companies to promptly create foreigner-friendly economic conditions in Korea, intended to facilitate more foreign investment. It regulates specific incentives and unique treatments for foreign investors and companies, such as exemptions in corporation tax.

According to the above laws, the main incentives and qualifications for foreign investments are as follows:

<table>
<tr><th colspan="3">Qualifications</th><th>Incentives</th></tr>
<tr><td rowspan="4">Tax Reductions</td><td>New Growth Engines Industries & Source-Technology Businesses</td><td>Technologies by the field that fall into the categories of new growth engines and source technologies; and the establishment and operation of factories to do businesses utilising related technologies, materials, and production processes.</td><td rowspan="2">- Income tax, corporate tax: 100% for 5 years, 50% for 2 years after that (ONLY if submitted the application by 31 Dec 2018)
- Acquisition tax, property tax: 100% for 15 years
- Customs tariff, value-added tax, special consumption tax: 100% for 5 years</td></tr>
<tr><td rowspan="2">Foreign Investment Zones</td><td>Individual type
- Manufacturing: min. U$30M
- Tourism & resort, international convention: min. U$20M
- Logistics: min. U$10M
- R&D centres: min. U$2M & min. 10 researchers</td></tr>
<tr><td>Complex type
- Manufacturing: min. U$10M
- Logistics: min. U$5M</td><td rowspan="2">- Income tax, corporate tax: 100% for 3 years, 50% for 2 years after that (ONLY if submitted the application by 31 Dec 2018)
- Acquisition tax, property tax: 100% for 15 years
- Customs tariff: 100% for 5 years</td></tr>
<tr><td>Free Economic Zones</td><td>- Manufacturing, tourism & resort, international convention: min. U$10M
- Logistics, medical institutions: min. U$5M
- R&D centres: min. U$1M (min. 10 researchers)</td></tr>
</table>

Qualifications		Incentives
Land Support	Min. 30% foreign investment	- Reduction of rent fee - Support for infrastructure
Cash Grants	- Min. 30% foreign investment - Manufacturing: Parts & materials speciality businesses, new growth engines and indigenous-tech businesses - R&D centres: New R&D facilities (min. 5 researchers)	Negotiable

Source: www.investkorea.org

Translations of current major statutes are provided here to foster foreign investors' understanding of the Korean laws and increase their investment in Korea.

Regulations on Operation of Security review Procedures for Foreign Investments

On 24 August 2022, the Ministry of Trade, Industry and Energy enacted and implemented the Regulations on Operation of Security Review Procedures for Foreign Investments. The new rules activate the previously unused system for national security review of foreign investments and supplement the foreign investment filing requirements.

- The types of foreign investments subject to a national security review are investments in companies that:
  - Prompt concerns over hindrance of production of defence materials
  - Produce goods subject to export approval or licence or own military purpose technology
  - Prompt concerns regarding public disclosure of state secrets
  - Prompt concerns that international peace and security efforts of the UN or other organisations may be severely and substantially hindered; or
  - Are highly likely to result in the disclosure of national core technology.
- Creation of a new expert committee to conduct preliminary reviews of the investments mentioned above
- Establishment of more specific evaluation standards based on the factors of threats, vulnerabilities and impact on national security

Source: Kim & Chang

INTELLECTUAL PROPERTY PROTECTION (IPP)

Korean Intellectual Property Office (KIPO) is the principal governmental authority in charge of intellectual property matters in South Korea. According to the annual Special 301 Reports of the United States Trade Representative (USTR), Korea has been excluded from the Watch List for 13 years.

The KIPO has provided an internet-based patent document search service available to the public and internationals since 2016. The service offers relative information on Korean IRP applications, statuses, and trial procedures. For more information, go to the patent document search service.

GENERAL DATA PROTECTION LAW

The primary law concerning data protection is the Personal Information Protection Act 2011 (PIPA). The amendments in 2020, which entered into effect on 5 August 2020, include revised definitions for pseudonymous and anonymous processing, associated requirements, penalties, and measures for centralising personal information protection services within the Personal Information Protection Commission (PIPC).

In January 2021, an additional amendment to PIPA was proposed. The proposal introduces the right to data portability and to be excluded from automated decision-making, diversifies the methods of transferring personal data overseas, and includes pseudonymised data in the scope of information that a data handler must destroy.

EU Adequacy Decision with South Korea

On 17 December 2021, the European Commission announced it had adopted its adequacy decision on Korea. The adequacy decision allows for the free flow of personal data between the EU and Korea without further authorisation or additional transfer tools. The adequacy decision also covers transfers of personal data between public authorities.

The adequacy decision builds on Europeans' protections under Korean law when their data is transferred. It includes additional safeguards agreed upon by both parties as part of the adequacy dialogue, such as additional transparency and onward data transfer requirements. These rules are binding and enforceable by the PIPC and Korean courts.

The European Commission released the entire adequacy decision and a Q&A for more information.

The ROK-EU Digital Partnership

On 28 November 2022, Korea and the EU signed the ROK-EU Digital Partnership. The initial set of joint actions includes Collaborative Research, Semiconductors, High-Performance Computing (HPC) & Quantum Technologies, Cybersecurity & Trust, Beyond 5G/6G Mobility Skills, Digital Inclusion, Artificial Intelligence, Online & Digital Platform Cooperation, Data-related Laws and Systems, Digital Identity & Trust Services, and Digital Trade.

The Korea-EU Digital Partnership Council, headed by the Korean Minister of Science and ICT (MSIT) and the EU Commissioner for the Internal Market, will be established to ensure the initial joint actions on the topics set out in the Digital Partnership are carried out pragmatically. The entire Digital Partnership can be found on the MSIT press release here.

New Telecommunication Business Act

The Telecommunications Business Act amendments came into effect on 14 September 2021. The amendments impose new restrictions and mechanisms of greater regulatory scrutiny over the operators of the online platform business.

Under the new rules, application market providers such as Apple and Google cannot force in-app payments to content providers. From March 2022, the Ministry of Science and ICT (Information and Communication Technologies) and the Broadcasting and Communication Commission can survey how to market providers protect users and run their markets.

MERGER & JOINT VENTURE

Korea's primary antitrust/competition act is the Monopoly Regulation and Fair Trade Act (MRFTA). The Korea Fair Trade Commission (KFTC) is an authority that controls mergers reviewing mergers and acquisitions under the MRFTA.

Effective as of 30 December 2021, the amended MRFTA requires to notify a transaction if it (i) falls into the following types of business combinations; and (ii) meets either of the size-of-parties or size-of-transaction thresholds:

(1) Acquisitions of 20% or more (or 15% or more in the case of Korean-listed companies) of the total voting shares of another company;

(2) Acquisition of additional shares by a shareholder who already owns 20% or more (or 15% or more in the case of Korean-listed companies) of the total voting shares of another company and becomes the largest shareholder of such company through the acquisition;

(3) Participation as the largest shareholder in the establishment of a new joint venture company;

(4) Acquisition of all or a substantial part of the target company's business or fixed assets;

(5) Statutory merger with another company; and

(6) Interlocking directorates, where a director or an employee of one company concurrently holding a position as a registered director of another company. Interlocking directorates between affiliates are excluded.

Size-of-Parties Threshold

	Company 1	Company 2
Total worldwide assets or total worldwide turnover during the immediately preceding business year (including those of its affiliates)	Equal to or greater than KRW 300 billion	Equal to or greater than KRW 30 billion
In the case of a foreign-to-foreign merger, the Korean turnover (including those of its affiliates)	Equal to or greater than KRW 30 billion	Equal to or greater than KRW 30 billion
In the case of a Korean-to-foreign merger, (Not including a foreign company's acquisition of a Korean company)		The target foreign company: equal to or greater than KRW 30 billion (including those of its affiliates)

Size-of-transaction Threshold

<table>
<tr><th colspan="2">Transaction Value Test</th><th>Korean Activities Test</th></tr>
<tr><td colspan="2">The transaction value is KRW 600 billion or more.
The transaction value for each merger type is calculated as follows:</td><td rowspan="5">(a) The target has sold or provided products or services to at least 1 million people per month in the Korean market during the immediately preceding three years;

(b) The target has either leased research and development (R&D) facilities or used R&D personnel in Korea and has had an annual R&D budget of at least KRW 30 billion for the Korean market during the immediately preceding three years; or

(c) The transaction involves facts that are, in effect, equivalent to the above (a) or (b).</td></tr>
<tr><td>Share Acquisitions</td><td>The sum of the purchase price for the shares to be newly acquired and the book value of the shares already owned, and the value of liabilities of the target</td></tr>
<tr><td>Statutory Mergers</td><td>The sum of the value of shares to be issued as consideration for the merger, and the value of liabilities of the target</td></tr>
<tr><td>Business or Asset Transfer</td><td>The sum of the purchase price for the business or assets and the value of liabilities to be assumed</td></tr>
<tr><td>Establishment of a Joint Venture Company</td><td>The amount of investment to be made by the largest shareholder</td></tr>
</table>

ENTRY CONDITIONS & VISA APPLICATION

Foreigners must carry a valid visa to enter South Korea. Swiss citizens are exempt from this rule unless they stay longer than 90 days. To check other exemptions, visit the Korea Visa Portal.

According to Korean Immigration Law, any 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 jurisdiction over the sojourning place within 90 days. Foreigners over 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 their eligibility for staying in Korea according to the purpose of their entry into the country and apply along with the corresponding documents to an overseas Korean consular office. For more information, visit the Korea Visa Portal or contact:

Embassy of Republic of Korea to Switzerland
Kalcheggweg 38
3006 Bern
Switzerland
Tel: +41 31 356-2444
overseas.mofa.go.kr/ch-en/index.do

Electronic Travel Authorization

Since June 2021, the Korean Electronic Travel Authorization (K-ETA) system has been implemented for foreigners visiting Korea. Nationals of countries eligible to enter Korea without a visa for specific purposes, including tours, must enter their personal and travel information online in advance on ETA and obtain travel permission. Please access the Korean ETA at least 72 hours before boarding the planes. Only passengers who have obtained travel permission via ETA in advance can receive boarding passes. Once the ETA approval has been granted, advance travel authorisation and fees are waived for re-entry to Korea for 2 years.

LABOUR LAW

South Korean Labour Law has four subsections: Individual Labour Relations Law, Collective Industrial Relations Law, Cooperative Industrial Relations Law, and Employment Law. Each part sets the standards for labour contracts and relations between employers and workers depending on its characteristics. The standards enable autonomous dispute resolutions between labour and management by guaranteeing workers' rights to organise a union and to ensure mutual benefits to labour and management by promoting the participation and cooperation of both employers and workers.

The standard working hours set by the Labour Standards Act (LSA) are 8 hours per day and 40 hours per week. The standard annual paid leave is 15 days, with one day added every 2 years of consecutive work after the initial year, up to 25 days.

Under Korean Labour law, paid holidays include public holidays, Labour Day (1 May), and parental leave with paid time off. In addition, employers shall provide their employees with at least one day a week of paid days off. If a worker works on a paid holiday, a holiday work allowance (50% added for less than 8 hours per day, 100% for time exceeding 8 hours per day) must be additionally paid.

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

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

An employer cannot dismiss, lay off, suspend or transfer a worker, reduce wages, or take punitive measures against a worker without justifiable cause. Such punitive measures shall be taken on reasonable grounds generally accepted by society at large. The reasons for punitive measures, such as dismissal, are usually stipulated in labour laws, regulations, and collective agreements. When dismissing a worker, the worker shall receive notice of the dismissal at least 30 days before actual discharge. If not, the employer shall be obligated to pay at least 30 days' worth of dismissal pay. Dismissal of an employee is effective only when a written notice stating the cause and date of discharge is sent to the employee concerned.

A Severance Payment is a unique institution in 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 Severance Pay is a mandatory legal benefit given to employees when they leave a company, it must be offered to those who resign or are fired, regardless of the circumstances. For more information, visit the Ministry of Employment and Labour website.

Minimum Wage & Maximum Working Hours

According to the revised Minimum Wage Act, the minimum hourly wage will be KRW 9,160 from January 2021. If any employee works 40 hours a week, the minimum monthly salary is KRW 1,914,440, including the weekly holiday allowance. The minimum wage covers all employees as defined in the Labour Standards Act of Korea, regardless of their status, contract, or nationality. However, some exceptions include businesses that only employ family members or relatives living in the same residence; domestic service users; and seamen governed by the Seamen Act. Any employers who fail to pay the minimum wage are subject to punishment by the Ministry of Labour.

From July 2018, the maximum weekly working hours have been 52, consisting of 40 regular hours and 12 overtime hours.

In February 2018, the Korean Labour Standards Act was amended to settle a long-standing controversy over the treatment of weekend working hours. Before the amendment, they interpreted the relevant provisions of the Act that 12 overtime work hours were not included in the 16 hours of weekends. It made possible 16 working hours on the paid day off (weekends) even though the Act restricted only 12 overtime hours a week. The new rules have been applied to all workplaces since July 2021.

And all employees who work less than 8 hours on a public holiday must be paid 150% of their regular wage and 200% if 8 hours are exceeded. Exceptions are applied in 5 industrial categories: land transportation business, water transportation business, air transportation business, other transportation-related service business, and medical and sanitary business. However, in the above exceptional categories, the employer shall give the worker at least 11 hours of rest before the start of the next workday.

Job Stabilization Fund

The Job Stabilization Fund is a government program that directly supports small and mid-size companies and relieves workers' job insecurity in response to a sharp increase in the minimum wage. The fund supports employers that maintain employment for at least one month and employ fewer than 30 workers with a monthly remuneration of KRW 2.19 million or less.

Support for the Job Stability Fund will extend until May 2022. Applications can be made online or at any public insurance corporation. For more information, go to jobfunds.or.kr (KOR).

Act on the Guarantee of Employees' Retirement Benefits

The revised Act on the Guarantee of Employees' Retirement Benefits took effect on 14 April 2022.

	Before amendment	Effective on 14 April 2022
Payment into Individual Retirement Plan (IRP) accounts	Only retirement benefits for employees who had subscribed to retirement pension schemes (Defined Benefit or Defined Contribution) were required to be paid into their IRP accounts.	Statutory severance pay must also be deposited into the employees' IRP accounts and paid on a pre-tax basis without withholding income tax.
Sanctions for unfulfilled funding requirements for a Defined Benefit (DB) plan	None	If employers fail to make up for the shortfall by meeting at least 1/3 of the required minimum funded status target, they will be subject to an administrative fine of up to KRW 10 million.
DB retirement pension schemes (Companies with 300 or more employees)	Employers were allowed to determine how to invest DB plan assets independently.	- Employers are required to form an investment committee. The committee must consist of 5 to 7 members and hold a meeting at least once a year. - If employers do not meet the minimum funding ratios, at least one employee representative, one department head related to retirement pensions, and one retirement pension expert shall be included in the investment committee.

		- Failure to organise the investment committee or to prepare an asset investment plan may result in an administrative fine of up to KRW 5 million.
Implementation of the Small & Medium-sized Enterprises (SME) Retirement Pension Plan (Companies with 30 or fewer employees)	N/A	- The SME Retirement Pension Plan creates and operates a joint fund with contributions paid by two or more SME employers and workers. - The employer pays at least 1/12 of an employee's total annual wage to the employee's retirement pension account annually. Upon retirement or separation from the company, the employee will receive these retirement benefits from their retirement pension account. - The existing Defined Contribution (DC) plan allows employees to manage their pension assets directly. - The SME Retirement Pension Fund Plan allows the Korea Workers' Compensation & Welfare Services and external professional agencies to manage the assets.

Source: Kim & Chang

Improper solicitation and graft act (Kim Young-Ran Act)

In October 2016, the Improper Solicitation and Graft Act, also called the "Kim Young-Ran Act," took effect to prevent corruption. It prohibits public officials, educators, and journalists from receiving unlawful requests to establish discipline in public offices.

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 favours were given in return. At the same time, even receiving a gift of cash or other articles worth less than KRW 1 million, they are subject to punishment if the gift is duty-related or compensation is attached. The public officials who receive money and the givers of such valuables will also be punished.

But there are exceptions to the prohibition of graft for smooth job performance. The exceptions include socialisation, rituals, and relief money without direct relevance to an official's duties or position: (1) drinks and snacks in social settings are permitted up to KRW 30,000; (2) personal gifts up to a value of KRW 50,000 are acceptable (in case that the personal gift is an agricultural or a marine product, up to KRW 100,000 is acceptable); (3) condolence money or flowers are permitted up to KRW 100,000.

For more information, visit the Anti-Corruption & Civil Rights Commission website.

Serious Accident Punishment Act (SAPA)

On 27 January 2022, the nation's new industrial safety law, the Serious Accident Punishment Act (SAPA), took effect. Under the SAPA, business owners or managerial personnel at companies with more than 50 employees could face a criminal penalty of a minimum one-year prison term or fines of up to KRW 1 billion for fatal industrial accidents under circumstances where safety measures are deemed insufficient.

A business owner or managerial personnel authorised to represent and manage the business concerned has the duty to oversee safety and health matters for the business. According to the Act, business owners and the responsible managerial personnel have obligations to take the following steps to prevent serious industrial accidents:

(7) To establish a health and safety management system by utilising sufficient workforce and financial resources as necessary to prevent accidents;

(8) To set an adequate contingency plan to avoid the recurrence of an accident;

(9) To comply with any improvement or corrective order issued by a government authority; and

(10) To implement necessary measures to comply with all applicable health and safety laws and regulations.

The SAPA imposes personal criminal liabilities on business owners and responsible managerial personnel in a serious accident.

	Serious Industrial Accidents	Serious Public Accidents
Fatalities (one or more persons)	Imprisonment of one year or more and/or a criminal fine of up to KRW 1 billion	Imprisonment of one year or more and/or a criminal fine of up to KRW 1 billion
Injuries (two or more persons receiving medical treatment of six months or longer due to the same accident; ten or more persons in case of serious public accidents)	Imprisonment of up to seven years or a criminal fine of up to KRW 100 million	Imprisonment of up to seven years or a criminal fine of up to KRW 100 million
Occupational Illness (three or more persons within one year due to the same hazard)	Imprisonment of up to seven years or a criminal fine of up to KRW 100 million	
Illness (then or more persons receiving medical treatment of three months or longer due to the same cause)		Imprisonment of up to seven years or a criminal fine of up to KRW 100 million
* Punishment will be expanded by 50% in case of repeated violations within five years.		

ENVIRONMENTAL LAW

Framework Act on Carbon Neutrality and Green Growth for Coping with Climate Crisis

Announcing the Enforcement Decree, the Framework Act on Carbon Neutrality and Green Growth for Coping with Climate Crisis came into force on 25 March 2022. On 25 September 2022, the Korean administration implemented the climate change impact assessment system under the Act. According to the Act, major national plans and large-scale development projects must;

(1) Assess their impacts on or from climate change; and

(2) Implement greenhouse gas reduction measures and climate crisis adaptation measures.

The Decree stipulates ten industries emitting many greenhouse gases or being vulnerable to climate crises. It requires them to assess the relevant plans or projects for greenhouse gas reduction or climate crisis adaptation. Those industries are as follows:

- Energy development
- Industrial site and complex development
- Urban development
- Water resource development
- Port construction
- Mountain development
- River use and development
- Road construction
- Airport construction
- Installation of waste and livestock manure treatment facilities

The Ministry of Environment released the entire Enforcement Decree here.

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