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South Korea

INVESTING IN

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This country-specific Q&A provides an overview of investing in laws and regulations applicable in South Korea.

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SOUTH KOREA
INVESTING IN

1. Please briefly describe the current investment climate in the country and the average volume of foreign direct investments (by value in US dollars and by deal number) over the last three years.

Over the past three years, the amount of foreign direct investment in South Korea was $20.74 billion in 2020, $29.51 billion in 2021, $30.45 billion in 2022, and $17.09 billion in the first half of 2023. As illustrated by the numbers, foreign direct investment has been increasing since 2013.

2. What are the typical forms of Foreign Direct Investments (FDI) in the country: a) greenfield or brownfield projects to build new facilities by foreign companies, b) acquisition of businesses (in asset or stock transactions), c) acquisition of minority interests in existing companies, d) joint ventures, e) other?

Recent foreign direct investments have predominantly taken the form of greenfield investments. In 2022, out of the total foreign direct investment of $30.45 billion, greenfield investments accounted for $22.32 billion, while mergers and acquisitions represented $8.13 billion. Furthermore, in the first half of 2023, out of the total foreign direct investment of $17.09 billion, greenfield investments amounted to $12.64 billion, with mergers and acquisitions totaling $4.45 billion.

3. Are foreign investors allowed to own 100% of a domestic company or business? If not, what is the maximum percentage that a foreign investor can own?

In principle, foreign investors can acquire 100% ownership of domestic companies without restrictions on ownership percentage. However, regulations (i) prohibit foreign investment on certain industries (e.g., postal services, central bank, financial market management, and other financial support services), and (ii) limit foreign investment on certain industries or by percentage of foreign investment (e.g., nuclear power generation, sale of electricity, coastal passenger transportation services, banking, telecommunications). Therefore, foreign investors should review whether their investment falls under the above categories.

4. Are foreign investors allowed to invest and hold the same class of stock or other equity securities as domestic shareholders? Is it true for both public and private companies?

Foreign investors are also allowed to hold same class of stocks and other equity securities as domestic shareholders for both listed and unlisted companies.

5. Are domestic businesses organized and managed through domestic companies or primarily offshore companies?

The approach depends on the business environments and the specific needs of each foreign investor. Some directly acquire shares in domestic companies and manage their operations, while others choose to establish a holding company in South Korea, acquire shares of domestic companies through the holding company, and operate those companies.

6. What are the forms of domestic companies? Briefly describe the differences. Which form is preferred by domestic shareholders? Which form is preferred by foreign investors/shareholders? What are the reasons for foreign shareholders preferring one form over the other?

In South Korea, both domestic and foreign investors primarily invest in companies in the form of ‘corporations (jooshikhoisa)’ (i.e., Co., Ltd.). This preference stems from the fact that corporations are the most commonly utilized form of company in South Korea and are extensively regulated by the Commercial Code. While ‘limited companies (yoohanhoisa)’ (i.e., Ltd.) are incorporated as the second choice after corporations, they represent only a small portion of the total number of companies compared to corporations. It is important to note that, in the case of a limited company, the transfer of ownership stakes requires approval from the meeting of members. Therefore, a limited company is suitable for a business comprising of a small group of trusted individuals.

7. What are the requirements for forming a company? Which governmental entities have to give approvals? What is the process for forming/incorporating a domestic company? What is a required capitalization for forming/incorporating a company? How long does it take to form a domestic company? How many shareholders is the company required to have? Is the list of shareholders publicly available?

• Which governmental entities have to give approvals?

If a foreign investor intends to incorporate a company in South Korea, (i) the foreign investor must file a Korean Won-denominated Securities Acquisition Notification by Non-resident before remitting paid-in capital if the investment amount is below KRW 100 million, and (ii) the foreign investor must file a Foreign Direct Investment Notification before capital payment if the investment amount is KRW 100 million or more. No additional government approval is required beyond these filings. After filing, the foreign investor can proceed to file necessary documents for incorporation of a company at the local registry office.

• What is the process for forming/incorporating a domestic company?

According to the Commercial Code of South Korea, several steps must be followed, including drafting the articles of incorporation, appointing the board of directors, and conducting a general meeting of promoters. Once these procedures are completed, one can submit the necessary documents to the registry office to report the incorporation.

• What is a required capitalization for forming/incorporating a company?

In principle, there is no minimum capital requirement when incorporating a company (except for specific licensed industries regulated by certain laws, such as the construction business requiring KRW 500 million or information communication business requiring KRW 150 million). Theoretically, a foreign investor can incorporate a company in South Korea with capital as low as KRW 100. However, to qualify for registration as a foreign-invested enterprise and enjoy associated benefits, meeting the requirements for the Foreign Direct Investment Notification is necessary for a domestic company incorporated by a foreign investor. Hence, it is common for foreign investors to invest a paid-in capital of at least KRW 100 million when incorporating a company in South Korea.

• How long does it take to form a domestic company?

If the aforementioned procedures and documents are prepared, the process of incorporating a corporation and completing the registration typically takes around one week.

• How many shareholders is the company required to have?

In principle, there is no restriction on the number of shareholders when incorporating a company.

• Is the list of shareholders publicly available?

Generally, shareholders’ registry is not publicly available.

8. What are the requirements and necessary governmental approvals for a foreign investor acquiring shares in a private company? What about for an acquisition of assets?

As mentioned in question 7, for foreigners to invest in a domestic company, filing either a Foreign Direct Investment Notification or Securities Acquisition Notification is required. Depending on the industry or the nature of the target company, obtaining additional licenses, permits, or approvals may be necessary. For instance, approval or consent from the Ministry of Trade, Industry and Energy is mandatory for investing in defense-related companies or those possessing core national technology. Additionally, as detailed in question 3, certain industries like telecommunications or banking may require approvals from relevant ministries based on the percentage of foreign investment. Therefore, foreign investors should thoroughly review the industry type and technology held by the target company before proceeding with an investment.

Furthermore, if a foreign investor acquires 20% of shares in an unlisted company (15% in the case of a listed company) or becomes the largest capital contributor when incorporating a new company, the foreign investor or the target company may need to undergo a merger filing process with the Korea Fair Trade Commission based on the company's asset size or revenue.

If a foreign investor seeks to acquire real estate in South Korea, the foreign investor must file a report of real estate acquisition in accordance with laws related to foreign exchange transaction, and must also file a report of acquisition with the local government office (e.g., *gu*-office) having the jurisdiction where the property is located.

9. Does a foreign investor need approval to acquire shares in a public company on a domestic stock market? What about acquiring shares of a public company in a direct (private) transaction from another shareholder?

No additional approvals from government authorities are required for a foreign investor's acquisition of shares in a public company, whether through transactions in the stock market or through direct (private) transactions.

10. Is there a requirement for a mandatory tender offer if an investor acquired a certain percentage of shares of a public company?

When acquiring shares of a listed company, there are obligations to publicly disclose a tender offer in accordance with the Financial Investment Services and Capital Markets Act (the "Capital Markets Act") under specific circumstances.

Specifically, if an individual intends to acquire shares from 10 or more shareholders outside the stock market within a six-month period, and the total acquired shares from such acquisitions are to exceed 5% of the total issued shares of the target company, the individual is obligated to conduct a public tender offer.

Separate from the public tender offer provisions of the Capital Markets Act, there is a bill currently underway in the Korean National Assembly. This bill aims to require any controlling shareholder holding more than 25% of a listed company to conduct a public tender offer to the remaining shareholders when acquiring 50%+1 share of the company. The bill is currently under review by the relevant legislative committee and has not yet been finalized.

11. What is the approval process for building a new facility in the country (in a greenfield or brownfield project)?

When constructing a new facility in South Korea, it is necessary to obtain approval for the construction from the local government office that has jurisdiction over the building site. However, depending on the type of facility, additional or modified approvals or permits might be necessary. Therefore, before proceeding with the project, it is essential to comprehensively review relevant domestic laws, taking into account the nature of the new facility.

12. Can an investor do a transaction in the country in any currency or only in domestic currency? a) Is there an approval requirement (e.g. through Central Bank or another governmental agency) to use foreign currency in the country to pay: i. in an acquisition, or, ii. to pay to contractors, or, iii. to pay salaries of employees? b) Is there a limit on the amount of foreign currency in any transaction or series of related transactions? i. Is there an approval requirement and a limit on how much foreign currency a foreign investor can transfer into the country? ii. Is there an approval requirement and a limit on how much domestic currency a foreign investor can buy in the country? iii. Can an investor buy domestic currency outside of the country and transfer it into the country to pay for an acquisition or to third parties for goods or services or to pay salaries of employees?

In South Korea, investors have the option to conduct transactions using foreign or Korean currency.

• Is there an approval requirement (e.g. through Central Bank or another governmental agency) to use foreign currency in the country to pay:

- in an acquisition, or

- to pay to contractors, or
- to pay salaries of employees?

No specific approvals are required for the use of foreign currency in South Korea. However, if foreign currency is brought into South Korea from abroad for use within the country, reporting may be necessary in accordance with the Foreign Exchange Transactions Act. The requirement depends on the amount and purpose of the foreign currency being brought in.

• Is there a limit on the amount of foreign currency in any transaction or series of related transactions?

There are no limitations on the amount of foreign currency used in transactions. However, as previously explained, when foreign currency from abroad is brought into South Korea, reporting may be necessary in accordance with the Foreign Exchange Transactions Act, depending on the amount

• Is there an approval requirement and a limit on how much foreign currency a foreign investor can transfer into the country?

There are no specific restrictions on the amount, but reporting may be required based on the transferred amount.

• Is there an approval requirement and a limit on how much domestic currency a foreign investor can buy in the country?

There are no such restrictions.

• Can an investor buy domestic currency outside of the country and transfer it into the country to pay for an acquisition or to third parties for goods or services or to pay salaries of employees?

According to relevant laws, foreign direct investments must be conducted in a foreign currency. Hence, transferring Korean Won acquired overseas to South Korea for purchasing shares of domestic companies or other assets is not permissible under relevant laws.

Transferring Korean Won from abroad for payments of services, goods, or employee salaries require filing individual foreign exchange reports based on the purpose (e.g., payment for services/goods) and the type of the remittance (e.g., borrowing from overseas affiliates).

13. Are there approval requirements for a foreign investor for transferring domestic currency or foreign currency out of the country? Whose approval is required? How long does it take to get the approval? Are there limitations on the amount of foreign or domestic currency that can be transferred out of the country? Is the approval required for each transfer or can it be granted for all future transfers?

• Whose approval is required?

Reporting to foreign exchange banks or the Bank of Korea is required by foreign exchange-related laws. This reporting is based on the reason for transferring Korean Won or foreign currency abroad (e.g., dividends, liquidation proceeds, money lending, service payment, etc.), the type of remittance, and the amount.

• How long does it take to get the approval?

When all the relevant documents and reporting requirements are in order, the processing is typically completed within three business days.

• Are there limitations on the amount of foreign or domestic currency that can be transferred out of the country?

There is no specific limitation on the amount in Korean won or foreign currency that can be transferred out of South Korea. However, subjects to be reported and reporting procedures may vary based on the amount and purpose of the transfer.

• Is the approval required for each transfer or can it be granted for all future transfers?

Reporting should be conducted separately for each reason, type, and amount of transfer in Korean Won or foreign currency.

14. Is there a tax or duty on foreign currency conversion?

No tax is levied on currency exchange, but banks charge fees for currency exchange.

15. Is there a tax or duty on bringing foreign or domestic currency into the country?

No tax is imposed on remittance, but banks charge fees for remittance.

16. Is there a difference in tax treatment between acquisition of assets or shares (e.g. a stamp duty)?

No stamp duty or other taxes are payable to the government or government institutions regarding foreign exchange reporting for the acquisition of domestic assets or shares by foreign investors. However, bank fees may be imposed based on individual bank policies. Additionally, there are typically no differences in stamp duties between acquisitions of assets and shares. Any applicable taxes are imposed according to the tax codes of South Korea or the foreign investor's country of residence. Therefore, foreign investors should seek advice from tax professionals before engaging in transactions

17. When is a stamp duty required to be paid?

As explained earlier, there is no stamp duty.

18. Are shares in private domestic companies easily transferable? Can the shares be held outside of the home jurisdiction? What approval does a foreign investor need to transfer shares to another foreign or domestic shareholder? Are changes in shareholding publicly reported or publicly available?

According to the Commercial Code of South Korea, restrictions on share transfers are usually enforceable only through the approval from the board of directors by resolution, in accordance with the provisions outlined in the company's articles of incorporation. Unless there are specific transfer restriction clauses in the articles of incorporation, shares are generally freely transferable.

• Can the shares be held outside of the home jurisdiction?

Yes.

• What approval does a foreign investor need to transfer shares to another foreign or domestic shareholder?

There are no particular approval required for the transfer of shares. However, when a foreign investor transfers shares to a resident of South Korea, amendment or cancellation of the Certificate of Registration of Foreign-Invested Enterprise of the target foreign-invested company is required. In the case of a foreign investor transferring shares to a non-resident of South Korea, the transferee needs to file Foreign Direct Investment Notification or Securities Acquisition Notification, and the target foreign-invested company must amend or cancel its Certificate of Registration of Foreign-Invested Enterprise.

No specific approvals are required for the transfer of shares. However, when a foreign investor transfers shares to a resident of South Korea, amending or cancelling the Certificate of Registration of Foreign-Invested Enterprise of the target foreign-invested company is required. When a foreign investor transfers shares to a non-resident of South Korea, the transferee must file either a Foreign Direct Investment Notification or Securities Acquisition Notification. Concurrently, the target foreign-invested company must amend or cancel its Certificate of Registration of Foreign-Invested Enterprise."

• Are changes in shareholding publicly reported or publicly available?

Transactions with or transactions of shares issued by companies subject to public disclosure obligations under relevant laws may require public disclosure of transaction details depending on the scale of the transaction.

19. Is there a mandatory FDI filing? With which agency is it required to be made? How long does it take to obtain an FDI approval? Under what circumstances is the mandatory FDI filing required to be made? If a mandatory filing is not required, can a transaction be reviewed by a governmental authority and be blocked? If a transaction is outside of the home jurisdiction (e.g. a global transaction where shares of a foreign incorporated parent company are being bought by another foreign company, but the parent company that's been acquired has a subsidiary in your jurisdiction), could such a transaction trigger a mandatory FDI filing in your jurisdiction? Can a governmental authority in such a transaction prohibit the indirect transfer of control of the subsidiary?

For transaction of KRW 100 million or more in investment, (i) acquisition of 10% or more of the target company's issued shares or (ii) appointment of director requires the filing of Foreign Direct Investment Notification before the consummation of transaction.

Moreover, investments in defense industries or similar industries may require separate government approvals, such as approval from the Ministry of Trade, Industry and Energy (see question 7 and 8).

• With which agency is it required to be made?

Generally, reports are filed with KOTRA (Korea Trade-Investment Promotion Agency) or foreign exchange banks. When a foreign-invested company uses unappropriated earned surplus for constructing or expanding factories, the report is filed with KOTRA. For transactions requiring approval from the Minister of the Ministry of Trade, Industry and Energy—such as investments in defense industries—the report is filed directly with the Ministry of Trade, Industry and Energy.

• How long does it take to obtain an FDI approval?

Approvals are usually processed within one week, barring any special circumstances

• Under what circumstances is the mandatory FDI filing required to be made?

For transaction of KRW 100 million or more in investment with either (i) acquisition of 10% or more of the target company's issued shares or (ii) appointment of director, Foreign Direct Investment Notification must be filed. Additionally, investments in defense industries or similar industries may require separate government approvals, such as approval from the Ministry of Trade, Industry and Energy (see question 7 and 8).

• If a mandatory filing is not required, can a transaction be reviewed by a governmental authority and be blocked?

Even if filing a Foreign Direct Investment Notification is not required, filing a Securities Acquisition Notification with the foreign exchange bank is necessary. This filing allows government authorities to become aware of the securities acquisition. However, in practice, there is unlikely to be a regulation that leads to government agencies reviewing or restricting the investment

• If a transaction is outside of the home jurisdiction (e.g. a global transaction where shares of a foreign incorporated parent company are being bought by another foreign company, but the parent company that's been acquired has a subsidiary in your jurisdiction, could such a transaction trigger a mandatory FDI filing in your jurisdiction?

Only foreign direct investments in domestic companies require filing of a Foreign Direct Investment Notification. Therefore, the case in question is not subject to filing a Foreign Direct Investment Notification. However, depending on the domestic revenue volume of the foreign company involved in the transaction, a Report of Corporate Merger may need to be filed.

• Can a governmental authority in such a transaction prohibit the indirect transfer of control of the subsidiary?

Other than the explanation provided earlier, there are no additional regulations enforced by government authorities.

20. What are typical exit transactions for foreign companies?

Exit transaction varies case by case, but foreign investors predominantly prefer exits through sale of shares rather than IPO.

21. Do private companies prefer to pursue an IPO? i. on a domestic stock market, or ii. on a foreign stock market? iii. If foreign, which one?

Typically, domestic foreign-invested companies tend to avoid pursuing IPOs. This is due to the complex regulations associated with domestic IPOs, coupled with the lack of substantial benefits, considering that foreign-invested companies are often small subsidiaries of foreign parent companies. Consequently, it is more common to pursue IPOs for the parent companies rather than for subsidiary foreign-invested companies.

If IPOs are pursued, companies generally prefer conducting them in the Korean markets, with a few exceptions such as Coupang.

22. Do M&A/Investment/JV agreements typically provide for dispute resolution in domestic courts or through international arbitration?

The method of dispute resolution varies based on agreements between the parties. Nevertheless, in many cases involving foreign investment in domestic companies or the establishment of joint ventures in South Korea, the laws of South Korea are chosen as the governing law. When foreign investors are parties to contracts, disputes are often resolved through arbitration in a third country, with the Singapore International Arbitration Centre (SIAC) being a preferred choice for arbitration proceedings.

23. How long does a typical contract dispute case take in domestic courts for a final resolution?

The duration varies depending on the case, but litigation proceedings to the Supreme Court (third instance) typically take three to five years, or possibly longer, to render a final judgment.

24. Are domestic courts reliable in enforcing foreign investors rights under agreements and under the law?

Domestic courts adjudicate cases based on the Commercial Code, relevant laws, and legal principles. Courts do not render different judgments based on the nationality of the parties involved, nor do they deliver unjust judgments against foreign investors

25. Are there instances of abuse of foreign investors? How are cases of investor abuse handled?

There are no cases in particular.

26. Are international arbitral awards recognized and enforced in your country?

As a signatory to the New York Convention, South Korea allows the enforcement of arbitration awards rendered in signatory countries of the New York Convention, except for exceptional circumstances.

27. Are there foreign investment protection treaties in place between your country and major other countries?

South Korea has entered into investment protection treaties with major economies, including the United States, China, Japan, and the European Union.

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