

# Republic of Korea

## Legal Provisions

Compiled by:

### Swiss Business Hub Korea

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#### GENERAL REMARKS

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

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

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

#### FREE-TRADE AGREEMENTS

Korea has signed Free Trade Agreements with a total of 49 countries (Chile, Singapore, EFTA (4 countries), ASEAN (10 countries), India, EU (28 countries), Peru, USA, Turkey, Australia and Canada). These markets account for more than 37% of the world population and for 73.2% of the global GDP. 62.4% of the Korean trade is covered through FTAs.

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

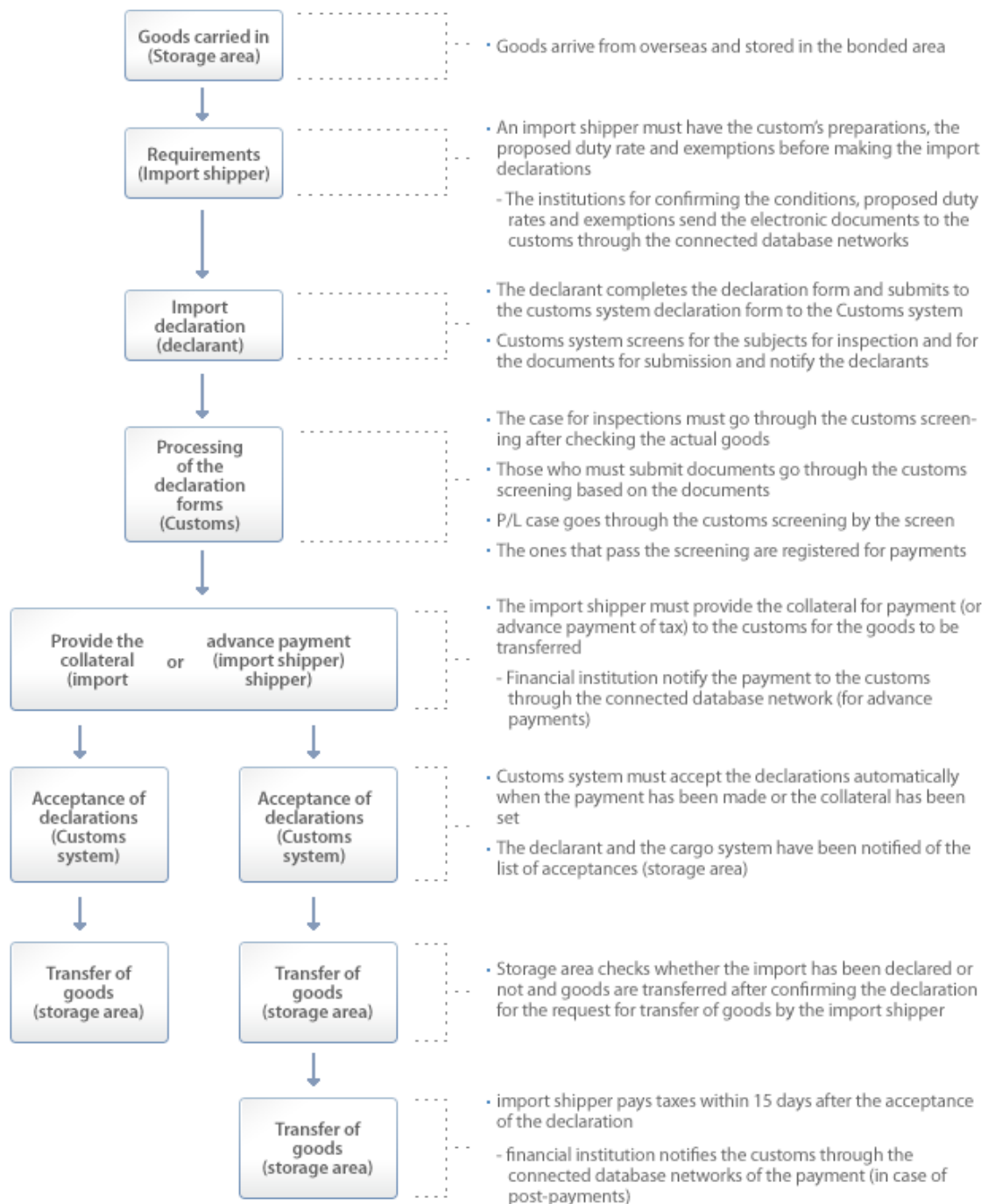
For legal provisions, please refer to the EFTA website:

<http://www.efta.int/free-trade/free-trade-agreements/korea.aspx>

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

## CUSTOMS

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



Source: Korea Customs Service, [www.customs.go.kr](http://www.customs.go.kr)

## IMPORT AND EXPORT REGULATIONS

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

For more information on general laws and regulations, go to [www.klri.re.kr/eng](http://www.klri.re.kr/eng).

## TAXES

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

<b>National tax</b>	<b>Internal tax</b>	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
	<b>Customs duty</b>	Customs duty
<b>Local tax</b>	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: Investkorea

### Corporate Tax

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

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

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

<b>Tax base</b>	<b>Tax rate</b>
Less than KRW 100 million	10% of the tax base
More than KRW 200 million	KRW 20 million + 20% of the amount in exceeding KRW 200 million
More than KRW 20 billion	KRW 3.98 billion + 22% of the amount exceeding KRW 20 billion

## SETTING UP COMPANIES

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

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

### Comparison of a Foreign-invested Company and a Domestic Branch

#### A Foreign-Invested Company under the Foreign Investment Promotion Act

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

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

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

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

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

Category	Foreign-Invested Company	Domestic Branch of a Foreign Company
<b>Act</b>	Foreign Investment Promotion Act	Foreign Exchange Transactions Act
<b>Corporation Type</b>	Domestic corporation	Foreign corporation
<b>Identity</b>	Foreign investors and foreign-invested companies are of separate entities (independent accounting & settlement)	Headquarters and branches are of a single entity (the same accounting & settlement)
<b>Authorities in charge of accepting registration and granting permission</b>	Invest KOREA (KOTRA) or headquarters of a foreign exchange bank	Headquarters of a foreign exchange bank for registration, and the Ministry of Strategy and Finance for permission of establishment of a financial business
<b>Minimum/Maximum Investment</b>	Minimum of KRW 100 million per investment (No upper limit)	No limit in investment amount
<b>Scope of Tax Obligations</b>	Tax obligations for all domestic and overseas income Corporate tax rate: 10% for KRW 200 million or less, 20% for over KRW 200 million and 20 billion or less, 22% for over KRW 20 billion	Tax obligations for income from domestic sources only Corporate tax rate: 10% for KRW 200 million or less, 20% for over KRW 200 million In some cases, branch tax shall be paid.

Source: [www.investkorea.org](http://www.investkorea.org)

## PROMOTION OF INVESTMENT

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

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

## INTELLECTUAL PROPERTY PROTECTION

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

## ENTRY CONDITIONS, VISA APPLICATION

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

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

## LABOUR LAW

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

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

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

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

## **LEGAL CONSULTANTS IN KOREA**

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***The other law firms are listed in alphabetical order and do not indicate any preference or recommendation by the Embassy of Switzerland or the Swiss Business Hub Korea.***

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