

Establishment of a Corporation

1. How Foreigners Advance Into Korea

There are three ways by which foreigners (foreign corporations) can enter Korea for business purposes: establishing a local corporation, a local branch, or a liaison office.

- How Foreigners Advance Into Korea
- Comparison of a Foreign-Invested Company and a Domestic Branch

1-1 How Foreigners Advance Into Korea

No.	Form of Entry	Governing Law	Note
1	Local corporation	Foreign Investment Promotion Act	Recognized as foreign direct investment
2	Branch	Foreign Exchange Transactions Act	Considered a domestic branch of a foreign corporation
3	Liaison office		

1-2 Comparison of a Foreign-Invested Company and a Domestic Branch

(1) Establishment of a Foreign-Invested Company Under the Foreign Investment Promotion Act

The establishment of a local corporation in Korea by a foreigner (individual or corporation) is regulated by the Foreign Investment Promotion Act and the Commercial Act. For a local corporation to be recognized as a foreign-invested company under the Foreign Investment Promotion Act, a foreigner must invest not less than KRW 100 million in the local corporation and acquire not less than 10 percent of the company's stocks with voting rights.

※ Status of foreigners operating a private business

In January 2012, the Daegu District Court of Korea ruled that private businesses run by foreigners cannot be recognized as foreign-invested companies. In accordance with such ruling, the Ministry of Justice issues a D-9 visa instead of a D-8 visa to foreigners operating a private business that is not a joint venture with a domestic private business when the invested amount is KRW 300 million or more.

(2) Domestic Branch of a Non-Resident (Foreign Company) Under the Foreign Exchange Transactions Act

A domestic branch of a foreign company can be classified into a branch and a liaison office depending on whether the entity engages in sales activities. Establishment of a branch that operates a business that generates profit in Korea is not considered foreign direct investment because it is a branch of a foreign company, not a domestic company.

A liaison office does not carry out businesses that generate profit in Korea, but instead undertakes non-sales functions such as market research and R&D. Unlike a branch, a liaison office does not need to undergo registration, and is issued an identification number equivalent to the business registration number at a jurisdictional tax office in Korea.

< Comparison of a Foreign-Invested Company and a Domestic Branch >

Category	Foreign-Invested Company	Domestic Branch of a Foreign Company
Governing law	Foreign Investment Promotion Act	Foreign Exchange Transactions Act
Type of corporation	Domestic corporation	Foreign corporation
Identity	The foreign investor and foreign-invested company are separate entities (independent accounting & settlement)	The headquarter and branch are a single entity (consolidated accounting & settlement)
Delegated agency to process notification and grant permission	KOTRA (Invest KOREA) or a foreign exchange bank	Designated foreign exchange bank, the Ministry of Strategy and Finance (securities, insurance, etc.)
Minimum (maximum) investment amount	KRW 100 million or more per case, no upper limit	No restrictions on the investment amount
Scope of tax obligations	<ul style="list-style-type: none"> • Tax obligations for all domestic and overseas income • Corporate tax rate: 10% for KRW 200 million or less; 20% for more than KRW 200 million but not more than KRW 20 billion; 22% for over KRW 20 billion 	<ul style="list-style-type: none"> • Tax obligations apply only to income from domestic sources • Corporate tax rate: Same as left • In some cases, branch tax should be paid.

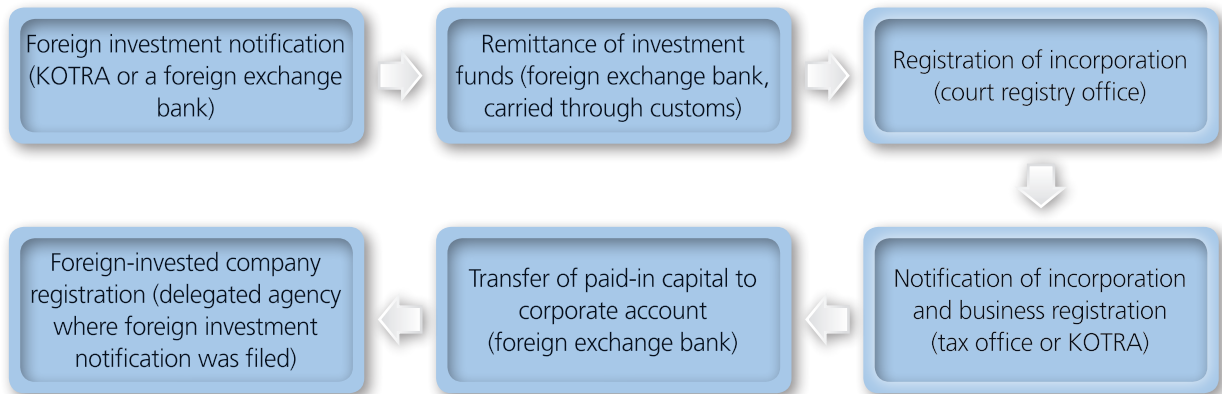
2. Establishment of a Local Corporation

The procedure for the establishment of a local corporation by a foreign investor is almost identical to that pertaining to the establishment of a domestic corporation, but requires the additional steps of pre-notification of foreign investment and foreign-invested company registration.

- The Procedure for Establishing a Local Corporation
- The Procedure for Establishing a Stock Company

2-1 The Procedure for Establishing a Local Corporation

The procedure for establishing a local corporation consists of foreign investment notification, registration of incorporation, registration of business and foreign-invested company registration. The following provides the details of the important steps of the incorporation registration procedure and business registration procedure.



2-2 The Procedure for Establishing a Stock Company

The Commercial Act recognizes five different forms of companies - partnership company, limited partnership company, limited liability company, limited company and stock company. As most companies fall into the category of "stock company," the procedure for establishing a stock company will be explained here.

(1) Ways of Establishing a Stock Company

There are two ways of establishing a stock company: promotion of incorporation and subscripive incorporation. Promotion of incorporation means that promoters subscribe to all of the shares issued at the time of incorporation. On the other hand, subscripive incorporation means that promoters subscribe to only part of the shares issued at the time of incorporation and the remaining shares are offered for subscription.

(2) Registration of Incorporation of a Stock Company

The registration of incorporation of a stock company should be effected within: two weeks of the date on which a review of the process of establishment is completed in the case of promotion of incorporation; and two weeks of the date on which the inaugural general meeting is closed in the case of subscripive incorporation.

The composition of promoters and whether the trade name or title is used by another company should be reviewed prior to registration. Since a trade name that has been registered by another person cannot be registered as a trade name for the same line of business in the same city (si) or county (gun), it is necessary to check whether an identical trade name has already been registered on the website of the Supreme Court (www.iros.go.kr).

Documents Required for Registration of Incorporation

1. Application form for stock company incorporation registration	13. A written statement by an appraiser
2. Articles of incorporation (notarization required if the total capital of the company is KRW 1 billion or more)	14. A certified copy of the inspector's report
3. Documents certifying subscription to shares	15. Foreign investment notification certificate
4. Subscription form (in the case of subscripitive incorporation)	16. Certificate of inauguration acceptance
5. Written consent to matters concerning the issuance of shares	a. A Korean national should put his/her seal on the certificate, and attach a certificate of the seal and a certified copy of his/her resident registration
6. Written consent to shortening the period for notice of convocation before the date of the inauguration general meeting (if the period is shortened)	b. A foreign national should attach the original copy with his/her signature notarized and a copy of his/her passport
7. The minutes of the inaugural general meeting (notarization required if the total capital of the company is KRW 1 billion or more)	17. Certificate of seal registration (with his/her signature notarized)
8. The minutes of the Board of Directors (notarization required if the total capital of the company is KRW 1 billion or more)	18. Resident registration certificate (certification of address)
9. A certificate of deposit of payment for shares or certificate of balance	19. Translation of documents (in cases where the required documents including the director's inauguration acceptance are written in a foreign language) *
10. A review report by a director, auditor or the audit committee	20. Receipt for payment of registration tax (issued by the district office which has jurisdiction over the area where the company headquarters is located)
11. Certificate of delivery of the pertinent property (in the case of investment-in-kind)	21. Revenue stamp of the Supreme Court of Korea
12. A public notary's report on the particulars of abnormal incorporation	22. Power of attorney (where an agent makes the application)
	23. Corporate seal
	24. Application form for issuance of corporate seal card (after registration of incorporation)
	* Documents 11, 12, 13 and 14 are required in cases where there are particulars of abnormal incorporation, such as in-kind investment.

* For documents 16, 17 and 18, an Apostille is required. In the case of countries that are not signatories of the Apostille Convention, notarization by the consul in Korea is required after obtaining notarization in the home country.

※ Documents required for a foreign investor

The documents to be submitted by a foreign investor differ, depending on whether the investor concerned is an individual or a corporation. A foreign investor of Japan or Taiwan must submit the same documents as a national of the Republic of Korea or a Korean corporation.

< Documents Required for Individual Investors >

Certificate of corporate seal registration	The personal seal or signature of the company representative should be placed on the certificate of corporate seal registration and be notarized (for countries that do not use seals).
A certificate of inauguration acceptance and a certificate of registered seal impression	Those who are inaugurated as executives of the new company <ul style="list-style-type: none"> • Korea/Japan/Taiwan: Place seal on the certificate of inauguration acceptance and attach a certificate of registered seal impression • Other countries: Place signature on the certificate of inauguration and have it notarized
Representative director's abstract of resident registration or address affidavit	To be attached to the certificate of inauguration acceptance <ul style="list-style-type: none"> • Korea/Japan/Taiwan: Abstract of resident registration or resident registration card • Other countries: Notarized address affidavit of the respective countries (not required for directors and auditors)
Power of attorney	When delegating matters regarding notification of foreign investment <ul style="list-style-type: none"> • Japan/Taiwan: Place seal on the power of attorney and attach a certificate of registered seal impression • Other countries: Place signature on the power of attorney and have it notarized
A copy of passport	All foreign nationals

< Documents Required for Corporate Investors >

Certified copy of corporate registration (the investing corporation)	Taiwan and Japan: A certified copy of corporate registration Other countries: Certificate of corporation or notarization certificate proving the existence of the corporation
Certificate of corporate seal impression (the corporation being established)	Place the personal seal or signature of the company representative on the certificate of corporate seal registration and have it notarized (for countries that do not use seals)
A certificate of inauguration acceptance and a certificate of seal impression	Those who are inaugurated as executives of the new company • Korea/Japan/Taiwan: Place seal on the certificate of inauguration acceptance and attach a certificate of registered seal impression • Other countries: Place signature on the certificate of inauguration and have it notarized
Representative director's abstract of resident registration or address affidavit	To be attached to the certificate of inauguration acceptance • Korea/Japan/Taiwan: Abstract of resident registration or resident registration card • Other countries: Notarized address affidavit of the respective countries (not required for directors and auditors)
Power of attorney	When delegating matters regarding notification of foreign investment • Japan/Taiwan: Place seal on the power of attorney and attach a certificate of registered seal impression • Other countries: Place signature of the representative director on the power of attorney and have it notarized
A copy of passport	All foreigners

(3) The Cost of Establishing a Stock Company

Registration tax, local education tax, registration application fees, etc. are the main costs involved in establishing a stock company.

<Example – Company with Capital of KRW 100 Million in an Overconcentration Control Area in Seoul>

Tax	Details	Cost
Registration Tax	0.4% of the capital, three times when a stock company is established in an overconcentration control area	KRW 1,200,000
Local Education Tax	20% of the registration tax	KRW 240,000
Revenue Stamp of the Supreme Court	Fee for registration application	KRW 30,000
Notarization Fee	Articles of association, etc. (Notarization of certain documents is exempted in the case of incorporation by promotion with capital of KRW 1 billion or less.)	Approx. KRW 1,000,000
Total		Approx. KRW 2,470,000

※Other fees such as legal service fees may occur.

(4) Business Registration

Business registration can be filed at a tax office with jurisdiction over the company headquarters or any other tax office, or at KOTRA. Registration should be completed within 20 days of the date of business commencement.

※ Required documents

- Application form for business registration
- For corporations: Specification of shareholders or investors, copy of the articles of incorporation, certified copy of corporate registration certificate
- A copy of the lease contract (if the business establishment has been leased)
- A copy of the foreign investment notification form and foreign currency purchase (or deposit) certificate
- A copy of the representative's alien registration card or passport
- A copy of the foreign currency purchase (or deposit) certificate
- Additional documents when required:
 - A copy of the power of attorney and the agent's ID when applying through an agent
 - Notification form of the appointment of a tax agent (in the case where the representative is a non-resident)
 - A copy of the required business permit, registration or notification certificate in the case of government licensed businesses
- Specification of the source of funds (for operators of gold bullion wholesale and retail, business for supply of fuel for vehicles and household use, recyclable materials business, collection and sales business, and taxable entertainment establishments)

In cases where a foreign investor makes an investment-in-kind to establish a corporation, a certificate of business registration is required in order to receive a value added tax refund when the object of investment in kind clears customs. Therefore, business registration has to be completed prior to importation of the object of investment.

※ Required documents in cases where business registration is filed in advance (for investment in kind)

- Application form for business registration
- Certified copy of the resident registration certificate of all promoters
- Application form for business permission (in cases where the business requires authorization and permission)
- Business plan
- * A certified copy of corporate registration is not required when applying for business registration, and all other required documents must be submitted after company establishment.

3. Establishment of a Foreign Company's Domestic Branch

The establishment and private registration of a local corporation is recognized as foreign investment under the Foreign Investment Promotion Act. However, the establishment of a domestic branch is not recognized as foreign investment, and is regulated by the Foreign Exchange Transactions Act.

- Types of a Foreign Company's Domestic Branch
- Procedure for Establishing a Foreign Company's Domestic Branch

3-1 Types of a Foreign Company's Domestic Branch

There are two types of domestic branches: a branch and a liaison office. A branch undertakes sales activities in Korea to generate profit, whereas a liaison office does not conduct sales activities to create profit but instead carries out non-sales functions such as business contacts, market research and R&D. Liaison offices can carry out quality control, market surveys, advertising, and other incidental and supportive roles. However, they are limited in the scope of their activities since they are not permitted to sell products directly or to stock inventory for sale on behalf of the headquarters.

3-2 Procedure for Establishing a Foreign Company's Domestic Branch



(1) Notification of Branch Establishment

In order for a foreign company to establish a domestic branch, a notification should be filed to the head of a designated foreign exchange bank.

※ Documents required:

- Notification form of the establishment of a foreign company's domestic branch
- Certificate of appointment of the head of the domestic branch
- Documents certifying the foreign company (headquarters)'s name, location and major business operations (Notarization of the location of the headquarters is required if the documents are not original copies)
- Where a permit, etc. is required for the establishment of a branch in accordance with other Acts and statutes, a copy of documents certifying that such permit, etc. has been obtained
- Articles of association of the headquarters
- Board meeting minutes containing the company's plans to establish a branch or liaison office in Korea and details on the appointment of its representative in Korea
- Specifications of the line of business that the company intends to operate in Korea and the scope of business
- Power of attorney in cases where the establishment of a domestic branch is commissioned to a person other than the branch head (Notarization of the location of the headquarters is required.)

Both a branch and an office should notify the Minister of Strategy and Finance if it intends to operate any of the following business:

- Financial business other than banking business, including fund loans, brokering and arranging overseas finance, cards, and installment financing
- Businesses related to securities and insurances
- Businesses that are not permitted under the Foreign Investment Promotion Act or other laws

(2) Registration of Branch Establishment

Under the Commercial Act, a branch is required to establish and register a business office. A liaison office does not require registration because it is not permitted to conduct sales activities and is only allowed to engage in activities such as information exchange.

The following documents should be attached to the application form for registration of branch establishment:

- Notification form of the establishment of a foreign company's domestic branch
- Documents certifying the foreign company (headquarters)'s name, location and major business operations (Notarization of the location of the headquarters is required if the documents are not original copies.)
- Where a permit, etc. is required for the establishment of a branch in accordance with other Acts and statutes, a copy of documents certifying that such permit, etc. has been obtained
- Articles of association of the headquarters
- Board meeting minutes containing the company's plans to establish a branch or liaison office in Korea and details on the appointment of its representative in Korea
- Specifications of the line of business that the company intends to operate in Korea and the scope of business
- Power of attorney in cases where the establishment of a domestic branch is commissioned to another person (Notarization of the location of the headquarters is required.)
- Application form for seal registration of the representative of the Korean office (for the convenience of the representative and is not mandatory)
- The branch representative's acceptance of appointment with a notarized signature, and certificate of location

All the above documents must be certified by a competent government authority of the foreign company's home country.

If the country where the foreign company's headquarters is based is a signatory of the Hague Convention Abolishing the Requirement for Legalization for Foreign Public Documents, or the Apostille Convention, the company may receive an Apostille certification on the documents certified by the competent government authority of the respective country.

If the home country of a foreign company is not a signatory of the Apostille Convention, a consul's notarization is required after obtaining a general notarization.

(3) Branch Closure and Retrieval of Liquidated Funds

If a person who has been approved to establish a business office pursuant to the relevant regulations intends to close his/her local branch office or to dispose of the locally owned assets and return the funds to a foreign country after branch closure, he/she should report the relevant facts to the head of a designated foreign exchange bank. In this case, the retrieved funds should not exceed the sum of the operating funds introduced to the local branch office, earned surplus and other reserve funds (after deducting deficits, if any).

※ Documents required for notification of branch closure

- Certificate of notification of closure of a foreign company's domestic branch: The notification should be filed under the name of the liquidator
- Documents certifying branch closure (issued by the company headquarters)
- Original copy of certification of notification of a foreign company's establishment of a domestic branch

※ Documents required for retrieval of funds

- A copy of the notification form of closure of a foreign-invested company's domestic branch
- A CPA-audited liquidation report (including the balance sheet, income statement as of the date of branch closure and date of completion of liquidation)
- Tax payment certificate (national tax and local tax, issued by the competent tax office)
- Specification of introduced operating funds, earned surplus and other reserve funds.
- Bank balance certificate (should match the remittable amount in the liquidation report.)
- A certified copy of the liquidation-closure register in the case of branches that engaged in sales activities
- The following documents should be submitted if a certified copy of the liquidation-closure register is not available:
 - Business closure certificate (issued by the competent tax office)
 - A document certifying the appointment of a liquidator
 - A document certifying that a peremptory notice for creditors has been issued (i.e. a copy of a newspaper on which the notice has been published)
 - Certificate of clearance of overdue wages for Korean workers (issued by the head of the competent labor office)