

KOTRA Express provides a summary of the government's authoritative interpretation on how foreign investment-related laws and regulations should be actually applied. The interpretations are the advice of the Ministry of Government Legislation on questions or conflicts regarding the meaning and interpretation of such laws and regulations.



If any person who is not a national of the Republic of Korea under Article 2 Subparagraph 2 of the Immigration Act (hereafter “alien”) completed alien registration under Article 31 (1) of the same Act, can the alien create, manage and operate a private qualification as prescribed by Article 17 (1) of the Framework Act on Qualifications?



In this case, the alien can create, manage and operate a private qualification.



Reasons

The Constitution of the Republic of Korea states that “the status of aliens shall be guaranteed as prescribed by international laws and treaties” (Article 6 (2)), and in accordance with this principle, many laws treat aliens as equally as Korean nationals. As a rule, in laws other than those related to basic rights recognized only to Korean nationals such as voting rights and political rights including the right to hold public office, it is interpreted that there are no restrictions on aliens unless there are explicit regulations imposing restrictions on them.

Also, Article 17 (1) of the Framework Act on Qualifications states that “any” corporation, organization or individual other than the State may create, manage and operate a private qualification in a sector other than those prescribed by its subparagraphs, and Article 23 (4) of the Enforcement Decree of the same Act stipulates that the minister of the competent ministry shall issue a registration certificate if the requested private qualification does not fall under the banned categories. In addition, Article 18 of the Act does not include aliens in persons disqualified as a private qualification manager, which means that aliens are not disqualified to become private qualification managers who can create, manage and operate private qualifications.

Moreover, by allowing everyone to create, manage and operate private qualifications and receive government accreditation on the qualifications, the purpose of the Framework Act on Qualifications is to ensure that private qualifications are invigorated and their credibility are enhanced, thereby improving the socio-economic status of people through promoting lifelong vocational competency (Article 1). In addition, the legislative objective of the Act is opening the qualification system to individuals so that persons with skills and talent in a particular field can be given an opportunity to succeed by practicing expertise in the field and ultimately contribute to the diversification of society and creation of an open system. Considering this, there is no reason to restrict an alien from creating a private qualification in accordance with the Framework Act on Qualifications.

Furthermore, the fact that the competent minister may manage and supervise the management and operation of private qualifications by private qualification managers regardless of whether they are domestic persons or aliens should be taken into account as well. For example, where a person who registers, manages and operates private qualifications in accordance with the Framework Act on Qualifications violates the Act, the competent minister may issue an order requiring the relevant private qualification manager to correct the relevant offense (Article 18-2), and may suspend the relevant qualification if the manager fails to comply with the corrective order (Article 18-3 (1) 3). And if necessary, the competent minister may provide instructions necessary for the guidance and supervision of registered qualification-related affairs under his/her jurisdiction, by requiring the registered qualification managers to report on their business or submit data, etc. (Article 18-5).

The Ministry of Government Legislation's statutory interpretation provides an authoritative opinion on the interpretation of statutes, and does not have the binding force of a final court ruling. Therefore, the competent government authority may not adopt the interpretation in its entirety. If a final court ruling contradicts the Ministry of Government Legislation's statutory interpretation, the court ruling shall prevail.