



Investing in South Korea 2021

Audit / Tax / Advisory

Smart decisions. Lasting value.

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Welcome

to the Crowe Global Investing in South Korea 2021 guidebook.

This guide forms a part of the Investing in Asia Pacific 2021 series and provides a quick reference for those interested in investing in South Korea. While it is not exhaustive, this guide aims to answer some of the key questions that may arise. When specific issues arise in practice, it will often be necessary to consider the relevant laws and regulations and to obtain appropriate professional advice.

The guidebook will cover five main topics as follows:

- Establishing the business entity
- Tax information
- IPO quick facts
- Human resource requirements
- Withdrawal procedures



Establishing the business entity

Formation and costs

Company	Branch	Representative Office
<p>To establish a company in Korea, a foreign (non-Korean) investor must first report or register its establishment with the foreign exchange bank, the district court and the district tax office, and it usually takes two weeks to complete the registration process of a Korean company.</p> <p>If the Korean company is to engage in financial services or in a restricted business as defined in the Foreign Investment Promotion Act (FIPA), the foreign investor must obtain a prior approval from the relevant authority.</p> <p>The minimum capital requirement is KRW 100 million per each foreign investor. The court registration tax is 1.44% (0.48% for non-Metropolitan area) of the paid-in capital and other dues are US\$ 1,000 or less.</p> <p>A Korean company is required to file the annual/semi-annual corporate income tax return, the quarterly VAT return, the monthly withholding tax return with the district tax office.</p>	<p>Similar to a Korean company, a foreign corporation must first report or register its branch establishment with the foreign exchange bank, the district court and the district tax office, and it usually takes two (2) weeks to complete the registration process of a Korean branch.</p> <p>If the Korean branch is to engage in financial services or in a restricted business as defined in the FIPA, the foreign investor must obtain a prior approval from the relevant authority. As the Korean branch does not have the paid-in capital, the court registration will cost only around US\$ 100.</p> <p>A Korean branch is also required to file the annual/semi-annual corporate income tax return, the quarterly VAT return, the monthly withholding tax return with the district tax office.</p>	<p>A representative office (RO) is treated as a non-taxable entity, and thus the RO may engage only in non-revenue generating liaison activities exclusively for its head office. It usually takes a week to complete the formation process for the RO (reports to the foreign exchange bank and the district tax office) since it does not need the court registration.</p> <p>The RO has no obligation to file the corporate income tax return or the VAT return. However, it is required to file the monthly withholding tax return and submit the information on the input-VAT or the exempted input-VAT from the purchase transactions to the district tax office on a semi-annual basis.</p>

Investment incentives

Company

For foreign investment which meets a set of qualifications, acquisition tax, property tax and customs duties on capital goods are exempted or reduced in accordance with the Tax Incentives Limitation Law. The foreign invested company must apply for the tax exemption to the Ministry of Strategy and Finance (MOSF) by the end of the initial business year. The MOSF usually determines whether the company is eligible for the tax exemption within twenty (20) days from the application date, however, the period may be extended, if necessary.

Foreign ownership restrictions

Company

There is no restriction of foreign ownership except for the specific industries listed in the FIPA (e.g., newspaper (less than 30%), airline company (less than 50%), cable broadcasting (49% or less), etc.).

Work permits and visas

Company	Branch	Representative Office
<ul style="list-style-type: none">• Eligible for D-8 visas.• Approximately four (4) weeks (incl. status change process).• Number of applicants per entity may be limited depending upon the amount of foreign investment.	<ul style="list-style-type: none">• Eligible for D-7 visas.• Approximately four (4) weeks.• Number of applicants per entity may be limited.	<ul style="list-style-type: none">• Eligible for D-7 visas.• Approximately four (4) weeks.• Number of applicants per entity may be limited.

Accounting standards and audit requirements

Company	Branch
<p>From 2011, the Korean IFRS (K-IFRS) applies to listed companies and financial companies (banks, insurance companies, credit card companies, financial holding companies, etc.).</p> <p>The following companies are subject to the statutory audit under the Korean Law.</p> <ul style="list-style-type: none"> • Listed companies. • Company which has the assets of KRW 50 billion or more. • Company which has the sales amount of KRW 50 billion or more. • Company which does not satisfy at least 3 or more of the following conditions. <ul style="list-style-type: none"> - assets less than KRW 12 billion - liabilities less than KRW 7 billion - sales amount less than KRW 10 billion - number of employees less than 100. 	<p>Generally, a Korean branch is not subject to the statutory audit, but in the following cases, the external audit by CPAs is required.</p> <ul style="list-style-type: none"> • When the Korean branch remits the profit of more than KRW 100 million or more than 100% of its operating funds to its head office, • When the Korean branch is closed and liquidation proceeds are remitted abroad.

Residential directors/promoters requirements

Company

From a theoretical perspective, the representative director of a Korean company must have a place of residence in Korea. However, the foreigners having no place of residence in Korea, in practice, have been registered with the district court as a representative director. Please note that there is the possibility that the district court may reject the registration of the foreigner with no residence in Korea as a representative director of a Korean company.

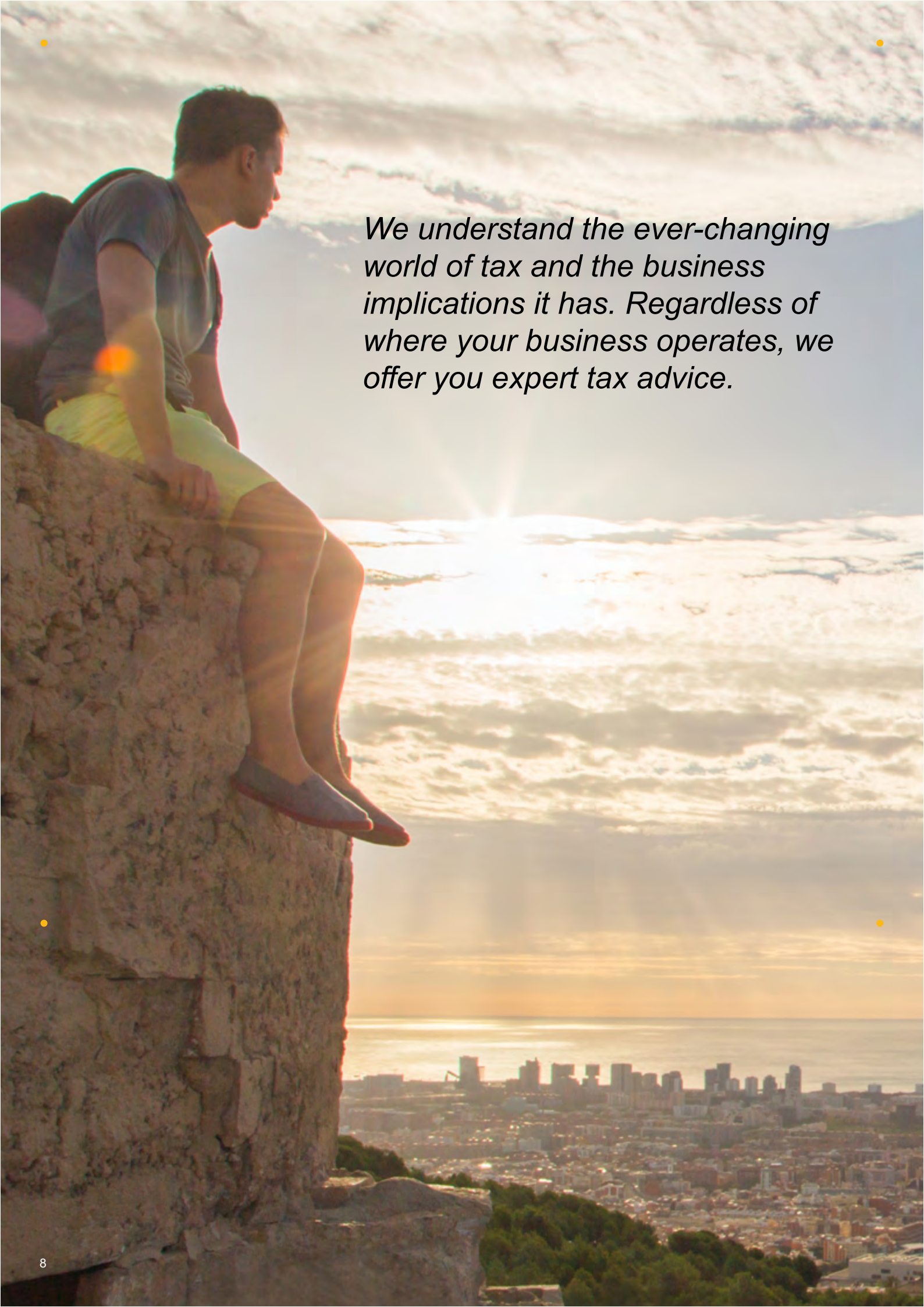
Foreign ownership over tangible assets

In general, there is no restriction in acquisition of land and building by foreigners. However, under the Act on Report on Real Estate Transactions, etc., foreigners are required to report the acquisition of land to the local government within sixty (60) days after the contract date of the land acquisition.

The foreigners include the followings:

- a foreign individual or a foreign corporation.
- a Korean company in which foreigners hold 50% or more of the shares.
- a Korean company whose foreign directors are 50% or more of total directors.
- a Korean branch or a representative office of a foreign corporation, etc

International Specialists

A man with a backpack is sitting on a stone ledge, looking out over a city at sunset. The sun is low on the horizon, creating a golden glow over the city and the ocean. The man is wearing a grey t-shirt, yellow shorts, and blue shoes. The city below is densely packed with buildings, and the ocean is visible in the distance. The sky is filled with soft, golden clouds.

We understand the ever-changing world of tax and the business implications it has. Regardless of where your business operates, we offer you expert tax advice.

Tax information

Tax rates on corporate income

- Up to KRW 200 million of taxable income: 11% (including local income tax).
- Over KRW 200 million and up to KRW 20 billion of taxable income: 22% (including local income tax).
- Over KRW 20 billion and up to KRW 300 billion of taxable income: 24.2% (including local income tax).
- Over KRW 300 billion of taxable income : 27.5% (including local income tax).

Branch income

Branch income is calculated in the same manner as that of a company. In the case of certain country's branch, the branch profit tax (2%~15%) may be added to the ordinary corporate income tax in accordance with the relevant tax treaties with the countries concerned. (e.g., Australia, Canada, France, Indonesia, Kazakhstan, Philippines, Thailand, Brazil, Morocco, Panama and Peru).

Other taxes

Value Added Tax (VAT)
10% of supply amount.

Income determination

The taxable income is calculated by adding/deducting the tax adjustment items to/from the book income. Gains from inventory valuation, security valuation and other asset valuation are not treated as taxable income. The capital gain on assets including real properties will be taxed when realized. Intercompany dividends received from a foreign subsidiary are added to the taxable income but the foreign tax credit will be allowed for the dividend income if certain conditions are met. Stock dividends will also be added to the taxable income. A Korean company is liable to pay the corporate income tax on worldwide income but a Korean branch is liable to pay the corporate income tax only on the Korean source income.

Deductions

Costs and expenses relating to the business are in principle deductible for tax purposes. Depreciation and depletion are deductible within the tax limit specified in the Corporate Tax Law and the net operating losses are carried over for fifteen (15) years. A domestic company and a foreign company which is not a Small and Medium-sized enterprise may utilize its tax loss carry-forward only within 60% of the taxable income of the fiscal year. Payments to foreign affiliates such as management service fees will be deductible only if the company can prove the reasonableness of the management service fee and actual provision of services by evidential documents.

Group taxation policies

Consolidated tax returns for Korean affiliate companies may be chosen if certain conditions are met. However, the consolidated tax returns for cross border affiliates are not allowed.

Tax incentives

Research and Development (R&D) tax credit is allowed for the expenses incurred in relation to the R&D activities. In addition, investment in fixed assets such as machinery, R&D facilities will be eligible for the investment tax credit of 1% - 13%.

Withholding Tax

Dividends	22% (inclusive of local income tax)
Interest	22% (15.4% on government bonds or corporate bonds, inclusive of local income tax)
Royalties	22% (inclusive of local income tax)
Technical fee	22% (inclusive of local income tax. Technical services which are provided in Korea are classified as personal service income)
Branch profit	2%~15%. Please see the branch profit tax above

Tax administration

Annual corporate income tax return (CITR) must be filed along with necessary tax payment by three (3) months after the end of the fiscal year with the relevant tax authorities. Interim CITR must be filed along with necessary tax payment by two (2) months after the first half (six (6) months) of the year.

A company must file and pay the VAT by the 25th day after the end of each quarter. In addition, the monthly withholding tax return should be filed by the 10th day of the following month.

A company must file semi-annual earned income payment statement by each employee by the end of January 31 and July 31, respectively.

Taxable incomes for non-resident companies and individuals

Any income sourced in Korea received by non-residential companies and individuals are subject to the Korean withholding tax at a rate as indicated in page 10. However, in the case of interest, dividends or royalties, the withholding tax rates may be reduced under the tax treaties with the resident countries.

BEPS (Base Erosion and Profit Shifting)

From FY 2016, Multinational Enterprises (“MNE”) which meet the following conditions are also required to submit the Combined Report of International Transactions (CRIT) which is comprised of three elements (Local File, Master File and Country-by-Country Report).

CRIT	Local File and Master File	Country-by-Country Report
Condition	Domestic corporations and foreign corporations with a domestic place of business that satisfy the following criteria: a. Annual gross sales of an individual entity exceed KRW 100 billion; and b. International related party transaction exceeds KRW 50 billion per year.	Domestic (Korean) ultimate parent company of multinational enterprises with annual sales revenue exceeding KRW 1 trillion per consolidated financial statements for the preceding year.
Due date	Within 12 months from the end of each fiscal year	

Trusted Advisors



Our specialists develop strategies that respond to current issues businesses face and anticipate the implications of future changes.

IPO quick facts

Bourses in the country

- a. Korea Composite Stock Price Index (KOSPI)
- b. Korea Securities Dealers Automated Quotations (KOSDAQ)

Admission requirements

KOSPI

a. Company size

Should meet all of the following conditions (1) ~ (2):

1. Net equity is KRW 30 billion or more.
2. The number of outstanding shares is 1 million or more.

b. Trading record

Should meet one of the following conditions (1) ~ (2):

1. Sales and profit

- Sales of KRW 100 billion or more for most recent fiscal year,
- Average sales of KRW 70 billion or more for the past three (3) years, and
- Generate the operating income, net income before tax and current income for most recent fiscal year, and

Should meet one of following conditions 1) ~ 3)

- i) Net Income: Higher than KRW 3 billion of the latest fiscal year & KRW 6 billion in total of the recent three (3) fiscal years
 - ii) ROE: Higher than 5% of the latest fiscal year & 10% in total of the recent three (3) fiscal years
 - iii) In case of a large-sized company with equity capital over KRW 100 billion: Higher than 3% at ROE or higher than 5 billion at net Income, and operating cash flow is positive.
- ##### 2. Sales and aggregate stock market value (ASMV)
- Sales of KRW 100 billion or more for most recent fiscal year, and
 - More than KRW 200 billion of ASMV.

c. Public shareholding requirement

Should meet all of the following conditions (1)~(3):

1. Minority shareholder requirement

Should meet any of the following conditions

- At least 25% of shares or 5 million shares held by public shareholders. (Including number of shares before submission of application for listing eligibility review) (in case where the number of outstanding shares is 50 million or more, at least 10% of the number of outstanding shares)
 - At least 25% of shares or 5 million shares to be publicly offered (in case where the number of outstanding shares is 50 million or more, at least 10% of the number of outstanding shares)
 - At least 10% of shares to be publicly offered after submission of application for listing eligibility review & At least the No. of the public offered shares should be as follows:
 - 1 million shares : KRW 50 billion Equity Capital < KRW 100 billion or KRW 100 billion Market Capitalization < KRW 200 billion.
 - 2 million shares : KRW 100 billion Equity Capital < KRW 250 billion or KRW 200 billion Market Capitalization < KRW 500 billion.
 - 5 million shares : KRW 250 billion Equity Capital or KRW 500 billion Market Capitalization.
 - In case of the simultaneous offering in Korea and abroad, at least 10% of shares and 1 million shares to be publicly offered
2. At least 700 public shareholders.
 3. There should be no restriction on share transfer.

d. Qualitative requirements

1. The past period of business should be more than three (3) years.
2. Audit opinion:
 - Recent fiscal year: Non-qualified.
 - Prior two (2) fiscal years: Non-qualified or Qualified (Except for qualified opinion resulting from restriction of audit scope).
3. Disposal of shares held by majority shareholder is restricted for six (6) months after listing, etc.

KOSDAQ

a. Company size

Should meet one of the following conditions (1) ~ (2):

1. Profitability and sales

- Net income before income tax of KRW 2 billion (KRW 1 billion for venture business) and more than KRW 9 billion of ASMV
- Net income before income tax of KRW 2 billion (KRW 1 billion for venture business) and net equity of KRW 3 billion (KRW 1.5 billion for venture business)
- Positive net income before income tax, more than KRW 20 billion of ASMV and more than KRW 10 billion sales (KRW 5 billion for venture business)
- Net income before income tax of KRW 5 billion

2. Sales, profit and ASMV.

- More than KRW 100 billion of ASMV
- Sales of KRW 10 billion (KRW 5 billion for venture business) or more for most recent fiscal year and more than KRW 30 billion of ASMV, or
- Sales growth rate of average 20% for recent two fiscal years and sales of KRW 3 billion for most recent fiscal year and more than KRW 50 billion of ASMV
- Net equity more than KRW 25 billion
- More than KRW 50 billion of ASMV and PBR 200%

b. Trading record and shareholding requirement

Should meet one of the following conditions (1) ~ (3):

1. Minority shareholder requirement

- Minority shareholding ratio is at least 25%, and
- Number of minority shareholders is at least 500, and
- At least 5% of shares to be publicly offered after submission of application for listing eligibility review.

2. At least 25% of total shares should be publicly offered and the number of minority shareholders is at least 500.

3. Equity capital is at least KRW 50 billion and number of minority shareholders is at least 500, and at least 10% of shares to be publicly offered after submission of application for listing eligibility review.

4. There should be no restriction on share transfer.

c. Qualitative requirements

1. Audit opinion:

- Recent fiscal year: Non-qualified.

Typical issuance size

Net equity (KRW billion)	Aggregate stock market value (KRW billion)	Number of shares to be issued
50 ~ 100	100 ~ 200	1,000,000 shares or more
100 ~ 250	200 ~ 500	2,000,000 shares or more
250 ~	500	5,000,000 shares or more

Requirements for foreigners

A foreign company may be listed in the Korea stock markets if it meets the listing requirements which are similar to those for a Korean company. Foreigners are also allowed to make transactions of the listed stocks in compliance with the relevant regulations (e.g., Foreign Exchange Transactions Control Law).

Methods of offer and restrictions

Please see section on Public shareholding requirement.

Deep Specialization

Timeline

It will usually take 99 ~ 105 days from the application date of preliminary examination of the listing requirements to complete the listing procedures. The period may be extended depending on the given situations.

Approving authorities

KOSPI Listing Committee, KOSDAQ Market Division.

Estimated cost involved

KOSPI	KOSDAQ
<ol style="list-style-type: none">1. Examination fee of listing requirements: KRW 5 million ~ 20 million.2. Listing fee: 0.0005% ~ 0.0075% of ASMV (limit of KRW 250 million).	<ol style="list-style-type: none">1. Examination fee of listing requirements: KRW 5 million ~ 15 million.2. Listing fee: 0.001% ~ 0.007% of ASMV (limit of KRW 200 million).

Language required for:

- a. Prospectus: Korean
- b. Annual reports: Korean
- c. Audit report: Korean

Requirements of accounting auditors to be appointed

The company which is to be listed in KOSPI and KOSDAQ is required to apply for appointment of external auditors to Securities and Futures Commission. Foreign auditors are not allowed to sign on the audit reports.

Audit opinion required for:

	KOSPI	KOSDAQ
a. IPO	<ul style="list-style-type: none">• Recent fiscal year: Non-qualified.• Prior two (2) fiscal years: Nonqualified or Qualified (Except for qualified opinion resulting from restriction of audit scope).	<ul style="list-style-type: none">• Recent fiscal year: Non-qualified.
b. After IPO	<ul style="list-style-type: none">• Please see below section titled as 'Delisting standard from bourses'.	

Delisting standards from bourses

KOSPI	KOSDAQ
<ol style="list-style-type: none"> 1. Non-submission of quarterly, semi-annual, or annual reports. 2. Audit opinion: <ul style="list-style-type: none"> • Qualified opinion (restriction of audit scope) for continuous two (2) years, or • Adverse opinion or disclaimer of opinion. 3. Suspension of business. 4. No. of minority shareholders is less than 200 for continuous two (2) years or their ownership ratio is less than 5% for continuous two (2) years. 5. Encroachment of capital. <ul style="list-style-type: none"> • Accumulated deficit is more than 50% of paid in capital for continuous two (2) years, or • Accumulated deficit is 100% or more of net equity. 6. Violation of public notice obligation. 7. Less than KRW 5 billion of sales amount for continuous two (2) years. 8. Bankruptcy or suspension of bank transaction, etc. 	<ol style="list-style-type: none"> 1. Non-submission of quarterly, semi-annual, or annual reports. 2. Audit opinion: <ul style="list-style-type: none"> • Qualified opinion (restriction of audit scope), adverse opinion, or disclaimer of opinion. 3. Suspension of business. 4. No. of minority shareholders is less than 200 for continuous two (2) years or their ownership ratio is less than 20% for continuous two (2) years. 5. Encroachment of capital. <ul style="list-style-type: none"> • Accumulated deficit is more than 50% of net equity, or • Net equity amount is less than KRW 1 billion. 6. Less than KRW 0.5 billion of sales amount for continuous two (2) years. 7. Bankruptcy or suspension of bank transaction, etc.

Human resource requirements

Special labour standards to take heed of

Labor Standards Act (LSA) of Korea.

Social welfare: insurance, pension, etc

There are 4 statutory social security programs in Korea under the employee welfare related laws and regulations including the Employment (Unemployment) Insurance Act, the National Health Insurance Act, the National Pension Act, and the Industrial Accident Compensation Insurance Act as below:

- National pension
- National health insurance
- Unemployment/employment insurance
- Industrial accident compensation insurance

Impeccable Service

Requirements for retirement benefits

Under the Korean Labor Standards Act (LSA) and the Employee Retirement Benefit Security Law (ERBSL), an employee with one (1) year or more of service with a company (including a foreign invested company) is entitled to receive a severance pay from the company in the amount of at least one (1) month's average salary for each year of service, upon resignation or termination of employment (regardless of reasons of such termination).

Under the ERBSL, an employer with one (1) or more employees shall be required to participate in the retirement pension system where an employee may receive retirement benefits in the form of pension. Under the retirement pension system, retirees may receive retirement benefits in the form of pension when they reach the age of 55 provided that the subscription period is ten (10) years or more.

Legal annual leave and public holidays

Under the five (5)-day workweek legislation, fifteen (15) days of annual leave will be given as annual leave provided that an employee satisfies at least 80% attendance. For an employee who has worked for a company for more than three (3) years, one (1) additional day of paid leave for every two (2) years will be vested, but not to exceed twenty five (25) days in aggregate.

Brief information on labour unions

There is no limitation in number of union members in a labor union (but to hold initial union members meeting and maintain union, there should be minimum two (2) or more union members) to be a legitimate union. Such union should be duly registered with the relevant district government authorities. Multiple unions in one company are also allowed under the laws of Korea.

Withdrawal procedures

Company: legal procedures required for liquidation

A company must file or report its de-registration with the foreign exchange bank, the district court and the district tax office. The legal procedures for liquidation include shareholders' resolution, appointment of liquidator, public announcement, settlement of account receivables and payables and distribution of residual assets, etc. It will take at least four to five months to complete all the steps necessary to liquidate the Company.

Company: tax requirements

The company must file the VAT return for the last period ending the dissolution registration date by the 25th day of the following month. In addition, the company must file the annual corporate tax return for the last fiscal period (ending on the dissolution registration date and the liquidation completion date).

Tailored Solutions

Branch: legal procedures required for closing branch

A branch must file or report its de-registration with the foreign exchange bank, the district court and the district tax office. The legal procedures for liquidation of a branch is similar to those of a company, however, the head office and its Korean branch may choose, if certain conditions are met, to liquidate the branch office through the 'simplified liquidation procedure' allowed under the law at their discretion, which will take less time than the formal liquidation procedures.

Branch: tax requirements

A Korean branch must file the VAT return for the last period ending the closing date by the 25th day of the following month. In addition, the branch must file the annual corporate tax return for the last fiscal period ending on the closing date but a liquidation income tax return is not required.

Representative office: legal procedures required for closing office

A representative office (RO) must file or report its de-registration with the foreign exchange bank and the district tax office. As the RO does not need the court registration, it is not required to be de-registered from the district court.

Representative office: any tax requirements

The RO has no obligation to file the corporate income tax return or the VAT return. However, it is required to submit the information on the input-VAT or the exempted input-VAT from the purchase transactions for the period ending the closing date to the district tax office.



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