

I·SEOUL·U

# CONSULTING CASE BOOK FOR FOREIGN START-UPS

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sba

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# CONSULTING CASE BOOK FOR FOREIGN

## CONTENTS

### 1. Advancement of Foreign Companies into Korea

Q.01	How can foreign companies advance into Korea?	50 - 50
Q.02	How can foreign companies advance into Korea? [Establishment of a Korean corporation]	50 - 53
Q.03	How can foreign companies advance into Korea? [Establishment of a branch]	53 - 55
Q.04	How can foreign companies advance into Korea? [Establishment of a liaison office]	55 - 56
Q.05	How can foreign companies open a bank account in Korea?	56 - 57

### 2. Foreigners' Startups

Q.06	How can foreigners operate a business in Korea?	60 - 61
Q.07	How can foreigners operate a business in Korea? [Foreign Direct Investment]	62 - 64
Q.08	How can foreigners operate a business in Korea? [Foreigners' Tech-based Startups]	64 - 66
Q.09	How can foreigners operate a business in Korea? [Sole proprietorship run by foreigners with Korean academic degrees]	67 - 68
Q.10	How can foreigners operate a business in Korea? [Foreigners' trade business startups]	68 - 71

### 3. Company Operation

Q.11	Must-know tax information for business operators	74 - 76
Q.12	What are the four social insurances required to employ workers?	76 - 77
Q.13	What are the requirements for the Special Occupation visa (E-7) required to employ foreigners?	77 - 79
Q.14	Matters for consideration after incorporation	79 - 79
Q.15	Differences between incorporation and sole proprietorship	79 - 81
Q.16	How to convert a sole proprietorship that is also a foreign direct investment company into a corporation	81 - 83

### 4. Others

Q.17	When unable to receive authorization and permission due to the lack of an alien registration number	86 - 86
Q.18	When the issuance of a business registration certificate is rejected for a foreign direct investment company established by an international student	86 - 87
Q.19	When the issuance of a registration certificate of a Foreign-Invested Enterprise is rejected due to a shortage of foundation capital	87 - 88
Q.20	What are the differences between an exclusive distributorship and a branch?	88 - 89
Q.21	What are intellectual property rights recognized by the Tech-based Startup visa (D-8-4)?	89 - 90
Q.22	How to establish a non-profit corporation	90 - 93
Q.23	How to prepare and use official and private documents issued in a foreign country	93 - 93
Q.24	What is an Apostille?	94 - 95
Q.25	What is a residence certificate?	95 - 95

REFERENCESF	97
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# Ch.1

## Advancement of Foreign Companies into Korea

- Q.01 How can foreign companies advance into Korea?
- Q.02 How can foreign companies advance into Korea? [Establishment of a Korean corporation]
- Q.03 How can foreign companies advance into Korea? [Establishment of a branch]
- Q.04 How can foreign companies advance into Korea? [Establishment of a liaison office]
- Q.05 How can foreign companies open a bank account in Korea?

# 1. Advancement of Foreign Companies into Korea

## Q.01

### How can foreign companies advance into Korea?

Overseas company “A” is planning to enter into Korea, and wants to know the routes through which a company can enter into Korea.

#### A. The relationship between the headquarters and the office to be set up in Korea and the business structure of the office must be determined in advance.

The company needs to enter Korea as an appropriate form of business, first considering the relationship between its headquarters and the office to be set up in Korea, the business structure of the office, and the cash flow. In addition, it needs to be decided in advance whether the representative of the office in Korea will be dispatched from the headquarters or hired in Korea, and whether the company will hire a foreigner or a Korean for the said position, which will determine the appropriate approach toward establishing the company.

#### B. The purpose of the entry into Korea must be clearly specified.

It is optimal to define the purpose of business establishment in Korea, rather than recklessly seeking a way to enter into Korea without any specified purpose. The form of business establishment depends on the purpose of the entry; for example, whether it is for profit-making activities or supplementary activities such as market research.

In addition, depending on the purpose of entry, a different type of office can be established after the initial establishment of an office in Korea.

#### C. How to start a business in Korea.

There are three ways for a foreign corporation to start a business in Korea: Establishment of a local corporation, establishment of a branch, and establishment of a liaison office.

1. Local corporation (a subsidiary, an affiliated company): Aims to make profits through sales activities by establishing a local corporation in Korea.
2. Branch: Aims to make profits through sales activities as a non-resident foreign corporation in Korea.
3. Liaison office: Aims to perform non-sales activities that do not generate profits.

## Q.02

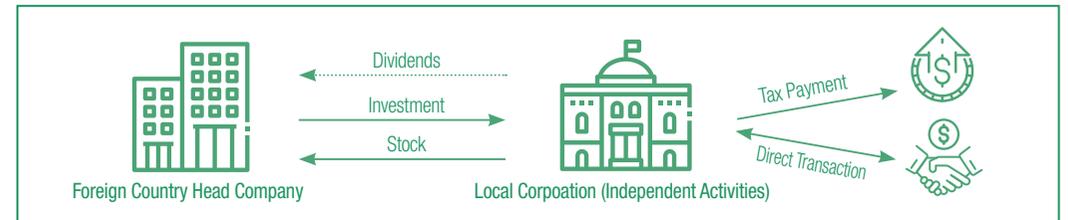
### How can foreign companies advance into Korea? [Establishment of a Korean corporation]

Overseas company “B” plans to establish a local corporation in Korea in order to perform commercial activities for profit. In this regard, the company plans to dispatch a representative from its headquarters.

#### A. A corporation must be established through the Foreign Direct Investment (FDI) procedures.

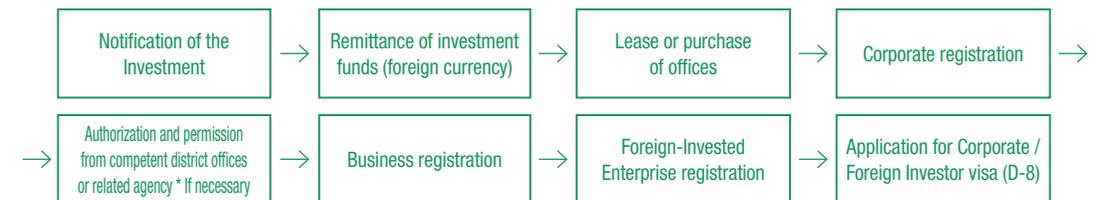
If a foreign company plans to establish a local corporation in Korea and dispatch a representative from its headquarters, the corporation must be established through the Foreign Direct Investment (FDI) procedures. The FDI

procedures are used to establish and operate a corporation whose capital is transferred to Korea for the investment through the notification of foreign investment. In summation, the relationship between its headquarters in its home country and the local corporation in Korea is similar to a parent-child relationship. Therefore, the local corporation in Korea is an entity that is independent from the parent company. (The business purposes prescribed on the articles of incorporation for the local corporation established in Korea are independent of its headquarters.) The investment funds in this transaction must be foreign currency equivalent to 100 million won or above.



- ※ The requirements for foreign direct investment companies (investment funds of 100 million won or above transferred from a foreign country, and holding shares amounting to ten percent minimum)
- ※ According to the share percentage of the subsidiary, the subsidiary can be defined as a holding company, a subsidiary, an affiliated company, or a related company.

#### B. How to establish a company through Foreign Direct Investment



##### ① Notification of the investment

- Report acceptance agency: A bank or KOTRA
- Document submission
  - Notification form of foreign investment (provided at each agency)
  - Real-name verification of the headquarters representative (passport)
  - Power of Attorney (if the report is filed by proxy)
  - Documents certifying the entity of the headquarters (Business license, certified copy of corporation register, etc.)

##### ② Remittance of investment funds

- Remittance carried through customs in person or sent through a bank
- Remitter: Foreign investment company
  - \* Following the completion of the remittance, the remittance details, the certificate of foreign currency purchased and the balance certificate are issued.

##### ③ Lease or purchase of offices

##### ④ Corporate registration (As documents can only be submitted in Korean, expert<sup>01)</sup> assistance is required.)

- Documents to be prepared
  - Residence certificate issued by a public agency where major shareholders of the head company reside

01) Lawyers or certified judicial scriveners

- \* Since large shareholders of the head company reside in a foreign country, there should be a certificate of proving the entity of the head company: a document showing the address, the name, and the CEO of the head company (such as business registration or real estate registration).
- Residence certificate issued by the government office of the country in which the representative of the Korean corporation resides
  - \* Korean or foreign nationals residing in Korea also require a registered seal and the certificate of personal seal impression.
- Proof of foundation capital (balance certificate or certificate for stock subscription payment)
- Others
  - Company name - Business purpose - Type of corporation

#### ⑤ Authorization and permission from competent district offices or related agencies

- \* Where authorization and/or permission are required, the qualification requirements for the relevant type of business should be ascertained and fulfilled in the competent district offices.

#### ⑥ Business registration

- Registration agency: Competent tax office for the business location
- Document submission
  - Business registration application (provided at the tax office)
  - Certified copy of corporation register
  - Certificate of corporation seal impression, and registered seal
  - Copy of articles of incorporation
  - List of shareholders
  - Business license/certificates prescribed in 5) (in cases where the business requires permission, authorization, reporting, etc.)
  - Copy of lease agreement (in cases where the place of business is taken on lease) or certified copy of building register (in cases where the place of business is purchased)
  - \* The applicable agreement must have been signed under the corporation name.
- Identification card of the representative
  - \* Following the presentation of the original copy of the certificate of alien registration or passport (in cases where the relevant corporate representative does not reside in Korea), a copy of the relevant document should be submitted.
- Others
  - \* Report of the appointed tax agent (in cases where the relevant corporate representative does not usually reside within the place of business or resides for over six months outside Korea, etc.)
  - \* Joint venture agreement (notarized) in the case of joint business representatives

#### ⑦ Foreign-Invested Enterprise registration

- Registration agency: Agency where the initial investment was reported (a bank or KOTRA)
- Document submission: Business license, certified copy of corporation register

#### ⑧ Application for Corporate Investment visa (D-8)

- \* In cases where the representative is dispatched from the headquarters
- Application agency: Immigration office within the country of sojourn
- Document submission: Related documents mentioned above in 1) through 7) and additional documents required by the immigration office

- \* Official documents issued in a signatory country to the Apostille Convention must obtain the apostille certification to be used in Korea, while those issued in a non-signatory country must be notarized and certified by the Korean consul located in the country. \* Private documents also require notarization and the apostille certification, or (if the documents have been issued in a non-signatory country) notarization and certification by the relevant consul.

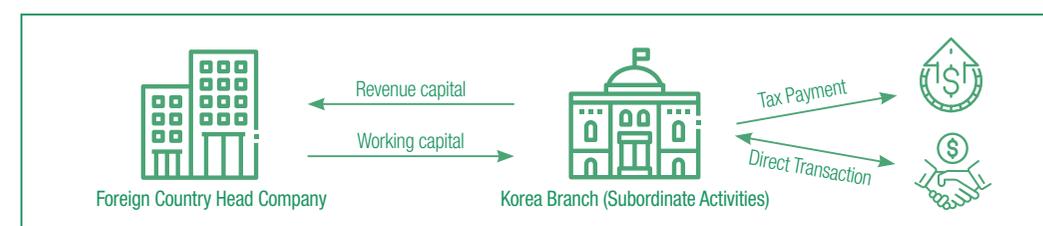
## Q.03

### How can foreign companies advance into Korea? [Establishment of a Korean corporation]

Overseas company “C” plans to establish a branch in Korea for commercial activities with a non-resident status. The company has not yet decided whether to dispatch a representative from its headquarters or to recruit a representative in Korea.

#### A. In the case of the establishment of a branch, an establishment report must be filed in accordance with the Foreign Exchange Transactions Regulation. (Article 9-33 of the Foreign Exchange Transactions Regulation)

The range of business activities for a branch is restricted to the activities in accordance with the business purposes stipulated under the articles of incorporation of the headquarters, and thus all activities performed by the branch are dependent on the headquarters. In addition, the establishment of a branch must be determined by the board of directors of the headquarters, and in the case of dispatching a representative for the branch from the headquarters, the representative must be proven to have worked at the headquarters, or a branch or other offices operated by the headquarters for at least one year. In the case of recruiting a representative of the branch in Korea, Korean or foreign nationals holding the appropriate visa for business activities (F-2, 4, 5, or 6 visa) can be hired. In the case of hiring a foreigner, the status of the branch must be appropriate for hiring a foreigner, because it will entail local employment at the branch location, and the foreigner to be hired must have an academic background and work experience related to the business of the branch.



\* Since most of the documents required to establish a branch should be prepared by the headquarters, if the headquarters is located in a different cultural sphere from Korea, it is likely to experience greater difficulty in preparing documents due to the different document types and documentation processing methods resulting from the cultural differences

#### B. How to establish a branch



##### ① Report of establishment

- Report acceptance agency: A bank
- Document submission
  - Report of a foreign company's domestic branch establishment (Appendix 9-8 of the Foreign Exchange Transactions Regulation)

- Documents certifying the entity of the headquarters (Business license, certified copy of register, etc.)
- Real-name verification of the headquarters representative (passport)
- Power of Attorney (if the establishment report is filed by proxy)

## ② Lease or purchase of offices

## ③ Registration of branch establishment

(As documents can only be submitted in Korean, expert<sup>02)</sup> assistance is required.)

- Documents to be prepared by the headquarters
  - Documents certifying the entity of the headquarters (Business license, certified copy of corporation register, etc.)
  - Board resolution of the headquarters
  - Articles of incorporation of the headquarters
  - Residence certificate of the representative of the headquarters Documents to be prepared by the representative of the Korean branch
  - Acceptance letter of appointment as branch representative
  - Residence certificate of the branch representative
    - \* In the case of Korean nationals, a certified copy of individual register, the registered seal, and the certificate of personal seal impression
    - \* In the case of F-2, 4, 5, or 6 visa holders, the certificate of fact on alien registration, the registered seal, and the certificate of personal seal impression
    - \* In the case of non-resident foreigners, the residence certificate issued by the home country

## ④ Authorization and permission from competent district offices or related agencies

\* Where authorization and/or permission are required, the qualification requirements for the relevant type of business should be ascertained and fulfilled in the competent district offices.

## ⑤ Business registration

- Registration agency: Competent tax office for the business location
- Document submission
  - Business registration application (provided at the tax office)
  - Certified copy of corporation register
  - Copy of the report of foreign company's domestic branch establishment
  - Documents related to the registration of the headquarters and articles of incorporation
  - Copy of lease agreement (in cases where the place of business is taken on lease) or certified copy of building register (in cases where the place of business is purchased)
  - Business license/certificates prescribed in 4) (in cases where businesses require permission, authorization, reporting, etc.)
  - Identification card of the representative
    - \* Following the presentation of the original copy of the certificate of alien registration or passport (in cases where the relevant corporate representative does not reside in Korea), a copy of the relevant document should be submitted.
  - Others
    - \* Report of the appointed tax agent (in cases where the relevant corporate representative does not usually reside within the place of business or resides for over six months outside Korea, etc.)

## ⑥ Application for Intra-company Transfer visa (D-7)

\* In cases where the representative is dispatched from the headquarters

- Application agency: Immigration office within the country of sojourn
- Document submission: Related documents mentioned above in 1) through 5) and additional documents required by the immigration office
  - \* Official documents issued in a signatory country to the Apostille Convention must obtain the apostille certification to be used in Korea, while those issued in a non-signatory country must be notarized and certified by the Korean consul located in the country.
  - \* Private documents also require notarization and the apostille certification, or (if the documents have been issued in a non-signatory country) notarization and certification by the relevant consul.

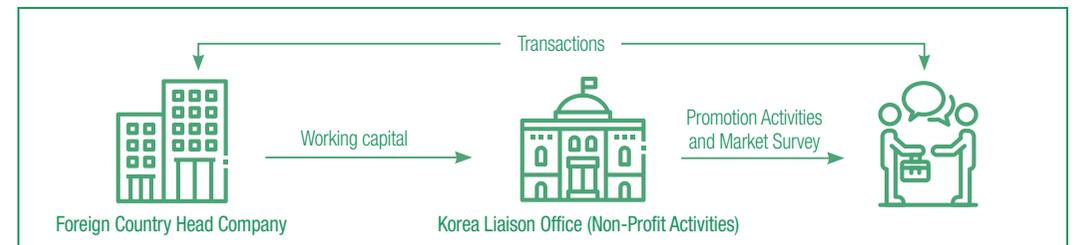
## Q.04

### How can foreign companies advance into Korea? [Establishment of a liaison office]

An overseas company “D” is conducting Korean market research before advancing into Korea. In the case of a company “K”, it provides every service through its overseas headquarters, and it wants to perform only promotional activities for the services in Korea.

#### A. Liaison offices are appropriate for non-profit making activities.

Liaison offices are appropriate for performing only supplementary activities without generating profit in Korea. Liaison offices are allowed to carry out only non-profit activities such as contact with their headquarters, market research, R&D activities, quality control, promotions, and information gathering, which means they are not allowed to perform any sales activities for generating profit.



#### B. The establishment of a liaison office must be reported in accordance with the Foreign Exchange Transactions Regulation. (Article 9-33 of the Foreign Exchange Transactions Regulation)

The activities of liaison offices are restricted to secondary non-profit activities, and in the case of dispatching a representative from the headquarters, the representative must be proven to have worked at the headquarters, or branches or other offices operated by the headquarters for at least one year. In addition, in the case of recruiting a representative in Korea, Korean or foreign nationals holding the appropriate visa for business activities (F-2, 4, 5, or 6 visa) can be hired. In the case of hiring a foreigner holding a visa other than those mentioned in the preceding sentence, however, the status of the liaison office must be appropriate for hiring a foreigner because it will entail local employment at the branch location, and the foreigner to be hired must have an academic background and work experience related to the business of the office.

#### C. How to establish a liaison office



### ① Business registration

- Registration agency: Competent tax office for the business location
- Document submission
  - Report of foreign company's domestic branch establishment (Appendix 9-8 of the Foreign Exchange Transactions Regulation)- Certified copy of corporation register
  - Documents certifying the entity of the headquarters (business license, certified copy of register, etc.)
  - Real-name verification of the headquarters representative (passport)
  - Power of Attorney (if the report is filed by proxy)

### ② Lease or purchase of offices

### ③ Application for an identification number

- Registration agency: Competent tax office for the business location
- Document submission
  - Identification number application form (provided at the tax office)
  - Copy of the report of foreign company's domestic branch establishment
  - Copy of lease agreement (in cases where the place of business is taken on lease) or certified copy of building register (in cases where the place of business is purchased)
  - Identification card of the representative
    - \* Following the presentation of the original copy of the certificate of alien registration or passport (in cases where the relevant corporate representative does not reside in Korea), a copy of the relevant document should be submitted.
  - Others
    - \* Report of the appointed tax agent (in cases where the relevant corporate representative does not usually reside within the place of business or resides for over six months outside Korea, etc.)

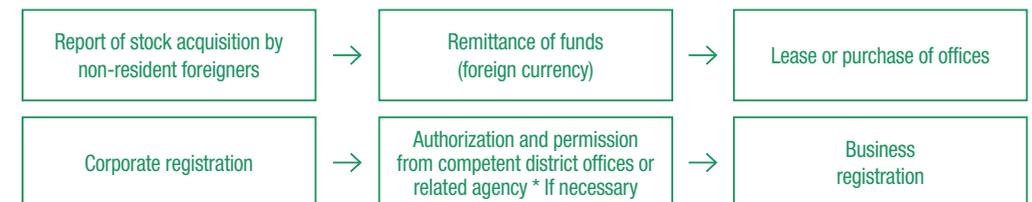
### ④ Application for Intra-company Transfer visa (D-7)

- \* In the case of dispatching a representative from the headquarters
- Application agency: Immigration office within the country of sojourn
- Document submission: Related documents mentioned above in 1) through 3) and additional documents required by the immigration office (resume, career certificate, etc.)
  - \* Official documents issued in a signatory country to the Apostille Convention must obtain the apostille certification to be used in Korea, while those issued in a non-signatory country must be notarized and certified by the Korean consul located in the country.
  - \* Private documents also require notarization and the apostille certification, or (if the documents have been issued in a non-signatory country) notarization and certification by the relevant consul.

### A. In order to open a bank account under the name of a company, the establishment of a corporation and the business license are required.

Even without establishing a corporation through the FDI procedures, a subsidiary must be established and capital must be introduced by reporting the stock acquisition by non-resident foreigners in order to form a legal corporation and subsequently open a bank account.

### B. Although a subsidiary is not a foreign direct investment company, its establishment procedures are identical to those of a foreign direct investment company.



The establishment of a subsidiary in this case entails a different report form for the capital introduction. In summation, however, the required procedures are not significantly different from those of a foreign direct investment company.

\* Further details are available in the following sections of this guide.

Q.02 How can foreign companies advance into Korea? [Establishment of a Korean corporation] – Page 4

### C. To prove the existence of a foreign corporation, documents issued by the relevant country must be prepared.

To prove the existence of a foreign corporation, documents issued by the country where the foreign corporation is located must be submitted. The documents must be issued by the government of the relevant country and must prove that the corporation has been established within the country. In addition, if the documents are prepared by proxy, a certificate of real-name verification of the proxy (passport or identification card) and a notarized power of Attorney are required.

\* Official documents issued in a signatory country to the Apostille Convention must obtain the apostille certification to be used in Korea, while those issued in a non-signatory country must be notarized and certified by the Korean consul located in the country.

\* Private documents also require notarization and the apostille certification, or (if the documents have been issued in a non-signatory country) notarization and certification by the relevant consul.

## Q.05

### How can foreign companies open a bank account in Korea?

Overseas company “E” has a plan to establish a subsidiary in Korea. The capital of the subsidiary is relatively small in scale, and company “E” is not considering the withdrawal of the capital. In addition, since the company is considering hiring a Korean national as the representative of the subsidiary, it wants to establish a subsidiary purely through the remittance of capital into Korea without establishing a company through Foreign Direct Investment (FDI). To this end, company “E” wishes to open a bank account under the name of the headquarters.

# Ch.2

## Foreigners' Startupsa

- Q.06 How can foreigners operate a business in Korea?
- Q.07 How can foreigners operate a business in Korea? [Foreign Direct Investment]
- Q.08 How can foreigners operate a business in Korea? [Foreigners' Tech-based Startups]
- Q.09 How can foreigners operate a business in Korea?  
[Sole proprietorship run by foreigners with Korean academic degrees]
- Q.10 How can foreigners operate a business in Korea? [Foreigners' trade business startups]

## 2. Foreigners' Startups

Q.06

How can foreigners operate a business in Korea?

Foreigner "F" has conceived a business idea while visiting Korea, and plans to reside and operate a business in Korea.

### A. Considerations when foreigners decide to start a business

When starting a business, foreigners must cautiously make decisions regarding the form of the startup and the business item in consideration of their present situation. Depending on their visa status, they may be able to set up a business immediately. Otherwise, they must receive investment funds from abroad (Foreign Direct Investment), or they may be recognized for a technology. The amount of investment funds is determined based on whether they decide to establish a corporation or a sole proprietorship, and the amount of investment funds and the startup procedures may differ based on their academic background in Korea.

### B. Variables depending on types of visa

- Resident (F-2), Overseas Korean (F-4), Permanent Resident (F-5), Marriage Migrant (F-6) visa holders
  - After making a decision on whether to establish the company as a corporation or a sole proprietorship, they can establish and operate the business.
- Industrial Trainee (D-3), Non-Professional (E-9), Maritime Crew (E-10), Miscellaneous (G-1), Group Tourist (C-3-2), Medical Tourist (C-3-3), Working Holiday (H-1 (France, Ireland, and the United Kingdom<sup>03</sup>)), Work and Visit (H-2) visa holders
  - The type of visa cannot be changed in Korea. Therefore, foreigners can establish a company after leaving and returning to Korea with a different type of visa, and change their status of sojourn to the eligible status to operate the business.
    - \* Foreigners must make preparations for their business startup under their current status of sojourn, and after leaving Korea, they must return to Korea upon receiving a new visa that has been issued through the business documents that they prepared for the startup.
    - \* In cases where there are special grounds such as where the authenticity of the investment has been recognized (for example, investment funds amounting to 300 million won or above, or having high investment performances), the visa status can be changed by the authority of the head of the Regional Immigration Service that holds jurisdiction over the relevant region after a close inspection.
- Foreigners holding a visa other than the above-mentioned visas
  - Through the Foreign Direct Investment (FDI) procedures
    - \* A minimum amount of investment is required. In the case of a corporation, the minimum investment is 100 million won or above, and in the case of a sole proprietorship, 300 million won or above.
  - Through the Tech-based Startup visa

03) The H-1 visa, known as the Working Holiday visa, does not allow the nationals from the above-mentioned countries to change their type of visa under the visa agreement.

- \* A Tech-based Startup visa can be obtained through a technology-based startup established through a patent application or its equivalent recognized by the Ministry of Justice.
- Through the International Trade visa
- \* An International Trade visa can be obtained after the completion of a specialized trade-related educational program certified by the Ministry of Justice.

### C. Graduates of schools in Korea

- Student visa (D-2) or Job Seeker visa (D-10) holders after earning a master's degree or higher (including prospective graduates) in Korea
  - They can run a business as a sole proprietor by investing 100 million won or above<sup>04</sup>. In this case, 50 million won among the total investment amount must be in foreign currency that has been directly remitted or carried in from abroad under the Foreign Exchange Transactions Act, and up to 50 million won can be recognized as domestically financed capital<sup>05</sup>. (The company established in this way is not recognized as a "foreign direct investment company.")
- Student visa (D-2) or Job Seeker visa (D-10) holders after earning a bachelor's degree or higher (including prospective graduates) in Korea
  - In cases where a total of 40 points or higher have been earned in OASIS<sup>06</sup> (OASIS-1 to 8), they are eligible to run a business as a sole proprietor under the same conditions as other master's degree holders.
- The Foreign Direct Investment (FDI) procedures, the Tech-based Startup visa, and the International Trade visa are all available.

### D. Establishing a startup in recognition of technology

After receiving recognition of a technology (patent holding/applied) by the Korean government or obtaining an equivalent qualification certified by the Ministry of Justice, it is possible to establish a startup without investments by earning points in OASIS (OASIS-1 to 8).

- Requirements
  - A total of 80 points or higher must be obtained in OASIS (OASIS-1 to 8) including points earned for prerequisite items.
  - Bachelor's degree or higher (regardless of the country where the degree is earned and the major)
    - \* In the case of domestic universities, associate degrees are also accepted.
  - Establishment of a new corporation (representative)
    - \* There is no limit with regard to a minimum capital amount for a corporation.

### E. Establishing a startup after the completion of a specialized trade-related educational program

It is possible to start a trade business startup as a sole proprietor after completing a specialized trade-related educational program certified by the Ministry of Justice and acquiring points according to the requirements of the Points System for International Trade Visa.

- Requirements
  - A total of 60 points or higher must be obtained in the Points System for International Trade Visa, including 10 points or higher earned for prerequisite items.
  - Business license (\*business type: trade business)
  - Copy of the certificate of the trade business code

04) In the case of startups established through the Foreign Direct Investment procedures, an investment of 300 million won or above is required.

05) In the case of China, a sum of 50,000 dollars or above cannot be remitted abroad for investment under the Foreign Exchange Control Regulations of China.

06) Overall Assistance for Startup Immigration System

While researching ways to start a business in Korea, foreigner “G” realized that he/she must establish a company through the Foreign Direct Investment procedures considering his/her status of sojourn and the startup item.

### A. The Foreign Direct Investment (FDI) requires investment funds

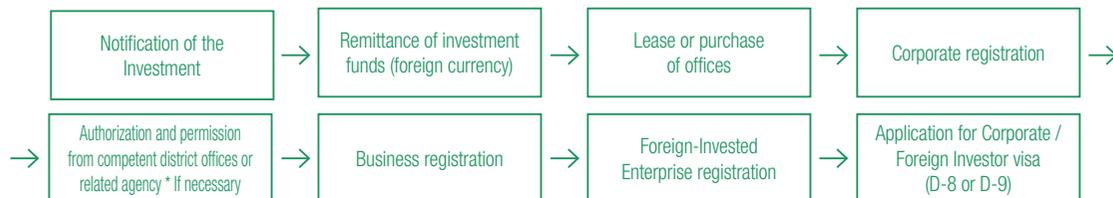
Establishing a startup through the Foreign Direct Investment means to establish a company with foreign currency investments received from abroad under his/her name in accordance with the Foreign Investment Promotion Act and the Foreign Exchange Transactions Act, and the minimum amount of investment differs depending on the type of the company. In the case of establishing a corporation, the minimum amount of investment is 100 million won, and in the case of a sole proprietorship, at least 300 million won is required.

### B. Matters to be considered when receiving investment funds

Foreigner “G” plans to start a business using his/her own funds. In other words, it is a private investment, and in this case, there are several conditions to follow:

1. The investment funds must be remitted from abroad.
  - The investment funds raised in Korea is not recognized as foreign direct investment.
2. The investment funds must be in foreign currency.
  - The investment funds must be remitted in foreign currency and exchanged into Korean won in Korea.
3. The investment funds must be remitted under the name of the investor.
  - The remittance completed under someone else’s name cannot be recognized as foreign direct investment.

### C. Matters to be considered when receiving investment funds



#### ① Notification of investment

- Report acceptance agency: A bank or KOTRA
- Document submission
  - Foreign investment notification form (provided at each agency)
  - Real-name verification (passport)
  - Power of Attorney (if the report is filed by proxy)

#### ② Remittance of investment funds

- Remittance carried through customs in person or sent through a bank
- Remitter: Foreign investor
  - \* Following the completion of the remittance, the remittance details, the certificate of foreign currency purchased and the balance certificate are issued.

#### ③ Lease or purchase of offices

#### ④ Corporate registration

(As documents can only be submitted in Korean, expert<sup>07)</sup> assistance is required.)

- \* In the case of a sole proprietorship, corporate registration is not required.
- Documents to be prepared
  - Investor’s certificate of residence issued by the government office of the country in which the investor resides
  - \* Foreign representatives residing in Korea must prepare their certificate of fact on alien registration, the registered seal and the certificate of personal seal impression.
- Others
  - Company name - Business purpose - Type of corporation

#### ⑤ Authorization and permission from competent district offices or related agencies

- \* Where authorization and/or permission are required, the qualification requirements for the relevant type of business should be ascertained and fulfilled in the competent district offices.

#### ⑥ Business registration

- Registration agency: Competent tax office for the business location
- Document submission
  - Business registration application (provided at the tax office)
  - Certified copy of corporation register
  - Certificate of corporation seal impression, and registered seal
  - Copy of articles of incorporation
  - List of shareholders
  - Business license/certificates prescribed in 5) (in cases where the business requires permission, authorization, reporting, etc.)
  - Copy of lease agreement (in cases where the place of business is taken on lease) or certified copy of building register (in cases where the place of business is purchased)
  - \* The applicable agreement must have been signed under the corporation name.
    - Identification card of the representative
  - \* Following the presentation of the original copy of the certificate of alien registration or passport (in cases where the applicable corporate representative does not reside in Korea), a copy of the relevant document should be submitted.
- Others
  - \* Report of the appointed tax agent (in cases where the relevant corporate representative does not usually reside within the place of business or resides for over six months outside Korea, etc.)
  - \* Joint venture agreement (notarized) in the case of joint business representatives
  - \* Copy of foreign investment notification form

#### ⑦ Foreign-Invested Enterprise registration

- Registration agency: Agency where the initial investment was reported (a bank or KOTRA)
- Document submission: Business license, certified copy of corporation register, and identification card

#### ⑧ Application for Foreign Investor visa (D-8)

- Application agency: Immigration office within the country of sojourn

- Document submission: Related documents mentioned above in 1) through 7) and additional documents required by the immigration office
- \* Official documents issued in a signatory country to the Apostille Convention must obtain the apostille certification to be used in Korea, while those issued in a non-signatory country must be notarized and certified by the Korean consul located in the country.
- \* Private documents also require notarization and the apostille certification, or (if the documents have been issued in a non-signatory country) notarization and certification by the relevant consul.

## Q.08

### How can foreigners start a business in Korea? [Foreigners' technology startup]

Foreigner “H” majored in computer engineering in his/her home country. While working as an English teacher in Korea, “H” found a startup item based on a technology and completed its development. “H” plans to start a business with this item.

#### A. Tech-based Startups visa require the recognition of the technology

In order for a technology to be recognized, the relevant patent must be acquired, applied for, or equivalent conditions must be fulfilled. The Tech-based Startup visa operates under a points system, and the points are divided into prerequisite items and elective items. To this end, it is essential to earn points for prerequisite items.

#### B. The points system and the requirements for the Tech-based Startup visa

- Requirements
  - A total of 80 points (including points earned for prerequisite items) out of Overall Assistance for Startup Immigration System (OASIS-1 to 9)
  - Bachelor's degree or higher (regardless of the country where the degree is earned and the major)
    - \* In the case of graduates of domestic universities, associate degrees are also accepted.
  - Establishment of a new corporation (representative)
    - \* There is no limit with regard to a minimum capital amount for a corporation.
- OASIS points items

#### - Prerequisite items and points (313 points): A minimum of one item is required

Items	Intellectual Property Ownership (Registration)		Intellectual Property Application		Co-Inventor of Owned (Registered) Intellectual Property Rights		3-Year Stay in Korea with E-3 (Researcher) Visa	OASIS-6, OASIS-9	Persons receiving investment amounting to 100 million won or more <sup>08)</sup>
	Patent/Utility	Design	Patent/Utility	Design	Patent/Utility	Design			
Points	80	50	20	10	5	3	15	25(each)	80

- (OASIS-6) Achievement of the third prize or higher at invention/start-up competitions (operated by SBA, KIPA, or NIPA)  
 (OASIS-9) Foreigner's business startup item selected as a central or local government-supported project recognized by the Minister of Justice (operated by NIPA)

#### - Elective items and points (135 points)

Items	OASIS-2 OASIS-4	OASIS-1 OASIS-5 OASIS-7	Academic background		Completion of TOPIK level 3 or higher, or KIIP level 3 or higher	Establishment of a new corporation
			Doctoral degree (from a domestic or foreign university)	Bachelor's or master's degree (from a domestic university)		
Points	25(each)	15(each)	10	5	10	15

(OASIS-2) Completion of the Advanced Intellectual Property Course (operated by KIPA)

(OASIS-4) Completion of the Start-up Class (operated by SBA, KPC)

(OASIS-1) Completion of the Basic Intellectual Property Course (operated by KIPA)

(OASIS-5) Completion of the Start-up Coaching and Mentoring Service (operated by SBA, KPC, NIPA)

(OASIS-7) Completion of the Start-up Incubator (operated by SBA, KPC, NIPA)

#### \* Startup Immigration Centers designated by the Ministry of Justice

Agencies	Programs	Program information
Seoul Business Agency (SBA)	OASIS 4, 5, 6, 7	global.seoul.go.kr
Korea Invention Promotion Association (KIPA)	OASIS 1, 2, 3, 6	ipcampus.kr/oasis-visa
Korea Productivity Center (KPC)	OASIS 4, 5, 6, 7, 8	
National IT Industry Promotion Agency (NIPA)	OASIS 5, 6, 7, 8, 9	https://www.k-startupgc.org/

#### C. Requirements for a Tech-based startup Preparation visa (D-10-2) for Tech-based Startup visa (D-8-4)

In order to obtain the Tech-based Startup visa (D-8-4), a preparation period is required. This is because each program is individually operated, and it requires time to earn points for prerequisite items. In this case, after obtaining the Tech-based startup Preparation visa (D-10-2), foreigners can prepare for the Tech-based Startup visa (D-8-4).

- Requirements
  - Obtaining one or more certificate of completion in the Overall Assistance for Startup Immigration System (OASIS-1 to 9)
  - Bachelor's degree or higher (regardless of the country where the degree is earned and the major)
    - \* In the case of graduates of domestic universities, associate degrees are also accepted.
  - Technology-based startup business plan (a designated form provided by the Immigration Office) and an actual business plan
  - Documents to prove all activities related to the business startup (for example, participation in the OASIS programs, preparation for intellectual property and its application, preparation for incorporation, etc.)
    - \* Tech-based startup Preparation visa (D-10-2) is issued for the first six months, and it can be extended up to a maximum of three times.
    - (In the case of its extension, at least 50 points in OASIS are required.)

#### D. Process of establishing a business with use of Tech-based Startup visa system



##### ① Achievement of points eligible for visa issuance

- \* Acquiring the required points is the highest priority, and diligence is necessary for confirming and attending the schedule for each program.

##### ② Lease or purchase of offices

08) Persons who have received investment of 100 million won or more from AC, VC, etc. and recommended by the Global Start-up Immigration Center, which has confirmed their reception of investment

### ③ Corporate registration

(As documents can only be submitted in Korean, expert<sup>09)</sup> assistance is required.)

- Documents to be prepared
  - Residence certificate issued by the government office of the country in which a person inaugurated as a representative of the corporation resides
    - \* Foreigners residing in Korea must prepare their certificate of fact on alien registration, the registered seal and the certificate of personal seal impression.
  - Establishment of foundation capital (bank statements)
    - \* If the representative is not a shareholder, the residence certificate issued by a government office of the country in which shareholders reside is required.
    - \* Foreign capital remitted from abroad must be reported to a bank.
- Others
  - Company name
  - Business purpose
  - Type of corporation

### ④ Authorization and permission from competent district offices or related agencies

- \* Where authorization and/or permission are required, the qualification requirements for the relevant type of business should be ascertained and fulfilled in the competent district offices.

### ⑤ Business registration

- Registration agency: Competent tax office for the business location
- Document submission
  - Business registration application (provided at the tax office)
  - Certified copy of corporation register
  - Certificate of corporation seal impression, and registered seal
  - Copy of articles of incorporation
  - List of shareholders
  - Business license/certificates prescribed in 4) (in cases where the business requires permission, authorization, reporting, etc.)
  - Copy of lease agreement (in cases where the place of business is taken on lease) or certified copy of building register (in cases where the place of business is purchased)
    - \* The applicable agreement must have been signed under the corporation name.
  - Identification card of the representative
    - \* Following the presentation of the original copy of certificate of alien registration or passport (in cases where the relevant corporate representative does not reside in Korea), a copy of the relevant document should be submitted.
- Others
  - \* Report of the appointed tax agent (in cases where the relevant corporate representative does not usually reside within the place of business or resides for over six months outside Korea, etc.)
  - \* Joint venture agreement (notarized) in the case of joint business representatives

### ⑥ Application for Tech-based Startup visa (D-8-4)

- Application agency: Immigration office within the country of sojourn
- Document submission: Related documents mentioned above in 1) through 5), and additional documents required by the immigration office

09) Lawyers or certified judicial scriveners

## Q.09

### How can foreigners operate a business in Korea? (Sole proprietorship run by foreigners with Korean academic degrees)

Foreigner “I” earned a master’s degree in Korea and plans to start an export packaging business. Initially, he/she tried to establish a corporation, but it was difficult to understand the differences between a corporation and sole proprietorship. Eventually, he/she decided to establish a business as a sole proprietorship, which can possibly lead to the addition of new businesses and the easier relocation of the business.

#### A. A sole proprietor with a degree from a domestic university can start a business with smaller investments.

An investment of 300 million won or above is required for foreigners to operate a sole proprietorship under the Foreign Investment Promotion Act<sup>10)</sup>. However, foreigners with academic degrees obtained in Korea are allowed to invest only 100 million won in establishing sole proprietorships and to acquire the applicable visa. In this case, however, they are not recognized as foreign-invested Enterprises<sup>11)</sup>.

#### B. Requirements for starting sole proprietorships run by foreigners with domestic degrees

- Basic requirements
  - Student visa (D-2) and Job Seeker visa (D-10) holders who earned or are expected to earn a master’s degree in domestic universities, or Student visa (D-2) and Job Seeker visa (D-10) holders with over 40 points in the Overall Assistance for Startup Immigration System in the case of foreigners with a bachelor’s degree in Korea.
  - A foreigner who invests over 100 million won in accordance with the Foreign Exchange Transactions Act and the Foreign Exchange Transactions Regulation<sup>12)</sup>.
    - \* In this case, out of the investment amount of 100 million won, up to 50 million won is recognized as domestically-financed capital.
  - Business registration (as sole proprietorship) under the Value-added Tax Act

#### C. Process of establishing sole proprietorships run by foreigners with domestic degrees



##### ① Remittance of investment amount

- Conditions of remittance
  1. Investment amount remitted from overseas
  2. Investment amount in foreign currency
    - The investment must be remitted in foreign currency, and the currency exchange must take place in Korea.
  3. The amount of investment should be remitted under the name of a foreign investor himself/herself<sup>13)</sup>.
    - \* Following the completion of the remittance, the remittance details, the certificate of foreign exchange purchased and the balance certificate are issued.
    - \* For the foreign investment to be recognized as a domestically-financed fund (up to 50 million won), the balance certificate and the bankbook details should be prepared with regard to the domestically-financed fund.

10) This refers to the amount of investment which the applicable foreigner directly brought from overseas in foreign currency following the foreign investment notification in accordance with the Foreign Investment Promotion Act.

11) Capital should be brought in under the Foreign Exchange Transactions Act but is not recognized as foreign direct investment, which means that it does not require foreign investment notification.

12) This refers to foreign currency remitted from overseas under his/her own name.

13) A remittance made under the name of a third party is not recognized.

## ② Lease or purchase of offices

## ③ Authorization and permission from competent district offices or related agencies

\* Where authorization and/or permission are required, the qualification requirements for the relevant type of business should be ascertained and fulfilled in the competent district offices.

## ④ Business registration

- Registration agency: Competent tax office for the business location
- Document submission
  - Business registration application (provided at the tax office)
  - Copy of lease agreement (in cases where the place of business is taken on lease) or certified copy of building register (in cases where the place of business is purchased)
  - Business license/certificates prescribed in 3) (in cases where the business requires permission, authorization, reporting, etc.)
  - Identification card of the representative
    - \* Following the presentation of the original copy of certificate of alien registration or passport (in cases where the relevant business operator does not reside in Korea), a copy of the relevant document should be submitted.
- Others
  - \* Report of the appointed tax agent (in cases where the relevant corporate representative does not usually reside within the place of business or resides for over six months outside Korea, etc.)
  - \* Joint venture agreement (notarized) in the case of joint business representatives

## ⑤ Application for Revised Standards on International Trade visa (D-9-5)

- Application agency: Immigration office within the country of sojourn
- Document submission: Related documents mentioned above in 1) through 4), and additional documents required by the immigration office

## Q.10 How can foreigners operate a business in Korea? (Foreigners' trade business startups)

Foreigner "J" graduated from a university in Korea and plans to enter into a trade business with the aim to export Korean products to his/her country.

### A. Foreigners with Korean degrees are able to start a trade business without a set investment amount.

With regard to trade businesses, foreigners who earned degrees in domestic universities are allowed to establish a business without investment through the point system. Like the Tech-based Startup visa system, foreigners can establish a business by obtaining points for prerequisite items and others in accordance with the point system.

### B. The point system is the result of relaxed requirements for International Trade visa, and trade-related performance is considered critical.

Starting a trade business through this system enables foreigners with Korean degrees to achieve points solely by receiving specialized trade-related education, which allows a business to be established without a capital requirement. Under this system, trade-related performance is the most important element in extending the relevant visa period. Following business registration, profits may be generated from business activities other than trade businesses. However, only trade-related performance is used as the criteria for visa extension. The said trade-related performance allocates higher points to exports.

## C. Issuance criteria for International Trade visa (D-9-1)

With regard to trade businesses, foreigners who earned degrees in domestic universities are allowed to establish a business without investment

- Basic requirements
  - A total of 60 points or higher including more than 10 points for prerequisite items, out of a total of 160 points in the point system
  - "Trade business" registered as a business (sole proprietorship) under the Value-Added Tax Act
  - Trade business code
- Items of the point system for International Trade visa
  - Prerequisite items (up to 65 points)

### ① Trade-related performance (average annual performance over the past two years as of the date of application)

Classification	Exports		Trading (Exports + Imports)	
	More than \$ 300,000	More than \$ 100,000	More than \$ 500,000	More than \$ 300,000
Points	30	20	15	10

\* Note: Duplicate calculation of items is not allowed. (Only the highest points are included in the calculation.)

### ② Expertise in the international trade

Classification	Experience in trade-related fields	Trade-related majors	Specialized trade-related education Operated by the Seoul Business Agency, Korea International Trade Association and KOTRA
Points	20	15	10

\* Note: For those subject to (A), either (B) or (C) can be eligible for duplicate recognition.

- Ⓐ Over two years of working experience as a permanent employee in international trade at public or private institutions at home and abroad.
- Ⓑ Those who received a bachelor's degree or higher educational attainment in trade-related majors at universities at home and abroad.
- Ⓒ Only institutions and courses recognized by the Minister of Justice are acknowledged (operated by the Seoul Business Agency, Korea International Trade Association and KOTRA).

### ① Period of sojourn in Korea (calculated based on the date of application) Elective items (up to 95 points)

Classification	Continued sojourn in Korea after alien registration			Sojourn in Korea for more than 200 days in the past 2 years without alien registration
	Longer than 5 years	Longer than 3 years	Longer than 1 years	
Points	20	15	10	5

\* Note: Duplicate calculation of items is not allowed. (Only the highest points are included in the calculation.)

### ② Academic background

Classification	Doctorate	Master's degree	Bachelor's degree	Associate degree
Points	20	15	10	5

\* Note: Duplicate calculation of items is not allowed. (Only the highest points are included in the calculation.)

- Ⓐ Those who studied at domestic universities for two years or longer and received an associate degree or higher

ⓐ Only the fund owned by the applicant himself/herself in relation to the operation of the applicable trade business is acknowledged (excluding loans).

#### D. Process of establishing a business under the International Trade visa (D-9-1) system



##### ① Achievement of points eligible for visa issuance

\* Acquiring the required points is the highest priority with regard to items under the point system for obtaining the International Trade visa, and diligence is necessary in confirming and attending the schedule for each educational program provided by educational institutions specializing in international trade.

##### ② Lease or purchase of offices

##### ③ Business registration (as a sole proprietorship)

- Registration agency: Competent tax office for the business location
- Document submission
  - Business registration application (provided at the tax office)
  - Copy of lease agreement (in cases where the place of business is taken on lease) or certified copy of building register (in cases where the place of business is purchased)
  - Business license/certificates (in cases where the business requires permission, authorization, reporting, etc.)
  - Identification card of the representative
  - Others
    - \* Joint venture agreement (notarized) in the case of joint business representatives

##### ④ Issuance of trade business code

- Registration agency: Korea International Trade Association (kita.net)
- ① **Online:** KITA's online certificate issuance center  
(Access to webdocu.kita.net or www.KITA.net Member company Online certificate issuance service)
  - Member companies: Log in with the representative's ID
  - Non-member companies: A general-purpose (for electronic trading) public internet certificate is required.
- ② **Offline:** Visit KITA's member service center  
(first floor, Trade Tower, Samseong-dong, Seoul, and its local branches across Korea)
  - Application and required documents: Identification card of the visitor, one original copy of the certificate of employment or the Power of Attorney, and one original business license (or its certified copy with an originality document verification seal)

#### E. Extension criteria for International Trade visa (D-9-1)

The International Trade visa is issued under a point system and can be issued easily, but it cannot be extended without proof of trade-related performance. In addition, although the said visa allows profit-making activities besides the trade business specified in the business license, the profits produced through such business activities are not included in the items required to extend the visa.

- Basic requirements: Visa extension is made on a differential basis according to the points acquired, and it is necessary to acquire five points or higher in prerequisite items.

##### - Criteria applied for first-time visa extension

Points	10 points or below	11 to 20 points	21 points or above
Permitted period	6 months	1 year	2 years

##### - Criteria applied from second-time visa extension

Points	10 points or below	11 to 20 points	21 points or above
Permitted period	Extension rejected	1 year	2 years

- Items for visa extension

- Prerequisite items (Achieving five points or higher in prerequisite items is mandatory for approval of visa extension.)

##### ① Trade-related performance (average annual performance over the past two years as of the date of application)

PClassification	Exports				Trading (Exports +Imports) 70,000 dollars or above	Letter of recommendation for visa extension by a specialized educational institution
	500,000 dollars or above	300,000 dollars or above	100,000 dollars or above	50,000 dollars or above		
Points	30	25	15	8	5	5

\* Note: Duplicate calculation of items is not allowed. (Only the highest points are included in the calculation.)

The letter of recommendation for visa extension issued by the head of a specialized educational institution is recognized for the same person up to four times within three years after the issuance of the International Trade visa.

- Elective items

##### ① Employment of local employees (This item applies only to permanent employees who have been employed for six months or longer as of the date of application.)

Classification	3 persons or above	2 persons or above	1 persons or above
Points	10	5	2

\* Note: Duplicate calculation of items is not allowed. (Only the highest points are included in the calculation.)

##### ② Employment of local employees (This item applies only to permanent employees who have been employed for six months or longer as of the date of application.)

Classification	5 million won or above	4 to less than 5 million won	3 to less than 4 million won	2 to less than 3 million won
Points	7	5	3	1

\* Note: Based on the certificate of income tax payment issued by the National Tax Service in the previous year

##### ③ Three points are allocated to those who completed advanced educational courses specializing in international trade.

Those who completed advanced educational courses, provided by educational institutions specializing in international trade and certified by the Ministry of Justice, within one year as of the date of application

# Ch.3

## Company Operation

- Q.11 Must-know tax information for business operators
- Q.12 What are the four social insurances required to employ workers?
- Q.13 What are the requirements for the Special Occupation visa (E-7) required to employ foreigners?
- Q.14 Matters for consideration after incorporation
- Q.15 Differences between incorporation and sole proprietorship
- Q.16 How to convert a sole proprietorship that is also a foreign direct investment company into a corporation

# 3. Company Operation

**Q.11**

## Must-know tax information for business operators

Foreigner “K” is planning to operate a business in Korea and would like to know basic information on taxes that business operators should be aware of.

### A. All information on taxes is available on the Hometax (hometax.go.kr) and the National Tax Service (nts.go.kr) websites.

The National Tax Service (NTS) is responsible for managing tax-related information and collecting taxes. Users of NTS’s website (nts.go.kr) can freely utilize useful data including essential tax-related information for business operators and the Tax Guide for Foreign Taxpayers in Korea (English data is available). In addition, the issuance of tax invoices, tax returns, tax payments and issuance of various certificates can be conducted on the Hometax website (hometax.go.kr).

### B. How to use Hometax (hometax.go.kr)

In order to use Hometax, users must sign up for a membership at hometax.go.kr, which requires a public internet certificate.

- **When using corporate internet banking:** Access the website of the applicable bank as a corporate customer, and issue the “public internet certificate for digital tax invoices” at the public internet certificate center.
- **When not using corporate internet banking:** Visit a bank to apply for corporate internet banking services along with the required documents to issue the “public internet certificate for digital tax invoices.”

### C. Essential basic tax information for business operators

Although there are various types of taxes, the most basic taxes in operating a business include value-added tax, global income tax and corporate tax.

- o Value-added tax (VAT)
  - Value-added tax refers to a tax placed on the value added during the process of business operation activities and is levied on all goods and services. In essence, consumers who purchase goods and services are liable to pay the VAT imposed on their purchases. However, the value-added tax is included in the prices of goods that the consumers pay, instead of being levied as a direct payment upon the purchase of goods. Sellers report their sales as an aggregate and pay the corresponding value-added tax in the place of consumers<sup>14</sup>.

#### o Return and taxable periods for the VAT

##### - Corporate entrepreneur

11 to 20 points	11 to 20 points
1st preliminary declaration (Apr. 1 – Apr. 25)	Jan. 1 – Jan. 31 Management performance
1st final returns (Jul. 1 – Jul. 25)	Apr. 1 – Jun. 30 Management performance
2nd preliminary declaration (Oct. 1 – Oct. 25)	Jul. 1 – Sept. 30 Management performance
2nd final returns (Jan. 1 – Jan. 25)	Oct. 1 – Dec. 31 Management performance

#### - Individual entrepreneur

Entrepreneur	Taxable period	Objects subject to final returns	Periods of final payment
General taxpayer	1st (Jan. 1 – Jun. 30)	Business performance between Jan. 1 – Jun. 30	Jul. 1 – Jul. 25
	2nd (Jul. 1 – Dec. 31)	Business performance between Jul. 1 – Dec. 31	Jan. 1 – Jan. 25 in the following year
Simplified taxpayer	Jan. 1 – Dec. 31	Business performance between Jan. 1 – Dec. 31	Jan. 1 – Jan. 25 in the following year

- General VAT
  - Amount of tax payable = 10 percent of sales - 10 percent of purchased amount
- Simplified VAT
  - Amount of tax payable = Value-added rate by business type - 10 percent of purchased amount
  - \* Since value-added rates for simplified taxpayers differ for each business type, they must be confirmed separately.

#### o Global income tax and corporate tax

- Global income tax and corporate tax refer to taxes placed on incomes produced by business activities in the previous year.
- Filing and payment periods
  - Global income tax: May 1 and May 31 in the following year (by June 30 in the case of those subject to compliant filing) Calculation methods of income taxes differ slightly according to circumstances such as the use or non-use of bookkeeping and a basic expense rate or a simplified expense rate, but in essence, income is considered to be the remaining sum after deducting expenses from revenues.
  - A business operator with bookkeeping: Amount of income = total revenues – necessary expenses
  - A business operator without bookkeeping  
Basic expense rate: Amount of income = revenues – primary expenses – (revenues x basic expense rate)  
Simplified expense rate: Amount of income = revenues – (revenues x simplified expense rate)
- Calculation of global income tax
  - Application of tax rates = Tax base (amount of income – income deduction) x tax rate – progressive deduction amount

#### - Global income tax rates

Tax base (amount of income – income deduction)	Tax rate	Progressive deduction
Not exceeding 12 million won	6%	–
Exceeding 12 million won – 46 million won	15%	1.08 million won
Exceeding 46 million won – 88 million won	24%	5.22 million won
Exceeding 88 million won – 150 million won	35%	14.90 million won
Exceeding 150 million won – 300 million won	38%	19.40 million won
Exceeding 300 million won – 500 million won	40%	25.40 million won
Exceeding 500 million won	42%	35.40 million won

- Corporate tax: A corporate tax return is filed within three months after the last day of the fiscal<sup>15</sup> year. Corporate tax refers to the tax placed on net profits after deducting costs and expenses from sales. A corporate tax rate is a flat rate and differs depending on the income in each business year.

- Calculation of corporate tax
  - Application of tax rates = Tax base (amount of income – income deduction) x tax rate – progressive deduction amount

<sup>14</sup>The liability for the VAT is borne by someone other than the person who pays it (indirect tax).

<sup>15</sup> For example, a corporation with a fiscal year that ends in December may file its corporate tax by March 31.

**- Corporate tax rates**

Tax base	Tax rate	Progressive deduction
Not exceeding 200 million won	10%	-
Exceeding 200 million won – 20 billion won	20%	20 million won
Exceeding 20 billion won – 300 billion won	22%	420 million won
Exceeding 300 billion won	25%	9.42 billion won

**Q.12** What are the four social insurances required to employ workers?

Foreigner “L” plans to employ workers, while establishing a new business in Korea. “L” knows that subscribing to the four social insurances is obligatory for employing workers. He/she would like to know what the four social insurances consist of in detail.

**A. Subscription to the four social insurances is an obligation.**

In a place of business that employs one or more full-time workers, both the employer and workers are obligated to be insured with the four social insurances and to pay insurance premiums at a fixed rate on a regular basis.

**B. Types of the four social insurances**

The four social insurances include ❶ health insurance, covering diseases and injuries, ❷ national pension, covering death and old age, ❸ employment insurance, covering unemployment and ❹ industrial accident compensation insurance, covering occupational accidents.

\* Insurance premiums differ depending on income.

○ **Table of the rates for the four social insurances**

Types	Liable entity and rate		
	Total	Worker	User (Company)
National pension	9.0%	4.5%	4.5%
National health insurance	6.67%	3.12%	3.12%
Long-term care insurance	10.25% of health insurance premium	50%	50%
Employment insurance	Unemployment allowances	1.6%	0.8%
	Employment stability / Job capacity development	Differs by business size	
Industrial accident compensation insurance	Differential application by business type Full amount of insurance premiums imposed on employers		

\* Rates differ each year, and the latest data is available at 4insure.or.kr.

**C. Subscription to the four social insurances and relevant information**

The four social insurances can be subscribed at the regional offices of the National Pension Service (national pension), the National Health Insurance Service (health insurance), and the Korea Workers' Compensation & Welfare Service (employment & industrial accident compensation insurances) or on the website of the Social Insurance Information System (4insure.or.kr).

○ **For further inquiries**

Insurance provider	National Pension Service	National Health Insurance Service	One-stop service for employment & industrial accident compensation insurances
Phone no.	1335	1577-1000	1588-0075
Website	www.nps.or.kr	www.nhis.or.kr	http://total.kcomwel.or.kr

**D. Business operators are obligated to be insured with national health insurance and national pension.**

- Sole proprietors are obligated to be insured with national health insurance and national pension, although insurance types such as the workplace-insured and the individually-insured may differ according to whether they have hired employees or not. In particular, it is necessary to be subscribed to national health insurance, as it affects visa extension.
- Corporate representatives must be insured with national health insurance and national pension in cases where they receive a salary. Even when directors are registered as unpaid positions, they must be individually insured with national health insurance in order to extend their visa in the future.

**Key amendments to the national health insurance system for foreigners (Korea Immigration Service of the Ministry of Justice)**

1. Foreigners who have stayed for six months or longer in Korea are subject to the statutory subscription of national health insurance.
2. Eligibility for national health insurance is granted individually, and the relevant insurance premium is imposed on each individual as well.
3. Foreigners who fail to pay national health insurance premiums, etc. may be restricted in visa extension and other permissions for staying in Korea.

※ See Announcement (posted on June 19, 2019) of Hi Korea, e-Government for Foreigners (hikorea.go.kr) for details.

**Q.13** What are the requirements for the Special Occupation visa (E-7) required to employ foreigners?

Foreigner “M,” who operates a business in Korea, plans to hire overseas workers and bring them to Korea as his/her core business is based on transactions with foreign countries. Moreover, he/she is considering employing foreign students who have completed their studies in Korea. To this end, what are the necessary preparations or matters for consideration?

**A. Prerequisite conditions for the employment of foreigners**

There are certain requirements that a company must satisfy in order to employ foreign workers in Korea.

○ **Amount of sales in the previous year**

In essence, the amount of sales in the previous year must be available. In cases where the relevant requirements are determined according to business type, the applicable requirements must be satisfied.

○ **Precise definition of occupational groups**

Different types of employment visas may be issued depending on occupational groups. Types of employment visas include Researcher (E-3), Technology Transfer (E-4), Professional Employment (E-5), Arts and Performance (E-6) and Special Occupation (E-7), and the employment visa typically refers to E-7. Furthermore, E-7 has 85 detailed preliminary criteria by occupation type and their requirements, and it is necessary to submit additional documents including a letter of employment recommendation from the competent administrative offices.

○ **Whether prospective employees are relevant to the occupational group concerned**

Foreigners with academic degrees from Korean universities can be employed even when their majors are not directly relevant to the occupational group concerned. However, those who did not obtain degrees in Korea must verify the relevance of their majors and careers to the occupational groups for which they are hired.

○ **Exploitative methods to pay low wages must be prevented**

To prevent the employment of foreigners from being used as a loophole of paying low wages, the employment agreement must specify working hours relative to the monthly basic wage, and where the stated base salary falls below the minimum wage standard of the pertinent year, visa issuance is restricted.

**B. Directly inquiring with the Korea Immigration Office is the surest way for an employer to find out about the relevant requirements for hiring foreigners.**

In most cases, foreigners who want to be employed in Korea confirm the employment visa requirements in person. However, a better approach to minimizing the trial and error process is for a company that seeks to hire foreign workers to confirm the precise requirements for employing foreigners through the Korea Immigration Office, in reference to its circumstances (size, personnel, business type, etc.), occupational groups for which the foreign workers would be hired, and information on prospective foreign employees (career and academic backgrounds).

**C. Document submission for Special Occupation visa (E-7)**

- ① Visa issuance application, copy of invitee's passport, photo (3cm x 4cm), and issuance fee
- ② Documents related to the establishment of the company: Business license, registration certificate of a foreign-invested enterprise, etc.
- ③ Copy of employment agreement
- ④ Documents submitted as proof of the necessity to hire foreign workers
  - Statement of invitation, and business plan for employing foreigners <sup>16)</sup>
  - Letter of employment recommendation (if necessary)

**D. Examples by occupational group<sup>17)</sup>**

- Chefs and cooks:
  - Definition: Those who oversee cooks and kitchens, or cook in person
  - Job examples: Chefs and cooks who cook national cuisines such as Western, Chinese or Japanese food
    - \* Korean food, coffee and Korean traditional tea are not applicable, since foreign workers can be replaced with Koreans.

**- Requirements of restaurants**

Classification	Size of business place	Annual surtax	No. of Korean employees
Chinese restaurants	200m <sup>2</sup> or larger	5 million won or above	3 persons
General restaurants	60m <sup>2</sup> or larger	3 million won or above	2 persons
Restaurants located in Multicultural Village Special Zone in Ansan	30m <sup>2</sup> or larger	2 million won or above	1 to 2 persons (Applicable only to the following cases: size of business place at 151m <sup>2</sup> or larger and annual surtax of 7.5 million won or above)

<sup>16)</sup> The business plan for employing foreigners can be downloaded on the Application Form page at hikorea.go.kr.

<sup>17)</sup> The related details can be confirmed at the guidelines for qualifications of visa issuance at hikorea.go.kr.

○ Overseas salespersons

- Description: Those who conduct English-related activities with regard to entering overseas markets and import products from foreign sellers
- Job examples: Overseas salespersons, trade salespersons and export-import salespersons
- Company requirements: The competent company should apply mutatis mutandis examinations designed to protect the employment of Koreans (at least five Korean nationals or more), while foreign-capital-invested companies and exporting companies operating in special language regions are considered to be special cases.
- Other requirements: Issuance of letter of employment recommendation (Minister of the Trade, Industry and Energy or Korea International Trade Association)

**Q.14**

**Matters for consideration after incorporation**

Foreigner “N” has operated a foreign direct investment company in Korea for five years since its establishment. He/she has relocated his/her places of residence and business over the past five years, but failed to change registrations, which resulted in fines. To prevent such cases from recurring, what should corporate representatives be aware of after the establishment of a corporation?

**A. A corporation should change registration accordingly in case of any changes**

There are a number of cases where the relevant registration must be changed. However, corporate representatives must change the registration in the following cases, and the failure to do so may result in fines.

○ **Changes in the place of residence of the corporate representative**

In the case of incorporation, the address of the corporate representative is crucial. For this reason, certificates of residence, including a certified copy of household register/certified copy of individual register or certificate of fact on alien registration are required when registering the company's incorporation. Within two weeks after a change in the address of the corporate representative, the relevant registration must be made.

○ **Changes in the place of business**

When the addresses of a corporation's head office and/or branches are changed, the changes must be registered. Any changes in addresses must be registered within two weeks in the case of head offices and three weeks in the case of branches. Following the registration, the address stated in the business license must also be modified.

○ **Changes in board members**

Any change in board members should be reported, and when their term nears expiration, the resulting registration concerning their retirement or reappointment is required, even if there is no change in the board members.

\* If the competent report is not filed for five years, the corporation in question is considered to be dormant. The corporation shall enter into liquidation when it fails to report the fact for eight years or longer.

**Q.15**

**Differences between incorporation and sole proprietorship**

Foreigner “O,” an F-4 visa holder, has learned that he/she is allowed to operate a business under the current status of sojourn in the same way as Korean nationals. While preparing to establish a business, he/she has become aware that he/she could choose between incorporation and sole proprietorship, and wanted to know about their differences.

### A. To understand the differences between incorporation and sole proprietorship, the conceptual differences between the two should be recognized

A corporate representative establishes an entity consisting of money and he/she operates the business in lieu of the entity, while a sole proprietor serves as the company itself and operates the business.

- In the case of incorporation, the address of the corporate representative is crucial. For this reason, certificates of residence, including a certified copy of household register/certified copy of individual register or certificate of fact on alien registration.
- On the other hand, if the miner is determined to establish a corporation, the amount of money used for mining gold is declared to other miners in advance before starting the gold mining. (In the real world, the declaration is made at a registry office through incorporation, and the money mentioned above becomes the company's foundation capital.)
- Subsequently, the miner does not use his/her own money to generate profit from mining gold and buy mining equipment. Instead, the declared money is used. As the miner conducts mining activities as a representative entrusted to use the money regardless of the amount of gold mined, he/she receives expenses for mining activities from the declared money on a regular basis, which constitutes a monthly wage.
- In addition, if the declared money is the miner's own, he/she becomes a shareholder of the corporation. If an increase in the amount of gold mined leads to a significant rise in profit, the miner may receive a dividend proportional to the ratio of the margin of increase from the initially-declared sum to his/her investment in the foundation capital.

### B. Incorporation and sole proprietorship are different in terms of establishment, taxes and operation

- **Establishment of a company**
  - Since a sole proprietor serves as the company itself, he/she can visit a tax office and register the company with the lease agreement and his/her identification card.
  - On the other hand, as stated above, a corporate representative must complete the registration of incorporation at a registry office of the Supreme Court and then the business registration at a tax office.
- **Taxes (See "Must-know tax information for business operators.")**
  - A sole proprietor must file and pay the global income tax without distinguishing business income from individual income, since he/she serves as the company itself. In addition, a value-added tax return should be filed, and the frequency of value-added tax returns differs according to general or simplified taxation status.
  - A corporate representative must file a corporate tax return within three months after the fiscal year and pay the corporate tax. A value-added tax return should be filed four times (preliminary declaration and final returns).
  - A corporate representative operates the corporation and receives a monthly wage as an employee. The corporation should deduct the relevant tax from the wage paid, and file and complete the tax payment within 10 days of the following month of the month when the monthly wage is paid. In addition, the year-end tax settlement must be filed by the corporation as well.
- **Operation**
  - ① National health insurance
    - A sole proprietor must subscribe to the national health insurance as an individually-insured person and pay the national health insurance premium on a monthly basis.
    - When a corporate representative receives a wage, his/her corporation must deduct the national health insurance premium from the monthly wage at a fixed rate and complete the payment within 10 days of the following month. In essence, the corporation and its employees must split the employees' national health insurance premium in half.
    - When a corporate representative is registered as unsalaried(unpaid registered director), his/her national health insurance status switches into an individually-insured subscriber and pays the amount of the national health

insurance premium charged for individually-insured subscribers.

- \* Foreigners must subscribe and pay the national health insurance in order to be able to extend their visas. Therefore, even when they are registered as unsalaried, they must buy and pay national health insurance.

#### ② Changes in companies (changes in company address, addition of new businesses)

- In cases where the company address changes, a sole proprietor should visit the tax office that holds jurisdiction over the changed business location and modify the address specified in the business license, while a corporation must register the relocation of the head office through a registry office prior to visiting a tax office.
- In cases where a new business is added, a sole proprietor can add a new business to the business license by visiting a tax office. However, if adding a new business is not included in the business purposes stated in the articles of incorporation, the corporation must register the addition of the new business purpose to its articles and add the new business to the business license.
- When the term of the company board nears expiration, any changes in board members should be registered. Otherwise, the relevant corporation will be considered dormant after five years and enter into liquidation after seven years.

#### ③ Changes in the address of the representative director

- Separate to changing the address of the identification card, a corporation should register any changes in the address of its representative director.

#### ④ Business closure

- A sole proprietor should visit a tax office and report the business closure.
- A corporate representative should first register the dissolution or liquidation of the corporation and then report its business closure at a tax office. The period of corporate liquidation may differ depending on the competent terms of the articles of incorporation.

## Q.16

### How to convert a sole proprietorship that is also a foreign direct investment company into a corporation

"P" has been operating a business since 2009. At the outset, "P" invested 50 million won to start a business under the Foreign Investment Promotion Act. However, due to a court ruling stipulating that a business owned by a foreign sole proprietor is not eligible for the Corporate Investment visa (D-8), "P" learned that a foreign sole proprietor could no longer acquire or maintain the qualification for the Corporate Investment visa (D-8). The Korea Immigration Service suggested that "P" should change his/her status of sojourn in Korea, from Corporate Investment (D-8) to Trade Management (D-9), but considering that the conversion to a corporation is more advantageous in terms of tax payment, "P" wishes to change the form of his business from a sole proprietorship to a corporation, and accordingly be recognized as a foreign direct investment company, thus maintaining his/her current status of sojourn in Korea.

#### A. The minimum investment amount required by a corporation to be recognized as a foreign direct investment company is 100 million won.

Pursuant to the amendment of the Foreign Investment Promotion Act (July 2012), the current minimum investment amount to be recognized as a foreign direct investment company is 100 million won. Therefore, the 50 million won that was initially invested by "P" to establish the business does not meet the minimum capital requirement of 100 million won. In addition, both the foreign investment notification form and the registration certificate of a foreign-invested enterprise only record the initial investment amount of 50 million won, so additional investment is required to be recognized as a foreign direct investment company (a corporation).

## B. Notification of the investment is the first step in changing the form of business to a corporation

Even though the investment has been notified, additional investment is required because the initial investment amount does not meet the minimum capital requirement for the conversion to a corporation. In this case, the investment must be notified before any additional investment is made in order to receive the required investment amount from abroad. Upon notification of the investment, the investor must declare an investment amount of at least 100 million won and, after deducting the existing investment amount that has already been notified and recognized as the investment funds on paper, receive the outstanding amount by remittance. However, the investor must adjust the investment amount to ensure that the corporation capital exceeds 100 million won, considering additional investment amount and the amount that can be used in practice by the sole proprietor as capital. In summation, both the investment amount to be recognized as foreign direct investment and foundation capital for the establishment of the corporation must amount to at least 100 million won.

## C. The conversion from a sole proprietorship to a corporation is the same as the establishment of a corporation

In cases where a sole proprietorship is converted into a corporation, it is common for a corporation to be newly established and the existing business to be incorporated into the new corporation through investment in kind or transfer. However, if a sole proprietor does not possess the investment amount in kind, etc., the only funds available for use in practice may be his/her own money. Subsequently, it is recommended for a corporation to be established from the perspective of establishing a new corporation entirely.

## D. It is necessary to understand the difference between a sole proprietorship and a corporation

There is arguably a crucial difference between a sole proprietorship and a corporation. Therefore, the establishment of a corporation without in-depth knowledge of corporations and thorough preparations for the operation thereof may impose serious obstacles in corporate management. For example, a corporation can be likened to an independent entity. Consequently, a company and an individual should be considered to be separate entities. In terms of tax, a corporation pays corporate tax for its earnings, while individuals who receive a salary from the corporation pay personal income tax. In addition, corporate funds must be used exclusively for the corporation's business purposes and with the explicit understanding that even the owner of the corporation is not allowed to use the corporate funds for personal purposes.

### Further details are available in the following sections of this guide.

Q.11 Must-know tax information for business operators – page 76

Q.14 Matters for consideration after incorporation – page 81

Q.15 Differences between incorporation and sole proprietorship – page 81~ 82

### Applicable precedent

Sole proprietorship's eligibility for the Corporate Investment visa (D-8) (Daegu District Court 2010Guhap4034)

#### 1. Account for the disposition

The plaintiff of Sri Lankan nationality entered into Korea with the Short-term Business visa (C-2) and then applied for the Corporate Investment visa (D-8) to change his status of sojourn in Korea. However, his application was rejected as he was not deemed to be an indispensable professional specialist who seeks to engage in the fields of business management & administration or production & technology of a foreign-capital-invested company.

#### 2. Plaintiff's argument

As I, the plaintiff, invested 50 million won in the wholesale and retail trade of automobile parts and home appliances and have been working in the said field, which is a condition of eligibility for the Corporate Investment visa (D-8) specified in Appendix 1, Paragraph 17 of the Enforcement Decree of the Immigration Control Law. As a consequence, the disposition of the defendant is illegal.

### 3. Verdict

To be eligible as a foreign-capital-invested company pursuant to the Foreign Investment Promotion Act, the company must be a Korean corporation or a business operated by a Korean citizen. However, there is no evidence to prove that the plaintiff's business of wholesale and retail trade of automobile parts and home appliances is a Korean corporation. In addition, as the plaintiff is a foreigner, as opposed to a Korean citizen, the company concerned in this case is not a foreign-capital-invested company under the Foreign Investment Promotion Act, subject to the Immigration Control Law.

=> Second trial (Daegu High Court 2011Nu1970, the plaintiff's appeal rejected; third trial (Supreme Court 2011Du30809, the plaintiff's final appeal rejected)

# Ch.4

# Others

- Q.17 When unable to receive authorization and permission due to the lack of an alien registration number
- Q.18 When the issuance of a business registration certificate is rejected for a foreign direct investment company established by an international student
- Q.19 When the issuance of a registration certificate of a Foreign-Invested Enterprise is ejected due to a shortage of foundation capital
- Q.20 What are the differences between an exclusive distributorship and a branch?
- Q.21 What are intellectual property rights recognized by the Tech-based Startup visa (D-8-4)?
- Q.22 How to establish a non-profit corporation
- Q.23 How to prepare and use official and private documents issued in a foreign country
- Q.24 What is an Apostille?
- Q.25 What is a residence certificate?

## 4. Others

**Q.17**

**When unable to receive authorization and permission due to the lack of an alien registration number**

“Q” is in the process of establishing a business by means of foreign direct investment to open a general restaurant in Korea, where he/she will sell food of his/her country. After reporting the investment and completing the remittance and the corporate registration, “Q” visited a tax office to register his/her business, but the office staff said that “Q” must first receive the restaurant business license from the competent district office to register his/her business. However, “Q” learned that, in the course of preparing for the restaurant business license, since he/she did not have an alien registration number, he/she could not be issued with a medical examination report (health certificate) required for obtaining a business license to establish a general restaurant.

### A. It is better to specify multiple business purposes in the articles of incorporation

A general restaurant may entail the trade business and the food ingredients wholesale and retail business, in order to obtain supplies of interior materials and food ingredients, as it is a foreign food-based restaurant in this case. In addition, there is also the possibility to add other businesses or expand the existing business in the future. Therefore, it is recommended for the investor to include multiple businesses (business purposes) in the articles of incorporation that is prepared during the establishment of a corporation.

### B. The initial business registration should be made with a business other than the restaurant business

Since the investor does not have a restaurant business license to operate a general restaurant, the type of business cannot be recorded as general restaurant business in the business license. In order to obtain the relevant business license, he/she must be issued with an alien registration number. Among those listed in the articles of incorporation, a business (purpose) that does not require authorization or permission can be used to apply for a business registration.

### C. The investor reissues the business license after obtaining a restaurant business license

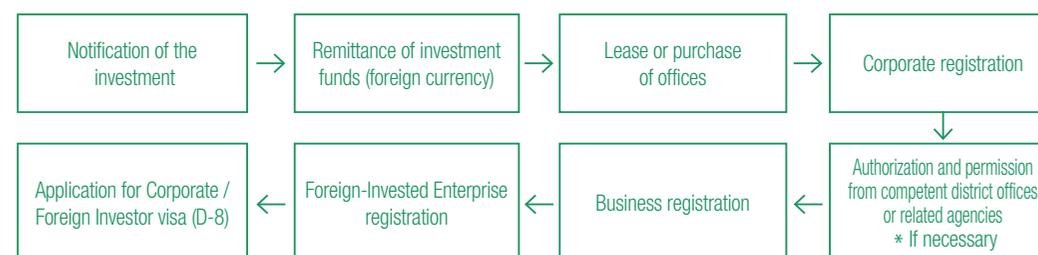
Once the investor acquires the business license, he/she will be issued with a registration certificate of a foreign-invested enterprise, and accordingly become eligible to apply for a relevant visa. After obtaining the relevant visa, the investor will be issued with a certificate of alien registration (alien registration number), which enables him/her to apply for a medical examination report (health certificate) necessary for gaining a restaurant business license to operate a general restaurant. After receiving the restaurant business license, the investor should visit the competent tax office to be issued with a new business license to operate his/her business.

**Q.18**

**When the issuance of a business license is rejected for a foreign direct investment company established by an international student**

“R” has decided to start a business during his/her study in Korea. He/she established a company by means of foreign direct investment, completed the corporate registration, and then visited a competent tax office to register his/her business. However, his/her application for business registration was rejected since he/she is a student visa holder.

### A. In the case of foreign direct investment, changing the status of sojourn should be the last step



### B. The status of sojourn is not relevant in establishing a company

Foreigners who wish to conduct profit-making activities by establishing a business in Korea require a status of sojourn that legally allows the generation of business income. It is not legally allowed to conduct profit-making activities by operating a business as an international student. The status of sojourn can be changed eventually after establishing a company with the investment funds introduced under the Foreign Investment Promotion Act, completing the business registration, and authorizing as a foreign direct investment company. In summation, if the business registration is not completed, a registration certificate of a foreign-invested enterprise is not issued, and a visa is not issued accordingly.

### C. Explanation of required documents for changing the status of sojourn under the Foreign Direct Investment Act

The Residence & Visa Division of the Ministry of Justice has publicly released the Sojourn Guide for Foreigners on a website (hikorea.go.kr.) operated by the MOJ. The guide includes activities allowed for each visa type, eligible individuals, basic requirements, and required documents. Based on the content of the guide, a business registration can be applied for at the competent tax office.

**Q.19**

**When the issuance of a certificate of a foreign-invested enterprise is rejected due to a shortage of foundation capital**

“S” is in the process of establishing a company under the Foreign Direct Investment procedure to open a restaurant in Korea. He/she reported his/her investment of about 100 million won and completed the required remittance, but it took considerable time to find a suitable business place. Eventually, “S” found a place of business and paid a deposit and rent, was re-issued with a balance certificate from his/her bank, and finally, established a corporation. He/she completed the business registration and visited the bank to be issued with a certificate of a foreign-invested enterprise, but the application was rejected due to a shortage of foundation capital.

### A. A balance certificate is deemed valid by a registry office within 15 days from its issuance

A corporation with capital of 1 billion won or less can prove its capital amount through a bank balance certificate. In this case, the valid period of the balance certificate is 15 days, after which it must be re-issued. If the investor uses any of the money introduced as capital after the issuance of the balance certificate and then is re-issued with the certificate as necessary, the current balance will be proved excluding the money used. Therefore, corporate registration must be completed within 15 days from the initial issuance of the balance certificate in order to allow the investor to establish a corporation with the capital that has been proved already, even if he/she has used some of the money.

## B. The minimum capital amount to establish a foreign direct investment company is 100 million won

In accordance with the Foreign Investment Promotion Act, to be recognized as a foreign direct investment company, an investor should hold at least 10 percent of shares in the company concerned and the investment amount shall be over 100 million won (Chapter 1, Article 2 of the Enforcement Decree of the Foreign Investment Promotion Act). In such a case, the investor used part of the money that was supposed to be used as capital and then was issued with a balance certificate, so the capital has decreased as much as the sum that he/she used.

## C. Through additional remittance and a capital increase, it is necessary to increase the amount of capital to meet the requirement for a foreign direct investment company

This is a case where the investor initially notified his/her investment amounting to 100 million won, which is the minimum investment amount required for foreign direct investment, but the capital proved by his/her balance certificate was insufficient to establish a corporation. The investor should remit as much money as required to fill the shortage and be issued with a balance certificate to increase the capital stock, thereby ensuring that the capital amount meets the minimum requirement for foreign direct investment.

### Enforcement Decree of the Foreign Investment Promotion Act (entered into effect on September 21, 2018)

Chapter 1 General Provisions (Amended on July 30, 2009)

Article 2 (Definitions of Foreign Investment, etc.)

(2) "Foreign investment" under Article 2(1)4(a) of the Act refers to any of the following and the investment amount is at least 100 million won: Provided, That where a business fails to meet the requirements of the main sentence of this paragraph due to partial transfer of stocks or shares (hereinafter referred to as "stocks, etc.") or capital reduction, etc. after it has been registered as a foreign-capital-invested company under Article 21(1) and (2) of the Act, it shall be also deemed a foreign investment: <Amended on Oct. 5, 2010 and Jul. 28, 2016>

1. Where a foreigner owns at least 10 percent of either the total number of voting stocks issued by a Korean corporation (including a corporation in the process of establishment; hereinafter the same shall apply) or a company run by a national of the Republic of Korea, or its total equity investment;
2. Where a foreigner who owns stocks, etc. of a Korean corporation or a company run by a national of the Republic of Korea dispatches or appoints an executive officer (referring to a director, a representative, a managing general partner, an auditor, or a person in a similar position, who has the authority to participate in decision-making for important management matters; hereinafter the same shall apply) to or at such corporation or company.

## Q.20

What are the differences between an exclusive distributorship and a branch?

"T" has been working in Korea for several years as an English teacher. During this time, "T" conceived a product that is not currently supplied in the Korean market and acquired an exclusive distributorship from a foreign company that manufactures and sells the product. Subsequently, he/she sought to obtain a visa to establish a branch in Korea with the said exclusive distributorship and operate the business as a branch manager, but his/her application for the branch office was rejected.

### A. Decision to establish a branch is made by the company headquarters

Corporate decision-making takes place through the board of directors at its meeting, or at a general shareholders'

meeting. The establishment and closing of a branch is also decided by the board of directors. In summation, an individual who wishes to serve as the head of a branch cannot simply establish a branch and obtain approval to serve as the head of the branch, and instead, the board of directors must decide whether to establish a branch and appoint the representative of the branch. Therefore, the aforementioned approach is not feasible. In addition, the necessary documents must be prepared in close cooperation with the headquarters, and in the process of preparing the documents, the exclusive distributorship can be used only for preparing documents that prove the distributorship.

Many foreigners hold the misconception that they can establish a branch of a foreign company and serve as the branch manager, but this is not the case.

### B. Any foreigners who wish to obtain a visa as the representative of a branch must possess at least one year of work experience at the headquarters, branch, or other places of business belonging to the relevant foreign company

The visa required to work at the Korean branch of a foreign company is granted to foreigners who are dispatched as indispensable professional specialists to work at the foreign company's affiliate, subsidiary, branch, or office, and possess at least one year of work experience at the headquarters, branch or other places of business belonging to the said foreign company. In the case of public institutions or organizations, the same condition applies. (However, in cases where the fund introduced for business operation is 500,000 dollars or more, the aforementioned requirement of "at least one year of work experience" does not apply).

### C. A branch is part of the company headquarters

A foreign company that does not have the minimum investment amount required to establish a business and dispatch a representative to conduct profit-making activities through the business may consider opening a branch to operate the business. However, as a branch comprises part of the company headquarters, it must ensure the organic movement of funds, even if the company does not have the minimum investment amount, and the funds are comprised of money required by the branch to conduct its operation and management activities. In addition, the branch's profits are vested in the profits of the headquarters. In short, a continuous flow of capital is required between the headquarters and the branch to operate the branch, even if the company does not meet the minimum capital requirement for foreign direct investment.

## Q.21

What are intellectual property rights recognized by the Tech-based Startup visa (D-8-4)?

Foreigner "U" plans to establish a business with points earned through intellectual property rights in the "Points System for Tech-based Startup visa." What are the types of intellectual property rights recognized by the Tech-based Startup visa and what is the difference between holding and applying for intellectual property rights?

### A. Not all intellectual property rights are recognized by the Tech-based Startup visa

Intellectual property rights are divided into two main categories: industrial property and copyright. These two areas are also divided into several sub-areas. However, not all types of intellectual property rights are recognized by the Tech-based Startup visa. Among industrial property rights, only "patents, utility model, and design rights," which are directly associated with business, are recognized.

### B. Types of intellectual property rights

- Industrial property rights

- Patents: Refers to designs for created products, and to original core technology, also referred to as “big inventions”
- Utility model: Refers to the technical creation of configuration, structure, and combination of item(s), also called “improved technology” or “small invention”
  - \* It is not necessary to specifically distinguish the above two properties
- Design: Design of objects
- **Copyright**
  - Copyright: The rights to the creation of literature, artistic works, etc.
  - Neighboring rights: The rights granted to a person who makes a contribution to the distribution of creative works
  - Database: The right to protect of the rights of database creators

### C. Minimum points required to obtain the Tech-based Startup visa

To obtain the Tech-based Startup visa, at least 80 points must be earned out of a total of 448 points in the Overall Assistance for Startup Immigration System (OASIS-1 to 9), and at least one required item should be included in the 80 points<sup>18)</sup>.

#### - Prerequisite items and points (313 points)

Items	Intellectual property ownership (registration)		Intellectual property application		Co-inventor of owned (registered) intellectual property rights		3-year stay on E-3 (researcher) visa	OASIS-6, OASIS-9	Persons receiving investment amounting to 100 million won or more
	Patent/utility	Design	Patent/utility	Design	Patent/utility	Design			
Points	3 persons	50	20	10	5	3	15	25	80

(OASIS-6) Achievement of the third prize or higher at invention & start-up exhibitions (held by SBA, KIPA, and NIPA)  
 (OASIS-9) Foreigner's business start-up item recognized by the Minister of Justice and selected as a central or local government-supported project (operated by NIPA)

## Q.22

### How to establish a non-profit corporation

Foreigner “V” wishes to establish, register, and operate an organization to conduct various activities together with other international students from his/her country, including teaching and introducing their language and cultures and participating in volunteer work.

#### A. The purposes and activities of an organization must be clearly defined

The purpose of registering an organization must be clearly specified. The purpose of the organization, such as conducting activities under the name of the organization, receiving grants from the local government or the competent authority, or officially receiving contributions, may determine whether the organization should be registered.

- If the purpose is volunteer work or socialization, the organization does not need to be registered to conduct activities under its name.

- To receive grants from the local government or the competent authority, the organization must apply for registration as a private non-profit organization and obtain permission by meeting the relevant registration requirements. Depending on the method of providing grants, a specific accounting process may be required, and the organization may need to be a corporation (non-profit corporation).
- To officially receive contributions and be issued with receipts for contributions, the organization must be designated as an organization that raises contributions.
- The competent authority to grant authorization and permission will vary depending on the business content, purpose, and scope of activities, and the establishment permission procedure may differ among competent authorities.

#### B. Differences among the establishment of a non-profit corporation, registration as a private non-profit organization, and registration as a voluntariness non-profit organization

Establishing a non-profit corporation is the same as establishing a corporation. Although corporations are divided into foundations and corporations according to the organization type, their intention is to establish a juristic person which is recognized by the law. The establishment of a juristic person requires corporate registration as an ordinary corporation and imposes duties such as tax returns. The difference between ordinary corporations and non-profit corporations is that the latter must obtain permission from the competent authority before completing the corporate registration.

Registration as a private non-profit organization is possible for non-profit corporations established as described in the preceding paragraph, or otherwise, if the organization meets the required standards. However, to receive grants from the competent authority with which the organization is registered, or the local government, it may have to be a registered corporation depending on the type of grants, so that the grants can be provided based on the relevant accounting system.

To register a voluntariness non-profit organization, its certificate of identification number should be registered with the tax office, without corporate registration. It is usually used for opening a bank account, rent, or other purposes under the name of the organization. In practice, it does not have significant meaning except the purpose of saving membership fees through a joint account.

Establishment of a non-profit corporation	Registration of a voluntariness non-profit organization	Registration of a private non-profit organization
<ul style="list-style-type: none"> <li>- Established through establishment registration after obtaining permission by the competent authority</li> <li>- Divided into foundations and corporations depending on capital investment</li> <li>- May receive contributions and grants</li> </ul>	<ul style="list-style-type: none"> <li>- Register at the tax office a certificate of identification number under the name of the organization</li> <li>- May open a bank account or real estate rental under the name of the organization</li> </ul>	<ul style="list-style-type: none"> <li>- Register an organization to implement projects to support the local government's activities</li> <li>- Requirements for registration vary by local government or department</li> </ul>

#### C. The establishment of a non-profit corporation does not entail entitlement to a visa

Even when establishing a non-profit corporation under the foreign direct investment procedure with money remitted from overseas, specific conditions (scientific and technological activities, at least five specialists dedicated to research) must be satisfied in order to be recognized as a foreign direct investment company, and to be issued with a visa accordingly. (In other cases than those satisfying the specific conditions, the Foreign Investment Committee composed of minister- and deputy minister-level officials in accordance with the relevant Presidential Decree must decide whether to recognize the company concerned as an FDI company).

18) Persons who have received investment of 100 million won or more from AC, VC, etc. and recommended by the Global Start-up Immigration Center, which has confirmed their reception of investment

#### D. How to establish a non-profit corporation



##### ① Search for the competent authority to obtain permission

- Search for the competent authority to obtain permission after clearly specifying activities to be conducted by the non-profit corporation.
- \* Different laws will apply to the establishment depending on the activities to be conducted.

##### ② Lease or purchase of offices

##### ③ Permission from the competent authority

(Requirements for permission vary depending on the competent authority)

- Report acceptance agency: Competent authority
- Document submission
  - Identification card of the representative
  - Articles of incorporation
  - Certificate of capital
- \* While the permission criteria vary depending on the competent authority, the capital for operating the non-profit corporation for at least one year is required.
- Other documents requested by the competent office

##### ④ Corporate registration (As documents can only be submitted in Korean, expert<sup>19)</sup> assistance is required)

- Documents to be prepared
  - Residence certificate of the representative or directors
  - Certificate of capital
  - Articles of incorporation
- \* Additional documents may be required.

##### ⑤ Application for a certificate of identification number

- Application agency: Competent tax office for the business location
- Document submission
  - Application form for a certificate of identification number (provided at the tax office)
  - Certified copy of corporation register
  - Certificate of corporation seal impression, and registered seal
  - Copy of articles of incorporation
  - List of shareholders
  - Copy of lease agreement (in cases where the place of business is taken on lease) or certified copy of building register (in cases where the place of business is purchased)
- \* The applicable agreement must have been signed under the corporation name.
- Identification card of the representative

#### E. How to register a voluntariness non-profit organization



##### ① Lease or purchase of offices

##### ② Application for a certificate of identification number

- Application agency: Competent tax office for the business location
- Document submission
  - Application form for approval of an organization deemed to be a corporation (provided at the tax office)
  - Report of the appointment of the representative of an organization deemed to be a corporation
  - List of members
  - Copy of lease agreement (in cases where the place of business is taken on lease) or certified copy of building register (in cases where the place of business is purchased)
- \* The applicable agreement must have been signed under the corporation name.
- Identification card of the representative
- Articles of incorporation, minutes of the general meeting

## Q.23

### How to prepare and use official and private documents issued in a foreign country

In the course of preparing for the establishment of a business in Korea, foreigner “W” learned that there are official documents and private documents that he/she must prepare in his/her country, and that documents prepared for use in Korea require the apostille certification.

#### A. Official and private documents

Official documents refer to documents prepared and communicated internally or externally by the central government, municipal governments, administrative agencies, and public agencies for business purposes with legal effect. On the other hand, private documents are prepared by individuals, as opposed to central or local governments, and do not necessarily carry legal effect, but in some cases are notarized as necessary to ensure the reliability of their content.

##### - Prerequisite items and points (313 points)

Official documents (issued by government offices)	Private documents (issued by individuals or businesses)
<ul style="list-style-type: none"> <li>- Business registration certificate</li> <li>- Certified copy of register</li> <li>- Residence certificate</li> <li>- Certificate of family relation</li> </ul>	<ul style="list-style-type: none"> <li>- Board resolution</li> <li>- Power of Attorney</li> <li>- Articles of incorporation</li> <li>- Translated documents</li> </ul>

#### B. Preparation of official documents

Official documents issued in a foreign country requires the apostille certification in order to be used in Korea, and documents from non-Apostille Convention signatories must be notarized and certified by the Korean consul in the foreign country concerned. Apostille-certified documents carry the same effect as official documents in Korea.

#### C. Preparation of private documents

Foreign-originating private documents issued for official use to establish a business in Korea also require the apostille certification, and to be eligible for an apostille, the documents must be notarized.

Specifically, the documents for use should be notarized by a qualified notary in the foreign country, specified as documents for the apostille certification, and then certified with an apostille. If the country is a non-Apostille Convention signatory, the documents must be certified by the Korean consul in the foreign country concerned.

19) Lawyers or certified judicial scriveners

While preparing documents required to establish a business in Korea, foreigner “X” was told to obtain apostille certification on a number of occasions. What is an Apostille and what functions does it serve?

#### A. What is an Apostille?

An Apostille is the name for a certificate attached to a document to verify that it is legitimate to use in other countries. In this era of globalization, a document issued in a signatory country to the Apostille Convention can be certified to be used in other signatory countries, and an apostille-certified document is recognized to carry the same effect as an official document in the country concerned.

In Korea, the Apostille Convention entered into effect on July 14, 2007, and as of May 2019, the convention had 117 member countries<sup>20</sup>.

##### - Prerequisite items

Region	State/area
Asia, Oceania (18 states)	Australia, parts of China (Macao, Hong Kong), Japan, South Korea, New Zealand, Brunei, Mongolia, the Cook Islands, Fiji, India, the Marshall Islands, Mauritius, Vanuatu, Samoa, Tonga, the Niue Islands, Tajikistan, the Philippines
Europe (52 states)	Albania, Austria, Belarus, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Malta, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Lithuania, Luxembourg, Monaco, Montenegro, the Netherlands, Norway, Poland, Portugal, Russia, Romania, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland, Turkey, Kyrgyzstan, Macedonia, Ukraine, United Kingdom, Andorra, Armenia, Azerbaijan, Moldova, Liechtenstein, San Marino, Kazakhstan, Uzbekistan, Kosovo
North America (1 state)	United States
Central and South America (30 states)	Argentina, Mexico, Panama, Suriname, Venezuela, Antigua and Barbuda, Bahamas, Barbados, Belize, Colombia, Dominica, Dominican Republic, Ecuador, El Salvador, Granada, Honduras, Saint Vincent, Peru, Trinidad and Tobago, Saint Lucia, Saint Kitts and Nevis, Costa Rica, Uruguay, Nicaragua, Paraguay, Brazil, Chile, Guatemala, Bolivia, Guyana
Africa (11 state)	South Africa, Botswana, Burundi, Lesotho, Liberia, Namibia, Sao Tome and Principe, Swaziland, Malawi, Cape Verde, Seychelles
Middle East (5 state)	Oman, Israel, Bahrain, Morocco, Tunisia

##### ○ Authority of the apostille certification

- There is no case where a signatory country has entrusted the authority of the apostille certification for documents originating internally to its embassy located in another country. Therefore, an apostille certificate should be issued in compliance with the procedure defined by an authorized agency designated by the country that issued the document.

##### ○ The apostille certification is applied to “the original document” in principle.

#### B. What about dealing with a country that has not signed the Apostille Convention?

In the case of a country that has not signed the Apostille Convention, documents issued in the country for use in Korea must be notarized<sup>21</sup> and then certified by the Korean consul in the country concerned.

\* Certification by the Korean consul is deemed valid only for countries that have not signed the Apostille Convention, but documents from signatories to the Apostille Convention must be apostille-certified regardless.

In the process of establishing a business in Korea, foreigner “Y” was requested by the registry office to submit “a residence certificate,” which he/she has never heard of in his/her country. As a result of inquiring about the certificate, “Y” learned that there is no government office in his/her country that issues such a certificate. What is a residence certificate and if it cannot be issued from the country concerned, what can serve as an alternative?

#### A. What is a residence certificate?

A “residence certificate,” as the term indicates, refers to a document proving that the undersigned person resides at the address recorded on paper. The certificate records the name, date of birth, address, and nationality, and must be issued by government offices.

##### ○ Korean nationals: Certified copy of register (abstract)

##### ○ Foreigners residing in Korea: Certificate of fact on alien registration

##### ○ Foreigners not residing in Korea:

- Countries where a certificate of address or residence certificate can be issued by local government offices (Japan, Germany, France, Taiwan, etc.): The issued document can be used.

- Countries where local government offices cannot issue a certificate of address or a residence certificate (United States, United Kingdom, etc.): Obtain a document that records the content of any document that can substitute a certificate of address (driver's license, identification card, etc.) and have it notarized for use.

\* Official documents issued in a signatory country to the Apostille Convention must obtain the apostille certification to be used in Korea, while those issued in a non-signatory country must be notarized and certified by the Korean consul located in the country.

\* Private documents also require notarization and the apostille certification, or (if the documents have been issued in a non-signatory country) notarization and certification by the relevant consul.

\* If the document certified with an apostille or the Korean consul can be issued in English, it may be translated into Korean in Korea. However, documents in other languages must be translated into English at least.

20) <https://www.hcch.net/en/instruments/conventions/status-table/?cid=41>

21) Notarized in the country in which the document is issued

## | REFERENCES |

Further information on the content of this guide is available at the following websites:



### Visa Information

HiKorea (e-Government for foreigners)

[www.hikorea.go.kr](http://www.hikorea.go.kr)



### Tax Information

Hometax, National Tax Service [www.hometax.go.kr](http://www.hometax.go.kr)

National Tax Service [www.nts.go.kr](http://www.nts.go.kr)



### Law information

Easy to Find, Practical Law

[easylaw.law.go.kr](http://easylaw.law.go.kr)



### Apostille

Consular service for safe overseas travel, Ministry of Foreign Affairs

[www.0404.go.kr](http://www.0404.go.kr)



### Retrieval and application of patents

Korea Intellectual Property Rights Information Service KIPRIS

[www.kipris.or.kr](http://www.kipris.or.kr)



### Precedents for registration / standing rules

Internet registration office, Supreme Court of Korea

[www.iros.go.kr](http://www.iros.go.kr)

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This guide has been prepared with a focus on frequently-asked questions and common cases when foreigners seek to establish a business. Please note that the content of this guide is only intended for reference. For further details, please contact the Seoul Global Business Center or relevant organizations.

If there is any part that must be supplemented, please inform us so that we can make appropriate improvements.

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