INTRODUCTION TO FOREIGN DIRECT INVESTMENT SYSTEM IN KOREA

JULY 2000

Korea Investment Service Center

Due to the continuous changes in laws and regulations relating to foreign direct investment (FDI), we may fail in updating the contents simultaneously with the changes. Thus when you use the information provided in this booklet for business purposes, you should contact *Investment Consulting Office* at Korea Investment Service Center (KISC) to confirm the accuracy of the information.

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I. OVERVIEW

1. Definition

(1) Foreign direct investment (FDI)

■ Acquisition of stocks of domestic companies (Article 2.1.4.1 of the Foreign Investment Promotion Act (FIPA))

- Acquisition by foreign nationals of shares or equity of a corporation of Korea or of an enterprise run by a Korean national in order to establish lasting economic relations by means of participating in the management of such corporation or enterprise

  - Where foreign investors exercise voting rights by owning 10% or more of the total voting stocks issued by, or of the total amount of capital contribution of enterprises run by a Korean national (Article 2.2.1 of the Enforcement Decree of the FIPA)

  - Where foreign nationals are objectively proved by joint venture contracts or by other related documentary evidence that they exercise substantial influence over the management of a corporation of Korea or of an enterprise run by Korean nationals although they own less than 10% of the total stocks. (Article 2.2.2 of the Enforcement Decree)

■ Long-term loan (Article 2.1.4.2 of the FIPA)

- Where a loan with maturity of five years or longer is granted to foreign invested enterprises (FDI companies) by their overseas parent company or by an enterprise which has capital affiliation with the parent company.

※ Enterprise which has capital affiliation with the parent company (Article 2.3 of the Enforcement Decree)

- An enterprise which owns 50% or more of the total issued stocks or of the total amount of capital contribution of the overseas parent company

- An enterprise falls under the following, provided that the overseas parent company of the FDI company owns 50% or more of the total outstanding stocks or of the total amount of capital contribution of the said FDI company:

  - An enterprise which owns 10% or more of the total stocks or of the total amount of capital contribution of the overseas parent company;

  - An enterprise of which 50% or more of the total stocks or of the total amount of capital contribution is owned by the overseas parent company

(2) Foreign investors and object of investment

■ Foreign investors (Article 2.1.1 of the FIPA)

- Individuals possessing foreign nationality
  - Korean nationals who hold permanent residence status or equivalent stay permits from foreign countries are also included in the definition of foreign investors. (Article 22 of the FIPA; Article 3 of the Enforcement Decree)
  - Investment by Chinese nationals with residence status (F2 visa) in Korea---those who have continuously lived with their permanent address in Korea---is not considered as FDI.
- Foreign corporations established under the laws of foreign countries
- International organizations, such as International Finance Corporation (IFC), International Bank for Reconstruction and Development (IBRD), Asia Development Bank (ADB), or other organizations engaging in international economic cooperation as proxies of foreign governments for overseas investment
- Foreign nationals who own stocks or equity pursuant to the FIPA

■ Foreign invested enterprises (Article 2.1.6 of the FIPA)

Enterprises in which foreign nationals have invested capital (FDI companies)

■ Object of investment (Articles 2.1.7 and 2.1.8 of the FIPA)

Investment by foreign nationals which is made for the purpose of acquiring stocks

- International means of payment under the Foreign Exchange Transactions Act, or domestic means of payment arising from exchange therefor
- Capital goods
  - Machinery, equipment, facilities, apparatus, components and parts treated as industrial facilities including ships, motor vehicles, airplanes, etc.; livestock, seeds, plants, trees, fish and shellfish needed for the development of agriculture, forestry and fisheries
  - Raw materials and spare parts for test operation of facilities deemed necessary by the competent ministers; freight and insurance premium costs for transportation of such materials; and technology or services utilized in installation or consulting with respect to the import of such materials
- Income arising from stocks or equity acquired pursuant to the FIPA (dividends)

- Industrial property rights and other equivalent rights concerning technology and its use

※ The price of industrial property rights evaluated by a technology evaluation institution designated by government authority shall be considered as certified evaluation value. (Article 30.4 of the FIPA)

- Remaining assets generated from the liquidation of foreign company's branch or liaison office in Korea
- Repayment of long-term loan pursuant to the FIPA, with maturity of five years or longer to FDI companies by their overseas parent company and to companies affiliated with the overseas parent company concerned
- Other domestic means of payment

  The sales proceeds of real estate and stocks or equity, owned by foreign nationals pursuant to the FIPA and the Foreign Exchange Transactions Act, of a corporation of Korea or of an enterprise run by Korean nationals

(3) FDI amount and ratio

- The amount of FDI shall be at least 50 million won per case. In the case where the number of foreign investors is two or more, the amount shall be 25 million won or more per investor. There is no ceiling on the FDI amount.

- In the case where foreign investors increase the investment amount or invest dividends in a company, there is no minimum on the FDI amount.

- In principle, FDI ratio shall be 10% or more, meaning that foreign investors shall acquire 10% or more of the stocks of a company.

- In the case where foreign investors are proved by joint venture contracts or by other documentary evidence that they exercise substantial influence over the management of companies, the FDI ratio less than 10% of the total stocks shall be allowed.

2. FDI-related Laws

(1) Related laws

- The Foreign Investment Promotion Act (FIPA)
- The Enforcement Decree of the Foreign Investment Promotion Act
- The Enforcement Regulation of the Foreign Investment Promotion Act
- Regulations on Foreign Investment and Technology Inducement
- Regulations on Tax Reductions or Exemptions for Foreign Investment
- Special Tax Treatment Control Act (Chapter V)

(2) Foreign Investment Promotion Act (FIPA)

■ Purpose (Article 1)

The purpose of the FIPA is to contribute to the sound development of the national economy through effective inducement of foreign investment by means of providing support and facilitation.

■ Basic direction

Policies on FDI have been restructured to support foreign investment from foreign investors' perspective and to facilitate effective inducement of FDI by local governments.

■ Relationship with other laws

- Foreign investment shall be considered as FDI when satisfying requirements of foreign capital in accordance with the FIPA and relevant laws.

- Matters concerning foreign exchange and overseas transactions shall follow the regulations of the Foreign Exchange Transactions Act, except as otherwise provided in the FIPA.

- Even though FDI companies complete required procedures stipulated in the FIPA, the companies shall follow the regulations applied to domestic companies under the laws of Korea, and obtain permissions or approvals in accordance with such laws to operate business, since FDI companies are regarded domestic companies.

3. Protection for FDI

Guaranty of overseas remittances of dividends and of the equal treatment as Korean nationals shall be protected in accordance with the FIPA. Thus foreign investment which is not made pursuant to the FIPA cannot be protected.

(1) Guaranty of overseas remittance

- Overseas remittance of dividends of stocks and equity owned by foreign investors; of proceeds from sales therein; of principals and interest paid from long-term loan contracts; and of commissions and royalties paid pursuant to technology inducement contracts shall be guaranteed. (Article 3.1 of the FIPA)

- With respect to overseas remittances, a confirmation by the head of foreign exchange banks is required as stipulated in the Foreign Exchange Transactions Act. (Article 4.1 of the Enforcement Decree)

- Suspension of foreign exchange transactions or other restrictive measures taken under situations of critical and rapid changes in the domestic economic situation, war, or Act of God, stipulated by the Foreign Exchange Transactions Act, shall not apply to FDI made pursuant to the FIPA.

(2) Equal treatment as Korean nationals

- Foreign investors and their companies investing in Korea shall be treated on equal terms as domestic investors and companies, except as otherwise provided in other laws. (Article 32 of the FIPA)

- Foreign investors enjoy more favorable treatment than Koreans do in tax reductions and in the site selection for their company or factory.

- In the case where FDI companies additionally conduct business open to FDI, the additional notification is not required. (Article 22.3 of the FIPA)

- Except as otherwise provided in other laws, no restrictions shall apply to a foreign national in performing FDI activities in Korea. (Article 4.1 of the FIPA)

4. FDI-allowed Business

- Out of total 1,121 business sectors described in the Korean Standard Industrial Classification, **1,058 sectors**, excluding 63 sectors such as public administration, diplomatic affairs, national defense, etc., are subject to FDI.

  ※ FDI-subject business: 1,058 sectors
  - Fully-open businesses: 1,030 sectors
  - Partially-open businesses: 24 sectors (FDI allowed if the criteria for FDI permission are satisfied.)
  - Non-open businesses: 4 sectors

  ☛ ***Details on FDI-restricted business are explained in pp. 8.***

- However, other individual laws may restrict FDI on certain businesses or impose an obligation to form joint ventures with domestic companies.

- Cases where FDI is not allowed: (Article 4.2 of the FIPA)
  - Where the maintenance of national security and public order is threatened;
  - Where the development of the national economy is negatively affected;
  - Where the laws of Korea are violated

- The Minister of Commerce, Industry and Energy will post FDI restrictions other than those stipulated in the FIPA every year. (Article 4.4 of the FIPA)

5. Types of FDI

■ Foreign investors may acquire newly issued or outstanding stocks, and FDI is allowed to both private businesses and corporations.

- FDI through acquisition of newly issued stocks (Article 5 of the FIPA)

  Foreign investors may acquire newly issued stocks through incorporation or increasing capital in an existing company.

- FDI through acquisition of outstanding stocks (Article 6 of the FIPA)

  Foreign investors may acquire outstanding stocks of domestic companies.

- FDI through mergers (Article 7 of the FIPA)

- FDI through long-term loan (Article 8 of the FIPA)

■ Notification of FDI

- Both foreign investors and their proxies can file the notification or the application.
- A power-of-attorney is required when filing through proxy.
- Required forms concerning FDI are provided in both in Korean and in English at Korea Investment Service Center (KISC).

☛ ***Details on FDI procedures and required documents are described in pp. 11.***

FDI-restricted business

- **FDI-subject businesses: 1,058 sectors**

  - Fully-open businesses: 1,030 sectors
  - Partially-open businesses: 24 sectors (FDI allowed if the criteria for FDI permission are satisfied.)
  - Non-open businesses: 4 sectors

- **FDI-restricted businesses (partially- and non-open businesses): 28 sectors**

Business (KSIC* code)	Criteria for Permission [1]	Opening Schedule [2]
Growing of cereal crops (01110)	Allowed except for growing of rice and barley	
Farming of beef cattle (01212)	FDI ratio shall be less than 50%.	
Inshore fishing (05112)	**NOT PERMITTED**	
Coastal fishing (05113)	**NOT PERMITTED**	
Publishing of newspapers (22121)	FDI ratio shall be less than 30%.	
Publishing of magazines and periodicals (22122)	FDI ratio shall be less than 50%.	
Processing of nuclear fuel (23300)	Allowed except for manufacturing and supply of nuclear fuel for nuclear power plants.	

* Korea Standard Industrial Classification (KSIC)

1 FDI on the businesses listed in the table shall be permitted if the criteria for permission are satisfied.

2 Date when FDI will be fully permitted.

Business (KSIC code)	Criteria for Permission [1]	Opening Schedule [2]
Electric power generation (40110)	FDI in electric business related to the operation of nuclear power plants is not allowed. FDI in non-nuclear public power generation businesses is allowed only when the FDI ratio is less than 50%. Both the largest shareholder and the representative of the company shall be a Korean national. FDI in other non-nuclear power generation businesses is fully allowed.	
Wholesale of meat (51312)	FDI ratio shall be less than 50%.	
Coastal water passenger transport (61121)	Allowed if all of the followings are met: 1. Scope of permission: Transportation between North and South Korea 2. Must be joint ventures with domestic shipping companies 3. FDI ratio shall be less than 50%.	
Coastal water freight transportation (61122)	Applied the same as above	
Scheduled air transport (62100)	FDI ratio shall be less than 50%.	
Non-scheduled air transport (62200)	FDI ratio shall be less than 50%.	
Leased line services (64211)	FDI in fundamental telecommunication businesses is allowed only when the total of stocks or equity with voting rights owned by foreign governments, foreign nationals or Korean corporations in which each of the following is 49% or less of the total number of stocks or equity. However, FDI in Korea Telecom is allowed only when the FDI ratio is 33% or less, and investment ratio of one individual is 15% or less. - A corporation whose ratio of stocks owned by the foreign government or foreign nationals are 50% or more - A corporation whose major shareholders are foreign governments/nationals, and whose ratio of shares owned by them are 15% or more	
Wired telephone and other wired telecommunications (64219)	Applied the same as above	

Business (KSIC code)	Criteria for Permission	Opening Schedule
Mobile telephone services (64221)	Applied the same as above	
Cellular telephone services (64229)	Applied the same as above	
Telecommunications resellers (64291)	Telecommunications reselling businesses providing telephone services by being connected to electric communication networks will be allowed only when the FDI ratio is 49% or less. FDI in other businesses in this sector is fully allowed.	**January 1, 2001**
Other Telecommunications unclassified (64299)	The same criteria for permission with that of *leased line services (64211)* apply to FDI in communication satellite services and communication satellite station operations. FDI ratio in broadcasting network operation must be 49% or less. FDI in other businesses in this sector is not allowed.	
Domestic commercial banking (65121)	Allowed only for commercial banks	
Investment trust companies (65931)	FDI in securities investment and trust businesses is allowed. FDI in trust fund-related businesses is allowed wherein the commercial or special banks conduct businesses in conjunction with their primary business.	
Radio broadcasting (87211)	**NOT PERMITTED**	
Television broadcasting (87212)	**NOT PERMITTED**	
Program supplying (87221)	- FDI in news program supplying businesses is not allowed. - FDI ratio in other businesses must be 33% or less.	
Cable broadcasting (87222)	FDI ratio in comprehensive cable broadcasting businesses shall be 33% or less. FDI in relay cable broadcasting businesses is not allowed. FDI in music cable broadcasting businesses is allowed.	
Satellite broadcasting (87223)	FDI ratio shall be 33% or less.	
News agency activities (88100)	FDI ratio shall be less than 25%.	
Radioactive waste disposal (90230)	Allowed except for radioactive waste management.	

II. PROCEDURES FOR FDI

1. FDI through Acquisition of Newly Issued Stocks

1. Establishment of a new company (100% subsidiary or joint venture with a domestic company)
2. Participation in capital increase of a domestic company (including FDI company)

(1) FDI notification (Article 5.1 of the FIPA)

■ Subject of notification: Foreign investors or their proxy

■ Notification place: KISC, head-office/branches of domestic banks, branches of foreign banks

■ Required documents:

- FDI notification form for acquisition of newly issued stocks (2 copies; provided)
- A power-of-attorney is required when filing notification through proxy.
- To be submitted if applicable (1 copy)
  - Document verifying the price evaluation of industrial property rights evaluated by a technology evaluation authority
  - Document verifying the remaining properties following liquidation of branches, liaison offices or legal entities
  - Document verifying the reimbursement amount of overseas loans
  - Document verifying the exercise of substantial influence over the management of the legal entity or enterprise concerned
  - Document verifying the amount received through a sale of stocks or real estate

■ Processing period: On-the-spot (Institutions accepting the FDI notification form shall issue a certificate of FDI notification after reviewing the notification form and related documents.)

(2) Carrying-in of FDI capital

■ **When FDI capital is remitted from overseas:**

① When FDI capital is remitted from foreign countries to foreign exchange banks in Korea, the recipient' s name of the capital shall be proxy' s or FDI company' s.

In this case, however, the FDI capital cannot be directly remitted to proxy' s private account or FDI company's account: The capital shall be deposited in a separate account temporarily.

② The FDI capital, remitted from overseas and deposited in the temporary account, will be transferred to "share subscription account." And when this transaction is made, the bank shall issue a document confirming custody of paid-in capital, a certificate required when foreign investors register incorporation in Korea.

※ Before or after filing the registration of incorporation, the FDI capital shall be converted into Korean won. In this case, the bank will issue a certificate of purchase/deposit of foreign currency, a document required when filing registration of FDI company.

■ **When FDI capital is carried in through the customs:**

① In the case where foreign investors personally bring in foreign currency in cash or by traveler's checks, they shall register the currency to the customs authority (e.g., airport customs authority).

② The FDI capital shall be deposited in foreign exchange banks. (And when opening account for non-residents, a registration certificate of foreign currency and the passport are required.)

③ When the FDI capital is transferred to "share subscription account," the bank shall issue a document confirming custody of paid-in capital, a certificate required when foreign investors register incorporation in Korea.

■ **When capital goods are imported as FDI in kind:**

① In the case where foreign investors intend to carry in capital goods as FDI in kind, they shall prepare a list of imported capital goods (3 copies), and have the list reviewed and confirmed by the President of Korea Trade-Investment Promotion Agency (KOTRA) or by the head of foreign exchange banks in Korea before such capital goods are shipped from overseas.

- Required documents:
  - Application form for confirmation of imported capital goods (3 copies)
  - Document verifying the price of imported capital goods

② When the import of capital goods is completed, foreign investors shall apply for a confirmation of completion of FDI in kind.

- The confirmation of completion of FDI in kind may be applied at KISC.
- Required documents:
  - Application form for confirmation of completion of FDI in kind (2 copies)
  - A certificate of import declaration

③ Foreign investors shall use the certificate of completion of FDI in kind when filing the registration of incorporation.

(3) Registration of incorporation and business registration

■ Registration of incorporation

Free proxy service for the registration of incorporation is provided by KISC: Preparation and submission of the documents to the competent authority

☛ ***Fore more information on incorporation procedures, please see our publication regarding company establishment, or visit Cyber KISC at*** www.kisc.org**.**

■ Business registration

- Registration period
  - In case of a corporation, the registration is usually made simultaneously with the incorporation;
  - In case of personal business, the registration is made within 20 days after starting business
- Business registration can be applied at KISC.
- With respect to the import of capital goods (e.g., FDI in kind, etc.), business registration shall be made before filing registration of incorporation or carrying in the capital goods in order to get value-added tax deduction.

(4) FDI company registration

■ Period: Within 30 days from the date after the payment required is completed

■ Place: Institution where FDI notification is filed

■ Required documents:

- Application form for FDI company registration

- Certificate of purchase/deposit of foreign currency (*In case of FDI in kind*, certificate of completion of FDI in kind)
- Transcript of incorporation registration (*In case of personal business*, certificate of business registration)

FDI through acquisition of newly issued stocks

KISC	**FDI consultation & settlement of FDI-related civil affairs administration**	- FDI procedures in general - Factory establishment: site survey/factory locating - Tax- and customs-related matters - Real estate acquisition - Financial advice (M&A and accounting) - Legal advice: review of contract and other FDI-related papers - Environment- and telecommunication-related businesses - Small and medium industries and venture business - FDI notification; registration of FDI companies - Visa - Free proxy service for registration of incorporation in Korea - Business registration - Confirmation on completion of FDI in kind - Confirmation on the list of imported capital goods for FDI
	↓	
	Preparation of FDI notification	***Required documents are listed in pp. 11.***
	↓	
KISC	**Submission of FDI notification**	- Application for tax reduction for FDI can be filed simultaneously with FDI notification. • Where application for tax reduction is made separately: Economic Cooperation Division at Ministry of Finance and Economy (MOFE) • Foreign investors may check with the Division whether their intended business is eligible for tax reduction before filing FDI notification. - Application period • New FDI: Before the last day of tax year in which the business is started • Capital increase: Within 2 years from the date of FDI notification * A certificate of FDI notification shall be issued when FDI notification is filed.
	↓	
	Carrying-in of FDI capital	☛ ***See pp. 11.***
	↓	

KISC	**Incorporation**	**Free proxy service is provided by KISC in filing registration of incorporation in Korea** • **Required documents:** - Application for company formation and associated articles of incorporation (notarized) - Document certifying subscription for stocks issued - Record of examinations by directors, auditors and inspectors and its related documents - Minutes of inaugural general meetings, and minutes of board-of-director meetings regarding representative directors - Certificate of FDI notification acceptance or approvals and document confirming custody of paid-in capital (issued by associated banks) - Inspector report or document confirming completion of FDI in kind (in case of FDI in kind)
	↓	
Institution where FDI notification has been filed	**FDI company registration***	• **Period:** FDI company registration shall be made within 30 days from the payment required is completed. • **Required documents:** Application form for FDI company registration; certificate of purchase/deposit of foreign currency (in case of FDI in kind, certificate of completion of FDI in kind); transcript of incorporation registration (in case of personal business, certificate of business registration)
	↓	
KISC	**Factory establishment**	

* **When modification in the reported FDI company registration is made, it shall be notified to the institution where FDI company registration is previously filed within 30 days from the date on which the modification is made.**

Cases where the modification of FDI company registration shall be filed:

- Where notification of acquisition of outstanding stocks of a company through mergers is made;
- Where notification of transfer/reduction of stocks is made;
- Where the name and domicile of FDI company is changed;
- Where the name and nationality foreign investor is changed;
- Where FDI amount, type, ratio and business operated is changed

2. FDI through Acquisition of Outstanding Stocks

Acquisition of outstanding stocks of a domestic company (including FDI company) operating in the domestic market

- Direct transactions between foreign investors and domestic shareholders
- Foreign investors' acquisition of outstanding stocks in the stock exchange market (10% or more)

(1) FDI notification (Articles 6.1 and 6.3 of the FIPA)

■ Notification matter: Acquisition of outstanding stocks of companies not in defense industry

- Subject of notification: Foreign investors or their proxy
- Notification place: KISC, head-office/branches of domestic banks, branches of foreign banks
- Required documents:
  - FDI notification form for acquisition of outstanding stocks (2 copies; provided)
  - Other documents to be submitted if applicable (1 copy):
    - Document verifying whether transferees are a specially related person in the case of two or more transferees
    - Document verifying that remaining properties after liquidation of branches, liaison offices or legal entities
    - Document verifying reimburses amount of overseas loans or other overseas borrowings
    - Document verifying the exercise substantial influence over the management of the legal entity or enterprise concerned
    - Document verifying that the amount received through the sale of stock or real estate
- Processing period: On-the-spot (Institutions accepting the FDI notification shall issue a certificate of FDI notification after reviewing the notification form and related documents.)

■ Approval matter: Acquisition of outstanding stocks of companies in defense industry

- Subject of approval: Foreign investors or their proxy
- Application place: Investment Policy Division at the Ministry of Commerce, Industry and Energy (MOCIE)
- Required documents:

- FDI application form for approval in acquisition of outstanding stocks (2 copies; provided)
- Other documents to be submitted if applicable (1 copy)
  - Document verifying whether transferees are a specially related person in the case of two or more transferees
  - Document verifying that remaining properties after liquidation of branches, liaison offices or legal entities
  - Document verifying reimburses amount of overseas loans or other overseas borrowings
  - Document verifying the exercise substantial influence over the management of the legal entity or enterprise concerned
  - Document verifying that the amount received through the sale of stock or real estate

- Processing period: 15 days (The period can be extended by another 15 days.)

- The authority granting the approval shall decide after consulting related matters with the competent ministries and shall notify to the applicant. There may be attached conditions in the case where the application is approved.

Companies in defense industry of Korea

Classifications	Companies
Companies producing special defense materials *1 (58)	Kangnam Inc., Kumho Tire, WIA Corporation, Kukje Electronics, Raycom Korea Co., Ltd., Korean Air Lines, Tongyang Steel, Daeyang Electrics, Daeyoung Electronics, Daewoo Electronics, Daewoo Precision Industry, Daewoo Heavy Industry, Daewoo Telecom, Tongmyung Heavy Industry, Doowon Heavy Industry, Doorae Air Metal, V.E.S.K., Seoul Engineering, Samgong Products, Seoul Chassis, Samsung Electronics, Samsung Air, Samyang Chemistry, Ssangyong Heavy Industry, Saetbang High-Tech, Unsung Inc., KIA Motors, Yunhap Precision, Oriental Industry, E.T.I. Korea Co., Ltd., LG Wire, LG Precision, Jeil Precision, Jinyang Industry, Changwon Steel, Chonji Industry, Techraf Inc., Taesan Precision, Tongil Heavy Industry, POSCO, Pyongwha Industry, Pungsan Inc., Hankook Fiber, Hanjin Heavy Industry, Hanwha Inc., Hanwha Machinery, Hankook Optics, Hankook Heavy Industry, Hankook Communications, Hanil Iron, Hyupjin Precision, Hyundai Space and Aviation, Hyundai Precision, Hyundai Heavy Industry, Korea Takoma, Korea Aerospace Industries, Ltd., Samsung-Thomson CSF, Korea DTS, Mando Corporation
Companies producing general defense materials *2 (25)	Kia Precision, Kwanglim, Kookje Machinery, National Plastics, Nowoo Electronics, Daemyung Inc., Tongjin Electrics, Daedong Gear, Daeshin Metal, Daewon Steel, Daehung Machinery, Tongyang Lining, Samjung Turbine, Suwon Pipe Inc., Samwoo Metal, Shinil Metal, Ssangyong Motors, Ilshin Communications, Jinyoung Precision, Halla Heavy Industry, Hanbell Helicopter, Hankook Heat-treat, Hankook Special Pack, Hyundai Electronics, Korea Lost-Wax
Total	**83**

*1 Companies that produce fire equipment; guided weapons; military planes and war vessels; ammunition; tanks and other military vehicles; air fighters; radar and identification equipment; electronic and telecommunications equipment; night vision scopes and other optical equipment; demolition engineering equipment for military use; and other goods designated by the Minister of National Defense.

*2 Companies that manufacture defense machinery and equipment other than those mentioned above.

(2) Carrying-in of FDI capital

■ When FDI capital is remitted to domestic foreign exchange banks:

- The remitted capital shall be converted into Korean won to pay for the acquisition of outstanding stocks, or the capital can be transferred directly to stock tranferor's account in foreign currency.

- In the case where foreign investors intend to pay for the acquisition of outstanding stocks by withdrawing the foreign currency, they shall obtain the approval from the President of the Bank of Korea.

- Foreign investors need to be issued a certificate of purchase/deposit of foreign currency by foreign exchange banks. This certificate is required when filing FDI company registration.

■ When capital is carried in through the customs:

- The foreign currency must be reported to the customs authority and be converted into Korean won to pay for the acqusition of outstanding stocks, or may be transferred directly to the stock transferor's account in foreign currency.

- Foreign investors need to be issued a certificate of purchase/deposit of foreign currency by foreign exchange banks. This certificate is required when filing FDI company registration.

(3) FDI company registration

■ FDI company registration

- Registration period: Within 30 days after acquisition of outstanding stocks. (Article 21.1 of the FIPA; Article 27 of Enforcement Decree)

- Required documents ☛ ***See pp. 13.***

■ Other required approvals:

Foreign investors shall apply for the approval individually for cases of notification in corporate mergers under Article 12 of the Monopoly Regulation and Fair Trade Act concerning the acquisition of outstanding stocks if such acquisition is made over certain amount.

(4) Acquisition of outstanding stocks of a domestic company by FDI companies

■ For FDI companies whose FDI ratio is less than 50% or less and whose the largest shareholder is not a foreign national:

FDI companies can acquire outstanding stocks of other domestic companies.

■ For FDI companies whose FDI ratio is 50% or more and the largest shareholder is a foreign national:

- Cases where outstanding stock acquisition by FDI company are allowed:
  - Acquisition of outstanding stocks of domestic companies operating business open to FDI;
  - Acquisition of outstanding stocks of domestic companies operating business partially open to FDI within the allowable scope stipulated in the permission criteria;
  - Acquisition of outstanding stocks of domestic companies operating business non-open to FDI within 10%;
  - Where FDI companies in finance or insurance business, whose main business objective is to acquire stocks of other companies, acquire such stocks in accordance with the regulations of other laws
- Cases where outstanding stock acquisition by FDI company are prohibited:
  - Acquisition of outstanding stocks of domestic companies operating business partially open to FDI beyond the allowable scope of stock acquisition;
  - Acquisition of outstanding stocks of domestic companies operating non-open business more than 10%

(5) Other matters to be noted

■ Acquisition of outstanding stocks in stock exchange market (Article 7.6 of the Enforcement Decree)

Where foreign nationals, who already acquired 9% of the total outstanding stocks in stock exchange market, intend to additionally acquire 1.1% of the total outstanding stocks (thus making the total acquisition ratio 10% or more), they shall file FDI notification through acquisition (or apply for approval) of outstanding stocks prior to acquiring the additional 1.1%.

- Acquisition of outstanding stocks of companies in FDI-restricted businesses (Articles 7.6, 7.7 and 7.8 of the Enforcement Decree)

  - In cases where foreign investors acquire outstanding stocks of a company operating two or more restricted businesses, the acquisition ceiling shall be the lowest FDI ratio allowed for FDI among the businesses operated by the said company.

  - In cases where the revenue from the restricted business is 1% or less of the total revenue of the company, such business shall not be regarded as business the said FDI company operates.

  - In cases where the revenue of restricted business exceeds 1% of the total revenue of the FDI company after foreign investors acquired the outstanding stocks, the foreign investors shall transfer the outstanding stocks acquired in excess of the acquisition ceiling to a Korean national or a legal entity of Korea within six months from the closing date of the business year in which the said excess has occurred.

  - In cases where transferees are more than one in acquisition of outstanding stocks, foreign investors shall file notification (or apply for approval) when the foreign investors and a special related person jointly acquire the outstanding stocks. (Article 7.1 of the Enforcement Decree)

FDI through acquisition of outstanding stocks

Institution	Procedure	Details
Institutions accepting notification (Application for approval)	**Submission of notification/ application for approval**	- Business not in defense industry (Notification): KISC, head-office/branches of domestic banks, branches of foreign banks - Business in defense industry (Approval): Investment Policy Division at the MOCIE ☛ ***For the required documents, see pp. 17-18.***
	↓	
Institution	**Issuance of certificate of FDI notification /approval**	Processing period - For notification: On-the-spot - For approval: 15 days (The period can be extended by another15 days.)
	↓	
	Carrying-in of FDI capital for acquisition of outstanding stocks	• Capital generated in Korea shall not be allowed. • When exchanging foreign currency into Korean won, a certificate purchase/deposit of foreign currency shall be issued. (It is required when filing FDI company registration.)
	↓	
Institution	**FDI company registration***	The registration shall be filed within 30 days from the date of acquisition of outstanding stocks. (Payment required is made.) ☛ ***For the required documents, see pp. 13.***

* **When modification in the reported FDI company registration is made, it shall be notified to the institution where FDI company registration is previously filed within 30 days from the date on which the modification is made.**

Cases where the modification of FDI company registration shall be filed:

- Where notification of acquisition of outstanding stocks of a company through mergers is made;
- Where notification of transfer/reduction of stocks is made;
- Where the name and domicile of FDI company is changed;
- Where the name and nationality foreign investor is changed;
- Where FDI amount, type, ratio and business operated is changed

3. FDI made in the form of Long-term Loan

Providing a loan with maturity of five years or more to a FDI company by its overseas parent company or by an enterprise which has capital affiliation with the said parent company

(1) FDI notification (Article 8.1 of the FIPA)

- Subject of notification: Foreign investors or their proxy
- Notification place: KISC, head-office/branches of domestic banks, branches of foreign banks
- Required documents:
  - Notification form of FDI made in the form of long-term loan (2 copies; provided)
  - Document verifying the identity of the overseas parent company or enterprise which has capital affiliation with such parent company (1 copy)
  - Loan agreement (1 copy)
- Processing period: On-the-spot

(2) Modification in FDI notification (Article 5.2 of the Enforcement Regulation)

■ Where loan contract is changed:

- Notification form (2 copies)
- Modified loan agreement (1 copy)

■ Where loan provider is changed:

- Notification form (2 copies)
- Modified loan agreement (1 copy)
- Document verifying loan providers as being overseas parent company or as having capital affiliation with such parent company (1 copy)

4. FDI through Acquisition of Stocks following Mergers

- Where foreign nationals acquire stocks of a FDI company whose stocks are issued following a transfer of reserved surpluses or revaluation reserves into capital of the said FDI company
- Where foreign nationals acquire stocks of a legal entity which survives, or is newly organized following mergers between a FDI company and other enterprises, based on rights arising from ownership of the stocks of the FDI company
- Where foreign nationals acquire stocks of a FDI company from a foreign investors by means of a purchase, an inheritance, a testament, or a gift
- Where foreign nationals acquire additional stocks by capital contribution of returns of profits derived from stocks acquired in accordance with the FIPA
- Where foreign nationals convert convertible bonds or corporate bonds with the option to purchase company stocks

(1) FDI notification (Article 7.1 of the FIPA)

- Subject of notification: Foreign investor or their proxy
- Notification place: KISC, head-office/branches of domestic banks, branches of foreign banks
- Required documents:
  - FDI notification form for stock or shares acquisition (2 copies; provided);
  - 1 copy of the document verifying acquisition of stocks or shares;
  - 1 copy of a document verifying that capital contribution is made to exercise substantial influence over the management of the legal entity or enterprises concerned (In case of acquisition amounting to less than 10% of the total shares)
- Filing period: Within 30 days from the date of acquiring outstanding stocks, etc.
- Processing period: On-the-spot

(2) Application for modification in FDI company registration (Article 21 of the FIPA, Article 27 of the Enforcement Decree) ☛ *See pp. 27.*

5. Other FDI-related Notifications

(1) Confirmation of the list of imported capital goods

■ Items subject to be confirmed

Capital goods imported as FDI in kind with the exemption of customs duties

■ Procedure

Where foreign investors intend to carry in capital goods as FDI in kind, they shall prepare a list of imported capital goods (3 copies), and have the list reviewed and confirmed by the President of KOTRA or by the head of foreign exchange banks in Korea before such capital goods are shipped from overseas.

■ Required documents

- Application form for confirmation of imported capital goods (3 copies)
- Document verifying the price of imported capital goods

■ Customs clearance

- FDI companies shall notify the import of capital goods to a customs authority and obtain a certificate of import acceptance in order the goods to be released.

- Documents to be submitted where capital goods are exempted from customs duties
  - Application form
  - Document verifying the business is subject to tax reduction/exemption
  - Document verifying the capital goods imported from foreign investors as international or domestic means of payment, or capital goods imported by foreign investor as object of investment
  - Certificate of the list of imported capital goods
  - Other documents to be submitted when going through customs (e.g., invoices, B/L, certificates showing prices, etc.)

※ With respect to the import of capital goods (e.g., FDI in kind, etc.), business registration shall be made before filing registration of incorporation or carrying in the capital goods in order to get value-added tax deduction.

(2) Confirmation on the completion of FDI in kind (Article 30 of the FIPA)

■ With respect to capital goods (FDI in kind) as object of investment, foreign investors should apply for the confirmation on the completion of FDI in kind after customs clearance.

■ Application for certificate of confirmation on the completion of FDI in kind shall be made when the last shipment of the capital goods is made through customs, where the capital goods concerned pass through customs in many shipments.

■ The confirmation of completion of FDI in kind may be applied at KISC. And the official seconded to KISC from Korea Customs Service will process it on the spot.

■ Required documents:

- Application form for confirmation of completion of FDI in kind (2 copies)
- A certificate of import declaration

■ Registration of capital

When completing the import of capital goods (FDI in kind) as object of investment, the FDI companies are issued a certificate of completion of FDI in kind, and they submit it when registering the company at the Korea Court Registry and filing FDI company registration.

(3) Modification in FDI company registration (Article 27 of the FIPA)

■ Cases where the modification of FDI company registration shall be filed:

- Where notification of acquisition of outstanding stocks of a company through mergers is made;
- Where notification of transfer/reduction of stocks is made;
- Where the name and domicile of FDI company is changed;
- Where the name and nationality foreign investor is changed;
- Where FDI amount, type, ratio and business operated is changed

■ Notification

- Period: Within 30 days from the date on which the modification is made
- Place: Institutions at which FDI notification has been filed
- Required documents:
  - Notification form (2 copies)
  - Document verifying the reasons for the modification (2 copies)

(4) Disposition of capital goods (Article 22 of the FIPA)

- ■ In the case where foreign investors transfer, lease or use the imported capital goods for other purposes than notified matter, notification shall be filed. However, for capital goods of which the issuance period of a certificate of import acceptance is 5 years or longer, notification for the disposition is not required.

- ■ Notification matter: Where the issuance period of import declaration for capital goods is less than 5 years
  - Notification place: Institution where FDI notification has been filed
  - Required documents: Notification form for disposition of capital goods (2 copies)

- ■ When FDI companies do not report on the disposition of capital goods, they shall be punished by an imprisonment for five years or less, or by a fine of 50 million Korean won. (Article 33 of the FIPA)

- ■ Cases where customs duties are additionally collected:
  - Where FDI company registration is cancelled, or where FDI companies close down its business: To collect additionally tax amount reduced or exempted within three years (five years for special excise tax and value-added tax) retroactive from the date of the cancellation or closedown. (Article 116-8 (1) 1 of the Special Tax Treatment Control Act)
  - Where imported capital goods are used or disposed of for any purpose other than as notified: To collect additionally tax amount reduced or exempted within three years (five years for special excise tax and value-added tax) from the date of import declaration. (Article 116-8 (2) 2 of such Act)
  - Where foreign investors transfer stocks acquired pursuant to the FIPA to Korean nationals or legal entities of Korea: To collect additionally tax amount reduced or exempted within three years from the first day of the taxable year in which profit is first made from the business or the taxable year in which it becomes the fifth year from the date of business commencement, whichever comes earlier. (Article 116-7 (1) 4 of such Act)
  - Where the price of the capital goods is decreased because such goods have been deteriorated or damaged, reductions or exemptions corresponding to the reduced price may be applied when calculating additional tax collection.

- Cases where additional customs duties are exempted: (Article 121-5 (5) of such Act)

  - Where FDI company registration is cancelled for being dissolved due to mergers

  - Where capital goods in use after being imported with their customs duties exempted are used or disposed of for any purpose other than their original one on approval by the Minister of Finance and Economy as they were unable to be used for their original purpose due to the existence of a national disaster, *force majeure* or any other cause beyond control or any depreciation, technological progress or other changes in economic conditions

  - Where FDI companies transfer stocks to Korean nationals or legal entities of Korea in order to make it go public pursuant to the Securities and Exchange Act

  - Where the purpose of tax reduction or exemption other than those listed is deemed to have been achieved as determined by the Enforcement Decree

(5) Notification of transfer/reduction of stocks

- Reasons for notification
  - Where foreign investors transfer owned shares to others
  - Where foreign investors reduce share ownership following capital reduction

- Notification period
  - Share transfer: Within 30 days from the date on which the transfer agreement is signed
  - Reduction of capital: Last day of notification period for creditors pursuant to Article 439 of the Commercial Act

- Required documents:
  - Notification form for transfer/reduction of stocks or shares
  - A copy of the document verifying a transfer or reduction of shares
  - A copy of the certificate issued at District Tax Office confirming the amount of tax paid (Only applicable when the purchaser is a foreigner)

III. TAX INCENTIVES FOR FDI

Tax reductions or exemptions on corporate, income, acquisition, registration, property and aggregate land taxes may be granted to FDI pursuant to the Special Tax Treatment Control Act. (Article 9 of the FIPA)

1. Business eligible for Tax Incentives

(1) Businesses carrying advanced technology or service businesses supporting domestic industry

To be eligible for tax incentives, businesses carrying advanced technology (high technology business) or service businesses supporting domestic industry shall satisfy the following requirements:

- Technology bringing substantial economic and technological effects on the national economy and that are critical to advance industrial structures and to strengthen international competitiveness of domestic industry

- Technology of which the induced period is less than three years from the date of FDI notification or of technology inducement contract; or technology of which induced period is more than three years but are evaluated as having greater economic and technological superiority than the previously induced technology

- Technology of which processing of major components is mainly operated in Korea

※ The complete list of the businesses carrying advanced technology or service businesses supporting domestic industry eligible for tax incentives are stipulated in the Regulation on Tax Reduction and Exemption for Foreign Investment (appendix 1):

- The number of businesses carrying advanced technology: 445
- The number of service businesses supporting domestic industry: 89

☛ ***For the complete list, visit Cyber KISC atwww.kisc.org***

(2) Businesses operated by FDI company located in Foreign Investment Zone (FIZ)

Eligible businesses	Criteria to be eligible for tax incentives
Manufacturing industry	*In order to be eligible for tax incentives, a FDI company operating business in FIZ shall install new or additional factory facilities and satisfy the following conditions.* **<Newly developed FIZ>** • FDI amount is US$100 million or more; • FDI ratio is 50% or more, and the number of new employees is 1,000 or more; • FDI amount is US$50 million or more, and the number of new employees is 500 or more **<Where existing industrial complex is designated as FIZ>** Where all or part of existing national/regional industrial complex is designated as FIZ, FDI amount invested by a FDI company shall be US$30 million or more, and the number of new employees shall be 300 or more.
Tourism industry	*In order to be eligible for tax incentives, a FDI company shall install new or additional facilities and satisfy the following conditions.* • **Tourist hotel business/water hotel business/international convention facility** FDI newly notified by **December 31, 2001**, whose amount equals or exceeds US$30 million. (In this case, payment required for FDI shall be completed by **December 31, 2005**) • **General recreation business** FDI newly notified by **December 31, 2001**, whose amount equals or exceeds US$50 million in Cheju Island or in tourist areas stipulated in Article 23 of the Tourism Promotion Act. (In this case, payment required for FDI shall be completed by **December 31, 2005**)

☛ ***For more information on Foreign Investment Zone, please see pp. 32.***

Foreign Investment Zone (FIZ)

- The Foreign Investment Zone (FIZ) system allows foreign investors to designate an ideal site for their business and to receive benefits available to those qualified.
- **Criteria to be designated as FIZ**: ☛ ***Described in the table in pp. 31.***
- **Designation**: Mayors or provincial governors can designate areas desired by foreign investors for investment as FIZ through the examination of the Foreign Investment Committee.
- **Cancellation of designation**
  - Where FDI companies housed in FIZ fail to satisfy the FIZ designation criteria, mayors or governors may demand such companies satisfy the criteria within the certain time period not exceeding six months. (Article 25.6 of the Enforcement Decree)
  - However, if it is deemed that unavoidable reasons are acknowledged to exist, the mayors or governors may extend the period once only within the period not exceeding the original requested period.
  - Where FDI companies do not compile with the request within the settled period, the mayors or provincial governors may cancel the FIZ designation through a review of the Foreign Investment Committee.
- **Tax incentives and other support for FIZ**
  - Tax reduction/exemption
  - Exemption on rent for national properties in FIZ
  - Exemption on the traffic inducement fee for construction of facilities in FIZ
  - Support for medical, educational and housing facilities
  - The development of FIZ shall be equally supported on construction costs and basic facilities in accordance with criteria of national industrial complexes.
  - Items of governmental support concerning national industrial complexes (Articles 28 and 29 of the Industrial Sites and Development Act): Costs for construction of basic facilities such as roads, water and sewage facilities, and costs of purchasing the land will be supported by up to 50% of the total costs; facilities such as harbors, roads, water facilities, railroads, communications and electricity facilities will be preferentially supported; taxes and fees imposed on developers of industrial complex projects shall be reduced or exempted.

- Exclusion of application of other laws
  - Where land is divided within FIZ, the required approvals from relevant authority shall be waived.
  - FDI companies within FIZ shall be excluded from restriction on participation in business peculiar to small and medium enterprises; obligation to commission production of designated systemized items to small and medium enterprises; obligation to hire persons of merit to country.

  Exemption from the obligation to hire persons of merit to country shall be temporarily applied until December 31, 2003.

(3) Other businesses stipulated in the Special Tax Treatment Control Act (Article 116-2 (4), (5) of the Enforcement Decree of such Act)

In order to be eligible for tax incentives, new or additional factory facilities shall be installed and satisfy the following requirements.

■ Manufacturing/logistics business operated by FDI company located in Free Trade Zone

- For manufacturing business: FDI amount shall be US$30 million and the number of new employees is 300 or more.
- For logistics business: FDI amount shall be US$30 million or more.

■ Logistics business registered as stipulated in the law concerning Customs Free Zone

- FDI amount shall be US$30 million or more.

2. Period and Amount of Tax Incentives

(1) Corporate tax / income tax of FDI companies (Article 121-2 (2) of such Act)

- Period
  - For seven years from the year in which the profit is first made: Exemption
  - Three years thereafter: 50% reduction

  ※ If profit is not made after five years from the business commencement:
  - Exemption for seven years
  - 50% reduction for next three years

- Tax amount to be reduced

  (Total calculated tax amount x income acquired from business subject to tax incentives/tax base) x (FDI ratio)

(2) Corporate tax / income tax on dividends of FDI companies (Article 121-2 (3) of such Act)

- Period: Same as corporate tax or income tax

(3) Acquisition tax/ registration tax/ property tax/ aggregate land tax on building and land acquired by FDI companies (Article 121-2 (4) of such Act)

■ Acquisition / registration/ property tax

- Period
  - For first five years from the business commencement: Exemption
  - Three years thereafter: 50% reduction
- Tax amount to be reduced: (Total calculated tax amount) x (FDI ratio)
- Local governments may extend the period for tax incentives up to 15 years or increase the rates by enacting new local government regulations.

※ For property acquisition made after decision on tax reduction:

- Acquisition/registration tax: Exemption
- Property tax
  - Exemption for five years from the date of property acquisition
  - 50% reduction for next three years

■ Aggregate land tax

- Period
  - For first five years from the business commencement: Exemption
  - Three years thereafter: 50% reduction
- Amount to be deducted from taxable amount:

  (Tax base for property acquired) x (FDI ratio)
- Local governments may extend the period for tax incentives up to 15 years or increase the rates by enacting new local government regulations.
- For property acquisition made after decision on tax reduction
  - Exemption for five years from the date of property acquisition
  - 50% reduction for next three years

(4) Customs duty/ special excise tax/ value-added tax

■ Subject eligible for reduction/exemption

Capital goods imported for the purpose of operating a business subject to tax incentives

※ This shall only apply to the capital goods imported in accordance with FDI through acquisition of newly issued stocks. (It shall not apply to FDI through acquisition of outstanding stocks.)

■ Period (Article 116-5 of the Special Tax Treatment Control Act)

- To be eligible for the exemption, import notification in accordance with the Customs Duties Act should be completed within three years from the date of FDI notification.
- However, in the case where FDI companies cannot file import notification within the specified period due to unavoidable reasons, such as delays in approval for factory establishment, this time period can be extended by another three years in accordance with the approval of the Minister of Finance and Economy.

■ Place: Customs house

■ Required documents

- Application form for exemption from customs duty/ special excise tax/ value-added tax
- A copy of official document verifying the business concerned is qualified for tax reduction/exemption
- A copy of a list of imported capital goods
- A copy of document verifying that the capital goods are imported as object of investment

(5) Tax reduction/exemption for capital increase (Article 121-4 of such Act)

- For a capital increase by FDI companies, same regulations as newly notified FDI shall apply with respect to tax reduction/exemption.
- For stocks which foreign investors acquire through capital transfer of reserves, asset revaluation surplus or other reserves, the reduction/exemption shall be made depending on the remainder of such reduction/exemption period and the reduction/exemption for stocks

forming a bases for such accrual.

- In the case where FDI companies file application for tax reduction/exemption by increasing its capital within five years after its substantial reduction of capital, the Minister of Finance and Economy shall make a decision on the reduction/exemption only for the ratio of FDI to net increased portion against before its capital reduction. (Article 116-6 (1) of the Enforcement Decree of the Special Tax Treatment Control Act)

3. Application for Tax Reduction/Exemption

(1) Application period (Article 121-2 (6) of the Special Tax Treatment Control Act)

■ For a new FDI: By the closing date of the tax year in which FDI companies started its business

■ For a capital increase: Within two years from the notification of capital increase

(2) Procedure

■ Institution accepting application

- Economic Cooperation Division at the Ministry of Finance and Economy (MOFE)

- Foreign investors may submit the application form for tax reduction and exemption at KISC or foreign exchange banks when filing FDI notification. In this case, the related documents shall be transferred to the MOFE.

■ Required documents

- Application form for tax reduction/exemption (3 copies; provided)
- Document explaining the technology concerned
  - Document describing products and scope of the use of services produced or provided by the technology concerned (e.g., catalogs, brochures, etc.)
  - Document describing production method and its procedures (Limited to manufacturing technology)
  - Document showing economic effects or technological performance: Matters concerning performance, quality and cost savings compared with similar products
  - Other documents showing that the technology concerned are advanced technology (e.g., Documents for industrial property rights, notes of authentication, certificates proving success of examinations, data related to technology developments, past records of technology provided to third countries.)

※ In the case where foreign investors file application for prior checking whether their intended business is eligible for tax reduction/exemption, the documents listed above should be submitted. ***For more information on such application, see pp. 39.***

(3) Determination of tax reduction/exemption by the authority

- Processing period: Within 20 days from the filing date of the application

- The Minister of Finance and Economy shall consult with the local government and with the competent minister when reviewing the application for tax reduction/exemption.

- In the case where the Minister of Finance and Economy decides to grant tax incentives, he shall notify the decision to the applicants, Commissioner of the National Tax Service, Commissioner of the Korea Customs Service and the head of the local government.

- Notification of business commencement

  FDI companies that have obtained a decision on tax reduction/exemption prior to business commencement shall make a report on business start-up to the competent District Tax Office within 20 days from the date of business commencement.

(4) Application for prior checking of tax reduction/exemption

- Foreign investors may file the application to confirm whether their intended business is subject to tax incentives before filing FDI notification.

- Procedure
  - Place: Economic Cooperation Division at MOFE
  - Period: Before filing FDI notification
  - Required documents: ☛ ***see pp. 38.***
  - Processing period: 20 days

Decision-making procedures for tax reduction/exemption

			(Within 20 days)
FDI notification (New investment or capital increase)	Application for tax reduction/exemption	Consultation with relevant government authorities	Decision on reduction/exemption
Application for prior checking of tax reduction/exemption can be made before filing FDI notification.	Application can be made simultaneously with FDI notification.		

4. Tax Exemption for Royalty on Technology Inducement (Article 121-6 of the Special Tax Treatment Control Act)

(1) Subject and period

- In the case where Korean nationals or legal entities of Korea induce advanced foreign technology critically needed to strengthen international competitiveness of domestic industry, corporate tax or income tax on royalty for technical license according to the contract shall be exempted.

- Advanced technologies subject to tax exemption shall be chosen and posted by the Minister of Finance and Economy through the review of the Foreign Investment Committee (445 items for advanced technology, 89 items for service business supporting domestic industry)

- Period of exemption: For five years from the date on which the first royalty payment is made

(2) Application

- Application period: Earlier date either the date becomes one year from the contract agreement or the date on which the first royalty payment is made

- Institutions accepting application: Government ministries in charge of the technology concerned

■ Processing period: Seven days

■ Required documents

- Application form for tax exemption respecting technology inducement
- A copy of technology inducement contract
- Documents proving technology development-related fund proving and technology is advanced technology ***(☛ For examples of such documents, see pp. 38.)***

Notification of contract agreement on technology inducement (Article 25 of the FIPA)

- Subject of notification: Contracts whose effective term or payment period for technology inducement equals or exceeds one year for the following technology

  - Advanced technology subject to tax exemptions
  - Technology concerning aircraft and spacecraft (including ground support facilities) and their components in accordance with Articles 2 (2) and (3) of the Aerospace Industry Development Promotion Act
  - Technology concerning national defense materials in accordance with Items 1, 2, 4, 6, 7 and 10, of the Article 4 (2) of the Act on Special Measures for Defense Industry

- Institutions accepting application: Ministries in charge of the technology concerned

- Processing period: On-the-spot (However, it can be seven days in the case where application for tax exemptions is made concurrently with the notification of technology inducement)

- Effective tax exemption period: A technology inducement contract shall be executed within six months from the date of notification. However, the period may be extended by approval from the Minister of Commerce, Industry and Energy.

IV. OTHER SUPPORT FOR FDI

1. Lease of National and Local Government Properties

(1) Lease of national government properties (Article 14 of the FIPA)

■ The FDI companies are offered the reduced rental fees for the properties of the national and local governments.

■ The lease period can be up to 50 years and FDI companies can construct facilities such as factories on the leased land on condition that the facilities are donated or returned to the national or local government after restoration to their original condition when the lease contract is terminated.

■ Rent reduction or exemption

- Qualifying FDI companies locate in the government property are eligible for rent reduction or exemption

- Criteria

  - Businesses subject to exemption:

    - FDI companies locating in FIZ
    - Companies in advanced technology businesses making FDI equals or exceeds US$1 million and locating in industrial complex reserved exclusively for FDI companies (Foreign Investors' Industrial Complex)

  - Businesses subject to reduction up to 75%:

    - Manufacturing companies locating in Foreign Investors' Industrial Complex making FDI equals or exceeds US$10 million
    - Companies that contribute substantially to assured supply of social overhead capital, adjustment of industrial structure or financial independence of local governments, which are designated by the Foreign Investment Committee

  - Businesses subject to reduction up to 50%:

    - Companies carrying advanced technology locating in National Industrial Complex throughout the nation making FDI equals or exceeds US$1 million
    - Manufacturing companies making FDI equals or exceeds US$10 million

(2) Lease of local government properties (Article 13 of the FIPA)

- Rental period: Up to 50 years same as national government properties

- Businesses eligible for rent reduction/exemption for properties owned by local governments and the rate for such reduction/exemption shall be decided by ordinances of the local government concerned.

(3) Sale of national and local government properties

- With respect to the sale of national or local government properties to FDI companies, the purchase price may be paid by installment in the case where lump-sum payment for the price is considered difficult to be paid by the purchaser. In this case, applied interest rate is less than 4% per annum.

  - National government properties: The payment may be extended up to one year, or the period for the installment payments may be allowed for 20 years.
  - Local government properties: The payment period shall be extended, or installment payments must be allowed according to the ordinances of the local government concerned.

Procedures for rent reduction/exemption for public properties

- For national government properties

Application filed by FDI companies	→	National Property Management Office	→	Decision on rent reduction/exemption

※ Documents required for application for rent reduction/exemption

- Documents verifying that the business concerned is subject to rent reduction/exemption
- A copy of lease contract

- For local government properties

Application filed by FDI companies	→	Local government	→	Decision on rent reduction/exemption

2. FDI-related Civil Affairs Administration

(1) Types of civil applications

The Foreign Investment Promotion Act (FIPA) stipulates three types of civil applications for foreign investors. So those who engage in FDI activities in Korea can request KISC to take care of FDI-related civil applications stipulated in the FIPA.

- On-the-spot processing of permits and approvals *(a.k.a. Civil petitions to be treated directly)*
- Comprehensive processing of permits and approvals necessary for investment projects *(a.k.a. Civil petitions to be treated in bulk)*
- Individual processing of permits and approvals *(a.k.a. Civil petitions to be treated individually)*

(2) Processing of civil applications

On-the-spot processing of permits and approvals

■ Concept (Article 17.2 of the FIPA)

Civil applications may be processed directly by the officials seconded to KISC from government ministries as stipulated in the FIPA; therefore, when foreign investors need to take care of the civil applications described below (7), they can file the application at KISC.

■ Application types and processing periods: Attachment 1 of the Enforcement Decree

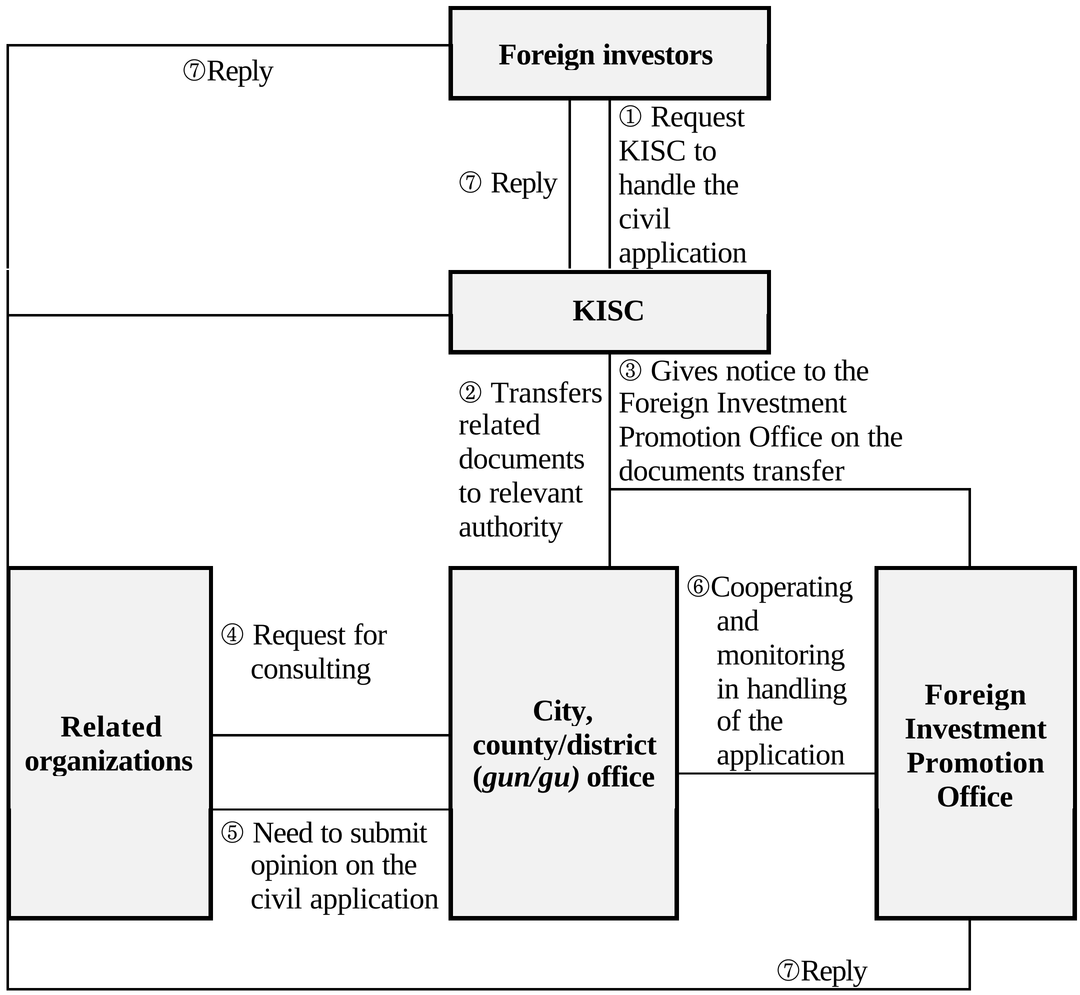
Types of Civil Applications	Legal Bases	Processing Periods
1. Confirmation on completion of FDI in kind	Article 30 (3) of the FIPA	On-the-spot
2. Granting of status of sojourn	Article 23 of the Immigration Control Act	On-the-spot
3. Permission for changes of status of sojourn	Article 24 (1) of the Immigration Control Act	On-the-spot
4. Permission on extension of sojourn period	Article 25 of the Immigration Control Act	On-the-spot
5. Permission for reentry	Article 30 (1) of the Immigration Control Act	On-the-spot
6. Report on modification in foreigner registration matters	Article 35 of the Immigration Control Act	On-the-spot
7. Business registration	Article 5 of the Value-added Tax Act	7 days

Comprehensive processing of permits and approvals necessary for investment projects

■ Concept (Article 17.3 of the FIPA)

This type of civil applications is divided into 5 main categories and for each main category, there are supplementary approvals attached to the main approval/permission. If the main approval/permission is made, it is regarded that those attached to the main approval/permission are automatically made. (Article 17.1 of the FIPA)

■ Procedure



① Foreign investors may request KISC to prepare and submit the required documents for approval/permission to the competent authority. (Applicants may submit the applications directly to the authority.)

② KISC transfers the documents to the city/county/district office.

③ KISC shall notify the Foreign Investment Promotion Office of a transfer of the documents.

The Foreign Investment Promotion Office may be established in cities and provinces to actively facilitate FDI, and to provide an effective assistance with respect to permissions, approvals, licenses, sanctions, designations, notifications, suggestions and agreements relating to FDI.

④ The head of the authority in charge of processing the civil application shall promptly consult with the head of related organizations, and the head of such organizations, if consulted, shall submit the opinions within the specified time period.

⑤ Where the head of related organizations disagrees with the application, the head shall notify the reasons therefor, and should there be no response to the application within the time period stipulated by the FIPA, the organizations shall be regarded as having no negative opinions.

⑥ Foreign Investment Promotion Office shall check upon the processing of the application, and if necessary, provide assistance in a processing of the application.

⑦ If the civil application is rejected, the reasons and legal basis of the rejection must be reported in writing to the foreign investors concerned.

■ Matters to be noted

- All civil applications shall be processed within the specified period, and in the case where such application is not handled within the period, FDI application for approval/permission shall be regarded as being granted on the following day of the expiration date for the processing period. (Article 17.5 of the FIPA)

- In the case where the applied documents are incomplete, such as lacking attached documents, the head of relevant authority may grant permission in advance on condition that such documents will be provided later. (Article 17.10 of the FIPA)

- In the case where foreign investors submit documents verifying the elimination of reasons for the rejection, thus meeting approval requirements, the head of relevant authority shall approve the originally requested application within three days from the submission of the said documents. In such case, the said head or officials shall not reject the re-submitted application for the same reasons as the first application. (Article 17.7 of the FIPA)

- Matters not stipulated in the FIPA or the Enforcement Decree regarding the processing of the application for approval/permission shall be governed by the laws concerning the processing of civil applications. (Article 24 of the Enforcement Decree)

■ Application types (Attachment 1 of the FIPA; Attachment of 2 of the Enforcement Decree)

Main approval/permission	Supplementary approvals/ permission	Required documents
Type 1. Approvals of factory establishment pursuant to Article 13 (1) of the Industrial Placement and Factory Construction Act	26 approvals in accordance with 16 individual acts	**Applications for approvals of factory establishment, etc.** - A copy of business plans - A copy of cadastral map indicating a planned site of the factory establishment - A copy of a legal statement regarded as permission for factory establishment - A copy of a document stating the right to use land and building (Limited to a case wherein the application for factory establishment through a use of existing building is submitted)
Type 2. Approvals of business plans pursuant to Article 21 of the Support for Small and Medium Enterprise Establishment Act	26 approvals in accordance with 14 individual acts	**Applications for approvals of business plans, etc.** - A copy of business plans (Limited to a case wherein the application for approval is submitted) - A copy of a document stating modification in the business plans and reasons (Limited to a case wherein the application for approval of the modification is submitted) - A copy of a document described the original contents of the business plans and modified contents (Limited to a case wherein the application for approval of the modification is submitted) - A copy of a legal statement regarded as permission for business plans A copy of a document stating FDI ratio (Limited to a case wherein the application to receive the levy reductions or exemptions for transfer of use in agricultural areas, etc.) - A copy of a document stating FDI ratio (Limited to a case wherein the application to receive they levy reductions or exemptions for diverting the use of land)

Type 3. Permissions for construction pursuant to Article 8 of the Building Act	27 approvals in accordance with 17 individual acts	**Applications for construction permission** - A document proving the land size for building construction and the land ownership or the right to use such land - A copy of basic blueprint of the building (including an outline of the building) - A copy of a legal statement regarded as approval for construction permission - A copy of the document stating FDI ratio (Limited to a case wherein the application to receive the levy exemption or reductions for transfer of use of agricultural areas, etc.)
Type 4. Permissions for wastewater discharge facilities pursuant to Article 10 of the Water Quality Conservation Act (Permissions for facilities of air pollutant discharge pursuant to Article 10 of the Clean Air Conservation Act where there is no wastewater discharge facility	7 approvals in accordance with 6 individual acts	**Applications for approvals of installation of discharge facilities** - A copy of flow chart of operation process of facilities - A copy of a legal statement regarded as permission for wastewater or air pollutant discharge facilities
Type 5. Approvals of use of building pursuant to Article 18 of the Building Act	12 approvals in accordance with 11 individual acts	**Applications for approvals of building, etc.** - A copy of a report on the completion of construction supervision - A copy of blueprint (Limited to a case required to report pursuant to Article 9 (1) of the Construction Act)

NOTE: Processing period to acquire approvals or permissions described above is between 7 to 30 days depending on the application.

Individual processing of permits and approvals

■ Concept (Article 24.2 of the Enforcement Decree)

Civil applications that require approvals and permissions may be processed by individual cases in accordance with the relevant laws.

■ Procedure

With regard to the *96 individual processing of permits and approvals* stipulated in the FIPA, those who engage in foreign direct investment (FDI) activities in Korea can request *Investment Consulting Office* at KISC to take care of their civil petitions (Article 17 (3) of the FIPA).

☛ ***For the complete list of individual processing of permits and approvals, please visit Cyber KISC at*** www.kisc.org**.**

3. Others

- In the case where FDI companies divert or change agricultural land or forest conservation areas for the purpose of establishing factories, such companies may enjoy levy reduction/exemption for diverting the use of land. The scope of the FDI companies qualified for such reduction/exemption as well as the ratio thereof shall be determined by the Enforcement Decree. (Article 17.12 of the FIPA)

- FDI companies may allot dividends by or with newly issued stocks up to the amount equivalent to the total amount of the dividends determined by the special resolution pursuant to Article 434 of the Commercial Act notwithstanding Article 462-2 (1) of the same Act prohibiting share dividends from exceeding 1/2 of the total profits. (Article 30 (2) of the FIPA)

- In the case where technology evaluation institutions stipulated by the Enforcement Decree evaluates the price of industrial property rights invested as object of investment, such evaluation shall be regarded as appraised by certified evaluators pursuant to Article 299-2 of the Commercial Act. (Article 30.4 of the FIPA)

< APPENDIX >

FDI-related Notification and Application Form

[Form No. 1] --
Foreign Investment Notification Form for the Acquisition of Newly Issued Stock

[Form No. 2] --
Notification Form of a Change in Content of Foreign Investment in regards to the Acquisition of Newly Issued Stock

[Form No. 3] --
Foreign Investment Notification Form/Authorization Application Form for the Acquisition of Outstanding Stock

[Form No. 4] --
Notification Form/Authority Application Form for a Change in Content of Foreign Investment in regards to the Acquisition of Outstanding Stock

[Form No. 5] --
Notification Form for Stock or Share Acquisition

[Form No. 6] --
Notification Form/Change in Content Form of a Foreign Investment Made in the Form of a Long-term Loan

[Form No. 80] --
Application Form for Tax Reduction or Exemption/Application Form in regards to a Change in Content of Tax Reduction or Exemption

[Form No. 81] --
Application Form for Prior Checking of Tax Reduction or Exemption

[Form No. 83] --
Application Form for Exemption from Customs Duty, Special Consumption Tax and Value-added Tax

[Form No. 22] --
Notification Form for the Transfer/Reduction of Stock or Shares