

Korea, Republic of

Foreign Investment Promotion Act (1999)

Note

The Investment Laws Navigator is based upon sources believed to be accurate and reliable and is intended to be up-to-date at the time it was generated. It is made available with the understanding that UNCTAD is not engaged in rendering legal or other professional services. To confirm that the information has not been affected or changed by recent developments, traditional legal research techniques should be used, including checking primary sources where appropriate. While every effort is made to ensure the accuracy and completeness of its content, UNCTAD assumes no responsibility for eventual errors or omissions in the data.

The year indicated in brackets after the title of the law refers to the year of publication in the Official Gazette or, when this is not available, the year of adoption of the law.

Contents

CHAPTER I GENERAL PROVISIONS

CHAPTER II PROCEDURES FOR FOREIGN INVESTMENT

Foreign Investment Promotion Act

[Enforcement Date 26. Jul, 2017.] [Act No.14839, 26. Jul, 2017., Amendment by Other Act]

CHAPTER I GENERAL PROVISIONS

Article 1 (Purpose)

The purpose of this Act is to promote foreign investment in Korea by providing necessary support and benefit and to contribute to the sound development of the nation's economy.

[This Article Wholly Amended by Act No. 9374, Jan. 30, 2009]

Article 2 (Definitions)

(1) The terms used in this Act are defined as follows: <Amended by Act No. 13854, Jan. 27, 2016>

1. The term "foreigner" means an individual with a foreign nationality, a corporation established in accordance with a foreign law (hereinafter referred to as "foreign corporation"), or an international economic cooperative organization prescribed by Presidential Decree;

2. The term "national of the Republic of Korea" means an individual who has the nationality of the Republic of Korea;

3. The term "Korean corporation" means a corporation established in accordance with the Acts of the Republic of Korea;

4. The term "foreign investment" means any of the following:

(a) Where a foreigner holds stocks or shares (hereinafter referred to as "stocks, etc.") of a Korean corporation (including a Korean corporation in the process of establishment; hereafter the same shall apply in (i) below) or a company run by a national of the Republic of Korea, as prescribed by Presidential Decree, by any of the following methods in order to establish a continuous economic relationship with the Korean corporation or company, such as participating in the management of such Korean corporation or company in accordance with this Act:

(i) Acquisition of stocks, etc. newly issued by the Korean corporation or company run by the national of the Republic of Korea;

(ii) Acquisition of stocks, etc. previously issued by the Korean corporation or company run by the national of the Republic of Korea (hereinafter referred to as "existing stocks, etc.");

- (b) A loan with maturity of not less than five years (based on the loan maturity prescribed in the first loan contract), which is provided to a foreign-capital invested company by any of the following entities:
- (i) The overseas parent company of the foreign-capital invested company;
 - (ii) A company that has a capital investment relationship prescribed by Presidential Decree with the company prescribed in (i);
 - (iii) A foreign investor;
 - (iv) A company that has a capital investment relationship prescribed by Presidential Decree with the investor prescribed in (iii);
- (c) Where a foreigner contributes to a nonprofit corporation pursuant to this Act in order to establish a continuous cooperative relationship with the corporation which satisfies the standards prescribed by Presidential Decree in terms of research personnel, facility, etc. and which is a corporation (including a corporation in the process of establishment) of the Republic of Korea in the field of science and technology;
- (d) Other contributions to a non-profit corporation by a foreigner, which the Foreign Investment Committee established under Article 27 (hereinafter referred to as the "Foreign Investment Committee") recognizes as a foreign investment in accordance with the standards prescribed by Presidential Decree regarding the business contents, etc. of the non-profit corporation;
5. The term "foreign investor" means a foreigner who holds stocks, etc. or has contributed as prescribed by this Act;
6. The term "foreign-capital invested company or foreigner-contributed nonprofit corporation" means a company in which a foreign investor has invested, or a nonprofit corporation to which a foreign investor has contributed;
7. The term "operator of establishments built to improve a foreign-investment environment" means any person who operates establishments prescribed by Presidential Decree, including schools and medical institutions for foreigners, in order to improve a foreign investment environment;
8. The term "object of investment" means any object in which a foreign investor invests in order to hold stocks, etc. under this Act, and which is any of the following:
- (a) A means of international payment as defined under the Foreign Exchange Transactions Act or a means of domestic payment incurred by the exchange of such a means of international payment;
 - (b) Capital goods;
 - (c) Proceeds from the stocks, etc. acquired under this Act;
 - (d) Industrial property rights, intellectual property rights prescribed by Presidential Decree, other technologies corresponding thereto, and rights pertaining to the use of such rights or technologies;

(e) Where a foreigner closes his/her own branch company or office in Korea and converts the branch company or office into another domestic corporation, or where a domestic corporation, the stocks of which are held by a foreigner, is dissolved, the residual property to distributed to the foreigner upon liquidation of such branch company, office, or corporation;

(f) The amount of redemption of loans referred to in subparagraph 4 (b) or of other loans from foreign countries;

(g) Stocks prescribed by Presidential Decree;

(h) Real estate located in Korea;

(i) Other means of domestic payment prescribed by Presidential Decree;

9. The term "capital goods" means machinery, apparatus, facilities, equipment, parts, and accessories as industrial facilities (including vessels, motor vehicles, aircraft, etc.), livestock, breeds or seeds, trees, fish and shellfish which are necessary for the development of agriculture, forestry, and fisheries, raw materials and reserve stocks deemed necessary by the competent Minister (referring to the head of the central administrative agency in control of the project concerned; hereinafter the same shall apply) for the initial test (including pilot projects) of the facilities concerned, and the fees for transportation and insurance required for the introduction thereof and other know-how or service necessary therefor;

10. Deleted. <by Act No. 13854, Jan. 27, 2016>

(2) For the purposes of this Act, the provisions of this Act concerning foreigners shall apply to individuals prescribed by Presidential Decree among nationals of the Republic of Korea who hold permanent residency in a foreign country. <Amended by Act No. 13854, Jan. 27, 2016>

[This Article Wholly Amended by Act No. 9374, Jan. 30, 2009]

[...]

CHAPTER II PROCEDURES FOR FOREIGN INVESTMENT

Article 5 (Reporting on Foreign Investment)

(1) A foreigner (including specially related personnel prescribed by Presidential Decree in cases falling under Article 2 (1) 4 (a) (ii); hereafter in this Article the same shall apply) who intends to make a foreign investment by either of the methods provided for in the items of Article 2 (1) shall, in advance, report thereon to the Minister of Trade, Industry and Energy, as prescribed by Ordinance of the Ministry of Trade, Industry and Energy.

(2) Notwithstanding paragraph (1), a foreigner who intends to make a foreign investment by any of the following methods may report thereon within 60 days from the acquisition of stocks, etc.:

1. Where the foreigner acquires existing stocks, etc. issued by a listed stock corporation under the Financial Investment Services and Capital Markets Act (excluding public purpose corporations defined under Article 152 (3) of the same Act and corporations that are restricted from acquiring stocks under separate Acts);
2. Where a foreign investor acquires stocks, etc. issued upon capitalizing reserves, revaluation reserves, or other reserves prescribed by Acts and other statutes of the relevant foreign-capital invested company;
3. Where a foreign investor acquires stocks, etc. of a surviving corporation or a newly incorporated corporation after a merger, all-inclusive stock swap or transfer, or spinoff by means of stocks he/she is holding at the time of the relevant foreign-capital invested company's merger, all-inclusive stock swap or transfer with another company, or spinoff;
4. Where a foreigner acquires stocks, etc. of a foreign-capital invested company registered under Article 21 by means of purchase, inheritance, testamentary gift, or gift from a foreign investor;
5. Where a foreign investor acquires stocks, etc. by investing the proceeds from the stocks, etc. acquired under the Acts of the Republic of Korea;
6. Where a foreigner acquires stocks, etc. using convertible bonds, exchangeable bonds, stock depositary receipts, and such similar ones as bonds or receipts that may be converted into, taken over as, or exchanged for stocks, etc.

(3) Of the details reported under paragraph (1) or (2), where any of the matters prescribed by Ordinance of the Ministry of Trade, Industry and Energy, such as the foreign investment ratio (referring to the ratio of the stocks, etc. owned by a foreign investor to the total stocks, etc. of a foreign-capital invested company; hereinafter the same shall apply), is modified, a foreigner may reflect such modified matter when reporting to Minister of Trade, Industry and Energy.

(4) Upon receipt of a report filed under paragraphs (1) through (3), the Minister of Trade, Industry and Energy shall issue a certificate of completion of report to the relevant person without delay.

[This Article Wholly Amended by Act No. 13854, Jan. 27, 2016]

Article 6 (Permission of Foreign Investment, etc.)

(1) A foreigner (including specially related persons prescribed by Presidential Decree) who intends to make a foreign investment in a defense industry company prescribed by Presidential Decree by the method provided in Article 2 (1) 4 (a) (ii) shall obtain permission from the Minister of Trade, Industry and Energy in advance, as prescribed by Ordinance of the Ministry of Trade, Industry and Energy, notwithstanding Article 5 (1) and (2). The same shall also apply where the foreigner intends to modify any permitted details prescribed by Ordinance of the Ministry of Trade, Industry and Energy, such as the foreign investment ratio.

(2) Upon receipt of an application for permission filed under paragraph (1), the Minister of Trade, Industry and Energy shall determine whether to grant permission or not, and notify the relevant applicant of his/her determination within a period prescribed by Presidential Decree.

(3) The Minister of Trade, Industry and Energy shall consult with the competent Minister before determining whether to grant permission or not under paragraph (2), as prescribed by Presidential Decree.

(4) The Minister of Trade, Industry and Energy may impose conditions on permission granted under paragraph (2) if deemed necessary to do so.

(5) No one who has acquired existing stocks, etc. without obtaining permission under paragraph (1) or in violation of conditions imposed under paragraph (4) shall exercise his/her voting rights in such existing stocks, etc.

(6) The Minister of Trade, Industry and Energy may order a person who has acquired existing stocks, etc. without obtaining permission under paragraph (1) or in violation of conditions imposed under paragraph (4) to transfer such existing stocks, etc. to a third party, as prescribed by Presidential Decree.

(7) Except as otherwise specifically provided for in paragraphs (1) through (6), matters necessary for permission of foreign investment shall be prescribed by Presidential Decree.

[This Article Wholly Amended by Act No. 13854, Jan. 27, 2016]

Articles 7 through 8-2 Deleted. <by Act No. 13854, Jan. 27, 2016>

[...]

* * *