

Korea, Republic of

Enforcement Decree of the Foreign Investment Promotion Act (1999)

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Enforcement Decree of the Foreign Investment Promotion Act

[Enforcement Date 30. Mar, 2017.] [Presidential Decree No.27972, 29. Mar, 2017.,
Amendment by Other Act]

CHAPTER I GENERAL PROVISIONS

Article 1 (Purpose)

The purpose of this Decree is to prescribe matters delegated by the Foreign Investment Promotion Act and matters necessary for the enforcement thereof.

[This Article Wholly Amended by Presidential Decree No. 21657, Jul. 30, 2009]

Article 2 (Definitions of Foreign Investment, etc.)

(1) "International economic cooperative organization prescribed by Presidential Decree" in Article 2 (1) 1 of the Foreign Investment Promotion Act (hereinafter referred to as the "Act") means:

1. An agency that conducts foreign economic cooperation affairs on behalf of a foreign government;
2. An international organization that deals with affairs concerning development finance, such as the International Bank for Reconstruction and Development, the International Financial Corporation, and the Asia Development Bank;
3. An international organization that deals with affairs concerning foreign investment, whether for itself or others.

(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 by Presidential Decree No. 22426, Oct. 5, 2010; Presidential Decree No. 27406, Jul. 28, 2016>

1. Where a foreigner owns at least 10/100 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 director, 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.

(3) "Investment amount" in the main sentence of paragraph (2) means the acquisition price of stocks, etc. (including where a foreign investor owns stocks as a foreign-capital invested company capitalizes the earned surplus reserve under Article 458 of the Commercial Act, pursuant to Article 461 of the same Act) and, where two or more foreigners make a joint investment, it means an amount invested by each person. In such cases, if a decrease in the amount of stocks, etc. held by a foreign investor is made due to capital reduction without any refund of the foreign-capital invested company, the investment amount at the time of acquisition of stocks, etc. shall be deemed to remain unchanged. <Newly Inserted by Presidential Decree No. 22426, Oct. 5, 2010; Presidential Decree No. 26803, Dec. 30, 2015>

(4) "Company that has a capital investment relationship prescribed by Presidential Decree" in Article 2 (1) 4 (b) (ii) of the Act means:

1. A company that holds at least 50/100 of the total number of issued stocks, or of the total equity investment of, its overseas parent company;
2. A foreign-capital invested company that holds at least 50/100 of the total number of issued stocks, or of the total equity investment of which, is held by its overseas parent company, and which is either of the following:
 - (a) Company that holds at least 10/100 of the total number of issued stocks, or of the total equity investment of, its overseas parent company;
 - (b) Company, at least 50/100 of the total number of issued stocks, or of the total equity investment of which, is held by its overseas parent company or a company referred to in subparagraph 1.

(5) "Company that has a capital investment relationship prescribed by Presidential Decree" in Article 2 (1) 4 (b) (iv) of the Act means a company, at least 50/100 of the total number of issued stocks, or of the total equity investment of which, is held by a foreign investor who holds at least 50/100 of the total number of issued stocks, or of the total equity investment of a foreign-capital invested company.

(6) "Standards prescribed by Presidential Decree" in Article 2 (1) 4 (c) of the Act means where a foreigner contributes at least 50 million won, accounting for at least 10/100 of the total amount of contributions to a nonprofit corporation that meets all of the following requirements: <Amended by Presidential Decree No. 24585, Jun. 11, 2013; Presidential Decree No. 27406, Jul. 28, 2016>

1. It shall have an independent research facility;
2. It shall meet either of the following requirements:
 - (a) At least five regular workers defined under Article 11 of the Labor Standards Act (hereinafter referred to as "regular worker") with a bachelor's degrees in the fields of science and technology and at least three years' research career, or with a master's or higher degree in the fields of science and technology;
 - (b) Engaging in research and development activities in the fields of natural science or engineering pursuant to the Korean Standard Industrial Classification prepared and publicly announced by the Commissioner of the Statistics Korea under Article 22 of the Statistics Act (hereinafter referred to as "Korean Standard Industrial Classification").

(7) "Standards prescribed by Presidential Decree" in Article 2 (1) 4 (d) of the Act means where a foreigner contributes at least 50 million won, accounting for at least 10/100 of the total amount of contributions to a nonprofit corporation that is either of the following: <Amended by Presidential Decree No. 27406, Jul. 28, 2016>

1. Nonprofit corporation that has been established with the purposes of promotion, etc. of science, art, medical services, or education, and continuously performs projects for developing experts in the relevant fields and for expanding international exchanges;
2. Local headquarters of an international organization performing international cooperation projects between civilians or governments.

(8) "Establishments prescribed by Presidential Decree" in Article 2 (1) 7 of the Act means:
<Amended by Presidential Decree No. 24442, Mar. 23, 2013>

1. A foreigners' school established under Article 60-2 of the Elementary and Secondary Education Act;
2. A general hospital, hospital, dental hospital, oriental medical hospital, intermediate care hospital, medical clinic, dental clinic, oriental medical clinic, and midwifery clinic referred to in Article 3 (2) of the Medical Service Act;
3. A pharmacy defined under subparagraph 3 of Article 2 of the Pharmaceutical Affairs Act;
4. Detached housing and multi-family housing referred to in subparagraphs 1 and 2 of attached Table 1 of the Enforcement Decree of the Building Act;
5. Other facilities determined and publicly announced by the Minister of Trade, Industry and Energy following deliberation by the Foreign Investment Committee (hereinafter referred to as the "Foreign Investment Committee") established under Article 27 of the Act, such as a business incubation center for foreign investors.

(9) "Intellectual property rights prescribed by Presidential Decree" in Article 2 (1) 8 (d) of the Act means any rights used in the industrial activities among copyrights registered under the Copyright Act and the layout-design rights defined under subparagraph 5 of Article 2 of the Act on the Layout-Designs of Semiconductor Integrated Circuits.

(10) "Stocks prescribed by Presidential Decree" in Article 2 (1) 8 (g) of the Act means the following:

1. Stocks of foreign corporations listed on foreign securities markets;
2. Stocks owned by foreigners under the Act or the Foreign Exchange Transactions Act.

(11) "Means of domestic payment prescribed by Presidential Decree" in Article 2 (1) 8 (i) of the Act means proceeds from the sale of stocks, etc. and real estate of a Korean corporation or a company run by a national of the Republic of Korea, held by a foreigner pursuant to the Act and the Foreign Exchange Transactions Act.

[This Article Wholly Amended by Presidential Decree No. 21657, Jul. 30, 2009]

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CHAPTER II PROCEDURES FOR FOREIGN INVESTMENT

Article 6 (Reporting on Foreign Investment, etc.)

(1) "Specially related persons prescribed by Presidential Decree" in Article 5 (1) and the forepart of Article 6 (1) of the Act means any of the following persons:

1. Spouse and lineal ascendants and descendants of the relevant foreigner (including lineal ascendants and descendants of the spouse of the relevant foreigner);
2. A foreign corporation where the relevant foreigner and persons in such relationship as prescribed in subparagraph 1 or 3 together hold at least 50/100 of the total number of issued stocks or the total equity investment, or a foreign corporation virtually controlled by the relevant foreigner and said persons;

3. Employees of the relevant foreigner and persons prescribed in subparagraph 2 or 4 (referring to executives in the case of a corporation; in the case of an individual, they shall refer to trade employees, other employed persons through an employment contract, or persons who maintain their livelihood by means of money or property of the individual);
4. A foreign corporation where such a corporation prescribed in subparagraph 2, the relevant foreigner, and persons prescribed in subparagraphs 1 and 3 together hold at least 50/100 of the total number of issued stocks or the total equity investment.

(2) Where a report on modification filed under Article 5 (3) of the Act contains matters concerning early redemption of loans, the Minister of Trade, Industry and Energy shall, without delay, notify the details of such report to the Commissioner of the National Tax Service, the Commissioner of the Korea Customs Service, the Special Metropolitan City Mayor, Metropolitan City Mayors, the Metropolitan Autonomous City Mayor, Do Governors, and the Special Self-Governing Province Governor (hereinafter referred to as "Mayor/Do Governor"). In such cases, the Mayors/Do Governors shall, without delay, notify the head of the agency that manages the relevant foreign investment zone of the details, as prescribed in Article 18 (5) of the Act.

[This Article Wholly Amended by Presidential Decree No. 27406, Jul. 28, 2016]

Article 7 (Permission of Foreign Investment, etc.)

- (1) "Defense industry company prescribed by Presidential Decree" in Article 6 (1) of the Act means a defense industry company defined under subparagraph 9 of Article 3 of the Defense Acquisition Program Act.
- (2) The processing period for determining whether to grant permission pursuant to Article 6 (2) of the Act shall be 15 days from the date of receiving an application for permission: Provided, That such processing period may be extended by up to 15 days only on one occasion in inevitable circumstances.
- (3) Where the Minister of Trade, Industry and Energy deems that an application for permission for foreign investment filed under Article 6 (1) of the Act needs supplementing or correcting, he/she may require the relevant applicant to supplement or correct the application within a prescribed period for such supplement or correction. In such cases, the period spent for supplementing or correcting any information on the application shall be disregarded for the purpose of calculating the processing period referred to paragraph (2).
- (4) The Minister of Trade, Industry and Energy shall request the Minister of National Defense to consult on an application for permission for foreign investment under Article 6 (1) of the Act pursuant to paragraph (3) of the same Article, and the Minister of National Defense in receipt of such request for consultation shall present his/her opinions on the application to the Minister of Trade, Industry and Energy within ten days of receipt of such request.
- (5) Where the Minister of National Defense in receipt of the request pursuant to paragraph (4) deems that defense materials produced by a defense industry company applied for permission are replaceable by products of other domestic companies or that granting permission will not significantly affect national security, he/she shall consent to granting of such permission.

(6) In presenting his/her opinions under paragraph (4), the Minister of National Defense may request that the Minister of Trade, Industry and Energy grant permission on either of the following conditions:

1. Conditions necessary for continuous production of the relevant defense materials and for the maintenance of security;
2. The condition of dividing and selling defense industry facilities defined under subparagraph 11 of Article 3 of the Defense Acquisition Program Act (hereinafter referred to as “defense industry facilities”) to a national of the Republic of Korea or a Korean corporation.

(7) Where permission is granted on the condition prescribed in paragraph (6) 2, a foreigner who has acquired the existing stocks, etc. before the sale of the defense industry facilities completes shall not participate in the management of the relevant defense industry company.

(8) Pursuant to Article 6 (6) of the Act, the Minister of Trade, Industry and Energy shall order a person who has acquired existing stocks, etc. in violation of Article 6 (1) or (4) of the Act to transfer such existing stocks, etc. to a national of the Republic of Korea or a Korean corporation within one month from the date he/she becomes aware of the violation. In such cases, the period for transfer shall be determined by the Minister of Trade, Industry and Energy within six month and such period may be extended by up to six months where it is acknowledged that inevitable circumstances arise.

[This Article Wholly Amended by Presidential Decree No. 27406, Jul. 28, 2016]

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