

Guide to Beneficial Ownership Information: Legal Entities and Legal Arrangements

The purpose of this country-specific guide is to provide assistance to investigators on the type of information that is available on the natural persons who control legal persons and arrangements, such as companies and trusts, or otherwise play an important role in a legal person and arrangement in **Korea**, and the conditions that need to be met to be able to access such information. For ease of reference, the Contents of the guide are listed below.

Contents

| | |
|--|----|
| Contents | 1 |
| I. Definitions and Company Formation Process | 2 |
| II. Types of Legal Entities..... | 6 |
| Stock companies (and other companies under the Commercial Act) | 6 |
| Incorporated Associations | 6 |
| Incorporated Foundations | 7 |
| III. How to Access Information..... | 8 |
| Registries | 8 |
| Registry update..... | 8 |
| Other Channels..... | 10 |
| IV. Other Useful Sources of Information..... | 12 |

I. Definitions and Company Formation Process

1. What is the definition of legal ownership in Korea?

In a stock company, shareholders have rights in proportion to the numbers which he/she has paid for his/her shares. In a partnership company, each of the members shall represent the company and if the assets of a company are insufficient to fully repay its obligations, all the members shall be jointly and severally liable for the repayment of the obligations. A limited partnership company shall be composed of both unlimited liability members and limited liability members. In limited liability company and limited company, the liability of a member shall be limited to the amount of his/her investment.

2. What does “beneficial ownership” mean in Korea?

Article 5-2 of Act on Report on, and the Use of Specific Financial Transaction Information requires financial institutions to identify the beneficial owner of a customer that is a legal person or an entity. The term beneficial owner is defined in the revised Presidential Enforcement Decree¹ of the above Act as:

1. The natural person who owns 25% or more of shareholdings in a legal person or entity
2. Where there is doubt as to whether the person identified under 1. is the beneficial owner or where there is no natural person who has 25% or more of shareholdings, the natural person who exercises control of the legal person or entity through other means
3. Where there is no natural person identified under 2., the chief executive of the legal person or entity.

3. How are legal entities (companies, partnerships, foundations, etc.) formed in Korea?

The incorporation process depends on the type of company.

For companies stipulated in the Commercial Act (i.e., stock company, partnership company, limited partnership company, limited liability company and limited company):

1. Founders prepare its articles of incorporation
2. Where founders subscribe to all the shares to be issued at the time of incorporation, they shall without delay make full payment of the subscription price. For investments in kind, all the asset are to be provided at the date of the payment of the subscription price.
3. Directors and auditors are appointed
4. Registration for incorporation of a stock company is made.

For incorporated associations under the Civil Act:

1. Identification of the objectives and name of the incorporated association
2. Preparation of the articles of incorporation
3. Holding of the inaugural meeting
4. Application for permission for incorporation to competent authorities
5. Requesting registration for incorporation to the competent court

For incorporated foundations under the Civil Act:

1. Receiving the asset contribution of the founder(s)

¹ The revised Presidential Enforcement Decree is expected to come into force in 2016.

2. Identification of the objectives and name of the incorporated foundation
3. Preparation of the articles of incorporation
4. Application for permission for incorporation to competent authorities
5. Requesting registration for incorporation to the competent court

4. What is the role of the Company Registries in Korea?

The company registry verifies that the conditions for the incorporation of a company are met, including the information and documents provided to support the incorporation.

5. How is basic information and information on beneficial ownership on legal entities obtained and recorded in Korea?

Article 317 of the Commercial Law² provides the list of documents and information relating to a stock company that are to be recorded in the company registry. For incorporated associations and foundations, the Civil Act lists the documents and information³ to be provided for their incorporation. Public corporations are subject to ownership information disclosure requirements⁴.

² **Commercial Law Article 317 (Registration for Incorporation)**

(1) Registration for incorporation of a stock company shall be made within two weeks from the date of completion of the procedures under Articles 299 and 300 in cases where the promoters subscribed to all the shares issued at the time of incorporation, and within two weeks from the date of closing of the inaugural general meeting or from the date of completion of the procedures under Article 314 in cases where the promoters have offered shares for subscription.

(2) For the registration under paragraph (1), the following matters shall be registered:

1. The matters listed in Article 289 (1) 1 through 4, 6 and 7;
2. The amount of the capital;
3. The total number and class of shares issued and outstanding, and the details and number of each class of shares;
- 3-2. Provisions that the transfer of shares requires the approval of the board of directors, if so determined;
- 3-3. Provisions under which stock options are granted, if so decided;
- 3-4. The place of each branch office;
4. The period of existence or reasons for dissolution of the company, if determined;
5. Deleted.
6. Retirement of shares out of profits to be distributed to shareholders, if so determined;
7. The matters listed in Article 347, if convertible shares are issued;
8. The names and resident registration numbers of inside directors, outside directors, other directors who are not engaged in regular business, auditors and executive directors;
9. The name, resident registration number and address of the representative director or executive directors;
10. Provisions that two or more representing directors or representative executive directors shall jointly represent the company, if so determined;
11. The trade name and the principal office of a transfer agent, if any;
12. The name and resident registration number of each auditor of the audit committee, if such committee has been set up.

(3) The matters prescribed in Article 289 (1) 1, 2, 6, 7 and (2) 4, 9 and 10 shall be registered for the registration in cases of establishing or relocating a new branch office at the place of such established or relocated branch office, as the case may be.

(4) The provisions of Articles 181 through 183 shall apply mutatis mutandis to the registration of a stock company.

³ **Civil Act Article 49 (Particulars to be Registered)**

(1) When the incorporation of a juristic person is permitted, the juristic person shall register its incorporation at the seat of its principal office within three weeks from the date of the permission.

(2) The particulars to be registered under the preceding paragraph shall be as follows:

1. Objective;
2. Name;

-
3. Office;
 4. Date of permission for incorporation;
 5. Period of duration or causes of dissolution, if any;
 6. Total value of the assets;
 7. Method of effecting contributions, if any;
 8. Full names and domiciles of directors; and
 9. Any restriction where restriction is placed upon the power of representation of directors.

Civil Act Article 50 (Registration for Establishment of Branch Office)

(1) When a juristic person establishes a branch office, the establishment shall be registered within three weeks at the seat of the principal office. At the seat of the branch office, the particulars under paragraph (2) of the preceding Article, shall be registered within the same period. At the seat of other branch offices, the establishment shall be registered within the same period.

(2) Where the branch office is newly established within the jurisdiction of a register office which exercises jurisdiction over the seat of the principal office, or the established branch office, only the establishment shall be registered within the period under the preceding paragraph.

Civil Act Article 51 (Registration for Transfer of Office)

(1) Where the juristic person has transferred its office, such transfer shall be registered at the seat of the former office within three weeks, and the particulars mentioned in Article 49 (2) shall be registered at the seat of the new office within the same period.

(2) Where an office has been transferred from one place to another within the jurisdiction of the same register office, only the transfer shall be registered.

Civil Act Article 52 (Registration for Alteration)

Where any alteration has occurred in any of the particulars mentioned in Article 49 (2), the registration thereof shall be made within three weeks.

Civil Act Article 52-2 (Registration of Provisional Disposition Such as Suspension of Exercise of Duties)

Where the exercise of director's duties is suspended, where a provisional disposition of appointing a proxy for duties is made, or where the provisional disposition is altered or cancelled, the registration thereof shall be made at the registry in the place where a principal office or branch office is located.

Civil Act Article 53 (Reckoning of Period for Registration)

If any of the particulars to be registered in accordance with the provisions of the preceding three Articles requires the permission of the authorities, the period for registration shall be computed from the date of the arrival of the permit in question.

Civil Act Article 54 (Effect of Registration Other than That for Incorporation and Public Notice of Particulars Registered)

(1) Particulars to be registered in this Section other than that for incorporation purposes cannot be set up against a third party until such particulars are registered.

(2) The court shall immediately give public notice of the particulars registered.

Civil Act Article 55 (Inventory of Assets and List of Members)

(1) A juristic person shall, at the time of its formation and within three months of every year, prepare an inventory of assets and keep the same in its office. Where the special business term is fixed, the inventory shall be made at the time of its formation and at the end of the business term.

(2) An incorporated association shall keep a list of members and revise the list whenever an alteration takes place in its membership.

⁴ Pursuant to Articles 159 and 160 of the Financial Investment Services and Capital Markets Act, public corporations are required to file with the Financial Services Commission annual, semi-annual and quarterly reports, which contain ownership information.

Pursuant to Article 5-2 of the Act on Report on, and Use of Specific Financial Transaction Information, financial institutions are required to obtain certain basic information (such as business name, address of the principal office and name of the representatives) as well as information on the beneficial owner of a customer that is a legal person or entity. Financial institutions are also subject to record keeping obligations of at least 5 years under the Act and related regulations.

6. How are legal arrangements (express trusts and trust-like agreements) formed in Korea?

A trust may be created in any of the following manners:

1. A contract between the settlor and the trustee
2. The will of the settlor
3. A declaration of the settlor in which the purpose, the assets and the beneficiary of the trust are specified.

7. How is information on legal arrangements obtained and recorded in Korea?

With respect to any property right that can be registered, the fact that the property belongs to trust property may contest against a third person by completing a registration thereof. With respect to any property right that cannot be registered, the fact that the property belongs to trust property may contest against a third person upon indicating that such property right is the trust property by means of the management, etc. of such property right separately from other property. According to the KoFIU, professional trustees (“trust companies”) are licensed financial institutions that are subject to AML/CFT requirements (including customer due diligence) under Act on Report on, and the Use of Specific Financial Transaction Information.

II. Types of Legal Entities

There are many types of legal entities able to be formed in **Korea**. This Guide will provide information on three commonly used entities:

Stock companies (and other companies under the Commercial Act⁵)

| Type of legal entity | Stock companies (and other companies under the Commercial Act) | |
|---|--|-----------|
| What is the minimum number of natural persons required for formation? | 1 | |
| | Yes | No |
| Is there a requirement to register with the company registry? | X | |
| Is there a requirement to provide verification for identity of natural persons (shareholders, representatives of bodies corporate and beneficial owners) | | X |
| Is there a residency requirement for directors? | | X |
| Are bearer shares/share warrants permitted? | | X |
| Is a Trust and Company Service Provider required to form? | X ¹ | |
| Is a registered agent in the jurisdiction of formation required? | | X |
| Is the entity required to hold financial account(s) in jurisdiction of formation? | | X |
| Are tax filings required in the jurisdiction of formation (even if there are no direct tax liabilities)? | | X |
| Does the jurisdiction allow for nominee directors? | | X |
| If so, are they required to disclose their status as nominee directors? | | |
| If so, are the nominee directors required to obtain information on and/ or disclose the identity of natural person(s) on whose behalf they are acting? | | |
| Does the jurisdiction allow for nominee shareholders? | | X |
| If so, are they required to disclose their status as nominee shareholders? | | |
| If so, are the nominee shareholders required to obtain information on and/ or disclose the identity of natural person(s) on whose behalf they are acting? | | |

Note:

¹ - Trust and Company Service Providers are not subject to AML/CFT obligations.

Incorporated Associations

| Type of legal entity | Incorporated Associations | |
|--|---------------------------|-----------|
| What is the minimum number of natural persons required for formation? | 2 | |
| | Yes | No |
| Is there a requirement to register with the company registry? | X | |
| Is there a requirement to provide verification for identity of natural persons (shareholders, representatives of bodies corporate and beneficial owners) | X | |
| Is there a residency requirement for directors? | | X |
| Are bearer shares/share warrants permitted? | | X |
| Is a Trust and Company Service Provider required to form? | | X |
| Is a registered agent in the jurisdiction of formation required? | | X |
| Is the entity required to hold financial account(s) in jurisdiction of formation? | X | |

⁵ There are four other types of companies under the Commercial Act: partnership companies, limited partnership companies, limited liability companies and limited company. In Korea, stock companies represent more than 90% of the companies under the Commercial Act.

| | | |
|---|---|---|
| Are tax filings required in the jurisdiction of formation (even if there are no direct tax liabilities)? | X | |
| Does the jurisdiction allow for nominee directors? | | X |
| If so, are they required to disclose their status as nominee directors? | | |
| If so, are the nominee directors required to obtain information on and/ or disclose the identity of natural person(s) on whose behalf they are acting? | | |
| Does the jurisdiction allow for nominee shareholders? | | X |
| If so, are they required to disclose their status as nominee shareholders? | | |
| If so, are the nominee shareholders required to obtain information on and/ or disclose the identity of natural person(s) on whose behalf they are acting? | | |

Incorporated Foundations

| Type of legal entity | Incorporated Foundations | |
|---|--------------------------|----|
| What is the minimum number of natural persons required for formation? | 1 | |
| | Yes | No |
| Is there a requirement to register with the company registry? | X | |
| Is there a requirement to provide verification for identity of natural persons (shareholders, representatives of bodies corporate and beneficial owners) | X | |
| Is there a residency requirement for directors? | | X |
| Are bearer shares/share warrants permitted? | | X |
| Is a Trust and Company Service Provider required to form? | | X |
| Is a registered agent in the jurisdiction of formation required? | | X |
| Is the entity required to hold financial account(s) in jurisdiction of formation? | X | |
| Are tax filings required in the jurisdiction of formation (even if there are no direct tax liabilities)? | X | |
| Does the jurisdiction allow for nominee directors? | | X |
| If so, are they required to disclose their status as nominee directors? | | |
| If so, are the nominee directors required to obtain information on and/ or disclose the identity of natural person(s) on whose behalf they are acting? | | |
| Does the jurisdiction allow for nominee shareholders? | | X |
| If so, are they required to disclose their status as nominee shareholders? | | |
| If so, are the nominee shareholders required to obtain information on and/ or disclose the identity of natural person(s) on whose behalf they are acting? | | |

III. How to Access Information

This guide will address the ability to access information on entities formed in **Korea** available in 1) registries and 2) other channels.

Registries

The registry in **Korea** is called the Registry under the Supreme Court of Korea. It is available online at www.iros.go.kr.

Contact information for the registry is provided here:

Agency: Supreme Court and its district and branch courts

In general, the following information is publicly available online (free or for a nominal fee, with no log-in requirements):

1. Name of Legal Entity
2. Entity Number (if any)
3. Type of Legal Entity
4. Date of Incorporation
5. Principal Address of Business
6. Principal Purpose of Business
7. Registered Capital
8. Officer/Director Information
9. Shareholder/Member Information
10. Articles of Incorporation
11. Annual/Biennial Reports (for listed companies)
12. Shareholder Register

Registry update

Registered entities are required to notify without delay any change in the registered information to the registry.

| | Online Access (free or for nominal fee, no log-in requirements) | Other Public Access (available in person only or via pre-registration requirement) | Law Enforcement Access only | For Information/ documents accessible only by Law Enforcement, please describe how an investigator may access information |
|---|---|--|-----------------------------|---|
| Name of Legal Entity | X | | | |
| Entity Number (if any) | X | | | |
| Type of Legal Entity | X | | | |
| Date of Incorporation | X | | | |
| Current Status (active, etc.) | | | | |
| Principal Address of Business | X | | | |
| Principal Purpose of Business | X | | | |
| Registered Capital | X | | | |
| Registered Agent Information | | | | |
| Officer/ Director Information (incl. power of representation) | X | | | |
| Shareholder/ Member Information | X | | | |
| Memorandum | | | | |
| Articles of Incorporation | X | | | |
| Application/ Certificate of Formation | | | | |
| Annual/ Biennial Reports | X | | | |
| Shareholder Register | X | | | |
| Register of Charges | | | | |
| Bank Account Information | | | | |
| Payment Records | | | | |
| Historical Documents (example: past annual filings) | | | | |

Other Channels

The explanation below outlines the channels by which foreign authorities may obtain information on legal entities, legal arrangements, or relevant persons from different sources in **Korea**.

Channels through which foreign authorities may obtain information

Legal entities/ Relevant Individuals (directors, shareholders, managers, associates, family members, etc.)

| | Information/ Intelligence Sharing Inquiry | | Explanation | Mutual Legal Assistance Request | | Explanation |
|--------------------------------------|---|----|---------------------------------|---------------------------------------|----|----------------------------|
| | Yes | No | | Yes | No | |
| Interviews with relevant Individuals | | X | Absence of relevant legislation | X | | Subject to MLA legislation |
| Records/ documents | | X | | X | | |

Legal arrangements/ relevant individuals (trustees [nonprofessional], settlers, beneficiaries, protectors, etc.)

| | Information/ Intelligence Sharing Inquiry | | Explanation | Mutual Legal Assistance Request | | Explanation |
|--------------------------------------|---|----|---------------------------------|---------------------------------------|----|----------------------------|
| | Yes | No | | Yes | No | |
| Interviews with relevant Individuals | | X | Absence of relevant legislation | X | | Subject to MLA legislation |
| Records/ documents | | X | | X | | |

Financial Institutions

| | Information/ Intelligence Sharing Inquiry | | Explanation | Mutual Legal Assistance Request | | Explanation |
|--------------------------------|---|----|---------------------------------|---------------------------------------|----|----------------------------|
| | Yes | No | | Yes | No | |
| Interviews with personnel | | X | Absence of relevant legislation | X | | Subject to MLA legislation |
| Accounts records/ documents | | X | | X | | |

Trust and Company Service Providers

| | Information/ Intelligence Sharing Inquiry | | Explanation | Mutual Legal Assistance Request | | Explanation |
|--------------------------------|---|----|------------------------------------|---------------------------------------|----|-------------------------------|
| | Yes | No | | Yes | No | |
| Interviews with personnel | | X | Absence of relevant legislation | X | | Subject to MLA legislation |
| Accounts records/ documents | | X | | X | | |

Other Designated Non-Financial Businesses and Professions

| | Information/ Intelligence Sharing Inquiry | | Explanation | Mutual Legal Assistance Request | | Explanation |
|--------------------------------|---|----|------------------------------------|---------------------------------------|----|-------------------------------|
| | Yes | No | | Yes | No | |
| Interviews with personnel | | X | Absence of relevant legislation | X | | Subject to MLA legislation |
| Accounts records/ documents | | X | | X | | |

IV. Other Useful Sources of Information

| Resource Name | Web Link |
|--|--|
| Ministry of Justice | www.moj.go.kr |
| Supreme Prosecutor’s Office | www.spo.go.kr |
| Financial Intelligence Unit | www.kofiu.go.kr |
| Ministry of Foreign Affairs | www.mofa.go.kr |
| National Police Agency | www.police.go.kr |
| The agencies listed above are relevant for companies and registration matters. | |