

NEW GROUND

U.S. Law Essentials for Korean Businesses

미국 진출을 준비하는
창업자와 임원을 위한 실용 안내서

A Practical Guide for Founders and Executives
Preparing to Expand into the U.S.



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Disclaimer

This booklet provides general information about U.S. law for South Korean businesses considering expansion. It is not legal advice. Every business situation is different, and before you act on anything in these pages, please consult a qualified attorney licensed in the relevant U.S. jurisdiction.

Introduction

Welcome and congratulations on your plans to expand into the United States. If you are reading this booklet, you have likely built a business in Korea that you would like to bring to the U.S. -- or you have created a product / service / intellectual property in Korea that you think would do well in America.

This short guide can help turn your plans into reality, and my goal is to offer up clear, practical guidance. Think of it as a friendly roadmap: complete the quick tasks first, then work with local experts on bigger items so you can grow confidently without unnecessary risk.

The United States is the largest consumer market on earth. It has deep capital markets, strong rule of law, and a culture that rewards ambition. Korean companies—from Samsung and Hyundai down to Pangyo startups—have made the crossing successfully.

But the American legal system is not the Korean legal system. In some ways, it looks familiar from the outside – but it is **FUNDAMENTALLY** different on the inside. I know the differences well. I lived in Oksu-dong, Seoul from 1996 – 1998 when I worked at a major Korean law firm with our office in Jongno-gu (near . Gyeongbokgung Palace). Since moving back to the U.S. in 1998, I have helped lots of Korean companies launch successfully in America — their New Ground.

I hope this booklet can help you, too. It covers five areas where Korean companies stumble most often: corporate structure, employment law, contracts, foreign investment regulations, and immigration.

I recommend that you read it before you form a U.S. corporation, set up a U.S. bank account, sign your first American contract or hire your first American employee. Please feel free to contact me directly if I can ever be of assistance to you.

Chapter 1: Choosing Your Corporate Structure

In Korea, you likely know the basic options. A Jusik Hoesa (주식회사) (stock corporation) or a Yuhan Hoesa (유한회사) (limited liability company). As a young lawyer advising companies entering the Korean market, it was fairly straightforward. Most serious business used the Jusik Hoesa, and the Commercial Act governed everything from a single national framework. I believe that it is still true.

America is completely different. There is no single, national commercial code. Each of the fifty states has its own corporate law.

The Main Options

American law offers several entity types. For the sake of simplicity, three matter for Korean companies entering the market.

C-Corporation

This is the closest equivalent to a Korean Jusik Hoesa. It has shareholders, a board of directors, and officers. It issues stock. If you plan to raise venture capital or eventually go public, you will likely form a C-Corporation.

During recent times, most C-Corporations with national ambitions would incorporate in Delaware, regardless of where they operate. Delaware has specialized business courts, predictable case law, and a corporate statute that gives management flexibility. About two-thirds of Fortune 500 companies are incorporated there. Now there is some movement away from Delaware to a few other states, but Delaware is still an excellent choice for most Korean businesses getting established in the U.S. in my opinion.

Limited Liability Company (LLC)

The LLC is America's most popular business entity. It provides limited liability like a corporation -- but can be taxed as a partnership. Profits and losses pass through to the owners—called members—and are taxed only once.

An LLC has no board of directors. Instead, it is governed by “Managers” or “Members”, and the rules are set out in an operating agreement. This gives enormous flexibility -- but requires careful drafting.

Branch Office vs. Subsidiary

You can also operate in the U.S. through a branch office of your Korean entity. This is simpler but exposes your entire Korean company to U.S. liability. A subsidiary—whether a C-Corp or LLC—creates a legal wall between the U.S. operations and the Korean parent.

The wall matters because the risk of lawsuits in the U.S. is much greater than in Korea.

Korea vs. U.S.: Key Differences

Issue	South Korea	United States
Governing Law	National Commercial Act	State-by-state corporate law
Dominant Entity	Jusik Hoesa (주식회사)	C-Corp (for fundraising) or LLC
Director Liability	Statutory duties under Commercial Act	Fiduciary duties (state common law)
Shareholder Suits	Derivative suits possible but less common	Very common, especially in Delaware
Formation Speed	Days to weeks, registration-heavy	Same-day in many states
Capital Requirements	Minimum capital abolished in 2009	No minimum capital requirement

Practical Steps

1. Work with a U.S. corporate attorney. I like and respect many Korean lawyers who work on U.S. legal matters, but I think you should have a U.S. lawyer who lives, works and focuses solely on American legal issues.
2. Work with your lawyer to decide whether you need a subsidiary or a branch. In almost every case, choose a subsidiary. The liability protection is worth the added complexity.
3. Choose your state of incorporation carefully. If you plan to raise institutional capital, Delaware (or perhaps Texas or a limited number of other states) is often a strong choice. If your operations will be entirely in one state and you do not plan to raise outside funding, incorporate there.
4. Set up your U.S. operations with a compliance plan in mind for banking, employment law, contract law, intellectual property licensing, immigration law, and more.

Chapter 2: Employment Law

Korean employment law protects workers. American employment law also protects workers. But the systems operate on different assumptions, and the differences will surprise you.

At-Will Employment

Here is the single most important concept for Korean employers to understand: in most U.S. states, employment is “at-will.” This means the employer can fire an employee at any time, for any reason or no reason, as long as the reason is not illegal. The employee can quit at any time, too.

Korean employment law (노동기준법, Labor Standards Act) requires just cause for termination. You must provide thirty days’ notice or thirty days’ pay. You must have a legitimate business reason. The Labor Relations Commission can review your decision.

None of that applies in America. But at-will employment is not unlimited power. Federal and state laws prohibit termination based on race, sex, religion, national origin, age, disability, and other protected categories. Wrongful termination lawsuits are common and expensive.

Anti-Discrimination Law

Title VII of the Civil Rights Act prohibits discrimination based on race, color, religion, sex, and national origin. The Americans with Disabilities Act covers disability. The Age Discrimination in Employment Act covers age. Many states add protections for sexual orientation, gender identity, marital status, and more.

Korean law has the Equal Employment Opportunity Act. But the enforcement culture differs in a fundamental way. In America, employees sue their companies quite often, and discrimination claims can result in compensatory damages, punitive damages, and attorneys’ fees.

In job interviews, for example, never ask candidates about age, marital status, children or family plans, religion, medical history, or pregnancy—these topics (and more!) are protected under U.S. anti-discrimination laws and can create legal risk even if asked unintentionally.

Train interviewers on permitted questions and keep notes strictly about skills and experience to reduce the risk of discrimination claims.

Korean companies operating in the U.S. sometimes run into trouble with language requirements. You cannot require employees to speak Korean unless it is a bona fide occupational qualification. You cannot prefer Korean nationals for positions unless the specific job genuinely requires Korean language skills or cultural knowledge.

Wages, Hours, and Benefits

The Fair Labor Standards Act sets the federal minimum wage and requires overtime pay for non-exempt employees who work more than forty hours per week. States and cities often set

higher minimums. California, New York, and Washington have particularly complex wage-and-hour laws.

In Korea, the standard workweek is forty hours, with overtime capped at twelve additional hours per week under the 52-hour workweek reform. The U.S. has no cap on hours for most workers—only requirements to pay overtime.

Health insurance is another critical area. Companies with fifty or more full-time employees must offer affordable health coverage or pay a penalty under the Affordable Care Act. Smaller companies are not required to offer insurance, but most do to attract talent. Korea's National Health Insurance system has no equivalent in the U.S. employer context.

Korea vs. U.S.: Employment Comparison

Issue	South Korea	United States
Termination Standard	Just cause required	At-will (with exceptions)
Notice Period	30 days or pay in lieu	None required (generally)
Severance	Mandatory (1 month per year)	Not required by federal law
Standard Workweek	40 hours, 52-hour max	40 hours, no federal max
Health Insurance	National Health Insurance	Employer-sponsored (50+ employees)
Discrimination Claims	Administrative process focus	Litigation-focused, large damages
Non-Compete Agreements	Generally enforceable if reasonable	Varies by state;

Equity Compensation

Equity compensation — giving employees ownership stakes or options to buy shares — is a cornerstone of U.S. high-tech startup culture. It lets early-stage companies attract talent they could not pay purely in cash.

Granting equity with things like “stock options” or “restricted stock units” is NOT for every company, and in my experience, most Korean companies do NOT do it when they first enter the U.S. market. There are many requirements to do it properly, and you will definitely want a U.S. law firm that has expertise to make sure you do everything properly.

Practical Steps

1. Establish a detailed plan for employment law compliance before you hire anyone in the U.S.
2. Review and confirm that your hiring policies are compliant. You may want to draft an employee handbook before you hire your first U.S. employee – but at a minimum, you will want to have a detailed Offer Letter for any U.S. hire so that you have a written document addressing the person’s role, responsibilities, title, pay, at-will status, and much more.
3. Avoid simply translating your Korean HR policies into English. You will need to create a completely new document in order to comply with U.S. laws and regulations.
4. Give careful attention to “employee classification” issues. The distinction between (a) “employees” and “independent contractors”, and (b) “exempt” and “non-exempt” employees matters enormously. Misclassification can often lead to back taxes, penalties, and lawsuits.
5. Explore using a Professional Employer Organization (PEO) or Employer of Record (EOR) service when you first enter the U.S. market. These organizations handle payroll, benefits, and compliance while you learn the landscape.

Chapter 3: Contracts and Commercial Agreements

Korean business culture values relationships. The contract is important, but the relationship behind it matters more. Many Korean executives view the written agreement as a starting point—a framework that can be adjusted as circumstances change.

American business culture values the contract itself. The document is the deal. What it says is what it means. If it is not in the contract, it does not exist.

This difference causes more problems for Korean companies in America than any other cultural gap.

The Parol Evidence Rule

American contract law has a doctrine called the parol evidence rule. When parties sign a written contract that is intended to be their complete agreement, courts will generally not consider prior oral discussions or earlier drafts to interpret or change the written terms.

In Korea, Article 105 of the Civil Act and the principle of good faith allow courts more flexibility to consider the parties’ true intentions beyond the written text. Korean courts may look at negotiations, course of dealing, and surrounding circumstances more freely.

The practical lesson is this:

In the United States, put everything in the contract before you sign.

Key Contract Provisions

Choice of Law and Forum

Every contract with a U.S. party should specify which state's law governs the agreement and which courts have jurisdiction over disputes. Without this clause, you may find yourself litigating in an unfavorable forum under unfavorable law.

Delaware law is common for corporate agreements. New York law is common for financial and commercial contracts. California law is common for technology agreements. Each has advantages and disadvantages.

Dispute Resolution

American litigation is expensive. Discovery—the process where each side demands documents and depositions from the other—can cost hundreds of thousands of dollars before trial even begins. Korea does not have American-style discovery.

Look into requiring arbitration for commercial disputes. The American Arbitration Association and JAMS are the leading U.S. providers. The Korean Commercial Arbitration Board (KCAB) is another option if both parties agree. Typically, arbitration is faster, more private, and cheaper than litigation.

Indemnification

American contracts routinely include indemnification clauses that would surprise Korean executives. One party agrees to cover the other party's losses, including attorneys' fees, arising from certain events. These clauses can create enormous liability. Read them carefully. Negotiate them aggressively. Understand what you are agreeing to before you sign.

Intellectual Property

If your business depends on technology or brand, your U.S. contracts should address intellectual property clearly. (For example: Who owns the IP? Who licenses it? What happens to the IP if the contract ends?)

Korean IP registered with KIPO does not automatically protect you in the U.S. You need separate U.S. registrations with the U.S. Patent and Trademark Office ("USPTO").

USPTO filings: File U.S. trademark and patent applications with the U.S. Patent and Trademark Office (USPTO). Unlike Korea (first-to-file), U.S. trademark priority is based on "first use in commerce" – but even so, it is strongly encouraged to register as early as possible.

Korea vs. U.S.: Contract Comparison

Issue	South Korea	United States
Contract Interpretation	Good faith; courts look beyond text	Strict textual interpretation
Discovery in Disputes	Limited document production	Broad, expensive discovery
Attorneys' Fees	Generally each side pays own	Each side pays own (unless contract says otherwise)
Liquidated Damages	Allowed if reasonable	Allowed if reasonable; penalty clauses disfavored
Statute of Frauds	Writing required for certain contracts	Writing required for certain contracts
Standard Form Contracts	Regulated under consumer protection laws	Enforced broadly, even controversial terms

Practical Steps

1. Have every U.S. contract reviewed by a U.S.-licensed attorney before you sign. Do not rely on English translations of Korean legal concepts. The words may be the same, but the legal meaning is often different.
2. Be sure to include a “dispute resolution clause” that fits your situation – location, governing law, mediation/arbitration/litigation.
3. Include a clear termination provision. Specify what happens to property, data, and ongoing obligations when the contract ends. American courts enforce termination clauses strictly.

Compliance & Regulation

The U.S. has no single “foreign business registration” agency. Compliance is fragmented across federal and state levels, and it is your responsibility to know which rules apply — regulators will not notify you.

- **FCPA (Foreign Corrupt Practices Act):** The FCPA bans bribing foreign government officials, even if the bribe happens outside the U.S. If your company has any U.S. connection (even just a U.S. bank account or listed securities), it applies to your global operations. Penalties are severe.

- **CFIUS (Committee on Foreign Investment in the U.S.):** If you plan to acquire a U.S. company or make a significant investment in one, CFIUS can review and block transactions that threaten U.S. national security. Critical technology, infrastructure, or data companies trigger mandatory filings. This has become significantly more active in recent years.
- **Export controls:** U.S. export control laws (EAR, ITAR) restrict the transfer of certain technologies and goods outside the U.S. — including sending them to Korean parent employees who are not U.S. persons. If your product has dual civilian/military use, get an export control review.
- **State-level rules:** You will need to register to do business in every state where you have employees or significant operations, not just your state of incorporation. Each state has its own taxes, employment rules, and reporting.

Practical Steps

1. Determine whether your business or any planned acquisition triggers CFIUS review, and implement a basic FCPA anti-bribery policy.
2. Conduct an export control review if you handle dual-use technology, and register to do business in all states where you operate.

Bank Accounts

Opening a U.S. bank account is often harder for a Korean company than expected. Many U.S. banks require in-person visits, certified corporate documents, board of director resolutions, and/or “know your customer” questionnaires -- and this can be difficult. But, of course, you will need a U.S. bank account for your normal operations.

Chapter 4: Foreign Investment Regulations

The United States is generally open to foreign investment. There is no general requirement to obtain government approval before investing. But there are important exceptions, and they have grown more significant in recent years.

CFIUS: The Committee on Foreign Investment

CFIUS is an interagency committee led by the U.S. Treasury Department. It reviews foreign acquisitions of U.S. businesses to determine whether the transaction threatens national security. Under the Foreign Investment Risk Review Modernization Act (FIRRMA) of 2018, CFIUS’s jurisdiction expanded significantly.

CFIUS now reviews certain non-controlling investments in U.S. businesses that deal with critical technology, critical infrastructure, or sensitive personal data. This matters for Korean technology companies. If your business involves semiconductors, artificial intelligence, biotechnology, or other advanced technologies, a CFIUS review may be required or strongly recommended.

Filing with CFIUS is technically voluntary in most cases, but proceeding without a filing is risky. CFIUS can review—and unwind—completed transactions.

Industry-Specific Restrictions

Certain U.S. industries restrict or prohibit foreign ownership. These include defense contracting, broadcast media, airlines, maritime shipping, banking, and nuclear energy. If your business touches any of these sectors, consult a specialized regulatory attorney early.

Korea has its own foreign investment restrictions under the Foreign Investment Promotion Act. The U.S. approach is different—there is no equivalent of Korea’s Ministry of Trade, Industry, and Energy screening process for most sectors. But where restrictions exist, they are strict.

Tax Considerations

Cross-border tax planning is essential. The United States and South Korea have a bilateral tax treaty that prevents double taxation on most types of income. But the treaty does not eliminate all tax obligations.

Your U.S. subsidiary will pay U.S. federal and state corporate income taxes. When it sends profits back to the Korean parent as dividends, the U.S. will withhold tax—reduced to 15 percent or 10 percent under the treaty, depending on the ownership percentage.

Transfer pricing is a critical issue. The IRS closely scrutinizes transactions between a U.S. subsidiary and its Korean parent. Prices for goods, services, and IP licenses between related entities must be at arm’s length—meaning they must reflect what unrelated parties would charge each other. Keep thorough documentation. The penalties for non-compliance are severe.

Korea vs. U.S.: Investment Regulation

Issue	South Korea	United States
General Approach	Positive list (notify or approve)	Generally open, with exceptions
National Security Review	MOTIE screening for restricted sectors	CFIUS review for national security
Tax Treaty	15% or 10% withholding on dividends	Reciprocal rates under bilateral treaty
Transfer Pricing	Strictly enforced by NTS	Strictly enforced by IRS
Incentives	Tax holidays in free economic zones	State-level incentives vary widely

Practical Steps

1. Engage a U.S. tax advisor before you structure your investment.
2. If your business involves critical technology, consult a CFIUS attorney before completing any acquisition or significant investment in a U.S. company. The cost of a CFIUS filing is small compared to the cost of having a deal unwound after closing.
3. Prepare a transfer pricing study from day one. Do not wait for an IRS audit. Document your intercompany pricing methodology and update it annually.
4. Research state-level incentives. Many U.S. states compete aggressively for foreign investment with tax credits, grants, workforce training programs, and infrastructure support. Georgia, Texas, Indiana, and South Carolina have been particularly active in attracting Korean manufacturers.

Chapter 5: Immigration for Korean Entrepreneurs

You want to come to America to run your business. You need a visa. The U.S. immigration system is complex, slow, and often frustrating. But there are clear pathways for Korean entrepreneurs and executives. Understanding them early will save you months of delay.

Immigration

While most U.S. business law issues are governed by state law, U.S. immigration is a federal / national matter. For several years (2007 – 2019), I was the most senior lawyer for two large staffing and recruiting companies, and I worked with immigration law experts to file more than 1,000 U.S. business visas. Even so, I am not an immigration law expert – but I work closely with lawyers (including a Korean/American lawyer in Boston, Massachusetts) who devotes 100% of her time to U.S. immigration issues. Here is some key information:

E-2 Treaty Investor Visa

South Korea has a treaty of commerce and navigation with the United States. This makes Korean nationals eligible for the E-2 Treaty Investor visa. It is the most common visa for Korean entrepreneurs opening a business in the U.S.

The E-2 requires a substantial investment in a real, operating enterprise. There is no fixed minimum amount, but immigration attorneys generally recommend investing at least \$100,000 to \$200,000, depending on the type of business. The investment must be at risk—meaning it is committed to the business and subject to loss.

The E-2 visa is renewable indefinitely in two-year increments, as long as the business remains operational. But it never leads directly to a green card. This is its main limitation.

L-1 Intracompany Transferee Visa

If you are a manager, executive, or specialized knowledge employee of a Korean company, the L-1 visa allows you to transfer to a U.S. subsidiary or affiliate. You must have worked for the Korean company for at least one continuous year in the prior three years.

The L-1A is for managers and executives and is valid for up to seven years. The L-1B is for employees with specialized knowledge and is valid for up to five years. The L-1A has a significant advantage: it provides a pathway to a green card through the EB-1C immigrant visa category without the need for a labor certification.

For Korean companies establishing a new U.S. office, the initial L-1 petition is approved for only one year. You must show that the new office will grow enough to support a managerial or executive position.

Other Visa Options

H-1B Specialty Occupation

If you or your employees hold at least a bachelor's degree and the job requires specialized knowledge, the H-1B may be available. But it is subject to an annual cap and a lottery system. It is not reliable for timing-sensitive business plans.

O-1 Extraordinary Ability

For entrepreneurs with a demonstrated record of extraordinary achievement in business, science, or technology, the O-1 visa is a possible option. It has no annual cap and no lottery, but the evidentiary standard is extremely high.

EB-5 Immigrant Investor

The EB-5 provides a direct path to a green card through investment. The standard investment amount is a bit more than \$1,000,000 (or \$800,000 in a Targeted Employment Area). You must create at least ten full-time jobs. The process is slow—often several years—but the result is permanent residency.

Korea vs. U.S.: Immigration Comparison

Issue	South Korea	United States
Investor Visa	D-8 (Foreign Investment)	E-2 Treaty Investor
Intracompany Transfer	D-7 Visa	L-1A / L-1B
Path to Permanent Residency	F-2 then F-5 visa	Green card (various categories)
Investment Minimum (Investor)	KRW 100 million (~\$75,000)	\$100,000–\$200,000+ (E-2, no fixed minimum)
Processing Time	Generally weeks	Weeks to months (premium processing available for some)
Dual Intent	Limited	Allowed for L-1 and H-1B

Practical Steps

1. Start the immigration process early. Do not wait until you have signed a lease or hired employees. Some visa categories take months to process. Premium processing—available for certain petitions—can reduce adjudication to fifteen business days for an additional fee.
2. Work with an immigration attorney who specializes in business immigration. This is not a field for generalists. Your attorney should understand both U.S. immigration law and the specific challenges Korean nationals face.
3. Keep meticulous records of your investment. Immigration officers will want to see the source of funds, the trail of transfers, and proof that the money is at risk in the business. Korean banking records should be translated and certified.
4. Plan your long-term immigration strategy from the beginning. If you want permanent residency, the E-2 alone will not get you there. Discuss green card options—EB-1C through an L-1A, EB-5, or employer-sponsored EB-2 or EB-3—with your attorney before you choose your initial visa.

Conclusion

There are a huge number of issues to address when planning to bring your Korean business to the U.S. I believe that Korean companies that succeed in America share three common traits.

1. They respect the differences between the two systems, and they do not assume that what works in Korea will work in the United States.
2. They work hard to have a good “U.S. launch team” because no founder succeeds in a new country alone. At a minimum, your team should include a U.S. business attorney, tax advisor, banker and insurance broker.
3. They establish a detailed “U.S. expansion checklist” to keep everything organized and on-track.

Finally, if you would like to speak with an experienced U.S. lawyer (who used to work at the Leema Building in Seoul when he was a young lawyer), please contact me at any time. I would be pleased to provide you with a free consultation.

My best wishes to you!

--JT

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Let's talk about your business.

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