Direct sales into South Korea can be difficult. For most UK companies, it is more effective to approach the market through local business partners (agents and distributors) who have the ability to distribute and provide locally based technical support. Licensing and franchising are also increasingly popular options.

It is possible to set up a representative office, a branch office, a joint venture or a wholly foreign-owned enterprise in South Korea. If you are planning to do business in South Korea, consult a lawyer about the possible options and how you plan to conduct the operation. UKTI can help you to identify local and international law and consultancy firms who can help. They can also provide validated lists of agents/potential partners, key market players and potential customers, approach contacts on your behalf to establish if they are interested in working with you, as well as arranging appointments and organising events.

Agents and distributors

An agent is a company’s direct representative in a market and is paid commission, whereas a distributor buys products from the manufacturer and sells them on to customers. The difference between the cost of purchasing products and selling them on (the profit) forms the distributor’s income.

In South Korea, registered commissioned agents are known as “offer agents”. Many of them operate on a small scale and lack capital, but if they have the right contacts they can provide adequate representation, even for major projects.

Entering a market by working with an agent or distributor can have several advantages. It reduces time and costs, and companies gain the local knowledge and networks of the agent/distributor in question. However, there are also some drawbacks. Employing a third party results in an additional cost to your products and you may lose some control and visibility over sales and marketing. It also has implications for intellectual
property rights protection, increasing the risk of your product being copied or counterfeited.

Given these considerations, you need to select agents and distributors carefully. Your local UKTI office will advise you on how to commission a tailored report for your specific needs and can also provide a list of the best potential partners. A visit to South Korea will enable you to meet some of them and appoint a local contact.

**Suggested questions to ask agents/distributors**

*You should also conduct due diligence to verify this information.*

**Background:**

- Company size, history and ownership (private or state-owned)
- Quality and quantity of the sales force
- Customer feedback and trade/bank references

**Distribution channels:**

- Regional coverage
- Types of outlets covered and frequency of visits
- Transportation and warehousing facilities

**Are they right for you?**

- Does the agent/distributor have a genuine interest in representing your product?
- Can they benefit from actively promoting your interests (is it a win-win)?
- Do they also represent any competing companies/products?
- Can you communicate effectively with your counterpart?

**Once a working relationship has been established, the agent/distributor needs you to actively manage them by:**

- visiting as regularly as is practicable at a senior management level. This shows interest in, and commitment to, the agent and the market. It will also provide you with an opportunity to learn about conditions in the market and see how your products are doing.
- working closely with the agent to show them how they can profit from your products.

- helping to prepare marketing and sales plans for the agent.

- providing regular training for sales staff and after-sales training for technical staff in the UK.

- linking performance to incentives and agreeing milestone targets.

There is additional guidance on working with South Korean partners in later sections of this guide.

Licensing and franchising

Licensing and franchising are alternative approaches to selling products and services, but the exact business model will vary, depending on the sector and company. It is worth noting that South Koreans have a different view of contractual agreements from UK companies. There is a tendency to regard them as “gentlemen’s agreements” that can be subject to renegotiation if circumstances change, rather than as a binding contract. It is a good idea to exercise caution when entering into licensing agreements. UKTI in South Korea can advise on this, as well as other aspects of licensing and franchising.

Establishing a permanent presence

Having a permanent in-market presence can have several benefits, including:

- demonstrating commitment

- cutting out the ‘middle man’, providing direct access to the end customer/supplier

- giving direct control over corporate strategy and activities

- enabling trading in the local currency and easing the conduct of business transactions

- fulfilling a legal requirement to have a permanent presence (relevant in certain business activities and sectors).

In the past, foreign investors who wanted to do business in South Korea were required to have a South Korean partner. However, this has changed, thanks to the South Korean government’s continued efforts to ease regulations and encourage more foreign investors.
It is now possible for foreign companies to establish a business in South Korea, even as sole traders, providing they follow the correct guidelines and procedures and set themselves up as an appropriate legal entity. The company must also be compliant with South Korean legal and tax requirements. The South Korean government website, www.korea.net contains information about how to set up a business in the country.

Once you have decided where you’d like to establish your business, contact the local government office in your target region. These offices provide help for companies wishing to set up in their locality. There are details of metropolitan and provincial governments on the korea.net website, or alternatively consult UKTI in South Korea.

Deciding what constitutes an appropriate legal entity for your business depends on your intended scope. There are a number of legal structures that allow Foreign Invested Enterprises (FIEs) to do business in South Korea, as outlined below. Each has its own advantages, restrictions and drawbacks, so it is essential to choose the option best suited to your aims. Setting up an FIE is a common method of creating an operation in Asian countries and can have a number of legal structures.

It is usually more difficult to alter a business structure once a legal entity has been incorporated or established, so it is essential to seek professional advice during the early stages of planning. UKTI can offer dedicated one-to-one consulting and incorporation services to assist UK companies establishing various kinds of permanent presence in South Korea. Please contact UKTI for more details.

Legal structures

Foreign invested enterprises (FIEs) in South Korea are governed by the Foreign Investment Promotion Act (FIPA) and the Commercial Code of Korea. The aim of FIPA is to create a level playing field between South Korean investors and foreign investors, so that both are treated more or less equally.

FIPA states that:

- foreign investors can invest in virtually any type of business in South Korea
- potential foreign investors only have to notify the relevant government authorities, rather than having to seek consent.

FIEs established under FIPA are entitled to certain tax incentives provided by the Special Tax Treatment Control Act of Korea. In return, they are required to invest 50 million Korean Won (approximately £28,000) or more in the local corporation.

The Korean National Tax Service provides information about the taxation system for foreign investors. For detailed advice on any aspect of establishing a permanent presence in the country, contact UKTI South Korea.
Representative offices

Representative offices are often the first step taken by foreign companies when establishing a permanent presence in South Korea. They provide a vehicle through which the foreign investor can undertake activities such as market research, customer liaison and support. Representative offices can also organise business visits from company headquarters, which can make the process of obtaining business visas for visitors much easier. Public relations work and local administration are also permitted. However, a representative office cannot conduct sales activities. This means they cannot sign contracts, receive income or issue invoices and tax receipts.

Branch offices

Branch offices can be used for companies that do not plan to have their head office in South Korea but need the ability to exercise their rights, based on the South Korean legal system, and establish their own property there. A registration fee is payable, based on the authorised share capital of the parent company. A higher registration fee is payable if the parent company has a high authorised share capital.

Joint ventures

A joint venture (JV) is an organisation jointly owned by one or several South Korean and foreign partners. It can be formed by way of equity contribution, whereby ownership, risk and profit are shared, based on each party’s monetary contribution. Alternatively, a JV can be incorporated, with liabilities and profit distribution being decided by contractual agreement.

JVs can be beneficial in a number of ways. A good local partner may contribute market knowledge and strong marketing and distribution channels, and they may help reduce the costs and risk of market entry.

The challenge of establishing and running a successful JV is to find and nurture the right partnership. Partners have to overcome issues such as mismatched expectations and differences in business culture and practices. The ability to maintain effective communication, and control, where necessary, is also crucial. It is essential that you carry out corporate and financial due diligence before you sign up to any partnership. Companies should also plan an exit strategy. Like a marriage, it is better to have a pre-nuptial agreement than a messy divorce.

Foreign investment procedures
Foreign investment procedures consist of the submission of a foreign investment report, remittance of investment funds, registration of a foreign-invested company and registration of incorporation and business. Where a foreign investor registers a privately-owned business, ‘registration of incorporation’ is not required. The procedures applied to foreigners are basically the same as for South Koreans except for the two additional areas: foreign investment reports and registration of a foreign-invested company.

**Foreign investment report** A foreign investor, or an agent, may report their investment at Invest KOREA (KOTRA), Korea Business Centres (KBC) of KOTRA, headquarters and branches of domestic foreign exchange banks, or domestic branches of delegated foreign banks.

- **Reporting person:** A foreign investor or an agent

- **Delegated agency:** Headquarters and branches of domestic banks, domestic branches of delegated foreign banks, Invest KOREA (KOTRA), or Korea Business Centres (KBC) of KOTRA

- **Processing period of a foreign investment report:** Immediate (The certificate of completion of report is issued without delay).

**Follow-up management of foreign investment** Where a foreign investor or a foreign-invested company has completed payment for an investment or acquired existing stocks, he/she/it shall take procedures to register a foreign-invested company to the president of KOTRA or the head of a foreign exchange bank, as prescribed by acts and statutes of the Republic of Korea. The registration may be cancelled for certain reasons.

Corporation establishment

There are four ways that a UK company can establish a business in South Korea:

1) a local corporation

2) a private business set up by a foreigner or a foreign corporation (both recognised as a foreign investment)

3) a local branch, and:

4) a local office in South Korea set up by a foreign corporation (both categorised as a domestic branch of the foreign corporation).

**Comparison of a foreign-invested company and a domestic branch**
A foreign-invested company under the Foreign Investment Promotion Act
Establishment of a local corporation in South Korea by a foreign national or a foreign corporation is regulated by the Foreign Investment Promotion Act and the Commercial Act. A foreigner shall invest not less than 100 million Korean Won for the local corporation concerned to be recognised as foreign investment under the Foreign Investment Promotion Act.

Private business established by a foreigner with the investment of not less than 100 million Korean Won, is also recognised as foreign investment under the Foreign Investment Promotion Act.

Domestic branch of a non-resident (a foreign company) under the Foreign Exchange Transactions Act A ‘branch’ that operates its business and generates profits in South Korea is not recognised as foreign direct investment. An ‘office’ can be defined in that it does not carry out business that generates profits in South Korea, but instead undertakes a non-sales function such as market research, R&D etc. An ‘office’ is granted a distinct number (equivalent to business registration), at a jurisdictional tax office in South Korea without the need for registration, which is different from a ‘branch.’

For further details on incorporating in South Korea, contact UKTI South Korea or visit the offices of the Korean Trade Promotion Agency (KOTRA).

Source - UKTI

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