

Legal and Administrative Environment for Transnational Corporations in Korea*

Sang Hyun Song

College of Law
Seoul National University

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Chapter I. Economic Development Plans and Foreign Capital Inducement

1. Economic Development Plans and Achievements

The course of industrial growth upon which Korea embarked in 1962 has been, in the words of the World Bank, "one of the most outstanding success stories of the international development."

* All the information contained herein stands as of Dec. 1977.

Beginning from a position uncomfortably close to the bottom of the international income scale and without the benefit of significant natural resources, Korea launched itself upon a bold series of economic development programs which in less than fifteen years has transformed the country from a marginally subsistent agricultural economy into one of Asia's major industrial nations.

The first five year economic development plan (1962~1966) put the underlying tones on the "commencement of development era and complete assortment of organization bases." The main emphasis during the period was placed on breaking the major bottlenecks to the development, such as expanded investment for social overhead capital, fostering of the basic industries and import substitution.

The keynote of the second five year plan (1967~1971) lay in "the realization of the sustained high growth and industrialization." Among the tactical factors involved in Korea's remarkable growth, the export expansion and an outward looking development strategy worked during this period.

The third five year plan (1972~1976) aimed at the deepening of industrial structure and balanced growth of industries. For the past 15 years since the first five year plan was launched out in 1962, the real GNP, growing at 9.8% per annum, has risen to 25 billion dollars, while per capita income has increased to 698 dollars. Korea's fourth five year plan (1977~1981) reflects the increased maturity of the nation's economic needs and attainments. Recognizing that the equitable distribution of growth benefits is one of the fruits of, and a stimulus to, the further economic development, the fourth plan calls for continuing efforts toward the achievement of the rural-urban income parity, expanded employment, and increased investment in technical training & education, health care and housing.

2. Contribution of Foreign Capital to the Economic Development

Up to early sixties Korean economy was barely sustained mainly by the massive influx of the support assistances in the form of UNKRA, AID,

SA, and PL-480 (I), etc. Since, however, the five year economic development plan was launched in 1962, a variety of bottlenecks such as paucity of natural resources, overpopulation, small size of domestic market, lack of capital and technology were the main targets to break through. The inducement of foreign capital was sought as means to help eliminate such restrictions. During the first five year plan (1962~1966) about US\$ 654,000,000 of foreign capital was induced to foster the basic and import substitution industries.

The induced foreign capital greatly helped break the bottlenecks of electrical power and transportation in particular. The second five year plan (1967~1971) was aimed at the increase in export of consumers' goods, import substitution of intermediate goods and expansion of social overhead capital. About 2.9 billion dollars of foreign capital induced made it possible to maintain the growth at 10.5% per annum in average.

During the third five year plan (1972~1976) the main goals of an innovative development of agricultural and fishery economies, an ambitious increase of export, construction of heavy and petro-chemical industry have been achieved as planned.

3. Actual Results of Foreign Capital Inducement

1. General

The capital inducement in the form of loan was started in 1959: a loan from Development Loan Fund, while the first foreign equity investment was made in 1962.

Since the foreign capital was first induced in 1959, the total amount of loan induced for the last 17 years is 11 billion dollars committed and 7.8 billion dollars arrived. Out of the above amount about 2 billion dollars have been repaid and thus 5.8 billion dollars remain outstanding. For the foreign investment a total of 648 million dollars were authorized for 854 cases and 778 million dollars arrived as of the end of 1977.* The technology induce-

* The discrepancy between the authorized amount and the amount arrived arises

ment reached over 700 cases.

Shown below are the yearly results of foreign investment authorized and arrived.

(Table 1)

(Unit: 1,000US\$)

year	number of cases	authorized amount				arrived amount
		total	newly authorized	increased	decreased	
1962~66	18	26,331	28,562	40	2,271	30,169
1967~71	206	117,030	85,168	40,549	8,687	82,368
1972	140	102,860	65,697	43,171	6,008	60,703
1973	253	173,094	208,872	38,407	74,185	191,115
1974	104	109,832	56,175	58,286	4,629	162,594
1975	38	192,106	130,540	63,559	1,993	61,626
1976	45	73,167	23,238	50,536	607	85,494
1977	50	75,914	49,895	26,060	41	104,354
total	854	870,334	648,147	320,608	98,421	778,423

2. Foreign investment

Foreigner's direct or joint investment was gradually realized as an important factor for the economic development in that the foreign capital investment enhances the degree of utilization of capital and technology and contributed to the overseas export marketing.

Consolidation of relevant laws and furtherance of the investment environment by the government made it easier to induce the foreign capital investment and emerged as an important factor from the supplementary role that it used to play economically in comparison with that of commercial loans at the early stage.

In terms of the kind of industry, over 98% were approved for mining and manufacturing industries and social overhead capital. Among the textiles and garments, chemical, electronic & electric industries, hotel and tourism take more than 12% of the shares respectively (see Table 2). Investing countries are the U.S., Japan, Germany, England, France, etc., and the

from the fact that the approved amount does not include the invested amounts which were authorized and arrived, but later cancelled or repatriated.

(Table 3) Results of Fore

Country	Year	1962~67		1968~72		1973		19
		number of cases	amount	number	amount	number	amount	number
U.S.A.		17	31,898	49	71,590	11	7,298	10
(Europe)		6	995	9	11,156	2	3,031	2
West Germany		4	843	4	3,272	1	184	1
Britain				1	60			
France				1	1,100	1	2,600	
Holland		1	108	1	6,150			1
Italy		1	44	1	520		219	
Switzerland				1	54		28	
Japan		5	1,962	265	111,713	238	159,651	88
(Others)		3	3,158	10	13,744	2	3,114	4
Canada				1	29			
Panama		1	102	2	315			1
Hong Kong		1	319	3	394	2	2,313	2
Others*		1	2,737	4	13,006		801	1
Total		31	38,013	333	208,208	253	173,094	104

* Others are Bermuda, Bahamas, Iran, Kuwait, Saudi Arabia, Taiwan etc.

** Figures in the parenthesis indicate the amounts that arrived

ign Investment Authorized by Countries

(Unit: 1,000US\$)

74	1975		1976		1977		total		
amount	number	amount	number	amount	number	amount	number	amount	percentage
24, 613	8	6, 462	8	9, 116	12	17, 185	115	168, 163 (165, 875)	19. 3
1, 387	4	52, 148	7	13, 466	8	17, 390	38	99, 573	11. 4
100	1	1, 083	5	2, 568	1	5, 251	17	13, 301 (11, 539)	1. 5
			1	2, 588	2	6, 640	4	9, 288 (4, 366)	1. 1
	1	1, 250	1	200	1	3, 106	5	8, 256 (8, 471)	0. 9
1, 100	1	49, 766		7, 860		900	4	65, 884 (27, 569)	7. 6
115				250			2	1, 148 (948)	0. 1
72	1	49			4	1, 493	6	1, 696 (735)	0. 2
72, 238	21	96, 273	27	44, 156	24	29, 149	668	515, 147 (477, 961)	59. 2
11, 594	5	37, 223	3	6, 429	6	12, 189	33	87, 451	10. 1
	1	209					2	238 (137)	—
400	1	17, 500		104			5	18, 421 (21, 389)	2. 1
199		344	1	511	1	4, 124	10	8, 204 (4, 901)	1. 0
10, 995	3	19, 170	2	5, 814	5	8, 065	16	60, 588 (54, 805)	7. 0
109, 832	38	192, 106	45	73, 167	50	75, 914	854	870, 334 (778, 696)**	100. 0

U.S. invested 168 million dollars, or 19.3% of the total authorized amount, while Japan invested 515 million dollars, or 59.2% (see Table 3). Withdrawal of the invested amount reached 35 million dollars as of the end of 1977, whereas the total remittance of dividends accruing from the business activities amounted to 177 million dollars (see Table 4).

(Table 4) Remittance of invested principals and dividends
(Unit: 1,000US\$)

	profit dividends		repatriation of capital		total
	number	amount	number	amount	
1965	1	98			98
1966	1	229			229
1967	1	229			229
1968	4	597	1	19	616
1969	5	5,537	1	200	5,737
1970	8	8,133	1	200	8,333
1971	16	8,325	3	571	8,896
1972	24 (1)	8,659 (6)	5	2,943	11,602 (6)
1973	30	15,375	10	4,166	19,541
1974	55 (3)	26,842 (234)	17 (2)	6,129 (410)	32,971 (644)
1975	64 (8)	23,979 (3,080)	10 (2)	5,919 (51)	29,898 (3,131)
1976	99 (1)	37,741 (507)	23	4,444	42,185
1977	103	41,429	40	10,914	52,343
total	411 (13)	177,173 (3,827)	111 (4)	35,505 (461)	212,678 (4,288)*

* Amounts in the parenthesis indicate those remitted from the Free Export Zones that are included in the total.

Economic effects of foreign investment are increases of income and employment, learning of technology and management techniques, exploitation of overseas markets and increase of export, and weight carried by the foreign invested enterprises in the national economy is more or less 10%.

Chapter II. Basic Directions of the Foreign Capital Inducement

1. Governmental Policy Considerations

Basically, it is the fundamental policy of the Government to encourage, protect, and manage foreign capital, so that it may contribute to the sound development of the national economy, the improvement of the balance of payments and the introduction of advanced technology into the economy. Since the smooth economic growth has been the prime goal stressed in the past to carry out the economic plan as planned, the utmost emphasis was placed on the securing of the needed amount of foreign capital, almost irrespective of the terms and conditions thereof. From now on, however, the foreign capital inducement policy will be more selective and supplemented and elaborated as follows, based upon the fruits of the economic development so far harvested:

1) An increase in quantity of foreign capital inducement shall be counterbalanced by a more qualitative and timely selection. Loans in cash or in kind will be strictly regulated, and inducement of foreign capital will be selected from the international competition;

2) the regional preponderance in terms of the foreign capital inducement will be rectified and the capital cooperation with EC, Northern Europe and the Middle East will be strengthened, and inducement of foreign capital from the Export and Import Banks of various countries such as EXIM Bank of the U.S., JEXIM Bank of Japan, EDC of Canada, KFW of West Germany will be encouraged;

3) the fields for which the foreign capital is induced will be more carefully selected to enhance the foreign capital efficiency, and the foreign capital will be systematically induced in consideration of the yearly total investment plan. By introducing the prior reporting system of the foreign capital inducement, feasibilities of the business and the induced foreign

capital will be scrutinized in advance and the examination of the foreign capital investment will be strengthened. More efficient use of the induced foreign capital will be prompted by inducing the facilities and technologies of the international size;

4) inducement of foreign capital will be discouraged for the fields where the domestic production is possible, and the localization policy and the development of the domestic techniques will be put forward, thus discouraging the inducement on the turn-key basis;

5) foreign investment contributing to the export promotion and the overseas marketing and necessary for domestic development in connection with the advanced management and the learning of technology will be promoted and thus, foreign investment in the technology or skilled labor-intensive industries such as electronics, machinery, and metal industries will be recommended in particular;

6) inducement of the advanced technologies necessary for the development for the international technical cooperation of the domestic technology will be encouraged to the maximum for the international technical cooperation, as Korea is heading for an advanced industrialized country in the eighties;

7) the priority business areas for government support are heavy and petrochemical industry such as electronics, machinery, steel, metals, petrochemical, the development of power resources, the agricultural developments, social overhead resources, and export industry.

2. Legal Standards and Guidelines

The basic policy of the government toward the foreign capital investment lies in the positive inducement and protection of foreign capital contributing effectively to the sound development of the national economy, the improvement of international balance of payment, introduction of advanced technology into the economy, exploitation of overseas export markets, and effective utilization and management of such foreign capital. The Foreign Capital Inducement Law ("FCIL"), promulgated in 1966, provides for the

comprehensive standards for approval of inducement of foreign capital (commonly applicable to foreign investment, inducement of technology and loans) in art. 4:

1) projects greatly contributing to the improvement of the international balance of payments;

2) projects contributing to the development of key industries or public utilities;

3) projects contributing to the development of the national economy and the social welfare.

The government has set forth in accordance with the Law the new standards for projects adequate for foreign investment:

i) a large scale industrial equipment industry, metal, machinery and electronics industries that cannot be constructed and operated domestically for the time being in terms of capital, technology and management;

ii) export-oriented projects the overseas market of which cannot be easily secured by domestic enterprises;

iii) projects contributing to exploration and utilization of domestic resources;

iv) projects for which the import substitution is essential due to the shortage of domestic production.

In connection with the standards applicable to approval of foreign investment a form of joint venture has a priority to minimize the dependence of the national economy on the foreign capital.

The following are applicable laws vis-à-vis types of foreign capital inducement

Types of inducement	Applicable laws	Competent authorities
1. Direct foreign investment	FCIL, Law Establishing the Free Export Zone	The Economic Planning Board ("EPB") The Ministry of Commerce & Industry ("MCI")
1) subscription of stocks of shares		
2) acquisition of stocks or shares	Foreign Exchange Control Law ("FECL")	The Ministry of Finance ("MOF")

2. Indirect foreign investment		
1) public loan		
a. government loan	Law Concerning Inducement and Management of Public Loans	EPB
b. loan by local gov't or public entities	1) the same as above 2) FCIL	EPB EPB
2) commercial loan		
a. capital goods over US\$ 200,000, with settlement period longer than a year	FCIL	EPB
capital goods less than US\$ 200,000 with settlement period shorter than a year	Foreign Trade Act (FTA)	MCI
b. cash		
US\$ 200,000 or more with settlement period longer than a year	FCIL	EPB
amount less than US\$ 200,000 with settlement period shorter than a year	FCIL	MOF
c. raw material		
US\$ 200,000 or more of raw material for no more than 6 months, with settlement period longer than a year	FCIL	EPB
less than US\$ 200,000, raw material for more than 6 months, settlement period shorter than a year	FTA	MCI
3. Inducement of technology		
1) contract period or price paying period longer than a year	FCIL	EPB

2) contract period or price paying period shorter than a year, and domestic payment means	FCIL	MOF
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3. Operational Standards

Supply of capital needed, improvement of technology, participation in the overseas markets of foreign investors, and absorption of foreign investors' international credit and modern technology are usually cited as advantages of foreign investment. On the other hand, disadvantages are foreign control of domestic markets, and competition in the export market between pure domestic enterprises and foreign invested. Taking the aforesaid advantages and disadvantages into consideration, the government has established the General Guidelines for Foreign Investment:

1. Project Eligibility Principles

A. Eligible Projects

i) Industrial equipment projects of too large a scale for a domestic enterprise alone to undertake for the time being due to their limited capital, technology and managerial skill, including metals, machinery, and electronics industries;

ii) export-oriented projects for which it would be deemed difficult or economically unsuitable for the domestic enterprise alone to develop and exploit the overseas markets for the time being;

iii) projects contributing to development and effective utilization of domestic resources.

B. Ineligible Projects

i) Projects that would disrupt the domestic demand and supply of raw material and intermediary goods;

ii) projects that would compete with the already-existing export industry in the overseas market;

iii) projects that aim solely at the financial support for already-existing domestic enterprises;

iv) projects that are solely aimed at profit from land use.

2. Minimum Size of Foreign Equity Investment

For promotion of the investment of large size, the following principles will apply:

1) The minimum amount or value of initial foreign investment shall, as a governing principle, be US\$ 200,000;

2) to the extent that scale of the economy is rated as optimum, the following exceptions will be made:

a. US\$ 100,000 or more for the electronics and machine industries;

b. US\$ 50,000 or more for investment by Korean nationals residing overseas;

c. US\$ 50,000 or more for entirely export-oriented projects using mainly domestic raw material that the EPB Minister deems essential for the inducement of relevant technology concerned.

3. Standards concerning Foreign Investment Ratio

Although no restriction is legally imposed in terms of the share of the foreign participation in the investment, a joint venture is a more desirable form of foreign investment from even the foreign investor's point of view because he is not familiar with social or business environment, administrative systems, personnel management or provision of raw material in the invested country. Foreigner's solo investment will be likely to result in the foreign control of domestic markets and the usurpation of opportunities for nationals to participate in the foreign markets secured by foreign investors even if the entire amount of the products are exported. Technical propagation effect over domestic enterprises as well as value added to the national income of the invested country is very little. Korea, as a developing country, therefore, tries to discourage foreigner's full investment.

The ideal investment ratio might be, as a rule, 50% on the ground that both domestic and foreign investors' desire to participate in the business will be equally enhanced by doing so and that the investing as well as invested countries share the profit of the joint venture equally. If deemed

necessary for increasing the national's participation in management, the issuance of non-voting and redeemable stocks, or par value stocks at the premium to foreigners could be approved. Strictly speaking, foreign investment ratio is different from foreigner's stock or share-subscribing ratios. If, for instance, a foreigner subscribes to stocks or shares at premium, his stock or share subscribing ratio is lower than the investment ratio. In this research "the foreign investment ratio" will be used to mean a foreigner's ratio of subscription of stocks or shares.

1) Foreign investment shall be at 50:50 ratio with a national, as a matter of principle, except the following cases, and the minimum of the foreigner's initial investment shall be US \$ 200,000 (in the areas of machinery, metal and electronics, over US \$ 100,000), except

a. projects that export the total amount of its products and do not compete directly with relevant domestic enterprises in terms of market and technology;

b. project for which a solo investment is generally approved even in other countries for the purpose of protecting the technology kept by the investing enterprise.

2) Foreigners may make a sole investment in the kind of business that is expected to take quite a long time to find a suitable domestic partner, but the inducement of which is desirable in terms of the industrial policy.

3) The foreigner's equity ratio shall, however, be variable as an exception, depending on the kind of business:

a. local partners must hold more than 50 percent of the total shares in the following types of projects;

i) simple labor-intensive business (those admitted to the Free Export Zones excluded);

ii) simple bonded processing business (those admitted to the Free Export Zones excluded);

iii) business mainly oriented toward local market sales.

b. the foreigners' equity holding ratio shall be more than 50%, but less

than 100%, in case of

i) entirely export-oriented projects and important import substitution projects that have a big propagation effect of technology over types of industries concerned;

ii) projects which contribute to the formation of industrial structures, and which, due to the large capital required, advanced technology involved, extended gestation period, are beyond the capacity of local investors.

c. foreigners may be allowed to hold up to 100% in the following businesses, in case of

i) a multinational corporation projects that are allowed by other countries to be solely owned by foreign investors for exclusive use of their confidential production methods, business operations, or patent rights, and which it is desirable to induce into the country;

ii) investment projects induced from a country which has made little or no investment in Korea, and which are expected to foster or promote increased investment;

iii) projects invested by Korean nationals residing abroad;

iv) electronics and machinery industries admitted to Kumi and Chang Won Industrial Estates;

v) all kinds of business admitted to the Free Export Zones.

4) If Korean overseas residents do not remit the principal and its dividends overseas, such may be regarded as investment by nationals.

5) Where a joint venture needs a large scale of fund, issuance of non-voting, redeemable stock, convertible debenture or stocks at the premium can be approved if necessary to raise the national's equity holding ratio.

6) Joint venture receives a preferential treatment over solo investment in the Free Export Zone.

4. Administrative Requirements for Authorization of Foreign Capital Investment

In order to grant an authorization for inducement of foreign capital

investment, loans and technology, the opinion of the Minister concerned on the following matters must be considered:

- 1) the size of foreign capital needed;
- 2) prices of the goods to be induced;
- 3) whether the goods to be induced are domestically suppliable capital goods or raw materials;
- 4) terms and conditions of the proposed contract;
- 5) production capacity, cost of production and production plan;
- 6) production process and its technology;
- 7) production schedule considered in terms of domestic and international marketability;
- 8) raw material procurement plan;
- 9) the size and condition of plant site, and construction plan.

The Minister concerned may take into consideration opinions of the banking institutions concerned on the size of foreign capital needed, and of the Minister of Construction on the location of the plant.

The Minister concerned means to be the Minister of Commerce and Industry if products to be manufactured by foreign invested business are general goods, the Minister of Agriculture and Fisheries if they are agricultural and fisheries products, the Minister of Transportation if they are transportation or tourist business, and the Minister of the Public Health and Social Welfare if they are medical equipments and tools or pharmaceutical products respectively.

Chapter III. Procedures of Foreign Capital Investment

1. General

The procedures for foreign capital inducement have been simplified and the window for the investment authorization work has been unified for the convenience of the foreign investors. Since 1970, the officers of the

ministries concerned who are in charge of these matters are stationed at the Economic Planning Board and almost all the work and papers are screened by them.

To simplify the authorization procedures for small investments of less than one million dollars, an application for such a small matter should no longer require resolution by the Foreign Capital Inducement Deliberation Committee, but could be authorized in consultation with the Foreign Capital Project Review Committee chaired by the Assistant Minister of EPB in charge of economic cooperation. In such case, the result of review by the ministry concerned should be replied to EPB within 10 days.

The EPB Minister's authority to grant an authorization under FCIL has been partially delegated to the Director of the Office of the Industrial Estate Management in charge of the affairs of the Estate Management for businesses that process and export raw material or half-finished goods imported without customs duty in the Free Export Zones of Masan and Iri so that an on-the-spot authorization is possible.

2. In Case of New Investment

1. Submission of an application for authorization of foreign investment

Any person desiring to obtain an authorization for foreign investment or technical inducement contract must submit an application for authorization of foreign investment in quintuple appended respectively with each of the following documents to the Minister of EPB:

- 1) description of proposed project of the enterprise which will issue stocks or shares;

- 2) notarized and consularized joint-venture contract or documents to prove that the applicant will subscribe to stocks or shares. In case of a sole investment, notarized and consularized minutes of the general shareholders' meeting or the board of directors meeting or letter of intent that contains the resolution or intention to make a foreign investment;

- 3) notarized and consularized power of attorney in case of application

by proxy;

4) certificate of corporate nationality in case of a juridical person, and a nationality certificate in case of a natural person, and document establishing that the applicant has resided overseas for more than ten years in case of Korean national resident abroad;

5) articles of incorporation of the enterprise the stock or shares of which the applicant intends to subscribe to;

6) details of foreign capital to be induced as the subject matters of investment by a foreign national.

2. Review of applications by the Ministries concerned and competency of stationing officers

Upon receipt of an application, EPB reviews the proposed project and conducts the required economic feasibility study in cooperation with the foreign investment promotion officers stationed at EPB, and also seeks the opinions of the related government ministries on technical matters such as technical feasibility, prices, facilities, production capacity and sales plans. The Minister of EPB shall forward necessary documents to the competent ministers when granting an authorization, and they shall transmit their respective opinions to the Minister of EPB within 20 days from the date of such receipt. Such transmission of opinions should be made within 10 days when the amount of foreign investment does not exceed US\$ one million.

According to the Rules for Unification of Handling Foreign Investment Affairs (PD No. 7401 as last amended Dec. 3, 1974) all the ministries concerned shall have some of their officials in charge station at the EPB to form a task force on the spot:

1) competency of the stationing officials from the Finance Ministry

i) remittance of profit dividends by the foreign invested enterprise;

ii) remittance of repatriated capital;

iii) remittance of salaries and allowances by foreign directors and officers of the foreign invested enterprise;

- iv) guidance of foreign investment affairs;
 - v) other related trivial matters.
- 2) competency of the stationing officials from the Ministry of Commerce and Industry.
- i) technical examination on foreign investment, loan and technical assistance;
 - ii) examination on permission to engage in the business other than the registered;
 - iii) examination on inducement, price and change of the price of capital goods;
 - iv) examination on alteration of purpose of use of induced capital goods;
 - v) confirmation of details of induced capital goods;
 - vi) recommendation for import or intake of property;
 - vii) confirmation of details of goods to be imported;
 - viii) confirmation of details of goods to be taken out;
 - ix) other matters related to foreign invested enterprise.
- 3) competency of the stationing officials from the Ministry of Justice
- i) matters concerning legality of foreigner's entry;
 - ii) matters concerning multiple entries and reentry;
 - iii) matters concerning sanctions against violators of the Law concerning Control of Exist and Entry;
 - iv) matters concerning legal questions and answers.
- 4) competency of the stationing officials from the Ministry of Science and Technology
- i) review and examination of the technical inducement followed by the foreign invested business;
 - ii) matters concerning the management of the induced technology.
- 5) competency of the stationing officials from the Office of the National Tax Administration
- i) confirmation on exemption of withholding tax on the induced capital goods;

ii) confirmation on exemption of wage and salary income tax of foreign employees;

iii) report of confirmation of being foreign employees;

iv) other matters related to investment business.

6) competency of the stationing officials from the Office of the Customs

i) matters concerning designation of the special bond carrier;

ii) matters concerning establishment and license of the bonded area;

iii) matters concerning determination of deferment of the collection of customs duty;

iv) matters concerning assessment of prices necessary for surveying and taxing values in foreign currency and domestic wholesale prices of the imported foreign products.

3. Investment Authorization Deliberation by the Foreign Capital Inducement Deliberation Committee, etc.

The EPB submits the investment application with its opinion to the Foreign Capital Inducement Deliberation Committee or to the Foreign Investment Review Committee for final approval, depending upon the amount to be invested.

If, however, the resolution of the Deliberation Committee is not consistent with the opinion of the EPB, the matter shall be referred to the decision of the president of the Republic after deliberation by the State Council.

If the foreign invested amount does not exceed one million US dollars or the value equivalent thereto, or the cost for technical inducement does not exceed 3/100 sales proceeds of the products manufactured under the technology inducement agreement or the value equivalent thereto, and the term of technological contract or payment period of the cost does not exceed 3 years and its advance does not exceed 30,000 US dollars, an approval therefor shall be determined by the Foreign Investment Review Committee, which is an advisory body to the EPB Minister. This is a more simplified procedure for approving small amount of investment. The Foreign Capital Inducement Deliberation Committee, of which the Minister of EPB is

chairman, considers foreign loan contracts, foreign equity investment applications exceeding one million US dollars and the technological contracts of three or more years when the cost exceeds 3 per cent of the net sales proceeds.

4. Authorization Notice

Authorization takes effect not by the resolution passed by either committee, but by EPB Minister's notifying such authorization. Notification is sent to the applicant, Ministers of Home Affairs, of Finance, of Justice, of Commerce and Industry, and the Directors of the Office of National Tax Administration, & the Office of the Customs.

5. Issuance of Letter of Confirmation for Imported Capital Goods

When a foreign investor intends to induce capital goods which are subject matters of investment upon receiving an authorization of investment, he shall, prior to the shipment, prepare a specification of imported commodities showing price, quantity, size, manufacturer, etc. of the capital goods or induced raw materials and submit it to the Minister of EPB after obtaining a confirmation of the Minister concerned, provided, however, that the submission of specification of commodities may be waived when a specification of foreign capital under the authorization in accordance with the provision of art. 6 of the Act is available.

Any person desiring to receive such confirmation by the competent Minister shall submit application in triple for confirmation of Specifications of the Imported Capital Goods, etc. appended respectively with the documents in each of the following items to the competent Minister:

- 1) documents to prove that goods to be confirmed constitute part of the contract;
- 2) blueprint for installation (It must contain the mark, number and other related information of each part of equipment for installation);
- 3) schedule for importation of goods (only in the case of a loan contract);
- 4) related evidentiary documents.

The foreign investor who received the above confirmation shall submit

the confirmed Specification of Imported Capital Goods, etc., with copies of the documents referred to in each of the above items, to the Bureau of the Investment Promotion. One copy hereof shall be submitted to the capital goods concerned, and another copy is used at the time of a letter of credit being opened. Since the payment of subject matters of investment shall be completed within 18 months from the date of authorization, the schedule for importation of goods has to be planned within this time limitation.

6. Customs Clearance of Capital Goods Confirmed

1) In order to induce the capital goods confirmed it is not necessary to obtain a separate import permission from the Minister of Commerce and Industry, and it suffices to submit a report on import to the customs office. Documents to be appended hereto are as follows:

- a. report on import;
- b. invoice of the goods concerned;
- c. specification for packing;
- d. confirmation of specification of capital goods, etc. to be imported;
- e. copy of authorization for foreign investment;
- f. end user certificate (This is issued by the competent tax authority if submitted with invoice and a copy of authorization for foreign investment).

2) Application for Exemption of Customs Duty and Value Added Tax

Customs duty, and value added tax to be imposed on the capital goods imported by a foreign investor in compliance with the authorization, or on capital goods imported by a foreign invested enterprise in exchange for foreign means of payment which have been invested by a foreign investor shall be exempted. Those who with such exemption shall submit to the competent customs authority application in triple for exemption of customs duty and the value added tax together with the following documents:

- a. confirmation of specification of imported capital goods, etc.;
- b. documents certifying that the imported capital goods fall under art. 9 of the Presidential Decree;
- c. power of attorney.

When the above documents are filed with the customs office, a special customs clearance process separate from the general procedure for ordinary imported goods will be expedited more rapidly by the customs official team specially set up solely in charge of foreign investment.

7. Submission of Foreign Investment Inducement Report

To report on the inducement of the subject matters of investment, a foreign investor shall submit an inducement report (in case of capital goods, etc. report on customs clearance, and in case of cash, downpayment or service fee, report on withdrawal of money) accompanied by evidentiary documents to the Minister of EPB and the competent Minister not later than one month from the date on which the foreign capital concerned arrives or is cleared by the customs. Evidentiary documents here mean an import license in case of payment in kind, and deposit certificate by a bank or banking institution in case of cash.

8. Incorporation and Registration of a Corporation

1) In case of new incorporation

When all the aforesaid procedures are through and a part of capital goods is cleared for customs, the foreign investor and his domestic counterpart shall incorporate a corporation in accordance with the Korean Commercial Code and have its incorporation of the company registered on the commercial corporation registry (The Code Art. 317).

Although the Korean Commercial Code also recognizes three other corporate types: partnership, limited partnership, and private company with limited liability, the corporate form most commonly used by foreign investors is the joint stock corporation.

The legal concepts and regulations governing joint stock corporations in Korea are similar to those found in Japan and Germany. To establish a joint stock corporation, articles of incorporation must be drawn up and notarized. Seven or more promoters are required for the incorporation of a joint stock corporation. The minimum par value of a share shall be 500 Won, and shares must be registered as common or preferred. Common shares must

carry voting rights.

The application for registration must then be submitted to a district court clerk. Upon registration and payment of the registration tax, the company is permitted to run a business. At such time it can enter into contracts, acquire rights and obligations, possess intangible property such as patents and copyrights, own real estate, establish commercial credit, and undertake business transactions.

Documents to be filed at the time of entering the incorporation registration of a stock corporation are as follows (The Non-Contentious Cases Procedure Law Art. 249):

- a. application for incorporation of a company;
 - b. articles of incorporation (to be notarized);
 - c. certificate of the subscription for stocks;
 - d. application for stock subscription;
 - e. if promoters agreed on the matters provided for by art. 291 of the Commercial Code, a document certifying to the effect;
 - f. inquiry and report by a director, auditor or inspector and other related documents;
 - g. when promoters elect directors and auditors, documents related hereto;
 - h. the minutes of inaugural general meeting;
 - i. the minutes of the board of directors or shareholders' meeting regarding the representative director;
 - j. the receipt of payment for stocks issued by a bank or banking institution;
 - k. in case of investment in kind inspector's report or confirmation for the performance of contribution by the Minister of EPB or the competent minister under the para. 2, art. 8 of FCIL;
 - l. authorization of foreign investment;
 - m. any other permission of the government authorities relating to the purpose of business.
- 2) In case of joint venture with an already existing enterprise (same as

the increase of capital)

If a foreign investor induces the subject matters of investment and makes a foreign investment in the form of the increase of the capital of the already-existing domestic corporation or of an enterprise already registered as a foreign invested enterprise, the new shares have to be issued corresponding to the invested amount. The increase of the capital, authorized or paid-in, subjects the company to change of the corporate registration. Application for change of corporate registration due to the issuance of new shares has to be submitted to the registration section of the competent district court with the following documents (Art. 252 of the Non-Contentious Cases Procedure Law):

- a. articles of incorporation;
- b. certificate of the subscription for stocks;
- c. application for stock subscription;
- d. inquiry and report by an inspector regarding investment in kind and other related documents;
- e. certified copy of judgment if there is a court decision on the inspector's report;
- f. the minutes of the board of directors or shareholders' meeting regarding issuance of new shares;
- g. receipt of payment for stocks issued by a bank;
- h. certified copy of judgment if there is a court decision on the issuance of shares under the par value.

9. Registration of a Company as Foreign Invested Enterprise

After completing the procedures of inducement and payment of the subject matters of investment, a foreign investor shall have his company registered in the EPB and obtain a certificate for registration of foreign invested enterprise. Such registration is by all means necessary to obtain tax exemptions. For this registration an application must be filed with the Investment Promotion Bureau of EPB with the following documents:

- 1) documents to prove the completion of payment of the subject matters

of investment as authorized under art. 6 of of FCIL;

2) documents to prove the fulfillment of conditions attached to the authorization and memorandum, if any;

3) articles of incorporation of the foreign invested enterprise concerned;

4) certificate of the subscription for stocks or the receipt of payment for stocks.

After reviewing the application for registration, EPB issues a certificate of registration of the foreign invested enterprise within 5 days and notifies the authorities concerned thereof.

10. Commencement of Business

When a foreign invested enterprise commences to run a business, it must apply for the entrepreneur license under the Value Added Tax Law to the director of the competent tax office and report on the tax assessment within 30 days. The license must be certified by government authorities twice a year. An annual independent audit by a certified public accountant is not required except for those companies listed on the Korea Stock Exchange.

11. Application for License to Export and Import

Anyone who desires to be engaged in the foreign trade in Korea must obtain a license to export and import from the Minister of Commerce and Industry. Anyone who applies for the opening of the foreign trade business must, as a rule, pay the capital in the amount over 50 million Won, and receive irrevocable letters of credit equivalent to half a million dollars or more, or conclude a processing deal in the amount over 150,000 dollars. One of the exceptions to the above principles, is that a foreign invested enterprise incorporated under the authorization of the Minister of EPB may engage in the foreign trade activities to export self-manufactured products or to import the raw material for their own use. To apply for license to export and import, therefore, a foreign invested enterprise must file the application with the Export Planning Section, Commercial Trade Bureau, Ministry of Commerce and Industry, together with the following documents:

1) application for license to export and import;

- 2) certified copy of corporate registration;
- 3) police reports of officers;
- 4) list of shareholders;
- 5) authorization of foreign investment and certificate of registration of foreign invested enterprise;
- 6) certificate of payment of registration tax;
- 7) stamps;
- 8) other related documents;
- 9) opinion of the Korea Traders' Association under the Foreign Trade Act.

12. Application for tax exemption

Income tax, corporation tax and property tax shall be exempted for five years from the first taxable dates under pertinent tax laws, and property acquisition tax shall be exempted for five years from the date of registration, and for three years following the expiration of the aforesaid, fifty percent of the tax amount computed under the pertinent tax laws shall be reduced. (FCIL Art. 15, para. 1)

Since the provisions for tax exemption are optional (FCIL Art. 15, para. 5), those who seek the tax exemptions must apply for it under the following procedure:

- 1) to file application for tax exemptions in duplicate with the director of the competent tax office to be exempted from corporate income or business income;
- 2) to file application in duplicate with the head of the competent local autonomous entity to be exempted from property acquisition tax;
- 3) if the list of foreign employees is submitted to the Minister of EPB for the tax exemption on their wage and salary the Minister of EPB shall notify the stationing officer from the Office of National Tax Administration thereof and the officer in turn notifies the director of the competent district tax office thereof. An individual foreign employee should submit the application to the director of the competent district tax office through his

corporation.

A. Tax Privileges under Foreign Capital Inducement Law

i) Exemption and Reduction of Income Taxes and Corporation Taxes

Income and corporation taxes on foreign invested enterprises are exempted or reduced in proportion to the percentage of stocks or shares which foreign investors own in the enterprises. In the event of a capital increase, both income and corporation taxes are exempted or reduced in proportion to the foreign-owned increase in capital. Foreign invested enterprises are exempted from these taxes for five years from the initial taxable date prescribed in the Income Tax Law and the Corporation Tax Law respectively; for the ensuing three years tax reductions by 50 percent will be allowed.

ii) Acquisition and Property Tax Exemption

Foreign invested enterprises are exempted from acquisition taxes from the date of registration, and from property taxes from the initial reckoning date prescribed in the respective tax laws. Even before the registration of a foreign invested enterprise, it may be exempted from acquisition and property taxes on the property acquired for the enterprise's original business purpose. They are exempted from these taxes for five years in proportion to the percentage of stocks or shares owned by the foreign investors, and for the ensuing three years will be allowed of 50 percent reduction in the same proportion.

iii) Exemption and Reduction on Dividend Taxes

Income and corporation taxes on dividends paid out of profits and distribution of surplus are exempted for five years from the commencement of a foreign invested enterprise's business operation, and reduced by 50 percent for the ensuing three years.

iv) Import Duty Exemption

Capital goods imported by a foreign investor under an import authorization for capitalization are exempted from import duties, including customs duties.

v) Interest Income Exemption

Income and corporation taxes are exempted on interest or other income received by a foreign creditor under a loan contract.

vi) Tax Exemption and Reduction on Technology Income

Payments to the supplier of technology under a technology inducement contract are exempted from income of corporation taxes for five years from the date of authorization of the loan contract or the technology inducement contract, and are reduced by 50 percent for the ensuing three years.

vii) Disallowed Tax Incentives

Tax exemptions or reductions at the request of the foreign investor, creditor or the supplier of technology are not allowable.

B. Tax Privileges under Various Tax Laws

i) Wage and Salary Income Tax Exemptions

Foreigners sent to Korea under a Government agreement, foreigners engaged in a foreign invested enterprise as prescribed in the Foreign Capital Inducement Act, and foreigners furnishing services under a technology inducement will be exempted from wage and salary income tax for five years from the date of registration if they file an application for tax exemption with the head of the district tax office. This exemption is in proportion to the percentage of the wages and salaries to global income.

ii) Tax Credit on Investment

Investment in certain specified fields may be eligible for exemption or reduction of corporation tax or income tax for six years, or for a reduction in the tax base by 8 percent of the total investment, or for an allowance of 100 percent special additional depreciation on fixed assets. The specified fields are the following: shipbuilding, iron, steel, lead, chemical fertilizer, chemical fiber, major automobile parts, machine, chemical pulp, soda ash production, power generation, mining, marine and livestock product processing, national land development, and petrochemical, electronics and electric machinery industries.

iii) Application of Five-Fold Registration Tax Rates

Five-fold registration tax rates are applied in Seoul and Busan to real

estate registration for business offices, branches and factories of corporations, in order to discourage concentration of business and industry in these areas. The five-fold registration tax rate shall not, however, be applied to foreign invested enterprises which are engaged in manufacturing.

iv) Capital Gains Tax Exemption

In cases where land is the local investment in kind for the establishment of a joint venture enterprise under the Foreign Capital Inducement Act, there is a capital gains tax exemption.

v) Deduction of Presumptive Dividends Tax

In the case of the foreign invested enterprises prescribed in the Foreign Capital Inducement Act, 50 percent of the amount of presumptive dividends tax is deductible.

vi) Change in Methods of Computing Depreciation

The computation methods for depreciation may be changed with the approval of the director of the district tax office. An application for change in the computation method must, however, be filed within 30 days from the beginning of the business year in which the new depreciation method is to be adopted.

vii) Special Depreciation

Special depreciation, in addition to the amount of ordinary depreciation on fixed assets, is allowed in the following businesses:

a. machinery and equipment for mining or manufacturing: 20 percent is added to normal depreciation;

b. heavy equipment used in national land construction projects: 20 percent is added to normal depreciation;

c. fixed assets for export business: when foreign exchange income accounts for 50 percent or more of the total income, 30 percent is added to normal depreciation, when foreign exchange income accounts for less than 50 percent of the total income, an amount is added calculated by multiplying an amount equivalent to 30 percent by 200 percent;

d. research facilities for promotion of science and technology, and

machinery and equipment for medium and small-scale manufacturing and mining: 30 percent is added.

In cases which involve more than one of the foregoing categories, however, special depreciation rates will apply to only one category.

viii) Tax Exemption and Reduction for Disaster

In cases where an enterprise is deemed unable to pay taxes because of a loss of more than 50 percent of the total amount of its business assets due to an Act of God or any other disaster, the corporation and business taxes on the enterprise may be exempted or reduced according to the ratio of the lost assets to its total assets.

Taxes Subject to Exemptions & Reductions

	Tax	Taxation Basis	Tax Rates	Tax Exemption or Reduction
NATIONAL TAXES	Income Tax	Amount of income or earnings	8%~70%	Exemption for 5 years, 50% reduction for following 3 years, on foreign owned ratio
	Corporation Tax	1) Income in each business year 2) Income in liquidation	1) Publicly held corporation 20%~27% 2) Closed corporation 20%~40%	Exemption for 5 years, 50% reduction for following 3 years, on foreign owned ratio
	Wages and Salary Income Tax	Foreign employees working in foreign invested enterprise, or under technology inducement contract	8%~70%	Exemption for 5 years
	Dividend Income Tax	Amount of Dividends Received	25%	Exemption for 5 years, 50% reduction for following 3 years
	Tax on Technology Income	Income from supplying technology (royalty)	25%	Exemption for 5 years, 50% reduction for following 3 years.

LOCAL TAXES	Interest Income	Gross receipt or Derived from interest on loans or deposits	25%	Exemption for approved foreign loans
	Customs Duty	Ad valorem basis (C.I.F. price)	5%~150%	Exemption for approved capital goods
	Value added Tax	same as above	10%	same as above
	Property Tax	Assessed value of land, building,* vessels, mining concession, etc.	1) Land: 0.3%~5% 2) House & Vessels: 0.3%~5% 3) Mine lot: W 30, per/ha	Exemption for 5 years, 50% reduction for following 3 years, on foreign owned ratio
	Property Acquisition Tax	Acquisition price of reality (land and building), automobiles, etc.	1) 1% 2) 2% in Seoul & Pusan	Exemption for 5 years, 50% reduction for following 3 years, on foreign owned ratio.

* Land and buildings thereon are treated as separate realities under the Korean Civil Code.

The government is planning to remove tax favors for foreign investment in the nation as the investment environment in the nation has much improved as a result of steady economic growth.

According to the Economic Planning Board the government has decided not to grant tax favors to foreign investments in foodstuffs, medicines and cosmetics among other industries.

The government authorities are also selectively authorizing foreign investment in the direction of giving up tax favors for other industrial classifications by amending the Foreign Capital Inducement Act, which was enacted in 1966.

In recent years, foreign investment in the country has increased sharply. This year over \$100 million is expected to be invested for foreigners as compared with the year's target of \$80 million, according to the EPB.

13. Application for permission for remittance overseas of dividends

Remittance overseas of dividends of legitimate profit accrued from the stocks or shares owned by foreign investors shall be guaranteed. A foreign investor shall apply for such permission to the Minister of Finance with the following documents:

- 1) documents to prove inducement or payment of the subject matters of investment;
- 2) documents to prove the subscription for the stocks or shares if the case falls under para. 2, art. 6 and art. 7 of the FCIL;
- 3) articles of incorporation of foreign invested enterprises, certified copy of corporate registration, and document to prove the date of commencement of business;
- 4) financial statements for dividends during the accounting term concerned (balance sheet, profit and loss account, surplus account, surplus appropriation statement), minutes of the shareholders meeting and auditing report by CPA;
- 5) other documents that the Minister of Finance deems necessary.

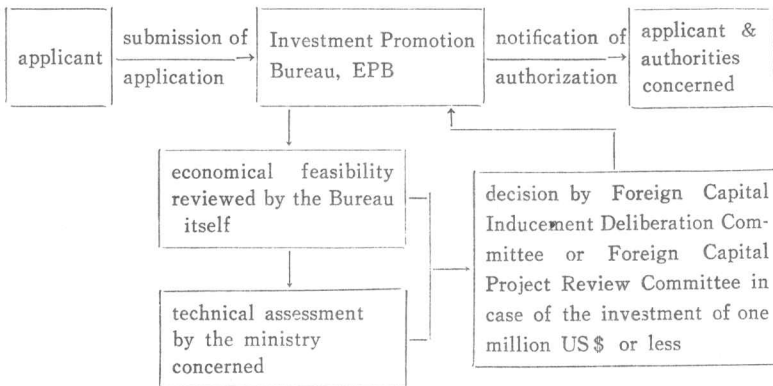
3. In case of Reinvestment

Under art. 6 para. 1 of FCIL, authorization must be obtained from the Minister of EPB for foreign investment. However,

1. when a foreign investor acquires the stocks to be issued as a result of the transfer of reserved surplus of the revaluation reserve into the capital of the foreign invested enterprise concerned;
2. when a foreign investor invests dividends of legitimate profits accrued from a foreign invested enterprise up to the amount of his original investment in the enterprise concerned, it suffices to file a report with the Minister of EPB.

Other procedures are identical or analogous to procedures of the new investments.

Diagram on procedures of obtaining authorization for foreign investment



4. Miscellaneous (license to establish a bonded factory)

There is a system of granting a license to establish a bonded factory for foreigners who wishes to export after simple processing. Such a license may be obtained from the director of the competent customs office by filing the following documents:

1. application;
2. business plan;
3. certified copy of the corporate registration (in case of a corporation);
4. corporate articles of incorporation (in case of a corporation);
5. police report (in case of a corporation, such report on the representative and all the other officers);
6. processing agreement;
7. financial responsibility statement;
8. document to prove the full payment of all the taxes.

Chater IV. Ex Post Facto Management of the Invested Foreign Capital

1. Ex Post Facto Management under FCIL

Ex post facto management means to regulate the induced capital so that

it is used for the original purpose. If the capital is so used for the purpose other than authorized as to be viewed as inefficient in terms of the national economy, or the capital cannot be used as authorized for one reason or another, alteration for the contents of the authorization is granted so that the use of capital can be fit for the altered purpose. The disorganized way of using foreign capital should be prevented in view of various privileges and favorable treatments accorded to it to maintain the domestic economic order and protect the foreign interests.

1. Payment of Subject Matters of Investment

The subject matter of the foreign capital induced under the authorization for investment must go through the custom clearance and be reported to the EPB and the Ministry concerned and paid in at the corporate capital if it is a stock corporation. The foreign investor must, within 18 months from the date of authorization of investment, complete payment of subject matters of investment (FCIL 8 III). If, however, the payment is not within such period, a permission for extension must be obtained from the Minister of EPB. Failure to obtain an extension constitutes a cause of cancellation of the authorization. The legal subject matters of investment are limited to the following (Art. 8):

- 1) foreign means of payment or domestic means of payment derived from direct exchange hereof;
- 2) capital goods;
- 3) profits accrued from the stocks or shares acquired under the FCIL;
- 4) industrial property rights and other technology equivalent thereto, the right to the use thereof, or other technology as deemed necessary by the Minister of EPB.

2. Registration of Foreign Invested Enterprise

When a foreign investor completes the payment the enterprise concerned must without delay register with EPB (Art. 9). This registration is a right as well as a duty of the enterprise concerned, for by completing the registration it becomes a foreign invested enterprise under the FCIL and is

entitled to various favorable treatments.

3. Examination and Correction of Inducement and Investment

The Minister of EPB may examine the foreign investor authorized under Art. 6 of FCIL and the one who intends to receive his investment with respect to any of the following matters:

- 1) status of inducement of subject matters of investment and of payment for stocks and shares therewith;
- 2) status of performance of contents of the authorization or conditions attached thereto.

When the result of such examination reveals that the contents of authorization under Art. 6 or conditions attached thereto are violated, the Minister of EPB may issue an order for correction thereof.

4. Restriction on Disposition of Foreign Capital

Those who intend to sell, assign, or lease foreign capital introduced by a foreign investor or a foreign invested enterprise, or to use it for purposes other than authorized must obtain a prior permission from the Minister of EPB (Art. 13). The violation hereof is subject to imprisonment up to five years, or fine up to fifteen million Won.

5. Permission for Additional Business

A foreign invested enterprise must register the amount of investment and the authorized business at the time of registration. If, however, it intends to engage in business other than the registered one, it must obtain prior permission of the Minister of EPB. This aims at accommodating the foreign invested enterprise for the changing business environments so that it is made possible for a foreign invested enterprise to engage in the additional business without going through the whole procedure necessary for obtaining a new authorization therefor. For the permission to engage in other business a foreign invested enterprise must apply with the following documents in triplicate respectively:

- 1) application for such permission;
- 2) descriptions of proposed project of the business concerned;

- 3) statement of causes to engage in the business other than the registered one;
- 4) related evidentiary documents.

6. Repatriation of Equity Interest and Remittance of Dividends

1) All properties of foreign invested enterprises are guaranteed in accordance with the provisions of the law (FCIL Art. 14). A foreign investor may sell stocks or shares owned by him and remittance overseas of such sales proceeds is guaranteed after two years from the date of commencement of operation of the enterprise concerned. In case of such sale the seller and the buyer concerned must jointly report the transaction to and obtain confirmation from the Minister of EPB. If the buyer is a foreigner in such case, he shall be deemed authorized under the provision of Art. 6 of FCIL.

2) Remittance overseas of dividends of legitimate profit accrued from the stocks or shares owned by foreign investors is guaranteed (Art. 11). For such remittance a permission from the Ministry of Finance is necessary. The Ministry, to grant such permission, shall deliberate the terms and conditions of authorization, whether all the taxes have been paid, and validity of repatriation of equity interest or remittance of dividends, etc. If such is viewed as improper, the permission may be denied.

7. Retroactive Collection of Taxes

A. Various causes for retroactive collection

The government provides for various tax privileges for the foreign investment. In the following cases, however, the taxes already exempted or reduced must be collected retroactively (Art. 16), provided that such retroactive collection of taxes shall be limited to the amount of the difference.

1) Retroactive collection of acquisition tax and property tax

- a. when an enterprise does not complete the payment of the subject-matter of investment within 18 months from the date of authorization;
- b. when, after such tax exemption, the ratio of a foreign investor's stocks or shares is less than the ratio of tax exemption due to a change

in the foreigner's equity holding ratio;

- c. when the authorization or the registration is cancelled;
- d. when the Minister of EPB so requests for the reason of non-performance of the terms of authorization or conditions.

2) Retroactive collection of customs duty and special consumption tax exempted or reduced

- a. when the authorization or the registration is cancelled;
- b. when the foreign capital has been used or disposed of for purposes other than authorized;
- c. when the Minister of EPB so requests for the reason of non-performance of the terms of authorization or conditions.

3) Retroactive collection of income tax and corporation tax exempted or reduced;

- a. when the authorization or registration is cancelled;
- b. when the Minister of EPB so requests for non-performance of the terms of authorization or conditions.

B. Demand for retroactive collection of taxes

The Minister of EPB shall demand the retroactive collection of taxes, if causes therefor occur and it is deemed necessary to do so, based on the examination result of the Sanction Review Committee, an advisory body for the Minister (PD Art. 10-2). The Assistant Minister in charge of the economic cooperation of EPB shall become the chairman ex officio and directors of bureaus concerned become its members. This committee is authorized merely to review the matters concerning the retroactive imposition of taxes, but can de facto examine the matters concerning the overall management of foreign investment. The retroactive imposition of taxes based on non-performance of the export requirement condition shall be made under the following items:

- 1) When a foreign invested enterprise violates the export requirement condition for once and the ratio of non-performance shall be less than 10 percent, the amount of corporate tax or income tax exempted or reduced

during the pertinent year as computed according to the ratio of non-performance amount or non-performance quantity compared to the export-obligated to the export-obligated amount or export-obligated quantity;

2) when a foreign invested enterprise violates the export requirement condition for once and the ratio of non-performance shall be equal to or over 10 percent, the total amount of acquisition tax and property tax exempted or reduced and the amount of corporate tax or income tax exempted or reduced during the pertinent year as computed according to the ratio of non-performance amount or non-performance quantity compared to the export-obligated amount or export-obligated quantity;

3) when a foreign invested enterprise violates the export requirement condition for over twice consecutively, the total amount of acquisition tax, property tax, customs duty, special consumption tax exempted or reduced, and the total amount of corporate tax or income tax exempted or reduced during the pertinent year.

8. Cancellation of Authorization

If the Minister of EPB finds that a foreign invested enterprise authorized or registered under FCIL falls under any of the following, he may cancel the authorization or registration:

1) When the subject matter of investment has not been paid in within 18 months from the date of authorization, provided, however, that there is a justifiable reason for non-payment, the period of such payment may be extended;

2) when the order of the EPB Minister for correction has not been complied with. An objection to such an order as being unreasonable may be raised and will be duly handled;

3) when the enterprise has, without special reason, failed to commence business activities within one year from the date of completion of registration or has failed to carry on business activities for two years or longer continuously.

9. Subscription of Stocks or Shares

The following subscription of stocks or shares shall be reported to the Minister of EPB, and once the report is received, it takes effect as the authorization of foreign investment and all the rights and duties related thereto will be succeeded:

- 1) when a foreign investor acquires the stocks to be issued as a result of the transfer of reserved surplus of the revaluation reserve into the capital of the foreign invested enterprise concerned;
- 2) when a foreigner acquires the stocks or shares of a foreign invested enterprise from a foreign investor by means of inheritance, legacy or gift;
- 3) when a foreign investor acquires the stocks or shares of a remaining or newly-incorporated juridical person after a merger in exchange for his stocks or shares of the foreign invested enterprise concerned at the time of such a merger;
- 4) When a foreign investor acquires the stocks to be newly issued as a result of the split or consolidation of the stocks owned by the foreign investor.

10. Miscellaneous

Foreign invested enterprises and foreign investors shall, except otherwise prescribed by law, be accorded as equal treatment as the Republic of Korea nationals with respect to their business.

2. Ex Post Facto Management Under the Laws Other than FCIL

1. Appropriateness of Product-exporting Price

To check whether the price is too unreasonable is not very difficult in case of domestic sales of the manufactured products, but the government has great concern over the export price of products manufactured by foreign invested enterprises, for if it is too low it would result in the overseas flight of the national foreign exchange, and cause the problem of tax evasion. It should not be below the check price of the ministry concerned.

Therefore, the authorities empowered to grant a foreign capital investment authorization, the ministries concerned and the national tax administration

may often check the export prices of the products manufactured by foreign invested enterprises.

2. Checking of the Import Price of the Raw Material and Equipments

The same authorities as above may check and manage the import prices of the raw material and equipments especially if their supply is monopolized by foreign investors.

3. Other Means of Ex Post Facto Management

1. Various Examinations and Verifications

Progress in inducing payment and use of the subject matters of investment may be examined and verified and an order for correction thereof may be rendered if necessary. Whether the terms and conditions of the authorization have been fulfilled is also closely checked.

2. Retroactive Collection of Taxes Exempted and Reduced

If the induced foreign capital is used for the purposes other than the authorized or any business act is done against the contents of authorization, the exempted or reduced taxes may be retroactively collected.

3. Cancellation of Authorization or Approval

Authorization, approval or registration may be cancelled if a specific duty prescribed by the law, an administrative disposition or conditions attached thereto is discharged.

4. Withholding of Registration of Foreign Invested Enterprise

Registration of foreign invested enterprise shall be withheld if a foreign investor or foreign invested enterprise does not discharge the contents of authorization, or memorandum or conditions attached thereto. If withheld, all the legal privileges will not be accorded to foreign invested enterprises.

5. Prosecution and Other Penalties

Failure to discharge legally prescribed duties or meet the requirements will be subject to prosecution with a penalty of fine and/or punishment under the very limited circumstances. In practice, however, few cases have been prosecuted or indicted.

6. Other Sanctions Imposed by the Laws and Regulations Other than FCIL

Since Art. 17 of FCIL provides that foreign invested enterprises and foreign investors shall, except for cases specifically prescribed by law, be accorded as equal treatment as the Korean nationals with respect to their business, all the domestic laws and regulations will be applied to them. Therefore, foreign investors or foreign invested enterprises are also regulated by the Foreign Exchange Management Act, Foreign Trade Law, Environmental Preservation Act and Foreigners' Land Ownership Act, as other domestic corporations or nationals are.

7. Labor Relations

There is a special statute regulating the labor relations of foreign invested enterprises in addition to the Labor Union Law and the Labor Dispute Settlement Law. The Special Measure Act concerning the Labor Unions and the Labor Dispute Settlement of the Foreign Invested Enterprises (Law No. 2192 promulgated on January 1, 1970) is applicable to the foreign invested enterprises prescribed by Art. 6 of FCIL that fall under one of the following:

1) One of the following businesses in which the foreigner's equity investment is US\$1,000,000 or more:

- a. electric and electronic business;
- b. chemical business;
- c. petroleum;
- d. steel and metal;
- e. machinery;
- f. textile;
- g. ceramic;
- h. transportation and tourism.

2) Foreign invested enterprise all the products of which are exported.

Eligible enterprises must apply for the EPB Minister for approval, and the Minister must notify the Director General of the Office of Labor of such

approval upon granting it in consideration of whether suspension or close down of such foreign invested enterprise hampers the development of the national economy, gravely affects the national economy, or threatens the daily life of citizens.

If a labor dispute occurs, it must first be submitted to and mediated by the Conciliation Committee chaired by the Minister of Public Health and Social Affairs. This procedure is speedier and more efficient than the ordinary labor dispute settlement procedures prescribed by the Labor Dispute Settlement Act.