

SOUTH KOREA¹

I. Overview of Country

South Korea (officially the Republic of Korea) is a civil law based, constitutional democracy with three branches of government: executive, judicial and legislative. Freedom of association is guaranteed by Article 21 of the Korean constitution.²

The president heads the executive branch. He/she is directly elected by the people and serves as head of state, head of government and commander in chief. At the national level, the legislative branch consists of the National Assembly of South Korea, currently with 300 members representing four political parties. Local legislative assemblies also exist at the provincial and metropolitan levels. The judicial branch includes the Supreme Court as the court of final appeal, appellate courts found in five of the country's major cities and district courts, which exist in almost every major city and municipal courts whose jurisdiction is limited to small claims and petty offences. Specialized courts exist for family, administrative and patent cases. As well, the Constitutional Court is independent from the Supreme Court and is charged solely with constitutional review and deciding cases of impeachment.

II. Registration Procedures

A. For-Profit Organizations

a. Laws

Companies are regulated by the *Commercial Act* and are grouped into four categories: partnership companies (hapmyong-hwesa), limited partnership companies (hapja-hwesa), stock companies (joosik-hwesa) and limited liability companies (yuhan-hwesa).³

Registration of all types of companies involves three general steps:

1. Creation of a company seal via the seal maker agency, which costs Korean Won (KRW) 30,000 (approx. 28 USD) and takes 1 day.
2. E-Registration of the company with Start Biz Online (KRW 2000 or approx. 2 USD). Start Biz Online combined the Internet Register Office, the Local Tax Payment System, the Electronic Notarization System, the National Tax Information System, the Financial Common Network and the Social Insurance Information System. It allows users to undertake the entire incorporation process online, including:
 - checking the availability of a trade name;
 - obtaining a certificate of name availability;
 - filing the incorporation application package. This includes articles of incorporation, which must include:
 - for partnerships and limited partnerships: purposes; trade name; name, resident registration number and domicile of each member; subject matter, value or basis

¹ The following memorandum was prepared by pro bono counsel for the ABA Center for Human Rights. It is intended as background information only and should not be relied upon as legal advice on a particular case. The views expressed herein have not been approved by the House of Delegates or the Board of Governors of the American Bar Association, and, accordingly, should not be construed as representing the policy of the American Bar Association.

² Article 21(1) of the South Korean *Constitution*, 1948 which can be found at:

[https://www.icrc.org/applic/ihl/ihl-nat.nsf/162d151af444ded44125673e00508141/aba339f342ad7493c1256bc8004c2772/\\$file/constitution%20-%20korea%20-%20en.pdf](https://www.icrc.org/applic/ihl/ihl-nat.nsf/162d151af444ded44125673e00508141/aba339f342ad7493c1256bc8004c2772/$file/constitution%20-%20korea%20-%20en.pdf)

³ Article 170 of the *Commercial Act*, 1963 which can be found at:

http://en.wikisource.org/wiki/Translation:Commercial_Act_of_South_Korea [*Commercial Act*]

- of valuation of the contribution to be made by each member; place of principal office; and date of execution of articles of incorporation);⁴
- for stock companies: purpose; trade name; total number of shares authorized and par value per share; number of shares to be issued at the time of incorporation; place of principal office; method of public notice; name, residence registration number and address of each promoter; any special benefits to be received by promoters and names of such promoters.⁵ In addition, the *Commercial Act* sets out that stock companies must register: the total amount of capital; total number and class of the issued and outstanding shares and contents and number of each class of shares; provision that the transfer of shares be subject to the approval of the board of directors; provision under which stock options are granted; places of branch offices; duration or reasons for dissolution of company; dividend of interest prior to the commencement of business; redemption of shares out of profits to be distributed to shareholders; name and residence registration number of each director, auditor and representative director;⁶
- for a limited liability company: purposes; trade name; name, resident registration number and domicile of each member; total amount of capital (which must be a minimum of 10 million KRW (approx. 9000 USD); amount of each contribution unit (which shall be no less than 5000 KRW (approx 4 USD); number of contribution units by each member; place of the principal office;⁷ name, residence registration number and address of each director; name of representative director; provisions relating to the joint representation of the company by two or more directors; duration or any other reason for dissolution of the company; name and residence registration number of auditors⁸
 - obtaining a certificate of seal impression of the corporation;
 - registering and obtaining a tax identification number;
 - submitting rules of employment; and
 - registering electronically for the Public Health Insurance Program, the National Pension Fund, Employment Insurance and Industrial Accident Compensation Insurance.

After checking the company name, uploading incorporation documents, as well as filing company information, applicants will automatically be directed process payment of their corporate registration tax bill (1.2% capital registration tax + education tax (20% of registration tax)) and incorporation fee (KRW 10,000 or approx. 9 USD). In most cases, it takes three days to obtain the certificate of incorporation. During this time, the court registry office reviews the documents and information provided by applicants and due diligence regarding the company address is conducted by the tax office.

3. Applicants will further be re-directed by Start-Biz Online to the relevant website where they can process online payment of fees to the National Health Insurance Corporation for the Public Health Insurance Program, the National Pension Fund, Employment Insurance and Industrial Accident Compensation Insurance. Takes less than one day and is free of charge.

Partnerships and limited partnerships may be dissolved where specified in the articles of corporation, with the consent of all members, where there is only one member left, or for reason of merger, bankruptcy or

⁴ See *Ibid.*, Article 179 (for partnerships), Article 270 (for limited partnerships)

⁵ *Ibid.*, at Articles 289 and 290.

⁶ *Ibid.*, at Article 317.

⁷ *Ibid.*, at Article 543.

⁸ *Ibid.*, Article 549.

an order of the court.⁹ Similarly, a stock company and limited liability company may be dissolved for all the same reasons or where shareholders in a general meeting pass a dissolution resolution.¹⁰

A court may order a company dissolved upon an application by an interested person or public prosecutor where: the company was incorporated for an illegal purpose; the company, without justifiable reasons, failed to commence its business within one year after its establishment or discontinued its business for a period of at least one year; a director or a member managing the affairs of the company violated the law or the articles of incorporation of the company resulting in it being deemed impermissible for the company to continue its existence.¹¹ Redress mechanisms were not indicated in the *Commercial Act*.

B. Not-For Profit Organizations

a. Laws

In South Korea, not-for profit organizations can exist as unregistered organizations or an incorporated, registered non-profit (public-interest) corporations. Registration provides tax and other financial benefits.

Associations and foundations (public interest corporations) relating to art, charity, science, religion, social intercourse or otherwise not engaged in profit are considered juristic persons and are governed by the *Civil Code*.¹² As set out in the *Code*, an association or foundation may be formed subject to permission of the competent authorities.¹³ Permission to incorporate must be obtained by drawing up articles of incorporation which detail the following: objective of the association; name; seat of office; provisions concerning assets; provisions concerning appointment and removal of directors; provisions concerning acquisition and loss of membership; cause of dissolution.¹⁴ Similarly, the founder of a foundation must endow property and draw the same articles of incorporation as an association.¹⁵ If incorporation of the association or foundation is permitted by the appropriate governing authority, the incorporation must be registered at the seat of the organization's principal office within three weeks from the date of permission. The following information must be registered: objective; name; office; date of permission of incorporation; causes of dissolution; total value of assets; method of effective contributions; and names and domicile of directors.¹⁶ Despite extensive internet searches, no information was found with respect to fees for registration, registration timeframe or how to determine exactly who is the "competent authority".

Associations and foundations can be dissolved for a number of reasons including: bankruptcy; completion of the undertaking of its objectives; cancellation of permission for incorporation by the competent authorities (as set out in legislation - for acting outside the scope of its purpose, violating conditions attached to incorporation and/or harming public interest. Despite extensive research, there is no information with respect to appealing such a decision)¹⁷; where no member remains; or by resolution of a general meeting.¹⁸

⁹ *Ibid.*, Article 227.

¹⁰ *Ibid.*, Articles 517 and 609.

¹¹ *Ibid.*, Article 176.

¹² Article 31, *Civil Act* of South Korea, which can be found at

http://en.wikisource.org/wiki/Civil_Act_of_South_Korea/GENERAL_PROVISIONS#Article_49_.28Particulars_to_be_Registered.29 [*Civil Act*].

¹³ *Ibid.*, Article 32.

¹⁴ *Ibid.*, Article 40.

¹⁵ *Ibid.*, Article 43.

¹⁶ *Ibid.*, Article 49.

¹⁷ *Ibid.*, Article 38.

¹⁸ *Ibid.*, Article 77.

The *Foreign Non-Governmental Aid Organizations Act* allows for registration and support for foreign nongovernmental organizations in South Korea. Defined as a nonprofit social services organization whose headquarters is abroad and which provides social welfare services, such as health services, education services, services for protection of livelihood, disaster relief services, local community development services, etc. in Korea by the aid of its headquarters and whose sources of revenue required for such services are provided from abroad and whose substantial operation main body is a foreigner.¹⁹ Such organization must register with the Minister of Health and Welfare in the fashion set out by presidential decree.²⁰ The Minister may, upon holding of a hearing, cancel registration where the organization: performs any service other than its purpose; has already accomplished the purposes of its services or it becomes impossible to accomplish; does not attain actual results of services for at least one year without justifiable reasons; registered by deceit or other wrongful means or fails to make a report of modification without justifiable reasons.²¹

The *Assistance for Non-profit, Nongovernmental Organizations Act* (also known as the Non-profit Private Organization Support Act), passed in 2000, allows for nonprofits and nongovernmental organizations to: apply for administrative assistance and financial subsidies to promote and undertake activities²²; receive tax incentives²³; and receive subsidies for postal charges.²⁴ These organizations do not have to be juristic persons (as set out in the *Code*) but must: operate to benefit numerous and unspecified persons; not distribute profit among its members; not have been established to support a specific political party or candidate in election or to spread the creed of any religion; have at least 100 members; have been established for one year or more; and where it is not a juristic person but an organizations, must have a representative or manager.²⁵ Organizations must apply for registration under the act with the minister who supervises its main public interest activities, Special Metropolitan City Mayor or Do Governor.²⁶

The *Social Enterprise Promotion Act* was enacted in 2006 in an effort to curb unemployment among vulnerable persons and expand social services. Organizations which are “engaged in business activities, such as selling goods and services, while pursuing a social purpose of enhancing the quality of local residents’ life by means of providing social services and creating jobs for the disadvantaged” can be certified as social enterprises.²⁷ To obtain certification, an organization must be an association registered under the *Civil Act* or a company/non profit private organization pursuant to the *Commercial Act*.²⁸ Applications are submitted to the Ministry of Labour and must include articles of association, rules, etc. that indicate: purposes; contents of business; title; location of main office; form and operating method of organization and governance; matters concerning profit sharing and re-investment; matters concerning contribution and financing; matters concerning the composition as well as appointment and dismissal of engaged persons; matters concerning dissolution and liquidation; other matters as determined by Presidential Decree. Organizations need to provide proof of the relationship between their activities and a

¹⁹ *Foreign Non-Governmental Aid Organizations Act*, Article 2. Found at: https://elaw.klri.re.kr/eng_service/lawView.do?hseq=7814&lang=ENG

²⁰ *Ibid.*, Article 4.

²¹ *Ibid.*, Articles 7 and 8.

²² *Assistance for Non-profit, Non-Governmental Organizations Act*, 2000, amended 2008, Articles 5, 6 and 7. Found at http://elaw.klri.re.kr/eng_mobile/viewer.do?hseq=17689&type=lawname&key=non-profit [*Assistance for Non-profit, Non-Governmental Organizations Act*].

²³ *Ibid.*, Article 10. Specifically, the *Restriction of Special Taxation Act*, 1998 at Article 85-6 sets out that such organizations are entitled to an exemption of a tax amount equivalent to 50% off corporate or income tax for the first four taxable years.

²⁴ *Ibid.*, Article 11.

²⁵ *Ibid.*, Article 2.

²⁶ *Ibid.*, Article 4.

²⁷ *Social Enterprise Promotion Act*, 2007 at Article 2, 8(3).

²⁸ *Ibid.*, Article 8.

social goal. After deliberation of the Social Enterprise Support Committee (under the authority of the Ministry of Labour) the organization is certified (or not).²⁹ Enterprises are eligible for tax reductions and/or financial supports from the national/provincial/city councils.³⁰ Social enterprises are further promoted through Social Enterprise Promotion Agency, established in 2010. Certification can be cancelled where it was obtained through fraudulent means and where it does not fulfill the certification requirements.³¹ Where cancellation is sought, the Minister of Employment and Labour must hold a hearing.³²

b. Case Law

Not researched.

C. Analytical comparison of the legal process of registration

Registration of both for profit and not-for profit organizations requires the submission of numerous documents including articles of incorporation. Registration of for profit organizations is more streamlined and straightforward given the existence of an online registration process that allows “one-stop” registration. There is no centralized system for registration of not-for profits and information on procedures for incorporation and registration are difficult to find.³³ Both types of organizations may be dissolved for similar purposes.

III. Tax Laws

A. For-Profit Organizations

a. Laws

For-profit organization income tax is governed by the *Corporate Tax Act*.³⁴ Taxes must be submitted within 3 months of the end of the last day of the taxation year and for-profit corporations can be taxed on all items of ordinary business income including income from the transfer of real estate property and liquidation income.³⁵

The corporate tax rate in 2014 was 11% on the first 200 million KRW (approx. 180,000 USD), 22% up to 20 billion KRW (approx. 1.8 million USD) and 24.2% on amounts over 20 billion KRW. Stock companies and those with income over 7 billion KRW (approx. 6.4 million USD) are subject to an independent audit by a certified public accountant and must submit externally audited financial statements with their annual corporate tax returns. The National Tax Service conducts periodic audits at fixed four year intervals of large corporations (annual revenue of 500 billion KRW (approx 45 million USD or more) and five year or longer intervals for smaller enterprises.³⁶

Tax credits and exemptions are available for companies engaging in research and development type activities, including:³⁷

- Tax credits for research and human resources development expenses;
- Special taxation for contributions to research and development;

²⁹ *Ibid.*, Article 4.

³⁰ *Ibid.*, Articles 13 and 14.

³¹ *Ibid.* Article 18(1).

³² *Ibid.*, Articles 18(2) and (3).

³³ It should be noted, however, that any lack of clarity determining exactly how to register a not-for profit organization may be due primarily to the lack of English translations of Korean laws.

³⁴ *Corporate Tax Act*, 1998. Found at <http://www.ifrc.org/docs/idrl/901EN.pdf> [*Corporate Tax Act*].

³⁵ *Ibid.*, Articles 3 and 60.

³⁶ See KPMG's Korea Tax Profile, 2013, found at: <http://www.kpmg.com/Global/en/services/Tax/regional-tax-centers/asia-pacific-tax-centre/Documents/CountryProfiles/Korea.pdf>

³⁷ *Corporate Tax Act*, *supra*, see Article 51-2.

- Tax credit for investment in facilities for research and manpower development;
- Special taxation for acquisition cost of technology;
- Reduction or exemption from corporate tax for corporation moving into research related fields.

South Korea also has incentives for attracting foreign investment, including:³⁸

- Reduction or exemption from corporate income tax, acquisition tax, and property tax;
- Exemptions from customs duties or value added tax;
- Exemption from tax on technical license royalties.

The *Corporate Tax Act* also allows for the imposition of additional taxes in the following situations:

- Where the corporation fails to properly keep accounting records the district tax office shall additionally collect an amount corresponding to 20% of the calculated tax amount (not applicable to non-profit corporations);³⁹
- When a taxpayer fails to accurately report the tax amount due they shall be subject to a penalty between 10 and 30%.⁴⁰

a.

B. Not-For Profit Organizations

a. Laws

The *Corporate Tax Act* governs taxation of non-profit organizations both registered and non-registered non-profit organizations.⁴¹ Such organizations are considered “non-profit domestic corporations” and any “profit-making income” of non-profit organizations derived for each business year shall be taxed in a similar fashion to for-profit corporations.⁴² As defined in the Act, such income includes: earnings from business such as manufacturing, construction, wholesale or retail sales, consumer product report, rental, real estate and provision of business services; interest, discounts or profits from dividends or distributions; dividends or funds; capital gains from transfer of stocks, investment shares, preemptive subscription rights; revenues accruing from the disposal of fixed assets.⁴³ A benefit accruing to non-profits that is not available to for-profit organizations is that they are allowed to appropriate money from their profit making businesses and deduct these as expenses provided they used to carry out the proper purposes of the non-profit.⁴⁴

The Korean government has created numerous other tax and financial incentives for the non-profit sector.

As noted above, the *Assistance for Nonprofit, Nongovernmental Organizations Act* and the *Social Enterprise Promotion Act* allows organizations registered under this Act to receive tax incentives.⁴⁵ The

³⁸ *Ibid.*, see Articles 57 and 57-2.

³⁹ *Ibid.*, at Article 76.

⁴⁰ *Ibid.*, Article 66.

⁴¹ Unregistered non-profits organizations are deemed to be “juristic persons” and thus governed by the *Corporate Tax Act*, *supra*, pursuant to Article 1 (2)(c) of that Act and Article 13 of the *Framework Act on National Taxes*, 2010 found at

http://www.nts.go.kr/eng/data/5_FRAMEWORK_ACT_ON_NATIONAL_TAXES.pdf

⁴² *Corporate Tax Act*, *supra*, at Articles 3(1), (2).

⁴³ *Ibid.*, Article 3(2).

⁴⁴ *Ibid.*, Article 29.

⁴⁵ *Assistance for Nonprofit, Nongovernmental Organizations Act*, *supra* at Article 10. Specifically, the *Restriction of Special Taxation Act*, 1998 at Article 85-6 sets out that such organizations are entitled to an exemption of a tax amount equivalent to 50% off corporate or income tax for the first four taxable years.

Natural Environment Conservation Act requires governments to support (financially or otherwise) organizations that seek to participate in environmental conservation.⁴⁶

b. Case Law

Not researched.

C. Analytical comparison

With respect to their profitable activities, profit and non-profit organizations appear to be subject to similar tax treatment and both have numerous tax incentives available.

IV. Financial Transaction Laws

A. For-Profit Organizations

a. Laws

i. Foreign Investment/Foreign Funding Laws

The *Foreign Investment Promotion Act* is the basic law regarding foreign investment. It sets out that, subject to some exceptions (discussed below), foreigners may conduct, without restraint, various activities of foreign investment in Korea.⁴⁷ To this end, South Korea has established Invest KOREA, a national investment promotion agency that has as its main purpose to support the establishment of foreign businesses in South Korea.⁴⁸ Other relevant subordinate statutes include: the *Enforcement Decree of the Foreign Investment Promotion Act*; *Enforcement Rule of the Foreign Investment Promotion Act*, which prescribe matters delegated by the *Foreign Investment Promotion Act* and matters necessary for enforcement of the Act; and *Regulations on Foreign Investment and Technology Introduction*. Much of the benefit for foreign investors prescribed by legislation is related to tax abatement or exemptions⁴⁹ but also includes some financial and administrative support and foreign investment zones.⁵⁰

The *Foreign Investment Promotion Act* restricts foreign investment in numerous broad categories, namely where: it threatens the maintenance of national safety and public order; it has harmful effects on public hygiene or environmental preservation or is against Korean morals or customs; it violates the Acts and subordinate statutes.⁵¹ The *Regulations on Foreign Investment and Technology Introduction* and the *Consolidated Public Notice for Foreign Investment* specifically set out the types of businesses where foreign investment is not permitted. These include:

- Postal services, central banking, individual mutual aid organizations, pension funding, administration of financial markets, activities auxiliary to financial service activities, etc.;
- Legislative, judiciary, administrative bodies, foreign embassies, extra-territorial organizations and bodies;
- Education (pre-primary, primary, secondary, higher education, universities, graduate schools, schools for the handicapped, etc.);
- Artists and/or religious, business, professional organizations, environmental advocacy organizations, political and labor organizations.

⁴⁶ *Natural Environment Conservation Act*, 1991. See Articles 4, 5, 41 and 54. Act can be found at:

http://elaw.klri.re.kr/eng_mobile/viewer.do?hseq=28457&type=lawname&key=environment

⁴⁷ *Foreign Investment Promotion Act*, 1998 found at:

<http://www.law.go.kr/engLsSc.do?menuId=0&subMenu=5&query=%EC%99%B8%EA%B5%AD%EC%9D%B8%ED%88%AC%EC%9E%90#liBgcolor2> [*Foreign Investment Promotion Act*]

⁴⁸ See their website at: <http://www.investkorea.org/ikwork/iko/eng/main/index.jsp>

⁴⁹ See Article 9 of the *Foreign Investment Promotion Act*, *supra* and *Restriction of Special Taxation Act*, 2008, found at: <http://www.moleg.go.kr/english/korLawEng?pstSeq=47514> [*Restriction of Special Taxation Act*].

⁵⁰ *Foreign Investment Promotion Act*, *supra*, Articles 14, 14-2, 16 and 18.

⁵¹ *Ibid.*, at Article 4.

ii. Political Contribution Laws

For-profit companies are forbidden from making political contributions by the *Political Funds Act*.⁵²

b. Case Law

Not researched.

B. Not-For Profit Organizations

a. Laws

i. Foreign Investment/Foreign Funding Laws

Contributions to not-for profit organizations is recognized as foreign investment and governed by the *Foreign Investment Promotion Act* where:

- the non-profit corporation has independent research facilities in the field of science and technology and meets one of the following conditions:⁵³
 - has at least five full time regularly employed research staff, consisting of persons with master's degrees or higher in the field of science and technology, or persons with a bachelor's degree in the field of science and technology having not less than a three year research career or;
 - research and development activities are conducted for a project which accompanies high technology pursuant to the *Restriction of Special Taxation Act*.
- The amount contributed is not less than 50 million KRW (approx \$46,000 USD) and:⁵⁴
 - The non-profit has been established for the purpose of promoting science, art, medical services, or education and continues to conduct business to develop professionals in the relevant fields and the business encourages international exchanges; or
 - The non-for profit corporation is a regional office of an international organization that carries out international cooperation between civilians or governments.

ii. Political Contribution Laws

As with for-profit corporations, non-profits are also prevented from making political contributions by the *Political Funds Act*.⁵⁵

b. Case Law

Not researched.

C. Analytical Comparison

For-profit and not-for profit corporations are treated similarly with respect to foreign investment and political contributions. With respect to foreign investment, the South Korean government has incentives to encourage investment in both profit and not-for profit organizations. Restrictions in categories of

⁵² Article 31 of the *Political Funds Act*, 2005. Found at: http://elaw.klri.re.kr/eng_service/lawView.do?hseq=29272&lang=ENG [*Political Funds Act*].

⁵³ See the *Enforcement Decree of the Foreign Investment Promotion Act* at Article 2(6) found at: <http://www.law.go.kr/engLsSc.do?menuId=0&subMenu=5&query=%EC%99%B8%EA%B5%AD%EC%9D%B8%ED%88%AC%EC%9E%90#liBgcolor6>. Also see Article 2(1)4(c) of the *Foreign Investment Promotion Act*, *supra* and the Invest KOREA website at: <http://www.investkorea.org/ikwork/iko/eng/cont/contents.jsp?code=102040102>

⁵⁴ *Foreign Investment Promotion Act*, *supra* at Article 2(1)4.(d) and Article 7 of the *Enforcement Decree of the Foreign Investment Promotion Act*, *supra*.

⁵⁵ *Political Fund Act*, *supra* at Article 31.

businesses that can be invested in apply to both types of organizations. Similarly, both types of organizations are prevented from making political contributions. The laws also seem to create restrictions regarding FPO's of a political nature, not being given access to foreign funds, but it is not clear.

V. Auditing/Reporting Requirements

A. For-Profit Organizations

a. Laws

The *Commercial Act* governs reporting the requirements of for-profit companies. While it does not list any reporting requirements for partnerships and limited partnerships, stock companies and limited liability companies, directors must, at each period for the settlement of accounts:

- prepare financial statements including a balance sheet, income statement and statements of appropriations of retained earnings or statements of disposition of deficit;⁵⁶
- prepare a business report which shall include important matters concerning the business as set forth in the Presidential Decree;⁵⁷

All of which is submitted to auditors who issue a report that assesses whether the company is in conformity with their reporting obligations.⁵⁸

In addition, the *Corporate Income Tax Act* requires that all corporations must keep its account books by the double entry system and preserve important documentary evidence related to the account books.⁵⁹ Corporations are also required to prepare and keep a stockholder registry or employee registry stating the names, addresses and resident registration numbers of stockholders and employees.⁶⁰

b. Case Law

Not researched.

B. Not-For Profit Organizations

a. Laws

Associations and foundations are required to submit and keep in the office a yearly inventory of assets. In addition, associations must keep an updated list of members.⁶¹

Social enterprises must draw up a business report including business performance and interested parties' participation in decision making, and submit it to the Minister of Labour at the end of February every fiscal year.⁶² In addition, the Minister may order a social enterprise to make a report or submit a related document.⁶³ Based on this information, the Minister may issue a corrective order.⁶⁴

Pursuant to the *Assistance for Nonprofit, Nongovernmental Organizations Act*, upon completion of the supported project, a project report must be submitted by the end of January of the next fiscal year.⁶⁵

⁵⁶ *Commercial Act, supra* at Article 447.

⁵⁷ *Ibid*, Articles 447-2, 579 and 579-2.

⁵⁸ *Ibid*, Articles 447-4 and 579.

⁵⁹ *Corporate Tax Act, supra* at Article 112.

⁶⁰ *Ibid.*, at Article 118.

⁶¹ Article 55 of the Civil Act of Korea.

⁶² *Social Enterprise Promotion Act, supra* at Article 17(1).

⁶³ *Ibid*, Article 17(2).

⁶⁴ *Ibid*. Article 17(3).

⁶⁵ *Assistance for Nonprofit, Nongovernmental Organizations Act, supra* at Article 9.

In addition, for tax purposes, as with profit corporations (see above) non-profit corporations are required to keep account books (to the extent they have profit making activities).

b. Case Law
Not researched.

C. Analytical Comparison
Generally, both profit and non-for profit organizations must keep some record of activities, including taxable activities, which must be submitted to the appropriate authorities.

VI. Penalties for Non-Compliance

A. For-Profit Organizations

a. Laws

i. Civil

In relation to the regulatory scheme described above, pursuant to the *Commercial Act*, for-profit organizations (managers, liquidators, transfer agents, acting director) are subject to a fine for negligence not exceeding five million KRW (approx. 4500 USD) where they:⁶⁶

- Neglected to effect any registration set out in the Act;
- Refused to permit the inspection or copying of documents or to deliver a transcript or an abstract without justifiable reason;
- Made a false report or concealed facts from government authorities, general meetings or meetings of bondholders;
- Failed to state or misstated any particulars in the articles of incorporation, the register of shareholders, register of members, register of bonds, the minutes, the property list, the balance sheet, business report, the operation report, the income statements, the statements of appropriation of retained earnings or statements of disposition of deficits, reports on the settlement of accounts, account books, the supplementary disposition of deficits, the reports on the settlement of accounts, account books, the supplementary schedules, or the audit reports;
- Refusal of the investigation of the auditor or member of the audit committee without justifiable reason.

In addition, the *Commercial Act* sets out that a person who engages in business in the name of a company before its incorporation shall be subject to a fine for negligence two times the sum of the registration tax for the registration of incorporation of the company.⁶⁷

ii. Criminal

The *Commercial Act* provides that, where a director, member of audit committee or acting director made a false report, or has concealed facts from a court or the general meeting with respect to the net assets, he shall be punished by imprisonment not exceeding five years or to a fine not exceeding fifteen million KRW (approx. 14,000 USD).⁶⁸

The *Foreign Investment Promotion Act* provides that use of false documents with respect to permissions or reporting under the Act will result in a term of imprisonment for not more than 3 years or a fine not exceeding 30 million KRW (approx. 27,000 USD).

⁶⁶ *Commercial Act, supra* at Article 635.

⁶⁷ *Commercial Act, supra* at Article 636.

⁶⁸ *Ibid.*, Article 626.

Where a defendant is not satisfied with the judgment, appeal can be made to the next level of court within seven days of the judgment.⁶⁹

B. Not-For Profit Organizations

a. Laws

i. Civil

Directors, auditors, or liquidators of an association or foundation are liable to a fine of not more than five million KRW (approx. 4500 USD) where they:⁷⁰

- neglected any of the regulations in the *Civil Act*;
- contravened the reporting requirements;
- obstructed inspection and supervision of the association or foundation;
- made false statements or concealed facts from authorities or a general meeting.

While the *Civil Code* does not indicate how such assessments of negligence can be appealed, it can perhaps be presumed that the *Civil Procedure Act* would govern this area and would allow for the filing of a complaint.⁷¹

Social enterprises are liable to a fine of not more than ten million KRW (approx. 9000 USD) where:⁷²

- they fail to comply with a corrective order issued pursuant to Article 17(3); or
- they use the title of “social enterprise” where they are in fact not certified as such.

Social enterprises are liable to no more than a 5 million KRW (approx. 4500 USD) fine where:

- they fail to report changes to their articles of association;
- they fail to make a business report or make one in a fraudulent fashion;
- they fail to make, or fraudulently make, a report or provide another document as ordered by the Minister of Labour.⁷³

Any social enterprise dissatisfied with one of the foregoing fines can object within 30 days in which case the Minister of Labour will notify the competent court who will try the case pursuant to the Non-contentious Case Litigation Procedure Act.⁷⁴

ii. Criminal

Pursuant to the *Assistance for Nonprofit, Nongovernmental Organizations Act* presentation of a false project proposal shall be punished by imprisonment for not more than 3 years or a fine up to 10 million KRW. Inappropriate use of subsidy shall be punished by imprisonment for not more than 1 year or a fine up to 5 million KRW (approx. 4500 USD).⁷⁵ Appeals must be lodged within seven days of judgment.⁷⁶

C. Analytical comparison

⁶⁹ See Articles 357 and 358 of the *Criminal Procedure Act*, 1954 found at: <http://www.oecd.org/site/adboecdanti-corruptioninitiative/46816481.pdf>

⁷⁰ See *Civil Act*, *supra* at Article 97.

⁷¹ See the *Civil Procedure Act*, 1960 at:

⁷² *Social Enterprise Promotion Act*, *supra* at Article 23(1).

⁷³ *Ibid.*, Article 23(2).

⁷⁴ *Ibid.* Article 21 (3), (4), (5).

⁷⁵ *Assistance for Nonprofit, Nongovernmental Organizations Act*, *supra* at Article 12.

⁷⁶ See *supra*, note 67.

Generally, profit and not-for profit organizations seem to be punished for similar types of offences, e.g. false representation, with similar consequences.

D. Statistics on actual penalties for each group (if, available)

Unavailable

OVERVIEW CHART

Although not exhaustive of all the similarities and differences discussed in the above sections, this is to help highlight some of the biggest differences or similarities.

Please identify 3-4 of the main issues discussed above for each category.

Issue	For-Profit Organizations	Not-For Profit Organizations	Similarities
Registration Procedures	<ul style="list-style-type: none"> - Creation of company seal - e-registration which includes ensuring name availability, filing incorporation package, obtaining tax number and registering for insurance - payment - dissolution can occur for a number of reasons including bankruptcy, completion of purpose, merger, consent of all member, judgment of the court. 	<ul style="list-style-type: none"> - not necessary to register to operate - permission must be sought to incorporate from competent authority. Must provide articles of incorporation. - where permission granted, registration can occur at the seat of the principal office. - dissolution can be undertaken for a number of reasons including: bankruptcy, completion of purpose, annulment of permission for incorporation. 	<ul style="list-style-type: none"> - registration requires filing of a number of document including articles of incorporation - dissolution for similar reasons
Tax Laws	<ul style="list-style-type: none"> - taxes submitted within 3 months of end of last day and taxed on all items of ordinary business income - tax rate of 11% on first 200 million KRW, 22% up to 20 billion KRW and 24.2% on amounts over 20 billion. - Tax credits and exemptions available for research and development activities and foreign investment. 	<ul style="list-style-type: none"> - taxed on any profit making income in each business year - can deduct monies used to carry out purposes of the non-profit - numerous financial incentives including for those registered as social enterprises. 	<ul style="list-style-type: none"> - taxed on profits during a business year - tax incentives available for various purposes.
Financial Transaction Laws	<ul style="list-style-type: none"> - Foreigners may invest in South Korea “without restraint” subject to some exceptions, e.g. national security. 	<ul style="list-style-type: none"> - certain types of foreign investment into not-for profit activities (research and development and 	<ul style="list-style-type: none"> - foreign investment encouraged in certain areas relating to human resources development and research.

	<ul style="list-style-type: none"> - foreign investment is encouraged by tax abatement or exemptions, financial and administrative support and foreign investment zones. - for-profit companies are forbidden from making political contributions 	<p>organizations developing professionals in the areas of science, art, medical services or education) is considered to be foreign direct investment and subject to the same benefits and restrictions as investment into for-profit companies.</p> <ul style="list-style-type: none"> - not-for profit companies are prevented from making political contributions. 	<ul style="list-style-type: none"> - foreign investment discouraged in relation to a number of areas including national security. -political contributions not allowed.
Auditing/Reporting Requirements	<ul style="list-style-type: none"> - stock companies and limited partnerships must report at each period: financial statements and a business report. - such documents are submitted to auditors who issue a report to assess company conformity with reporting obligations. - all companies must keep account books and preserve important documentary evidence. They must also keep a stockholder registry or an employee registry. 	<ul style="list-style-type: none"> - associations and foundations are required to submit and keep a yearly inventory of assets and an updated list of members. - social enterprises must provide a business report to the Minister of labor once a fiscal year. - those registered under the <i>Assistance for Nonprofit, Nongovernmental Organizations Act</i> must provide a project report upon the completion of a supported project - all not-for profits must keep account books (to the extent they have profit making activities). 	<ul style="list-style-type: none"> - yearly reporting of business documents and required - account books must be kept for all profit-making activities.
Penalties	<ul style="list-style-type: none"> - subject to a fine of negligence not exceeding five million KRW for: neglecting to properly register; refusing inspection; making false reports; failure to state or misstatement of particulars in incorporation documents; refusal of 	<ul style="list-style-type: none"> - subject to a fine of not more than five million KRW where they: neglected regulations under the <i>Civil Act</i>, contravened reporting requirements; obstructed inspection and supervision; made false statements. - social enterprises liable to a fine of up to 	<ul style="list-style-type: none"> -fines of negligence for false reporting and failure to comply with investigations - fines of negligence for engaging in business where not registered/incorporated properly. - imprisonment for false reporting/fraudulent project proposals.

	<p>investigation of auditor.</p> <ul style="list-style-type: none"> - engaging in business in name of company before incorporation subject to a fine of two times sum of registration tax. - imprisonment of up to five years or a fine of up to 15 million KRW for false reporting or concealment of facts. - imprisonment of up to three years or a fine of up to 30 million KRW for false reporting under the <i>Foreign Investment Promotion Act</i>. 	<p>10 million KRW if they fail to comply with a corrective order or they use the title “social enterprise” where they are not certified.</p> <ul style="list-style-type: none"> - social enterprises are liable to a fine of up to five million KRW where they fail to report changes to articles of association, fail or fraudulently make a business report or fail or fraudulently made a report ordered by the Minister. - a term of imprisonment for up to one year or a fine of five million KRW can be imposed for a false project proposal by a not-for profit registered under the <i>Assistance for Nonprofit, Nongovernmental Organizations Act</i>. 	
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