

Korean Business Law

The Legal Landscape and Beyond

Edited by
Jasper Kim

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*Dedicated in memory of my mother,
Jung Hi Kim*

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Foreword

What is Korean business law, and how can it be delivered in the most clear and succinct way to a global audience? In effect, this is the mandate of this book—*Korean Business Law: The Legal Landscape and Beyond*—on a wide variety of specific Korean business law topics.

As brief background, Korea is a civil law nation (following the civil law tradition of countries, such as Germany, France, and Japan), whereby its statutes and codes are generally given greater weight by the courts when rendering legal rulings. This is unlike many common law jurisdictions (such as the United States, United Kingdom, Australia, and New Zealand) in which relatively more weight is given toward case law and the legal concept of *stare decisis* (Latin for “stand by your decision,” which requires lower court decisions to follow higher court rulings based on cases with similar issues and facts).

Many Koreans will tell you of their country’s long history and rich traditions that span thousands of years, but from a business law perspective, Korea is arguably a historic nation with a relatively new legal landscape. In effect, Korea’s business law infrastructure has been in existence for only a few decades, beginning in 1945, which marked the end of the nation’s Japanese colonization period following World War II. Since 1945, Korea has rapidly introduced a flurry of laws, originally from other civil law nations (such as Germany and France). However, more recently, many of Korea’s contemporary business laws (relating to business, commercial, and financial law matters) have come from common law nations, most notably the United States. This trend was especially apparent following the 1997–98 Asian financial crisis.

South Korea (also referred to as simply, “Korea,” “Republic of Korea,” or “ROK” within the context of this book) is such a dynamic and changing society. Given that South Korea is an OECD member nation, the twelfth largest global economy, a notable exporter of various goods and services, a free trade agreement partner with a plethora of nations, and a member of the G20, its business laws are highly relevant and often serve as a benchmark for many other economies. Such rapid changes within Korea’s business laws and its legal landscape can give some the working impression of a “common law meets civil law” jurisdictional convergence in terms of South Korea’s contemporary business laws in the twenty-first century.

My inspiration for *Korean Business Law* is to help fill the gap in terms of providing what Korean business law means to a diverse audience, from lawyers to business leaders, from professors to students, all around the world, both inside and outside of Korea. The thinking was that to accomplish this objective, the book should be able to provide a broad overview of South Korea’s contemporary legal landscape from a 360-degree perspective by having chapters written from a rich ensemble of experts—law firm partners, scholars, and members of the judiciary, both Korean and non-Korean (with chapters written from Hong Kong, Los Angeles, Singapore, as well as Seoul). My view was that only such

a diverse array of experts could help answer some of the more relevant questions for a diverse audience, such as business heads, lawyers, nonlawyers, and students, each trying to make sense of what Korean business law may represent to them during our increasingly cross-border twenty-first century.

Despite coming from such diverse areas—law firm partners, judges, in-house counsel and academia—all the authors herein exist under the greater umbrella of having an expertise in select areas of Korean business and a passionate willingness to help explain a specific business law topic that falls within their core area of expertise.

When I arrived in Korea several years ago, I was surprised that no single source in English existed for some of the most basic Korean business laws—laws that could potentially affect millions of dollars in terms of transactions in and out of the country. At the same time, I was also struck by just how dispersed and balkanized comprehensible explanations of Korean business laws in the English language were, even onshore in Korea (let alone places outside the country). Certainly, rough translations of some basic Korean regulations existed, separate from scholarly writings in select law journals pontificating on specific aspects of Korean laws—but neither I thought would add much value for the average person (i.e., the non-Korean law expert). To me, and I suspect many others, this type of dispersed information did not represent value-added explanations in clear terms. In essence, this was the perceived problem, and this textbook was an actionable effort on my part to help remedy the situation.

Partly based on this reason, this book takes a 360-degree approach to the broad Korean business law landscape: that is, looking at Korean business law from the perspective of many different experts from many different sectors and jurisdictions. I thought this approach, rather than a more traditional singular scholar approach (where one author claims to have an expertise in all areas), could help achieve the mission of saying “what the law is” when it came to Korea’s contemporary business law topics

Because this book provides a broad overview of some (but not all) of the Korean business landscape, the chapters should not in any way, directly or indirectly, be construed to constitute legal advice that should be relied on. If legal advice is sought for any one or more of the topics discussed, it is advised that the relevant person or entity seek proper legal counsel and advice. Because all authors’ chapters constitutes work of their own, any related questions are best addressed to them directly or their respective institution. Furthermore, given the inherent fluctuation in the Korean won (₩) U.S. dollar (US\$) foreign exchange rate, and unless specified otherwise, a FX rate of ₩1,000 to US\$1 is used throughout for purposes of consistency and easy convertibility (realizing that such an exchange rate may not always reflect the prevailing market rate). One final related note is that because this book is based on legal writing, the citations in this book generally conform to *The Bluebook: A Uniform System of Citation* (a citation method required of most U.S. law journal articles).

This book is composed of three basic parts. Part I, “The Korean Legal Landscape: The Big Picture,” deals with the basic underlying framework of Korean business law. Topics include a post-1997 overview of Korea, litigation and alternative dispute resolution, legal risk management, and intellectual property. Part II, “The Korean Legal Landscape: Corporate and Commercial,” deals with the core legal topics directly related to business, corporate, and financial matters. Topics include corporate law, corporate governance, project finance, securities offerings, mergers and acquisitions, private equity funds, shareholder rights, and competition law. Part III, “The Korean Legal Landscape: Above and Beyond Corporate and Commercial,” the final section, deals with matters that go beyond the core

business, corporate, and financial law landscape, which are still keenly pertinent to Korea's contemporary business law infrastructure. Such topics include employment and labor law, real estate law, trade law, torts, and renewable energy law.

In conclusion, I sincerely hope that *Korean Business Law* is able to provide some useful insight and knowledge into the many issues that permeate dealings inside and outside of Korea for you and your organization.

Jasper Kim
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