Doing Business In Korea: A Country Commercial Guide for U.S. Companies

Chapter 3. Selling U.S. Products and Services

Using an Agent or Distributor Return to top

The most common means of representation include: 1) appointing a registered commissioned agent (more commonly known as an “offer agent” in Korea) on an exclusive or non-exclusive basis, 2) naming a registered trading company as an agent, or 3) establishing a branch sales office managed by home office personnel with Korean staff.

Any businessman registered with the Korean government can import goods in his own name. Appointing a registered trading company (rather than an "offer agent") as an agent has its advantages because these agents can handle all of the import paperwork and imports for their own account. Registered trading companies tend to be larger firms that split their businesses between exports and imports. However, these larger firms may be less attentive to building the U.S. supplier's business, placing a higher emphasis on diversifying their portfolio of products from different countries. Similarly, while the larger general trading companies may be influential and well known in the market, they also may not devote as much attention to a single product as smaller firms do.

To find a local representative, a good place to begin is with a fee-based service called the International Partner Search (IPS) that is offered through the U.S. Export Assistance Centers (USEAC) located throughout the Commercial Service Korea (CS Korea). For a modest fee, CS Korea's industry specialists will tap into their well-established network of industry contacts and trade associations. A client would first receive an annotated list of three to five potential, qualified representatives. The next step would be to plan a visit to Korea, perhaps calling upon CS Korea to arrange market briefings, a meeting schedule, and an interpreter/secretary under another fee-based service called the Korea Gold Key (KGK).

Another good contact is the Korea Importers Association (KOIMA), a well-established, private trade association founded under government auspices and dedicated to increasing imports into Korea. To fulfill its original mission of promoting balanced trade, KOIMA helps execute Korea's import diversification plan, leads annual purchasing missions to the United States, Latin America, and Europe, and holds monthly meetings between member agents and the commercial sections of various embassies located in Korea.

American businesses can contact KOIMA by sending their company catalogs with a letter specifying the items for which they are seeking an agent or visit the KOIMA office directly. Catalogs are displayed in the KOIMA library and inquiries are published free of charge on the association's web site or in the monthly KOIMA Magazine (KOIMA contact information is listed at the end of this section). CS Korea also works closely with KOIMA to advertise requests for agents and distributors received from American companies.

When writing a distribution or agency contract it is common to include a termination clause. When there are no specific provisions in a contract on termination, the Korean Commercial Arbitration Code can specify the provisions for terminating the contract. This compensation clause allows the agent to claim compensation from the principal. As a mutually signed contract between a supplier and an agent/distributor overrules the default Korean provisions of claims by a commercial agent, U.S. companies are advised to include termination provisions.

CS Korea recommends that U.S. companies seek legal counsel prior to signing a contract in Korea. Most experts also recommend hiring a local attorney prior to making major business decisions in dealing with Korean companies.

U.S. companies should also seek legal counsel with regard to protecting their intellectual property. Trademark and patent registration (if applicable) with the Korea Industrial Property Office (KIPO) is the minimum safeguard for your intellectual property rights in Korea. U.S. companies are advised to seek the services of a local attorney to directly register their trademarks and/or patents in their own names. In order to have control over these important intellectual property rights, registration must be done in the U.S. company's name and not the Korean agent's name. Under Korean law, only local attorneys can submit applications to KIPO.

To view a list of useful contacts for agents or distributors, go to the link below.
http://www.buyusa.gov/korea/en/agentscontacts.html

Establishing an Office Return to top

The following section provides some basic guidelines on how to set up an office in Korea. In addition, a list of real estate consultancy, taxation and human resource search services in Korea is provided in this section.

Step 1: Assess Your Company's Ability to Conduct Business in Korea

Depending on your company's particular industry sector, each investment will be different in terms of its size and complexity. Investment is also dependent on relevant Korean laws and regulations. Because the Ministry of Finance and Economy (MOFE) continually revises its negative list of commodities that are either prohibited or restricted from importation into Korea, the best way to verify that you may establish your business in Korea is to contact Invest KOREA.

Invest KOREA was established as Korea's official investment promotion agency and is an arm of the Korea Trade-Investment Promotion Agency (KOTRA), a government-sponsored non-profit organization. The operation is staffed by KOTRA personnel and complimented by officials from relevant government ministries and specialists from the private sector in areas such as law and accounting in order to provide the foreign investor with a prompt and comprehensive service.

Invest KOREA provides assistance in the following areas:
- Support on all necessary administrative procedures.
- Consultation on all forms of investment including M&A, joint ventures and real estate acquisition.
- Advice on legal and taxation matters.

Additionally as part of the "One-Stop Service", Invest KOREA provides investment planning consultation, ongoing support and a follow-up service.

There is also an Investment Ombudsman Office that will address any grievances by the foreign invested company once the company is established in Korea.

Step 2: Receive Authorization to Proceed with an Investment

Once approved to conduct business in Korea, the next step is to complete and submit the necessary notification documents. Approved foreign investment projects are subject to notification from the Ministry of Commerce, Industry, & Energy (MOCIE), which delegates its authority to the head office of a major commercial bank in Korea or to Invest Korea. (A list of major banks in Korea can be found at www.buyusa.gov/korea/en/bankcontacts.html.)

The head office of any major commercial bank has the ability to accept notification from companies proposing to engage in business in a liberalized sector. In practice, a commercial bank's head office will also generally accept notification of partially liberalized sectors provided that the foreign investment meets the criteria for the specific business. However, the bank will reject notifications in sectors that prohibit foreign entry.

Your company's designated representative should visit a commercial bank's head office or Invest Korea and consult with staff who deal with foreign clients and foreign investment. Invest Korea or the bank can provide application documents that are to be completed and then submitted for authorization. Once all the documents have been submitted, along with Korean translations, the authorization process should be completed within a day.

Step 3: Search for an Office Site

Companies are required to submit notification documents to the head office of a Korean commercial bank or to Invest Korea for approval prior to setting up an office. However, as finding and negotiating an office site may take more time than completing the necessary documents, companies should consider completing steps 2 and 3 simultaneously. To a company unfamiliar with Korean real estate, it is vital that the company locate a reputable real estate agent or real estate consulting firm with experience in foreign investment in order to locate a suitable office site. A list of select real estate agents and real estate consulting firms can be found at: http://www.buyusa.gov/korea/en/realestatecontacts.html#_section1.

Due to the scarcity of and high demand for land, property in Seoul is expensive even by U.S. and Asian standards. The rental rates for office space in Seoul are not as high as other East Asian capitals such as Tokyo, Shanghai or Hong Kong; however, a recent spot survey indicated that the range of monthly rents in popular Seoul commercial buildings ranged from USD 80 to USD 130 per pyong (equal to 3.3 square meters). These rates are inclusive of maintenance fees and are based on gross floor area, which include common areas.

In addition to the monthly rent, another major expense is the substantial deposit payment (or "key money"), which is a one-time charge that is refundable upon termination of the lease. Nearly all Korean landlords require key money, which ranges from USD 3,000 to USD 6,000 per pyong. There are various combinations of monthly rental fees and key money deposits, and the price per pyong varies based on the negotiated terms. Office parking, another scarce commodity in Seoul, is usually available with monthly charges.

Most foreign companies in Seoul are located in the following four well-known districts: 1) Kangnam -- the expensive, bustling, new city center south of the river where one can find the World Trade Center complex and the American Chamber of Commerce in Korea; 2) City Hall -- the historic downtown area where the U.S. Embassy and a few Korean ministries are located; 3) Yoido -- or "Manhattan Island," which is adjacent to the Han River, where many financial firms and the National Assembly can be found; and 4) Mapo District – which is halfway between Yoido and City Hall. While heavy urban traffic is an ongoing source of frustration and delay, Seoul has an excellent public transportation grid that allows foreign investors to consider various locales for their Korean offices.

Under the Foreign Land Acquisition Law the Korean government allows foreigners to purchase land regardless of the size and purpose. Local zoning laws restrict certain types of activity, and should also be taken into consideration by the investor before making the final purchase.

Step 4: Register with the Nearest Tax Office

After locating the site for the branch office and providing notification to the Bank, the investor should register with the nearest tax office within the jurisdiction of the site area

for tax reporting purposes. Local Korean tax authorities, in addition to performing tax audits, provide new tax information and counseling at the request of the company. However, the complexity of Korean tax laws and the language barrier make it difficult for foreign companies to file taxes with Korean authorities. Therefore, foreign companies should consider hiring a local accountant firm to file taxes. A list of local accounting firms can be found at:
http://www.buyusa.gov/korea/en/realestatecontacts.html#_section2.

Step 5: Seek Qualified Employees

One of the final steps in setting up an office in Korea is to locate and hire qualified employees, whether local or foreign, to staff the office. Frequently a U.S. company's headquarters designates one or two Americans to head the company's Korean office, while the remainder of the staff in the office typically are local nationals or Koreans educated in the U.S. Some major factors that attract local Koreans to work at a Korean branch office are high salary, a prestigious position, opportunities for travel, the ability to both use and learn English and the possibility of transferring to the company's home office or another foreign branch office.

Korea has a large pool of conscientious, highly educated, enthusiastic, and underutilized women workers who are usually unable to find equivalent employment in Korean companies due to traditional cultural attitudes toward women in the work force and the prevalence of the "old boy network" in Korea's corporate culture. Due to the rarity of opportunities for professional advancement in many Korean companies, frustrated professionally qualified Korean women often welcome employment offers from foreign firms.

Korean employees' once renowned dedication and loyalty to the company is slowly decreasing. Company loyalty still exists, but it, along with high productivity, should not be taken for granted. It is essential that the employer first earn the respect of his/her Korean employees. Many foreign managers have successfully used recognition and increased pay to reward increased productivity.

Whether seeking to hire local or foreign staff or to obtain information on local labor laws, a foreign investor should consult an employment agency in Korea. Click here to view a list of employment agencies:
http://www.buyusa.gov/korea/en/realestatecontacts.html#_section3

To view the list of real estate consultants, accounting firms and human resource agencies, go to the link below.
http://www.buyusa.gov/korea/en/realestatecontacts.html

Franchising Return to top

Korea's franchising industry has developed rapidly in the last few years, led by fast food restaurants. This growth has expanded to include family restaurants, discount stores, clothing, mailing services, cleaning services as well as education institutions. Franchising has expanded due to a "new generation" of affluent Korean consumers coupled with changes in Korea's distribution sector that favor new product and marketing concepts. The market value of this industry has reached an estimated USD 50 billion, 45 percent (USD 22.5 billion) of which is accounted for by food services, including fast food services and family restaurants.

Korea's USD 50 billion franchise market includes all franchise and sub-franchise fees, and royalties. It also consists of product and service revenues, consulting fees, and related product sales, such as coffee equipment at coffee franchise outlets.) Other franchise services, such as education, real estate, cleaning services, mailing services, and others account for 30 percent of this sector, realizing about USD 15 billion in sales. Lastly, the retail sector, such as convenience stores and consumer goods, comprise the remaining 25 percent of this industry (USD 12.5 billion).

Franchising in Korea first developed primarily in the food service market before expanding into other areas. Although the restaurant franchise market is beginning to mature, the service franchise market has just begun to see new concepts, promising future market opportunities. Korean franchisees are seeking, and prefer to do business with, U.S. franchisers that can offer established brand names to Korean consumers as well as American management skills provided by the U.S. headquarters. The service franchising market includes education, beauty salons, cleaning services, real estate, fitness centers, and other operations.

Over the past few years, Koreans have become increasingly conscious of foreign cosmetics, especially for imported beauty products and services. More Korean women are entering the labor force and are earning higher incomes. As a result they have begun to embrace western lifestyle concepts, particularly for beauty services and products. Korean men are also using cosmetics. This heightened demand is helping create opportunities for foreign cosmetic franchises.

Franchise activity related to children's educational services and services tied to sports and leisure activities have become very popular, especially with Korean parents' increased interest in providing better education for their children. Korea places a high emphasis on education, and as a result, most students engage in after school study programs at private academies or at home with tutors. At the same time, interest in activities such as field trips to the countryside, camping excursions, creative thinking classes, and book clubs is increasing, as highlighted by the recent successes of foreign companies such as Gymboree, New Horizon, Montessori, and Mad Science in entering this market.

Although U.S. franchises are sought after in Korea several challenges remain. Potential Korean franchisees are often reluctant to pay the relatively high franchising fees and royalties often required by U.S. headquarters. Other common franchising requirements, such as minimum facility size and the required number of stores within a certain period, are often very challenging for Korean franchisers to meet. U.S. franchises should therefore consider flexible franchising arrangements and conduct thorough research on the market and potential locations, as well as the potential master franchisee's ability to manage its stores.

There are no specific legal requirements for U.S. franchises to operate in the Korean market. However, franchisees need to comply with the Sub-franchisee's Fair Trade Act, which closely parallels the rules that exist for sub-franchisees in the U.S.

Direct Marketing

Return to top

The Korea E-Commerce & Direct Marketing Association (KEDMA) estimates that by October 31, 2003, there were approximately 77,924 direct marketing firms in Korea. Gross revenues for Korean direct marketing from January to September 2004, including catalog sales and TV and Internet shopping, are as follows:

Catalog sales:	USD 298 million
TV home shopping:	USD 2,259 million
Internet shopping:	USD 3,010 million
Total:	USD 5,567 million

Direct marketing primarily takes the form of catalog sales, TV home shopping, and Internet shopping. Korea also has a large market for door-to-door sales and multi-level marketing.

Door-to-Door Sales

There were 21,409 door-to-door sales firms in Korea as of December 31, 2003. The major door-to-door sales items include home education materials, books, household consumer goods, cosmetics, health foods, sporting goods, and service products, such as insurance and travel counseling. According to the Korea Direct Selling Association (KDSA), the Korean door-to-door sales market for 2003 totaled USD 1.8 billion.

Multi-level Marketing:

Korea's multi-level sales for 2003 reached USD 3.1 billion. As of December 31, 2003, the multi-level marketing (MLM) industry employed about 3.2 million active distributors. Over the years, the Korean government has derided MLM as an "undesirable or inappropriate business form" for Korea, claiming that it neglects consumer safety, profits "excessively," and threatens the Korean social fabric through its "pyramid schemes." However, MLM's negative image in Korea appears to be changing due to the combined efforts of the Korea Direct Selling Association (KDSA) (whose membership includes almost all U.S. MLM companies doing business in Korea), U.S. firms, CS Korea, the U.S. Trade Representative (USTR) and AmCham Korea. KDSA also is a member of the World Federation of Direct Selling Associations in Washington, D.C.

In keeping with its deregulation plan, the Korean government reduced restrictions on MLM companies by passing legislation eliminating most existing market barriers against MLM products, such as the obligation to disclose retail prices on the MLM product label. The authority to oversee the MLM industry rests with the Fair Trade Commission (FTC).

Multi-level marketing activities by U.S. firms in the cosmetics, cleaning products, and kitchenware sectors have been expanding. In order to gain further successes, however, U.S. multi-level sales firms should promote their products and services appropriately and efficiently by carefully analyzing Korean market trends. Prior knowledge of the market conditions can help prevent unnecessary conflicts with government officials, consumer 'watchdog' groups, or industry groups.

Joint Ventures/Licensing Return to top

The Korean government makes strong efforts to attract foreign investment. The government has publicly encouraged foreign investment and has liberalized policies including an increase in foreign equity ownership, in order to achieve its goals. A group of high-level officials headed by President Roh and the Prime Minister's Office have spearheaded efforts to de-regulate and liberalize the economy. Some foreign companies have responded negatively to the initiatives, claiming the policies do not eliminate trade and investment barriers at the working level. Nevertheless, many foreign companies that already have operations in Korea have increased their involvement in Korea. Other U.S. investors continue to be cautious because of continued concerns over corporate transparency and indebtedness.

Selecting the appropriate partner is one of the most difficult and crucial aspects of initiating a joint venture in Korea. Large Korean conglomerates, often known as chaebols, still exercise considerable influence over the Korean government and financial institutions. The Korean government has recently attempted a policy shift toward the promotion of small and medium-sized businesses, which means that the participation of a chaebol in a joint venture has the potential to create additional obstacles in terms of obtaining necessary approvals and local financing. This is further compounded due to a recent government policy shift towards anti-monopoly behavior. In addition, chaebols tend to insist on operating a joint venture in accordance with the overall policies and business culture of their group, sometimes to the detriment of the foreign shareholder's interest. Though an injection of foreign capital may be deemed necessary for the survival of a company, there is a tendency in Korean business culture to maintain local control, regardless of the percentage invested by foreign entities. A U.S. company may therefore consider assigning its headquarters staff to Korea in order to closely monitor and influence the activities of a newly established joint venture company.

Management control must be evaluated on three levels: 1) shareholder equity; 2) representation on the board of directors; and 3) active management (representative director and subordinate management*).* Legally, Korean board meetings require the physical presence of all members as well as a quorum of the directors. Therefore, if a foreign investor intends to exercise day-to-day management, a representative director who resides in Korea must be appointed. Moreover, the representative director will need the support of and access to key functional areas of the company in order to manage in accordance with the foreign investor's wishes. Therefore, the internal organization of a joint venture company as well as key management appointments should be worked out and agreed upon by all involved parties as early as possible.

Compatibility of goals between the Korean and foreign partners is also crucial to the joint venture's success. For example, the foreign investor's primary goal may be to send profit dividends offshore while the Korean counterpart may be most concerned with corporate growth in Korea, particularly through exporting to overseas markets.

To most Koreans, a contract represents the current understanding of a "deal" and is the beginning, rather than an end, to negotiations. If changing circumstances result in omissions or points that no longer accurately reflect the original agreement, then problems will arise. The same is true if the contracting parties change. This type of experience in Korea has led many foreigners to believe that Koreans place less importance on a written contract than Westerners. Though Americans may regard a written contract as legally binding, Koreans may regard the same contract as a "gentlemen's agreement" that is subject to further negotiations should conditions change. Therefore, contract negotiations with Koreans should be viewed as a process of extensive dialogue and as having the following objectives: 1) reaching a common understanding of the deal that includes each party's responsibilities; 2) recording that detailed understanding; and 3) being prepared to modify the terms of the agreement should there be a change in circumstances.

Certain terms of the commercial relationship between joint venture partners, such as technology transfer, raw material supply, marketing, and distribution should be agreed upon in detail in the joint venture agreement. Though circumstances are slowly changing, Korean companies have not made major investments in research and development. For this reason, there is a large Korean demand for technology transfer licensing agreements from foreign countries whose companies have a comparative advantage in high technology.

American companies should proceed with caution when they enter into a technology licensing agreement. A company's intellectual property is not necessarily protected and may be particularly vulnerable in the later stages of a business relationship when the survival of the Korean company is dependent on the technology. Although U.S. companies frequently register their patented technology with the Korean Industrial Property Office (KIPO) before entering into a licensing agreement, the most successful American companies intentionally withhold a small but key component of the manufacturing process or component from their Korean partner. This preventative strategy allows the U.S. company to control the use of the licensed technology as well as maintain the integrity of the licensing agreement.

Korea's legal procedures can be lengthy, cumbersome and expensive when dealing with contract violations. Hence, if at all possible, the best strategy is to prevent all possible conflicts. The identification of a viable and trustworthy business partner from the outset is essential; therefore, foreign investors should exercise due diligence when selecting a business partner.

One precautionary approach is to consult with attorneys throughout negotiations of a contract. A list of attorneys is available at the end of this chapter. In addition to consulting with an attorney, foreign investors should also consult with the Korean Commercial Arbitration Board (KCAB). The KCAB is staffed with counselors who advise U.S. companies on contract guidelines. At the company's request, a KCAB counselor can review the contract and stress the importance of an arbitration clause in the contract with a potential Korean partner. Information on the KCAB can be found at: http://www.kcab.or.kr

Selling to the Government Return to top

Korea began implementing the World Trade Organization's Government Procurement Agreement (GPA) on January 1, 1997. The GPA establishes non-discriminatory procedures for the procurement process so that a maximum number of qualified suppliers can fairly compete. In its accession offer, Korea agreed to cover procurements valued over certain "threshold" amounts made by Korean central government agencies, their subordinate entities, Korean provincial and municipal governments, and some two dozen government-invested companies. Korea included procurement of services and construction services. Other features of the GPA for Korea include a prohibition against offsets as a condition for awarding contracts on covered procurements, and a provision requiring procuring entities to allow suppliers to pursue alleged violations of the Agreement through GPA-defined bid challenge procedures. The Korean Ministry of

Finance & Economy (MOFE) has established an International Contract Dispute Settlement Committee to deal with any challenges by foreign suppliers that Korean procuring entities have not complied with GPA provisions.

The annexes to Korea's accession document specify certain thresholds, below which GPA rules do not apply. Thus, the threshold for Annex 1 (central government) entities for supplies and services is approximately USD 180,000, and for construction services approximately USD 7 million. Thresholds for supplies/services and construction services are considerably higher for Annex 2 (sub-central government entities) and Annex 3 (government-invested corporations). Korea also specified certain categories of purchases that would be exempt from GPA coverage altogether, including procurement related to national security and defense, Korea Telecom's purchases of telecommunications commodity products and network equipment, procurement of satellites, and purchase by the Korea Electric Power Corporation (KEPCO) of certain electrical transmission and distribution equipment.

The Public Procurement Service (PPS) is responsible for the purchase of goods and incidental services required by central and sub-central government entities, government construction contracts and stockpiling raw materials. Not all GPA-covered procurement is handled by the PPS. In the case of Korean government-invested corporations (listed in Annex 3 of Korea's accession agreement), procurement is handled in-house, with these entities following the same GPA rules. Thus, tendering under open, formal procedures are required.

All bidders who wish to participate in PPS tenders for supplying goods and services must register with PPS at least one business day prior to the date of the bid opening. However, foreign bidders are allowed to register with PPS prior to entering into a contract. Failure to register constitutes cause for rejection of the bid. Korea began the Government e-Procurement System (GePS) in October of 2002, a single window for public procurement which digitalized the entire process from order to payment for all public organizations. Bids can be viewed on the PPS website and are valid for at least 45 days after the bid opening date shown on the site. Additionally, as required by the GPA, the procuring entity must publish information on bid opportunities in at least two sources: the daily newspaper Seoul Shinmun (daily newspaper) and the Korean Government Gazette. While these sources are published in the Korean language, any given tender announcement must be accompanied by a summary in English, including the subject matter of the contract, the deadline for submission of tenders, and the address and contact point from which full documents relating to the contracts may be obtained. The tender announcement must contain a statement that the bid is covered by the GPA.

For more information on the Public Procurement Service, go to their website at www.pps.go.kr/neweng/

Defense Equipment

The Defense Procurement Agency (DPA) is responsible for defense industry equipment purchases. U.S. defense industry equipment standards are generally accepted in Korea since most Korean defense systems are based on American standards. Defense equipment is marketed in Korea through the following channels: direct purchase, sales agents, and importers. U.S. manufacturers and suppliers of defense equipment generally use a well-qualified agent in Korea who is familiar with the Korean defense system and who knows key members of the ROK Air Force (ROKAF), ROK Navy, ROK Army, and the Agency for Defense Development (ADD). The selected agent can provide U.S. suppliers with information about status of bids and procurement plans for defense equipment. Former ROKAF, ROKN, and ROK Army officials have good potential as agents in Korea. Local agents should register and be certified by the DPA to supply their products and services to the Ministry of National Defense (MND). Please visit the DPA website at http://www.dpa.mil.kr/English/jsp/index.jsp to register your company online. After registration, DPA will request a meeting with your local agent.

Distribution and Sales Channels Return to top

Local representation is essential for the success of foreign firms in the Korean market. This is especially true when considering the fact that business relationships in Korea are built upon personal ties and social introductions, and that much of the major third-country competition is only a few flight-hours away. In addition, for sectors that involve any type of government procurement, an entity must be registered with the Korean government in order to bid on the procurement projects. Hence, many American firms enter into a consortium with a Korean company or enter into a representative agreement, especially for the purposes of market entry. Finally, the language barrier and established social/ business circles make it extremely difficult to enter the Korean market without a qualified Korean representative.

Distribution methods and the number and functions of intermediaries vary widely by product area and local conditions. The market for most consumer products is concentrated in major cities. The traditional retail distribution network of small family-run stores, stalls in markets, and street vendors is changing rapidly toward large-size discount stores. There are many large retail stores in the major cities, especially Seoul, Daegu, Busan, and the outlying suburbs. Recently, retailing concepts such as Full-Line Discount Stores (FDS) including Price Costco (USA), Wal-Mart (USA), Carrefour (France), and E-mart (Korea) have gained tremendous popularity in Korea. Rapid expansion of these discount chain stores is planned nationwide, with suburban satellite cities attracting the greatest number of stores. Distribution of goods through large discount chains is one of the best ways to market foreign products to Korean consumers.

Parallel imports can legally enter Korea. Parallel imports marginally reduce the value of an exclusive distribution agreement. Many American companies continue to give exclusive contracts, since they have in place territorial limits in neighboring countries that enhance the value of the exclusive in any one country. Likewise, any parallel importer in Korea that is not receiving the support of the OEM, and does not deal in the same volume, cannot be guaranteed a steady source of supply. As noted above, the legitimate exclusive distributor still has considerable advantages in Korea.

Most products enter Korea by air and sea at Incheon and Busan, after which they are transferred to major distribution centers by rail or road. Korea's main distribution centers are Busan, Incheon, Daegu, and Gwanyang.

Selling Factors/Techniques Return to top

Three practices are essential for success in the Korean market: (1) adapting products and procedures to Korean tastes and conditions, (2) regular communication with Korean business partners and customers, and (3) consistently exhibiting a firm commitment to the Korean market over the long run.

In selling to manufacturers, personal contact is important not only because of the value placed on direct discussion and on building long-term relationships but also because such contact brings the end-user in contact with new processes and equipment. In light of competition offered by Japanese suppliers, who often visit potential and existing customers throughout Korea, U.S. suppliers should consider (1) making visits to Korea to augment the efforts of the local representative; (2) bringing representatives back to the home office periodically to ensure they are fully informed, motivated and up-to-date on the supplier and its offerings; (3) allowing the distributor or agent to appropriately select from the U.S. company's full product line items for sale in the market, (4) holding demonstrations, seminars and exhibitions of products in Korea; (5) increasing the distribution of technical data and descriptive brochures; and (6) improving follow-up of sales leads.

Electronic Commerce

Return to top

In 2003, the total amount of E-Commerce transactions in Korea was valued at approximately USD 200 billion, a 32 percent increase from 2002. This figure is projected to grow at an average annual rate of 10 percent over the next three years. The Korean government projects an e-commerce penetration rate across most business sectors of at least 30 percent by 2006. In Korea, the B2B, B2G and B2C transactions account for 88.2, 9.2 and 2.6 percent of the e-commerce sector respectively. There are approximately 3,500 B2C cyber shopping malls in Korea with estimated sales of USD 6 billion in 2004.

The transaction volume of Korean Electronic Commerce (EC) is forecast to grow rapidly over the next several years. Major factors driving the growth include a nationwide broadband infrastructure with 30 million Internet users from a total population of 48 million, and the planned introduction of wireless broadband technology through mobile computing and communication devices in 2006. Increased EC transactions will lead to growing demand for e-commerce solutions, a variety of equipment, networking, software and services, to develop and support e-commerce-related web-sites and transactions. The electronics and metal manufacturing industries that account for nearly 70 percent of total B2B transactions are willing to spend in order to achieve efficient and secure use of EC tools. However, multinational EC companies need closely follow the new Basic Privacy Act and Ministerial regulations for different industry sectors that will be drafted in 2005. The Act and regulations will most likely reflect concerns voiced by the public and the government to protect personal data, and could be restrictive to EC firms managing user data globally.

Trade Promotion and Advertising

Return to top

CS Korea is the main US government trade promotion agency in Korea. The Korea International Trade Association (KITA) is the largest trade association in Korea. As a member of the World Trade Centers Association (WTCA), KITA explores new trade opportunities for Korea by dispatching trade missions and market survey teams to a number of foreign countries on a regular basis. KITA's Trade Service Center also assists any potential foreign buyer or seller by responding to written inquiries from all over the world. The Center also offers on-the-spot consultation and personalized advisory service regarding trade rules and regulations, export and import procedures, business management, market research, technology development, and taxation. In addition, KITA maintains six overseas branch offices, two of which are based in Washington D.C. and New York.

Seoul also boasts the largest trade show venue in Korea, the Convention and Exhibition Center, popularly known as "COEX." Covering 36,027 square meters of exhibition space, COEX is a full-service trade organization offering multi-lingual simultaneous translation, world-class audio-visual equipment, state-of-the-art lighting and sound systems, and up-to-the-minute information services. The Seoul Trade Exhibition Center (SETEC) is also in Seoul and is operated by the Korea Trade- Investment Promotion Agency (KOTRA).

In addition, Busan, the second largest city in Korea located in southeastern part of Korea, currently has one exhibition hall called the Busan Exhibition & Convention Center (BEXCO). BEXCO is directly run by BEXCO, Inc., a Busan firm. The indoor exhibition hall has a floor space of 26,446 square meters. There is also an outdoor exhibition site that is 13,223 square meters in size.

Advertising

Korea's advertising market is completely open to 100 percent foreign equity participation. Foreign advertising agencies now control more than 50 percent of the Korean advertising market. Today, all the major international agencies are present in Korea.

There are four major broadcast networks (television and radio) in Korea. KBS I and KBS II are owned and operated by the Korean government, while MBC and SBS are independently operated. However, government influence remains since advertising time on these and other broadcast networks is sold exclusively through the government selling organization, the Korea Broadcast Advertising Corporation (KOBACO). Companies must register with this corporation if they intend to advertise in either of these two media. As of January 2005, approximately 7,000 foreign and Korean agencies were registered with this corporation.

Though censorship in advertisement is still practiced in Korea, it is not as strict as it was in the past. The Korea Advertising Review Board (KARB), which consists of advertising and industry associations, currently controls advertising censorship procedures. In addition, the government's Korean Fair Trade Commission is responsible for determining whether an advertisement makes accurate claims.

Several local TV stations have been established in recent years. This development, as well as the advent of cable television in 1995, has expanded advertising's potential reach to Korean audiences. As of December 2003, the Korean cable industry was served by 119 system operators and about 200 program providers offering diverse cable programs such as business news, sports, music, Buddhist programming, shows on the Korean board game, baduk ("Go"), etc. There are also five shopping channels, including CJ 39, Hyundai, LG, Woori, and Nongsusan. Estimated total sales for these five shopping channels in the first three quarters of 2004 was USD 2.2 billion.

Advertising market opportunities are predicted to show strong growth as more Koreans gain access to electronic media. Cable television in Korea currently has an audience of 12 million households. Additionally, the government took steps to promote broadcast satellite television in digital format in 2001, with expectations of nationwide coverage by 2010. Korea Digital Broadcasting (KDB), a subsidiary of state-run Korea Telecom, holds the contract for digital broadcasting. It is expected that KDB will be broadcasting about 120 satellite channels in 2005. Currently, the estimated number of KDB viewers is 900,000 households.

Internet advertising also offers significant market growth potential, since the number of computer users will further increase in the coming years. There are currently 12 million Internet using households in Korea, which amounts to more than 80 percent of the total households in Korea.

Local Fair Authorities

- Convention and Exhibition Center (COEX)
  Tel: 82-2-6000-0114
  Website: www.coex.co.kr

- Busan Exhibition and Convention Center (BEXCO)
  Tel: 82-51-740-7300
  Fax: 82-51-740-7320
  Website: www.bexco.co.kr/eng/index.php

- Seoul Trade Exhibition Center (SETEC)
  Tel: 82-2-2222-3800
  Fax: 82-2-2222-3820
  Website: www.setec.or.kr

- Daegu Exhibition and Convention Center (EXCO Daegu)
  Tel: 82-53-601-5000
  Fax: 82-53-601-5029
  Website: www.excodaegu.com

KITA US Offices

- KITA NY Office
  Tel: 212-421-8804(ext. 26)
  Fax: 212-223-38270
  E-Mail: kitany@kita.net
  Website: http://www.kita.org/kita/kita_index.jsp?siteUrl=usny.html

- KITA Washington Office
  Tel: 917-699-2032, 703-242-5713
  Fax: 703-242-5714
  E-Mail: wayne@kita.net

Website: http://www.kita.org/kita/kita_index.jsp?siteUrl=usny.html

Korea Trade Investment Promotion Agency (KOTRA)

Tel (rep): (82-2) 3460-7114
Fax(rep) : (82-2) 3460-7777
Website: www.kotra.or.kr/eng/index.jsp

To view the list of major newspaper agencies in Korea, go to the link below.

http://www.buyusa.gov/korea/en/newspapercontacts.html

CS Korea, provides the Single Company Promotion service to U.S. firms through which firms can promote their products in Korea. Additionally, the "Featured U.S. Exporters (FUSE)" site provides information on how a company can advertise products on the Commercial Service's worldwide website in various languages for free. Click on "FUSE" for more information.

Pricing Return to top

U.S. goods have a reputation among Korean buyers of having high quality and performance; however, since Korean manufacturers are price-conscious, they often regard U.S. products as very expensive. In an export-oriented economy where finished products must meet keen competition in the world market, many Korean manufacturers believe that it is essential to buy the cheapest raw materials and equipment, even at the expense of quality. Goods from Japan and elsewhere are often considered to be better buys than goods from the U.S. In addition, Korean manufacturers often seek to offset labor wages with low-cost inputs. However, as Korea continues to move toward exporting higher-end and manufacturer-branded products, and tries to combat criticisms of poor quality control of certain Korean products in recent years, the emphasis manufacturers place on price as a buying factor may be somewhat tempered. Other characteristics in Korean price considerations are the tendency to seek "bundled" prices and to undervalue "software" (engineering and other services components), particularly in the procurement of major systems.

Considering the factors outlined above, U.S. exporters might consider: 1) adapting their products to Korea by marketing basic units, 2) taking into account in their price quotations the likelihood of repeat business for spare parts and auxiliary equipment, and most importantly, 3) emphasizing and marketing the idea that the superior quality of U.S. manufactured input products ultimately results in lower production costs.

Another pricing factor that merits consideration is commissions. The commission rate for using an agent or distributor varies depending on the type of product and the transaction amount. On average, Korean agents require a 10 percent commission, particularly when a transaction is conducted on a spot basis, but this varies for different products. Generally, a 5-7 percent commission applies to product categories such as general machinery, including packaging, construction, and material handling equipment. Meanwhile, more sophisticated products such as medical, laboratory, and scientific analytical instruments usually require a commission of 15-18 percent or more, since these are products for which after-sales service is considered to be very important.

Korea has consumer-protection legislation that requires consumer items be labeled with both the manufacturer's sales price to the retailer and the marked-up retailer's price to the consumer. The mark-up from manufacturer to consumer ranges from 50 percent to 150 percent.

Korea has a 10 percent sales tax that is included in the price of taxable items. There is a 10 percent VAT on services provided in Korea.

Sales Service/Customer Support

Return to top

Sales and after-sales service, or A/S, are second only to the selection of the appropriate product and price in determining the long-term success of U.S. suppliers in the Korean market. Immediately following the Korean War, at a time when foreign exchange was exceedingly scarce, Korean plant operators learned to rely on their own resources or on the many small machine shops in order to service machinery. This tradition of self-reliance and improvisation is still evident in contemporary Korean business practices. However, with heavy competition among foreign suppliers in the Korean market, servicing has become an increasingly important component of selling.

Private traders and offer agents often hire in-house engineers to install equipment. For specialized installations, however, the best sources of assistance include resident and offshore foreign engineers in coordination with local engineers, whose services are available on contract.

Japan's geographical proximity to Korea as well as the similarities in business culture between the two countries allow Japan to send teams of specialists to Korea at minimal cost and effort in order to offer skilled advice in installation, maintenance and repair. U.S. firms should consider establishing regional servicing facilities that can effectively service and support equipment sold in Korea. The emphasis given recently by some American firms on the training of personnel, often through U.S.-based programs, has proven beneficial.

Protecting Your Intellectual Property

Return to top

Please refer to Chapter 6 (Investment Climate), for further details on the protection of intellectual property rights with regard to patents, copyrights, trademarks and their policy implications. For the purposes of this chapter on how to market U.S. products and services in Korea, however, we have briefly outlined measures U.S. firms should take to protect their Intellectual Property Rights (IPR) in Korea.

Why You Should Register Your Intellectual Property in Korea

Basic intellectual property laws exist in Korea. However, protection of intellectual property and the laws governing enforcement of these protections are not necessarily extra-territorial. What is understood and practiced in the United States is not always practiced in Korea. U.S. companies wishing to sell their products or services in Korea should first and foremost find out if they have to register their intellectual property rights (copyright, trademark or patents) in Korea. The speediest means to enforce the right-holder's claim is to have their intellectual property recognized by the Korean authorities and government.

One of the most frequent IPR problems facing U.S. businesses in Korea is trademark protection. Unlike the trademark registration system in the United States, which is based on "first commercial use" or "first intent to use," the trademark registration system in Korea is based on "first-to-file," or more accurately, first to successfully register with the Korea Intellectual Property Office (KIPO). If a U.S. company is considering entering the Korean market it is highly advisable that the U.S. company register their trademark first before an unauthorized party has the opportunity to register the trademark. The company will save much time, energy, resources and legal fees in the long run. Since registration of trademarks is in Korean, in order to successfully register a trademark, the U.S. company should hire a qualified local attorney who is familiar with registration procedures. To have maximum effect, a company should be prepared to register its trademark in every applicable product class category for the product(s). Should the trademark be challenged, protection is not generally provided under the Korean legal system if the company has not registered in the relevant product class category.

During the course of trademark registration, information on pending applications initially becomes available in publications of the Korea Invention and Patent Association two to three months after the initial application. Official announcements of pending applications are published for comment by KIPO in its Official Gazette. Generally, U.S. companies hire a local attorney and ask the firm to look into the status of the company's trademark in Korea. Sometimes, the U.S. company discovers from the aforementioned publications that an unauthorized party has already filed the trademark and is awaiting registration. In this case the company is eligible to file an Opposition Action Petition within a 30-day period of official publication. In an opposition action petition, the company states their case as to why the unauthorized party's application should be rejected during the course of initial review. After reviewing the opposition action petition, KIPO can decide either to proceed with registering the unauthorized trademark application or to reject the trademark application, clearing the path for the U.S. company to register at a later date.

At a minimum, American companies that plan to enter the Korean market in the future should monitor KIPO public notices to ensure that their trademark has not been registered. Since the public notices are only in Korean, if the U.S. company cannot monitor the situation from America, the company should consider hiring someone in Korea, such as an attorney, who can.

The 1998 Trademark Act provides KIPO with grounds to reject third-party applications of the same or similar trademarks if KIPO is convinced that the registration is done in "bad faith." As capable as trademark examiners can be, some trademark registrations by unauthorized registrants have slipped through the cracks and have been successfully registered. Registration by an unauthorized party can include "predatory registration" (i.e., knowing that the mark belongs to another company, the unauthorized applicant registers the mark, with no intention of using it but rather to sell the trademark registration when the legitimate trademark owner tries to enter the Korean market).

In such cases, because the Korean legal system is based on "first to file", and because the unauthorized registrant successfully registered with KIPO, the unauthorized registrant is the legal owner of the trademark in Korea—even if it is the U.S. company's mark and the American company has been using it in international business for several years. Provided that the mark was not used commercially by the successful but unauthorized registrant in Korea for the previous three years, the U.S. company can file a Cancellation Action petition to cancel the existing mark. If the cancellation action is successful and there is no appeal, the U.S. company can immediately file to register the trademark with KIPO, thereby reclaiming the trademark.

The most contentious scenario takes place when an unauthorized trademark application has been successfully registered with KIPO, and the party is actually using the U.S. company's trademark commercially in Korea. In this case, the legal remedy available is an Invalidation Action. An invalidation action petition can be filed anytime during the course of the 10-year life of a trademark, provided the unauthorized registrant is actually using the trademark. The American company's petition should outline why the unauthorized trademark owner's registration should be voided (invalidated), i.e. that the American company is the legitimate and original trademark owner, and that consumers know the trademark to be associated with the U.S. company.

If the company follows either the invalidation or cancellation action routes, the burden of proof lies with the petitioner. U.S. companies should be prepared to provide documentation showing commercial use (include samples of the product and illustrating the uniqueness of the trademark and product), to substantiate financial investment in advertisements (include all examples of actual advertisements or promotional materials that appeared in the media), even to provide results of any surveys that show that the brand name is publicly recognized in Korea and that the company is the source of the legitimate goods promoting the trademark.

Provided that the company and their attorneys put forth a convincing argument with meticulously documented details as to why the company is the legitimate trademark owner, the company has a good chance of winning the case before the KIPO Trial Board. However that may not be the final hurdle since there is an appeals process for cancellation and invalidation actions from the KIPO Tribunal Board to the Korean Patent Court and finally to the Supreme Court of Korea. The rule of thumb for a trial date is first come, first served --- petitions are filed by date with the trial dates occurring in order of the date of petition.

Unlike successful cancellation actions where the company may file for the trademark immediately with KIPO, successful invalidation actions have a one-year moratorium from the invalidation action date before a U.S. company can officially register a trademark. However, US companies can seek enforcement measures from the date of invalidation of the Korean registration.

An alternative approach is to settle out of court. Due to the length of time it takes to go from the KIPO Tribunal Board to the Korean Patent Court and all the way up to the Korean Supreme Court, some companies decide not to wait to reclaim their trademark. Four years or more is not unheard of for a final decision using the legal process and even then there is no guarantee that the U.S. company will be successful. Because the opportunity cost of not entering the Korean market can be considerable, some companies have opted to settle out of court, i.e., to buy their own trademark back from the unauthorized (but legal) registrant for use in the Korean market. Regardless of the approach taken, good legal counsel is essential.

How and Where to Register Your Intellectual Property in Korea

Both the United States and Korea are members of the Madrid Protocol, which allows companies from the member nations to apply for trademark ownership in several member nation countries simultaneously. In Korea, a U.S. company can register their trademark and patents with the Korea Industrial Property Office (KIPO). Foreign applicants are required to retain a licensed local attorney in order to prepare applications in Korean and to conduct necessary follow-up correspondence locally. Under international law, copyrights do not have to be registered in order to be protected; however, similar to the U.S., registration is also possible in Korea with the Ministry of Culture and Tourism. Enforcement of legally registered copyrights, trademarks, and patents are under the jurisdiction of the Prosecutor's Office in Korea.

Type of Intellectual Property	Where to Register
Trademark, Patent	Korea Industrial Property Office (KIPO) www.kipo.go.kr
Copyright	Ministry of Culture and Tourism (MOCT) www.moct.go.kr Copyright Registration Division: Copyright Deliberation and Conciliation Committee www.copyright.or.kr

When registering a copyright, trademark, or patent, US companies should maintain control of their intellectual property even if they request their Korean agent to do the processing. This control is particularly important should the relationship dissolve. In previous cases where the Korean agent maintained control of the intellectual property, long, costly legal battles ensued in order for the U.S. company to register their trademark.

Need for a Local Attorney

A large number of Korean law firms focus on international business. Most experts advise engaging a local attorney before making major business decisions in dealing with Korean companies. In addition to advice on structuring deals or arranging contracts, Korean law firms are usually well connected into the power structure and have extensive contacts in government ministries.

Although it is important to have legal representation when a business in Korea reaches even a modest level of complexity, it is important to remember two things. First, as a matter of legal culture, Korean lawyers do not see themselves as businessmen and try to avoid intruding on business judgments. It is rare for Korean lawyers to venture far from recitation of applicable statutes. This is one reason why it is a good idea to seek a Korean firm employing foreign legal consultants who tend to provide a proactive, commercial-oriented philosophy. Although major Korean legal firms have extensive and excellent contacts with the Korean bureaucracy, for anyone planning long-term business in Korea, it is useful to establish direct contacts with officials who oversee any given industry.

For list of major law firms in Korea, go to www.buyusa.gov/korea/en/lawfirmcontacts.html.

Due Diligence

Return to top

Local representation is essential for the success of foreign firms in the Korean market. Due diligence is critical when selecting a local partner for joint ventures, licensing, or distribution. When conducting due diligence of a potential Korean business partner, evaluate the company's financial and operational history, accounting practices, hidden ownership interests, corporate relationships with other Korean companies, and position in the market for the product(s) you are exporting.

CS Korea has a fee-based service, called the International Company Profile, which provides information on potential Korean business partners to help American companies obtain accurate, up-to-date information. The report includes input from Dunn and Bradstreet on Korean company financial information. Dun and Bradstreet and Kroll Korea are also known to provide due diligence services.

Local Professional Services

Return to top

Korea has a highly developed economy with a full range of professional services. For more information on professional services, please see the links below:

List of agents/distributors: http://www.buyusa.gov/korea/en/agentscontacts.html

List of law firms: http://www.buyusa.gov/korea/en/lawfirmcontacts.html

List of major banks: http://www.buyusa.gov/korea/en/bankcontacts.html

List of major real estate and real estate consultancy firms, accounting companies and human resources firms in Korea:
http://www.buyusa.gov/korea/en/realestatecontacts.html

List of major newspaper contacts:
http://www.buyusa.gov/korea/en/newspapercontacts.html

The U.S. Commercial Service, Korea, provides the Single Company Promotion service to U.S. firms. Additionally, the "Featured U.S. Exporters (FUSE)" site provide information on how you can advertise your products on our worldwide website in various languages for free. Click on "FUSE" for more information.

Web Resources

Return to top

Busan Exhibition and Convention Center (BEXCO):
www.bexco.co.kr/eng/index.php

Contacts for Accounting Firms in Korea:
http://www.buyusa.gov/korea/en/realestatecontacts.html#_section2

Contacts for Agents or Distributors in Korea:
http://www.buyusa.gov/korea/en/agentscontacts.html

Contacts for Employment Agencies in Korea:

http://www.buyusa.gov/korea/en/realestatecontacts.html#_section3

Contacts for Major Banks in Korea:
www.buyusa.gov/korea/en/bankcontacts.html

Contacts for Major Law Firms in Korea:
http://www.buyusa.gov/korea/en/lawfirmcontacts.html

Contacts for Major Newspaper Agencies in Korea:
http://www.buyusa.gov/korea/en/newspapercontacts.html

Contacts for Real Estate Consultants, Accounting Firms and Human Resource Agencies:
http://www.buyusa.gov/korea/en/realestatecontacts.html

Convention and Exhibition Center (COEX):
www.coex.co.kr

Daegu Exhibition and Convention Center (EXCO Daegu):
www.excodaegu.com

Defense Procurement Agency (DPA):
http://www.dpa.mil.kr/English/jsp/index.jsp

Dun and Bradstreet:
http://www.dnbkorea.com/

Featured U.S. Exporters (FUSE)
http://www.buyusa.gov/home/fuse.html

Government e-Procurement Service (GePS):
http://www.g2b.go.kr/

International Company Profile:
http://www.buyusa.gov/korea/en/icp.html

Invest KOREA:
http://www.investkorea.org/

KITA NY Office:
http://www.kita.org/kita/kita_index.jsp?siteUrl=usny.html

KITA Washington Office:
http://www.kita.org/kita/kita_index.jsp?siteUrl=usny.html

Korea Broadcast Advertising Corporation (KOBACO):
http://www.kobaco.co.kr/eng/index.asp

Korean Commercial Arbitration Board:
http://www.kcab.or.kr

Korea Intellectual Property Office (KIPO):
http://www.kipo.go.kr/kpo/user.tdf?a=user.eng.main.BoardApp

Korea's Main Distribution Centers:
Busan: http://www.portbusan.or.kr/english/
Daegu: http://english.daegu.go.kr/
Gwanyang: SITE DOESN"T WORK!!!
Incheon: http://www.incheon.go.kr/inpia/en/index.html

Korea Trade Investment Promotion Agency (KOTRA):
www.kotra.or.kr/eng/index.jsp

Kroll Korea:
http://www.krollworldwide.com/

Public Procurement Service (PPS):
www.pps.go.kr/neweng/

Seoul Trade Exhibition Center (SETEC)
www.setec.or.kr

Single Company Promotion: A service provided by the U.S. Commercial Service for U.S. firms wishing to enter the Korean market.