

# Startup and operation of coffee shops



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Even when one is planning to open a coffee shop or is currently operating one, it is still difficult and inconvenient to search relevant statutes and legal information easily in regards to startup preparation and operation of a coffee shop.

Accordingly, this content provides essential legal information for those who are planning to open a coffee shop or are operating one at present and helps to provide a better understanding regarding the startup and operation of coffee shops to prospective customers.

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## 1. Coffee shops

### 1.1. Coffee shops

#### 1.1.1. Startup of coffee shops

**▶ A coffee shop is a rest restaurant business under the 「Food Sanitation Act」**

▫ Concept of rest restaurant and other similar businesses

- The term "Rest restaurant business" falls under the business category of "food service business" under the Food Sanitation Act and refers to the business of cooking and selling mainly tea, ice cream, etc., or cooking and selling foods in fast food stores or snack bars (Article 36(3) of the Food Sanitation Act and subparagraph 8(a) of Article 21 of the Enforcement Decree of the Food Sanitation Act).
- A coffee shop falls under the category of rest restaurants that cook and sell tea, ice cream, etc. (Subparagraph 8(a) of Article 21 of the Enforcement Decree of the Food Sanitation Act).

**▶ Overview of startup and operation of coffee shops**

▫ Preparations required

- A coffee shop can be established either as an independent startup or as a franchise. An entrepreneur should carefully analyze the business feasibility, personal experience and funds required for independent startups and franchises in order to determine the appropriate type of startup.
- Once the type of startup has been determined, the trade area and location that are suitable for operation of a coffee shop should be sought. The Small Enterprise and Market Service operates a trade area information system (<https://sg.sbiz.or.kr>) that offers trade area analysis information for preliminary founders.
- Entrepreneurs with insufficient funds to start up their own business may utilize the fund support system of the Small Enterprise and Market Service.

▫ Preparations for startups

- Questions to ask before signing a commercial lease
  - A preliminary founder should ensure that no issues are present with the building that contains the space to be leased by reviewing its building register, land register, confirmation of land-use planning, register book, etc.
  - Once a lease agreement is entered into, the lessee will be subject to rights and obligations as prescribed in the agreement, and thus issues which may arise regarding special provisions on available business types, premiums, the use of parking lots, etc. should be carefully reviewed.
  - In the case of leasing a store space, confirm the delivery of the building, file a business registration, and receive a fixed date under the lease agreement to obtain counterforce and the right to preferential payment that protect the

security deposit paid for the lease.

- Completing notification of commencement of business, etc.
- To operate a coffee shop, a notification of commencement of business must be filed with the Special Metropolitan City Mayor, Metropolitan City Mayor, Special Self-Governing City Mayor, Do Governor or Special Self-Governing Province Governor, and a business registration must then be subsequently filed at the competent tax office.
- It is recommended to select the most suitable trade name and trademark for your business and register them to protect your rights and future asset values regarding such trade name and trademark.
- A full equipment of business facilities
- During interior construction of a business establishment, a contract must be prepared specifying the scope of the construction and the period of warranty for defects.
- To operate a coffee shop, appropriate facilities pursuant to the 「Food Sanitation Act」 must be installed.

#### ■ Operation

- Customer management
- After opening a coffee shop, its inventory status must be inspected as part of an effort to efficiently manage funds, and customer management needs to be thoroughly conducted to create a competitive advantage in the business.
- Precautions for operation
- A coffee shop operator and his/her employees must receive health examination and training on food sanitation for public health, and carry out requirements as prescribed in the Food Sanitation Act.
- Precautions for hiring employees
- When hiring employees, employment agreements must be signed and the minimum wage, break time, holidays, etc. of the employees must be guaranteed.
- All business establishments that use workers must subscribe to 4 major insurances (national pension, national health insurance, industrial accident compensation insurance, and employment insurance) and pay income tax and value-added tax for operating income.

#### ■ Business closure

- In the event where a registered business operator closes down his/her business, he/she must report the closure to the tax office that has jurisdiction over the said business without delay, and taxes incurred during his/her business operation, such as VAT, must also be paid in full.

## 2. Prior preparation

### 2.1. Determination of startup business type

#### 2.1.1. Independent startup and franchise startup

▶ Let us find out about the difference between an independent startup and a franchise startup.

- Types of coffee shops

- A coffee shop may be operated either as ① an independent business or as ② a franchise.

- Significance of an independent startup

- The "independent startup" refers to a business type where a business owner is given all of the rights and responsibilities as to its business, ranging from investment to operation.

- An independent startup may be achieved by independently establishing a business based on the founder's own know-how and business model, by starting a business through training provided by startup experts or with the help of acquaintances with relevant experience, or by acquiring an existing business.

- Significance of a franchise startup

- The term "franchise business" refers to a continuous business relationship in which a franchiser allows its franchisees to use its own trademarks, service marks, trade names, signs, or any other business marks (hereinafter referred to as "business marks" and hereinafter the same shall apply) in selling goods (including raw materials and auxiliary materials) or services in compliance with certain quality standards or business methods, and supports, trains, and controls its franchisees in regard to their management, business activities, etc., and in which franchisees pay franchise fees to their franchiser in return for the use of business marks and the support and training provided for their management, business activities, etc. (Subparagraph 1 of Article 2 of the 「Fair Transactions in Franchise Business Act」).

▶ If you have decided to start a franchise business, review the following matters.

- Preliminary inquiries into the business type of your interest

- Conduct preliminary inquiries into the business type of your interest through consultation with franchise operators with experience, attending startup fairs, and the website for the franchise business transactions under the Fair Trade Commission.

- Selection of appropriate franchise headquarters based on the collected information

- Based on the information collected through various channels, review the following items and select 2 or 3 franchisers as appropriate candidate franchisers.

- Visit the candidate franchisers for detailed consultation and request relevant details. In particular, make sure to receive the information disclosure

statement, promotional materials, expected revenue, profit margin, and information on expenses in writing.

- Where a franchiser provides an information disclosure statement, it must provide the information disclosure statement along with a document stating trade names, locations and telephone numbers of ten franchisees most adjacent to the place planned for a future store of a prospective franchisee (where the number of franchisees conducting business in a metropolitan local government to which the place planned for the future store of the prospective franchisee belongs is less than ten at the time the franchisor provides the information disclosure statement, referring to all franchisees in the relevant metropolitan local government) (Article 7(2) of the 「Fair Transactions in Franchise Business Act」).

■ Review of franchise agreement

- Review each provision, including the terms and conditions of business activities of the franchise, the demarcation of business territory, the term of the agreement, and matters on the termination of the agreement as set forth in the agreement, and compare them with the terms and conditions contained in the standard franchise agreement.
- Review whether the franchise agreement contains mandatory entry information required under the statutes (Article 11(2) of the 「Fair Transactions in Franchise Business Act」 and Article 12 of the 「Enforcement Decree of the Fair Transactions in Franchise Business Act」).
- Matters concerning the grant of a license for the use of business marks
- Matters concerning the terms and conditions of business activities of the franchisee
- Matters concerning the education, training, and business guidance for the franchisee
- Matters concerning the payment of franchise fees, etc.
- Matters concerning the demarcation of business territory
- Matters concerning the term of the agreement
- Matters concerning the transfer of business
- Matters concerning the grounds for termination of the agreement
- The fact that a franchise deposit will be deposited in the depository for 2 months from the date the prospective franchisee or franchisee enters into the franchise agreement (or until the date of commencement of the franchise business, where the franchisee commences the franchise business before the expiration of the 2 months) (if a franchiser enters into an indemnity insurance contract, etc., for its franchisees, matters concerning the insurance policy)
- Information on the prospective franchisee if he/she has consulted an attorney or a franchise trader
- Matters concerning the obligation to compensate the franchisee for damages caused by illegal acts of the franchiser or the executives of the franchiser or their actions against social norms, such as damaging the reputation or credibility of the franchise business
- When the franchisor coerces the franchisee to transact with the franchisor or a

- designated party, the types of real estate, services, facilities, products, raw materials, auxiliary materials, lease agreements, etc., that are subject to this coercion, and the methods for determining the supply prices
- Other matters pertaining to the rights and obligations of the parties to the franchise business as provided below
  - √ Matters concerning the conditions of return of money, such as the franchise fee.
  - √ Matters concerning the installation of operational equipment, fixtures, etc. for business of a franchisee and the maintenance and repair thereof and the bearing of such expenses
  - √ Matters concerning measures to be taken according to the expiration and termination of a franchise agreement
  - √ Matters concerning good cause by which a franchiser may refuse to renew a franchise agreement
  - √ Matters concerning the trade secret of a franchiser
  - √ Matters concerning compensations for loss due to violation of a franchise agreement
  - √ Matters concerning negotiations on changes to transaction terms and procedures for the resolution of a dispute between a franchiser and a franchisee
  - √ Where a franchiser transfers a franchise to another franchisee, matters concerning a franchise agreement with the former franchisee
  - √ Matters concerning measures to be taken upon expiration of the period of validity of a franchiser's intellectual property rights
  - Review the terms and conditions of the agreement and conclude the agreement by signing it if no issues arise after comparing them with the details specified in the information disclosure statement or promotional materials.
  - Postponement of contract conclusion in case any issues arise during the process
    - In the event that the terms and conditions of the franchise agreement differ from those provided in the information disclosure statement or that substantive issues such as the agreement not reflecting the matters previously promised by the franchiser are discovered, the applicable ground rule in such situation is to ascertain matters of fact and modify the corresponding parts of the agreement.
    - If the franchiser does not modify the corresponding part of the agreement, its conclusion must be deferred.
    - If 14 days have not elapsed from the date a franchiser provides its prospective franchisees with the franchise agreement to help the prospective franchisees understand in advance the details of the franchise agreement, the franchiser shall not engage in any of the following acts (referring to seven days where a prospective franchisee has received advice and suggestions from an attorney-at-law or a franchise trader under Article 27 of 「Fair Transactions in Franchise Business Act」 with respect to the details of a franchise agreement) (Article 11(1) of 「Fair Transactions in Franchise Business Act」):
      1. Receiving a franchise fee from a prospective franchisee. In such a case, if a prospective franchisee has deposited his/her franchise deposit in the depository institution, it will be deemed that he/she has received such franchise deposit on

the date the first deposit is made (or the date a prospective franchisee agrees with the franchiser to make the first deposit of a franchise fee if the agreement on such a date exists)

2. Entering into the franchise agreement with a prospective franchisee

- If a franchiser has failed to provide an information disclosure statement or 14 days (where a prospective franchisee has been given advice and suggestions by an attorney-at-law or franchise trader on an information disclosure statement) have not elapsed from the date it provided the information disclosure statement, etc., a franchise agreement cannot be signed with the prospective franchisee (Article 7(3) of the 「Fair Transactions in Franchise Business Act」).

■ Measures for resolving issues which may arise

- Withholding the payment of franchise deposit and requesting its return
  - If any issues arise as to the franchise business before the business commencement after the conclusion of an agreement, promptly ① apply for mediation to the Dispute Mediation Committee, ② report to the Fair Trade Commission, or ③ file a lawsuit, etc. before requesting the depository institution to withhold the payment of franchise deposit.
  - If a franchiser fails to provide an information disclosure statement, offer false or exaggerated information on important matters regarding the franchiser, or unilaterally suspends the franchise business, a franchisee may request the return of the franchise deposit.

## 2.2. Selection of location

### 2.2.1. Analysis of trade area and location

▶ The success of a coffee shop ultimately lies in the selection of the trade area and location in which it operates.

■ Inquiries into trade area

※ Key items for inquiries into trade area

1. Statistical investigations: Number of residents, number of households, and residential type (detached and semi-detached houses, apartment complexes)
2. Identification of the type and size of trade area: Daytime trade area, nighttime trade area, stationary trade area, transient trade area
3. Research on transient population: Identification of the number of transient population and passers-by, nature of passage, and income of passers-by according to gender, age, time, and day
4. Research on passing vehicles: Identification of the number of passing vehicles and the time slots during which the most number of vehicles pass
5. Research on competing stores: Expected number of customers and customer class at competing stores, price range of products
6. Research on future prospects of the trade area: Identification of the possibility of expansion or reduction and development plans of surrounding

trade areas

< 10 steps to prepare for a startup, startup diary, Small and Medium Business Administration, Small Enterprise and Market Service, p. 113 >

■ Provision of information on trade area

- The Small Enterprise and Market Service operates the Trade Area Information System (<https://sg.sbiz.or.kr>) to provide help for preliminary entrepreneurs to select the locations and business types for success.

▶ **In particular, a suitable location for the coffee shop needs to be found.**

■ Locations suitable for coffee shops

- It is recommended that coffee shops be located in areas where office buildings are largely concentrated in order to target office workers, university towns where there is a significant floating population of young people, and areas close to subway stations with excellent accessibility.
- However, as the distribution of coffee shops has increased in recent years, the distance from competing stores and whether the coffee shop is located in the flow of traffic of target customers, and whether the candidate location is likely to lose customers to competitors in the long run need to be carefully reviewed.

■ Identification of characteristics of surrounding areas

- Identifying the characteristics of the area that you have in mind should be the first thing to do when selecting the location.
- Therefore, the level of development of a trade area may be derived by identifying the distribution and business status of competitors, and the characteristics of other business types within the area. In addition, the suitability of opening a coffee shop may be considered depending on the characteristics of the location, and business strategies to be employed when opening a business in the future can also be established.

■ Identification of characteristics of commercial power

- In order to evaluate the characteristics of a commercial power, the income level and population of local residents, number of households, residential types, population by age, types of consumption, occupational distribution, educational attainment, etc. need to be researched.
- The total number of households and the proportion of apartments by size need to be accurately identified in areas with a high concentration of apartments. Areas with a high concentration of small-sized apartments display a relatively higher ratio of spending on consumption.

■ Identification of the characteristics of floating population

- The success and failure depend on the size of the floating population that pass by the store, and the suitability of business type is determined by the characteristics of the floating population.
- The floating population should be, in general, surveyed for weekdays and weekends, and by time slot, age group, and gender. The survey should be conducted during 12 - 2 p.m. during which time office workers have lunch, during 3 - 4 p.m. when homemakers go out to shop, and during 6 - 8 p.m. when workers leave their work.

- In addition to the status of floating population passing by the candidate location, the percentage of visiting population needs to be also identified. The identification of the percentage of those visiting the newly opened stores should be conducted by surveying the visitor status of similar business types in the surrounding area.
- Examination of traffic factors
  - Areas with concentrated public transportation bring a huge impact on the store business and such areas are called station-adjacent areas. Station-adjacent areas refer to areas where public transportation such as subway stations, bus stops, and intercity bus terminals have a significant impact on commercial areas.
  - When selecting a store location close to a station-adjacent area it should be noted that, among other things, the direction in which the users of transportation move should be identified and the store should be located along the moving direction of potential customers.
  - When selecting a location in a station-adjacent area, it is necessary to determine which exit shows the busiest movement and identify the characteristics of the floating population.
- Researching the strengths and weaknesses of competing stores
  - No matter how good the commercial district or the location, if there is already an excessive number of stores for the business type you intend to engage in, it would be meaningless to open your store there. Therefore the purpose of inquiring into competitors should be to assess whether opening a store in a certain location is possible or not, and to establish how a store can differentiate itself from its competitors if it turns out to be possible.
  - When researching on competing stores, the following items should be assessed.
    - Store awareness
    - Size of store
    - Characteristics of products handled at the stores
    - Pricing strategies
    - Major customer base
    - Operating hours
    - Number of users per day
  - Having competitors concentrated in 1 location does not necessarily provide a disadvantage for all, and it should be noted that having stores with similar business type in the surrounding area may create a mutual synergy effect.
- Assess the possibility of future growth of the trade area
  - Since it is not easy to relocate the store once it is established, although the current locational suitability may be important, the long-term changes in the trade area should also be considered.
  - One of the matters to pay attention to when assessing the possibility of future growth is the presence of a subway station. The opening of a station expands the scope of trade area and also increases floating population, making the trade area more likely to develop.

- In addition, the new construction of large government offices, high-rise buildings, and private academies within the trade area need to be also identified. The possibility of road extension also affects the changes in the trade area.
- Selection of location that is appropriate for available funds
- When searching for stores to acquire, those that you like often require large fixed investment costs such as expensive premiums and therefore may not be appropriate for your available funds. In such cases, if you start a business with an excessive burden through means such as setting up an unreasonable funding plan or paying a premium that is higher than those of surrounding stores out of hasty hope for success, you will constantly find yourself under financial pressure, making it difficult to focus all your efforts on your business.
- To start a business, you need to be able to secure at least 1.5 times the amount required for your business investment. Therefore it is necessary to invest only 60% to 70% of your available capital and preserve the rest as operating funds in order to carry out minimal business activities.
- Therefore it is important to consider the correlation between sales and investment, and one should not be lured into determining the location by visible sales only and be sure to make a careful review of the relationship between the cost of purchasing the store and its rate of return.

## 2.3. Funding plan

### 2.3.1. Support for funds

▶ When you lack the funds for starting a coffee shop, use the Support System for Startup Funds.

- Support System for Startup Funds

- The Small Enterprise and Market Service is currently implementing the Support System for Startup Funds that provides low-interest loans to preliminary entrepreneurs who meet certain requirements.

▶ If you have insufficient funds to operate a coffee shop, use the Policy Loan of Small Business.

- Eligibility

- Loans are provided to those who satisfy all of the following (2023 Guidelines for the policy loans for small enterprises agency lending, Small Business Market Promotion Corporation, December, 2022).

- Those that meet the criteria for small enterprises (average annual sales + number of full-time workers)

- √ Average annual sales: Enterprises whose average sales by major business type, etc. meet the criteria for size of small enterprises according to the 「Enforcement Decree of the Framework Act on Small and Medium Enterprises」

- √ Number of full-time workers: Business operators with less than 5 regular workers in their main business.

- ※ If a single enterprise is engaged in operating 2 or more different businesses, the number of workers is determined by regarding the business type with the largest average sales as its main business.
  - An individual or a corporate owner with a business license (after the 'commencement date of business' on the business operator's business registration as of the date of application)
  - Small enterprises that engage in business types other than those that are excluded from the policy loan support (excluded business types: adult entertainment business, special business, etc.)
  - Those that are not non-profit private business operators, corporations, organizations, or unions
- Details of loan support
- Maximum loan: Up to KRW 70 million for the upper limit of integrated support for each enterprise based on the loan balance of the Policy Loan of Small Business (agency lending)
  - Loan interest rate: the interest rate varies depending on the loan
  - Loan period: within 5 years (including 2 years of grace period)
  - Repayment method: During the repayment period after the grace period, as a matter of principle, 70% of the loan is to be paid in equal installments every 3 months and 30% is to be paid in a lump sum upon expiration of the repayment period (for separately designated loans, the percentage of payment at maturity and the method of installment payment may be different)
- Procedure for loan support

	Application and submission of confirmation (online submission to SEMAS)		Application for issuance of guarantee (online and in-person submission at the guaranteeing agency)		Loan application and execution (in-person submission at the financial institution)
Loan secured by guarantee organizations	Eligibility review	- - >	Issuance of guarantee after credit/business feasibility evaluation	- - >	Loan approved through the guarantee
Credit/secured loan	Eligibility review		----->		Submit after credit guarantee evaluation

- Pure credit and secured loans can be borrowed directly from a loan handling bank without the need to go through a regional credit guarantee foundation.

※ Detailed information on preparing and submitting loan documents is available in the 2023 Guidelines for the policy loans for small enterprises agency lending.

### 3. Preparations for starting a business

#### 3.1. Commercial lease agreement

##### 3.1.1. Confirmation regarding commercial buildings

▶ It is important to confirm that the lot number in the building register matches the actual lot number.

- Concept of the building register

- The term "building register" refers to a public register that contains the status of ownership and use of each building to provide information on the status of the building and its site, and the details of the structural resistance (Article 38(1) of the Building Act).
- The building register is comprised of the general building register and the collective building register. In case of a commercial building, if its owner is identified, the general building register contains the status of the building and its site, whereas if the owner is not identified, the collective building register provides the said information (Article 4 of the 「Regulations on the entry and management of the building register」.)

- Perusal or issuance of a building register

- A person who intends to issue or peruse an original copy or an abstract of the building register needs to pay a fee and select parts that he/she requires from documents such as the title section of the entire page containing the title section, or the building status map, and file an application to the Autonomous Metropolitan City Mayor, the Special Self-Governing Province Governor, or the head of a Si/Gun/Gu, or apply on Jungbu24 (<https://www.gov.kr>) to peruse or obtain such parts (Article 11(1), (8) and (9) of the 「Regulations on the entry and management of the building register」).

- Matters to confirm in the building register

- It is important to confirm that the lot number in the building register matches the actual lot number of the commercial building before signing a commercial lease agreement.
- The special-purpose area, special-purpose district, and special-purpose zone in which the commercial building is located should be checked, and it should be checked that the business type he/she wishes to engage in is suitable for the corresponding commercial building.
- It is important to ensure that the owner entered in the building register matches the building owner specified in the register of real property.

▶ The land location and the lot number of the building you wish to lease must match those specified in the land register.

- Concept of the land register

- The "land register" refers to a public register that contains the land location, lot number, land category, and the land owner (Article 71 of the Act on the Establishment, Management, etc. of Spatial Data and Article 68(2) and Attached Form 63 of the 「Enforcement Regulations on the Act on the Establishment, Management, etc. of Spatial Data」).

▣ Perusal or issuance of a land register

- A land register can be perused or issued by paying a visit to a cadastral authority or a Eup/Myeon/Dong office, or by filing an application on Jungbu24 (<https://www.gov.kr>) (Article 75 of the Act on the Establishment, Management, etc. of Spatial Data and Article 74 of the Enforcement Regulations on the Act on the Establishment, Management, etc. of Spatial Data).

▣ Matters to confirm in the land register

- Before signing a lease agreement, it is important to ensure that the land location and lot number specified in the land register match those of the commercial building that you wish to lease.

**▶ It is necessary to identify whether the property is subject to expropriation, redevelopment or restriction on the permitted business type.**

▣ Concept of a written confirmation of land use plan

- A written confirmation of land use plan lists the details of the designation of zones, districts, etc., and the details of restricted activities in the said zones, districts, etc. to provide information on the land use and decisions made on urban planning facilities (Article 5 of the Framework Act on the Regulation of Land Use, Article 2 and Attached Form 2 of the Enforcement Decree of the Framework Act on the Regulation of Land Use).

▣ Issuance of written confirmation of land use planning

- In order to have a written confirmation of land use planning issued, an application for the confirmation of land use planning must be filed with the Autonomous Metropolitan City Mayor, the Special Self-Governing Province Governor, or the head of a Si/Gun/Gu, or alternatively, a written confirmation may be issued on Jungbu24 (<https://www.gov.kr>) (Article 10 of the Framework Act on the Regulation of Land Use, Article 9 of the Enforcement Decree of the Framework Act on the Regulation of Land Use)

- The written confirmation of land use planning can be perused on Land Use Regulations Information Service ([luris.molit.go.kr](http://luris.molit.go.kr)).

▣ Matters to confirm in the written confirmation of land use planning

- The special-purpose area, special-purpose district, and designation status of special-purpose zone, and accommodation availability for the relevant commercial building should be checked, as well as whether there are any restrictions in business type.

**▶ Buildings with complicated relationship of rights and duties should be avoided.**

▣ Confirmation of a register and a certificate of registered matters

- The term "register" refers to a public book that registers lands and buildings, which is available at a competent registry based on the information and data on

registration that have been entered into and processed by a computerized information processing system, as prescribed by the Supreme Court Regulations, and it is classified into land registers and building registers (Subparagraph 1 of Article 2 and Article 14(1) of the Registration of Real Estate Act).

- The "certificate of registered matters" refers to a document that certifies matters as prescribed in the register (Article 19(1) of the Registration of Real Estate Act).
- Anyone may apply for the perusal of a registration history or the issuance of a certificate of registered matters by paying a visit to a registry or via Internet Registry (<http://www.iros.go.kr>) by paying a fee.

■ Matters to confirm in the register

- Matters to confirm in section A of the register are as follows (Refer to Article 15(2) of the Registration of Real Estate Act and Article 13(2) of the Regulations on Registration of Real Estate).
  - Personal information of the property owner including his/her name, address, and resident registration number must be confirmed.
  - It is important to identify the existence of any foreclosures, provisional seizures, interim injunctions, provisional registration, etc., and commercial buildings with such registered encumbrances should be avoided.
- Matters to confirm in section B of the register are as follows (Article 15(2) of the Registration of Real Estate Act and Article 13(2) of the Regulations on Registration of Real Estate):
  - Check whether any mortgage lien or right to lease on a deposit basis has been registered and commercial buildings with multiple registered mortgage lien or rights to lease on a deposit basis should be avoided.
  - Check whether any superficies or easements have been set.
- ※ If you sign a lease agreement without due care despite the fact that potential issues are present in the building register, land register, and property register, you may not be able to reclaim the lease deposit when issues arise, and thus such matters should be carefully reviewed before signing the lease agreement.
- ※ Comprehensive information on a real property, such as the building register, land register, property register, etc., is available in the "comprehensive real estate record" (Subparagraph 19-3 of Article 2 of the Act on the Establishment, Management, Etc. of Spatial Data).

### 3.1.2. Lease agreement

▶ A lease agreement prescribes important terms and conditions and special provisions required for a contract.

■ Preparation of a contract

- A lease agreement must contain the following matters (Article 26(1) of the Licensed Real Estate Agents Act and Article 22(1) of the Enforcement Decree of the Licensed Real Estate Agents Act).

- Personal information on parties to the transaction
  - Marking of the object
  - Date of the contract
  - Matters related to payment, such as transaction amount and contract deposit amount, and the date of payment thereof
  - Time and date of handing over of the object
  - Details of transfer of rights concerned
  - Terms and conditions or time limit of the contract, if any
  - Confirmation of brokerage object and explanatory note issuance date of brokerage object
  - Details of other stipulations
- ※ As you will be subject to the rights and duties specified in the lease agreement prepared, due care must be exercised. In particular, the parts where any issues may arise, such as in special provisions on the business type, premium, use of parking lot, etc. care should be made to thoroughly check and consult with the lessor before including them in the agreement.
- Documents to receive after signing an agreement
    - When signing a lease agreement, the following documents should be inspected and preserved.
      - A commercial lease agreement (Article 26(1) of the Licensed Real Estate Agents Act)
      - √ When a practicing licensed real estate agent inflicts property damage upon a transaction party intentionally or by negligence during brokerage, he/she will be liable for the damage (Article 30(1) of the Licensed Real Estate Agents Act).
      - √ In addition, where a licensed real estate agent fails to prepare, deliver or keep a contract document in a proper manner, the registration authority may issue an order to suspend his/her business for a fixed period of time not exceeding 6 months (Subparagraph 8 of Article 39(1) of the Licensed Real Estate Agents Act).
      - A written confirmation and explanation of object of brokerage (Article 25(3) of the Licensed Real Estate Agents Act)
      - √ Where a licensed real estate agent fails to prepare and provide a written confirmation and explanation on object of brokerage, or details prepared in the confirmation differs in the fact and inflicted property damages, the party to the transaction may file a claim for damages against the licensed real estate agent (Refer to Article 25(3) and Article 30(1) of the Licensed Real Estate Agents Act).
      - √ In addition, where a licensed real estate agent fails to prepare, deliver or preserve a contract document in a proper manner, the registration authority may issue an order to suspend his/her business for a fixed period of time not exceeding 6 months (Subparagraph 6 of Article 39(1) of the Licensed Real Estate Agents Act).
      - A deduction certificate that a licensed real estate agent has received after subscribing to a surety insurance or a mutual aid society to provide for

accidents regarding brokerage

√ Any licensed real estate agent who fails to provide an explanation as to the matters in liability for damages or issue a copy of a relationship certificate or an electronic document of a relationship certificate will be subject to an administrative fine not exceeding KRW 1 million (Subparagraph 5 of Article 51(3) of the Licensed Real Estate Agents Act).

√ In addition, where a licensed real estate agent commences his/her business without taking any measures to ensure liability to compensate for damages, the registration authority may revoke the registration of establishment of the relevant brokerage office (Subparagraph 8 of Article 38(2) of the Licensed Real Estate Agents Act).

**▶ Once the requisites for counteraction are satisfied and a certificate of a fixed date on the lease agreement is obtained, a preferential payment right is created.**

■ Fulfilling the requisites for counteraction

- Concept

· "Counterforce" refers to a legal power that allows a lessee to claim the terms and conditions of a lease to a third party, or a transferee, or a person that succeeded the right to lease of the commercial building, or another interested party in the leased commercial building (Article 3(1) of the Commercial Building Lease Protection Act).

- Requisites that give rise to counterforce

· Even if a lessee has not registered his/her lease, if he/she has been ① delivered with the building, and ② files an application for business registration, a counterforce will be created on the following date (Article 3(1) of the Commercial Building Lease Protection Act).

- Effect

· A lessee of a commercial building with the counterforce may claim the continued existence of lease right against the new owner of the commercial building (transferee or successful bidder), even if the building is transferred to another person, or sold by auction or public auction (Article 3(2) of the Commercial Building Lease Protection Act).

※ Provisions on counterforce, etc. (Article 3 of the Commercial Building Lease Protection Act) will be applied to leases with deposits that exceed the set amount for each region pursuant to Article 2(1) of the Commercial Building Lease Protection Act (Article 2(3) of the Commercial Building Lease Protection Act).

■ Preferential payment right

- Concept

· "Preferential payment right" refers to the right of a lessee where he/she is entitled to reimbursement of security deposit in preference to posterior creditors or other creditors from the realized amount of leasehold building (including the site owned by the landlord) at the time of auction under the Civil Execution Act or public auction under the National Tax Collection Act (Refer to Article 5(2) of the Commercial Building Lease Protection Act).

- Requisites for obtaining preferential payment right

- A lessee ① equipped with requisites for counteraction (delivery of building and application for business registration) ② who has obtained a certificate of a fixed date on the lease contract from the competent head of tax office has a preferential payment right (Article 5(2) of the Commercial Building Lease Protection Act).

**▣ Protection of opportunity to collect premiums**

▣ Concept of the premium

- The "premium" refers to a price, such as money, paid to a lessor or a lessee, other than deposits and rents, as a price for transfer or use of tangible or intangible property value, including business facilities, equipment, customers, credit, business know-how and business benefits generated from the location of a commercial building, which is paid by a person who conducts or who intends to conduct a business in a commercial building, the subject matter of the lease (Article 10-3(1) of the Commercial Building Lease Protection Act).
- A "premium contract" refers to a contract which requests any person who intends to be a new lessee to pay the above premium to a lessee (Article 10-3(2) of the Commercial Building Lease Protection Act).

▣ Protection of opportunity to collect premiums

- No lessor must obstruct any lessee from receiving any premium pursuant to a premium contract from a person arranged by the lessee to become a new lessee, by committing any of the following acts from 3 months prior to the expiry of the lease period until the end of the lease. However, this shall not apply where any of the grounds set forth in Article 10(1) of the Commercial Building Lease Protection Act exists (Article 10-4(1) and (2) of the Commercial Building Lease Protection Act).
  - Requesting a person arranged by the lessee to become a new lessee to pay premiums or receiving premiums from a person arranged by the lessee to become a new lessee
  - Preventing a person arranged by the lessee to become a new lessee from paying a premium to the lessee
  - Requesting a person arranged by the lessee to become a new lessee to pay remarkably large amounts of rent and deposit, compared with the tax on a commercial building, public charges, rents and deposits of surrounding commercial buildings, and other charges
  - Refusing to conclude a lease contract with a person arranged by the lessee to become a new lessee without any of the following justifiable grounds
  - √ Where a person arranged by the lessee to become a new lessee cannot afford to pay deposits or rents
  - √ Where a person arranged by the lessee to become a new lessee is likely to violate the duty as a lessee or any substantial ground exists which makes it difficult to maintain the lease
  - √ Where the subject matter of the lease is a commercial building and has not been used for profit making for at least 18 months
  - √ Where a new lessee selected by the lessor has concluded a premium contract with the lessee and paid the premium
- ▣ Lessor's liability for damages

- Where a lessor engages in the above prohibited acts in relation to the collection of premiums incurring any loss to a lessee, he/she shall be liable to compensate for such loss (Former part of Article 10-4(3) of the Commercial Building Lease Protection Act).
- Claim for damages to a lessor will expire by completion of prescription if it is not exercised within 3 years from the date when the lease expires (Article 10-4(4) of the Commercial Building Lease Protection Act).
- Lessee's duty to provide information
  - A lessee has to provide information to the lessor, to the best of his/her knowledge, on the financial capacity of the person arranged by the lessee to become a new lessee, such person's willingness and ability to pay deposits and rents and to perform duties as a lessee (Article 10-4(5) of the Commercial Building Lease Protection Act).
- Exemption from application of premiums
  - The provisions under Article 10-4 the Commercial Building Lease Protection Act will apply to any of the following commercial building leases (Article 10-5 of the Commercial Building Lease Protection Act)
    - Where a commercial building, the subject matter of the lease, is a part of a large store or quasi-large store as prescribed in Article 2 of the Distribution Industry Development Act (excluding traditional markets)
    - Where a commercial building, the subject matter of the lease, is a state property as prescribed in the State Properties Act or public property pursuant to the Public Property and Commodity Management Act

## 3.2. Notification of commencement of business

### 3.2.1. Notification of commencement of business and business registration

▶ A coffee shop must file a notification of commencement of business as a rest restaurant.

- Notification of commencement of business
  - Any person who intends to run a rest restaurant pursuant to the Enforcement Decree of the Food Sanitation Act must file a notification with the Minister of Food and Drug Safety, the Mayor of a Special Self-Governing City, or the Governor of a Special Self-Governing Province or the head of a Si/Gun/Gu, by type of business or place of business (hereinafter referred to as 'notifying office' (Former part of Article 37(4) of the Food Sanitation Act and Subparagraph 8 of Article 25(1) of the 「Enforcement Decree of the Food Sanitation Act).
  - ※ Any person who violates this provision shall be punished by imprisonment for no more than 3 years or be subject to a fine not exceeding KRW 30 million (Subparagraph 1 of Article 97 of the Food Sanitation Act).
- Procedure for notification of commencement of business

- Submission of notification

- Any person who intends to file a notification of commencement of business must ensure that his/her business establishment is equipped with required facilities and submit a notification with the following documents (including electronic documents) attached to a notifying office (Article 42(1) of 「Enforcement Rule of the Food Sanitation Act」).
- √ A notification of commencement of business (including notification in electronic form) [Attached Form 37 of the Enforcement Regulations of the Food Sanitation Act]
- √ A certificate on the completion of training (applicable only if he/she has received education in advance pursuant to Article 41(2) of the Food Sanitation Act)
- √ A water quality inspection (test) report issued by a drinking water quality inspection institution (applicable only if underground water, etc. rather than tap water is to be used in the manufacturing process for drinking water or foods or in cooking or cleaning of foods)
- √ License or certificate of completion of report for ferry and waterway businesses (only applicable when operating a rest food business, general restaurant business, or bakery business at a water structure ferry terminal or ferry point)
- √ Certificate of registration for water leisure businesses (only applicable when operating a rest food business or bakery business at a water structure water leisure facility)
- √ Permission for use of state property according to Article 14(3) of 「Enforcement Rule of the State Property Act」 (only applicable when operating a rest food business, general restaurant business, or bakery business at military facilities or the station facilities of national railroads)
- √ Documents related to the usage contract for urban railway facilities signed with urban railway operators (only applicable when operating a rest food business, general restaurant business, or bakery business at urban railway station facilities)
- √ Documents proving legitimate usage rights for external places adjacent to the business places when intending to use the external location for business purposes (only applicable when the person intending to operate a rest food business, general restaurant business, or bakery business provides food items in that external location)
- √ Documents according to attached Table 15-2 of 「Enforcement Rule of the Food Sanitation Act」 when intending to operate a rest food business or bakery business using small or compact cargo vehicles for mobile food sales according to subparagraphs 1 and 2 of attached Table 1 and item (a) of subparagraph 1 of Note 1 of 「Enforcement Rule of the Motor Vehicle Management Act」 or special vehicles for mobile food sales (hereinafter referred to as "food sales vehicles") according to subparagraph 2 of attached Table 1 of 「Enforcement Rule of the Motor Vehicle Management Act」
- √ Certificate of passing the inspection for the installation of children's play facilities according to Article 12(1) and Article 7(4) of 「Act on the Safety Control of Children's Play Facilities」, or the certificate of passing the

- periodic facility inspection for children’s play facilities according to Article 12(2) of 「Act on the Safety Control of Children’s Play Facilities」 and Article 8(5) of 「Enforcement Decree of the Food Sanitation Act」 (only applicable when intending to conduct business related to rest food businesses, general restaurant businesses, entrusted meal service businesses, or bakery businesses)
- √ Marina boat renting business registration certificate according to Article 22(5) of 「Enforcement Rule of the Act on the Development and Management of Marinas」 (only applicable when intending to conduct business related to rest food business, general restaurant business, or bakery business at marina boats as per 「Act on the Development and Management of Marinas」 under subparagraph 8 of Article 21 of 「Enforcement Decree of the Food Sanitation Act」)
  - The following documents are inspected by the notifying office and their submission is not required in the case the notifying person agrees to the confirmation via the joint use of administrative information (Article 42-(2) of the Enforcement Rule of the Food Sanitation Act).
  - √ Issuance of a certificate for final inspection of facilities that use liquefied petroleum gas (applicable if a person among those who intend to engage in a rest restaurant business, general restaurant business, or a bakery business is required to undergo a final inspection of facilities that use liquefied petroleum gas)
  - √ A vehicle registration (applicable if a person intends to engage in a rest restaurant business or a bakery business by using a food truck)
  - √ A certificate of business registration (applicable if an operator of a school that falls within Article 2 of the Higher Education Act intends to engage in a rest restaurant business or a bakery business by using a food truck)
  - √ A report of medical examination results (a person who is required to undergo a medical examination pursuant to Article 49 of the Enforcement Regulations of the Food Sanitation Act)
  - √ A certificate of full installation of safety facilities issued by the head of the fire department (headquarters) or fire station under Article 9-(5) of the Special Act on Safety Management of Multi-Use Businesses (for business under Article 2-1(Subparagraph 1)-A of the Enforcement Decree thereof)
  - Issuance of a business notification certificate by a notifying office
    - A notifying office that has been notified must issue a certificate of commencement of business without delay (Article 42(6) and Attached Form 38 of the Enforcement Regulations of the Food Sanitation Act).

#### 1. Where alcoholic beverages are to be sold at a coffee shop

- Since drinking is not allowed at a rest restaurant, a coffee shop that intends to sell alcoholic beverages must file a business notification as a general restaurant and be equipped with facilities that satisfy the facility criteria of a general restaurant (Article 36 of the Food Sanitation Act, Subparagraph 8(a) of Article 21 of the Enforcement Decree of the Food Sanitation Act, and Article 36 and attached Table 14 of the Enforcement Regulations of the Food Sanitation Act).
- ※ The “general restaurant business” refers to a business of cooking and selling foods, where drinking accompanied with meals is allowed (Subparagraph

8(b) of Article 21 of the Enforcement Decree of the Food Sanitation Act).

## 2. Where breads are to be sold at a coffee shop

- It is permitted to bake and sell breads as part of the menu while operating a rest restaurant. However, any person who intends to engage in the business of baking and selling breads must file a notification of commencement of business to run a bakery business.

※ The “bakery business” refers to a business of manufacturing and selling mainly bread, rice cake, snacks, etc., where the act of drinking is not permitted (Subparagraph 8(f) of Article 21 of the Enforcement Decree of the Food Sanitation Act)

▶ After filing a notification of commencement of business, a business registration must be filed at a competent tax office.

### ■ Concept of business registration

- “Business registration” refers to the reporting of a business operator subject to the payment of VAT with the relevant business details to the competent tax office (『Legal Terminology Casebook』, Ministry of Government Legislation · Korea Legislation Research Institute).

### ■ Procedure for registration application

- A business operator must file an application for business registration for each place of business with the head of the tax office having jurisdiction over each place of business, within 20 days from the commencement date of his/her business. However, a person who intends to newly start a business may file an application for business registration even before the commencement date of the business (Article 8(1) of the Value-Added Tax Act).
- An application for business registration may be filed with a head of any tax office other than the tax office having jurisdiction over his/her place of business. In this case, the application is deemed to have been filed with the head of the tax office having jurisdiction over his/her place of business (Article 8(2) of the Value-Added Tax Act).
- A business operator who has 2 or more places of business (including those who currently operate 1 business establishment but wish to open an additional one) may file an application for registration by his/her business unit with the head of the tax office having jurisdiction over his/her main office or principal office (The former part of the Article 8(3) of the Value-Added Tax Act).
- Any business operator who intends to register his/her business must submit the following documents to a head of a competent tax office or any head of another tax office chosen for the convenience of the applicant (including submissions via the national tax information network). However, if the business operator is a minor, a consent form from the legal guardian (attached Form 5-2 of 「Enforcement Rule of the Value-Added Tax Act」) must be additionally attached (Article 8(1) of 「Value-Added Tax Act」, paragraphs 1 and 3 of Article 11 of 「Enforcement Decree of the Value-Added Tax Act」, and paragraphs 1 to 3 of Article 9 of 「Enforcement Rule of the Value-Added Tax Act」).
- An application for business registration (Attached Form 4 of the Enforcement Regulations of the Value-Added Tax Act)

- A copy of business license, business registration or certificate of completion of report (applicable only if the business is required to obtain permission, register, or notify pursuant to statutes)
  - A copy of lease agreement (applicable only if a place of business has been leased)
  - A copy of the sublease agreement and the original lessor's written consent to sublease (only applicable in cases where the business premises have been subleased)
  - If you have leased part of a commercial building, a plan of the relevant portion (applicable only to the buildings that are subject to the Commercial Building Lease Protection Act)
  - If a business operator that runs 2 or more places of business seeks to apply for registration by his/her business unit with the head of the tax office having jurisdiction over his/her main office or principal office, the above attached documents for the places of business other than the one that is subject to taxation by business unit, and documents specifying the location, business type, business item, etc. (Attached Form 4 Supplementary Table 2 and 3 of the Enforcement Regulations of the Value-Added Tax Act)
- Issuance of a business registration certificate
- Depending on the details of the business registration application, the civil service office of a tax office either issues the business registration certificate immediately upon receipt, or hands over the application to the VAT department to review application details and submitted documents and conduct an interview, and subsequently issues or posts such certificate directly to the business operator within 2 days of the date of application (Main body of Article 11(5) of the Enforcement Decree of the Value-Added Tax Act).
  - Where the Commissioner of the National Tax Service deems it necessary to inspect business facilities or operations, he/she may extend the deadline for issuance by up to 5 days and issue a business registration certificate based on the findings of the inspection (The proviso of Article 11(5) of the Enforcement Decree of the Value-Added Tax Act).
- √ In such cases, the deadline for issuance may be extended by up to 5 days.

### 3.2.2. Reporting on the succession of business

- ▶ A person who takes over a business from another person must file a report on the succession of position of the operator.
  - ▣ Ground for business succession
    - When a business operator transfers his/her business or dies, or the merger of corporations is carried out, the transferee, successor, a corporation surviving such merger or a corporation established after such merger will be succeeded to the status of the relevant business operator (Article 39(1) of the Food Sanitation Act).
    - A person who has acquired all of the business facilities in accordance with the procedures that fall under any of the following will succeed the status of the

relevant business operator. In such a case, the notification of commencement of business filed by the previous operator loses its effect (Article 39(2) and Article 29(2) of the 「Food Sanitation Act」).

- An auction in accordance with the Civil Execution Act
  - Realization under the Debtor Rehabilitation and Bankruptcy Act
  - Sale of seized property under the National Tax Collection Act, the Customs Act, or the Local Tax Collection Act
  - Other procedures corresponding to the procedures provided above
- Reporting on the transfer of position of the operator
- A person who has succeeded the status of the relevant business operator must notify the Governor of a Special Self-Governing Province or the head of a Si/Gun/Gu of the fact within 1 month (Article 39(3) of the Food Sanitation Act).
  - ※ Any person who violates this provision will be punished by imprisonment for no more than 3 years or a fine not exceeding KRW 30 million (Subparagraph 1 of Article 97 of the Food Sanitation Act).
  - A person who intends to file a report on the transfer of position must submit the following documents to a notifying office (Article 39(3) of the Food Sanitation Act and Article 48(1) of the Enforcement Regulations of the Food Sanitation Act).
  - A report on transfer of position of the operator (Attached Form 49 of the Enforcement Regulations of the Food Sanitation Act)
  - A certificate of commencement of business
  - Documents that support the succession of business status
  - √ For a business transfer: a copy of the document proving the transfer
  - √ For an inheritance: documents proving that the individual is the rightful heir
  - √ For other cases, documents that prove that the operator's position has been transferred for each reason
  - Education completion certificate (only for those who have already undergone food hygiene education)
  - If the transferee has delegated the authority to declare business succession: a copy of the delegator's ID with the delegating person's handwritten signature and the power of delegation
  - Documents demonstrating that the declarant has subscribed to fire liability insurance
  - If the person who intends to report on the succession of position seeks to change the title or trade name of the business establishment, he/she may report such facts in combination at the same time (Article 48(5) of the Enforcement Regulations of the Food Sanitation Act).
  - The head of the Ministry of Food and Drug Safety or the Metropolitan Autonomous City Mayor, the Special Self-Governing Province Governor, or the head of a Si/Gun/Gu must notify the reporter of the receipt of report within 3 days from the date on which the report was filed (Article 39(4) of the 「Food Sanitation Act」).

### 3.3. Operating facilities

#### 3.3.1. Interior construction

▶ A unique concept and sensual interior is required.

■ Interior construction contract

- The assignment of the construction to an interior designer constitutes a work contract under which a contractor agrees to perform the interior construction and the other party (operator of coffee shop) agrees to pay remuneration for the result of such work (Article 664 of the Civil Act).

※ It is important to create a contract when assigning construction for issues such as repairing defects that may arise. In particular, the contract should clearly state the extent to which the construction work is included, and specify the defect liability period.

※ When selecting a contractor for the interior construction, if the construction cost amounts to KRW 10 million or more, it may be beneficial to select a contractor registered as an interior construction business, etc. according to the Framework Act on the Construction Industry in terms of repairing defects (Article 9(1) of the Framework Act on the Construction Industry and Subparagraph 2 of Article 8(1) and attached Table 1 of the Enforcement Decree of the Framework Act on the Construction Industry).

※ An interior constructed by a contractor registered pursuant to the Framework Act on the Construction Industry will benefit from a guaranteed defect liability period of 1 year (Article 28(1) of the Framework Act on the Construction Industry and Article 30 and attached Table 4 of the Enforcement Decree of the Framework Act on the Construction Industry).

■ Payment of Remuneration

- Remuneration (construction payment) must be made at a time that is mutually agreed upon, but where no time has been specified, custom shall prevail. In the absence of any established custom in regards to remuneration period, it has to be paid after the completion of the work that was agreed upon (Article 656(2) and Article 665 of the 「Civil Act」).
- For clear progress, remuneration period should be entered in the contract.

■ Warranty against defects

- Defect liability period

- Where any defect is found in the completed subject matter of a work or in a certain part of the subject matter of a work which has been finished before the completion of all the work, the coffee shop operator who ordered the work may demand the contractor to repair and rectify such defect within a significant period that is specified.
- However, this shall not apply if excessive costs are required for correcting a minor defect (Article 667(1) of the Civil Act).

- A coffee shop operator who has ordered the work may claim compensation in lieu of, or together with, correction of the defect and in such case, he or she may refuse to make payment for the construction until the other party pays compensation for damages (Article 667(2) and Article 536(1) of the Civil Act).
- Claims for the repair of defects and damages shall be available during the period set by the concerned parties to the extent that it does not exceed 1 year from the completion of the construction (Article 670(1) of the 「Civil Act」).
- Exceptions to liability for a warranty against defects
  - The liability for a warranty against defects will not be incurred if the defect in the finished subject matter of the work has arisen through the nature of the materials supplied by the coffee shop operator who ordered the work, or by reason of instructions given by such operator. However, the liability for a warranty against defects will arise if the contractor, knowing the impropriety of the materials or instructions, has failed to notify the coffee shop operator (Article 669 of the 「Civil Act」).
- Special agreements exempting the liability for a warranty against defects
  - Even where there was a special agreement between the parties stipulating that the contractor shall not be bound by warranty liabilities, he may not be relieved of liabilities with respect to the defects in workmanship or materials of which he was aware and nevertheless failed to give notice (Article 672 of the Civil Act).

### 3.3.2. Business equipment

#### ▶ Facilities must be installed according to facility and equipment standards.

##### ■ Facility requirements

- In order to operate a coffee shop, it must be equipped with facilities that meet the common facility standards and business type-specific facility standards (Article 36 of the Food Sanitation Act, Article 36 and attached Table 14 of the Enforcement Regulations of the Food Sanitation Act).
- Partition Article 36 and Subparagraph 8(b)(1)(B) of attached Table 14 of the Enforcement Regulations of the Food Sanitation Act
  - A coffee shop is not permitted to contain rooms.
  - However, rooms may be permitted if a transparent partition or barrier is installed and the entire interior is thus visible.
  - In case where partitioned seats are installed, such partitions (movable or fixed) must be less than 1.5 meters in height.
  - In such cases, more than 2 sides must not be shut off, and the interior of the seat must be visible to other seats.
- Safety facilities, etc. [Article 36 and item (b)1)c) and (b)1)d) of subparagraph 8 of attached Table 14] of 「Enforcement Rule of the Food Sanitation Act」]
  - Safety facilities for transportation modes, etc.
    - If a train, automobile, ship, or a streamline field, a ferry or a water leisure business that is a structure on water, the following facilities must be built.

- √ A drinking water tank that can store sufficient amount of water to be used during the operating hours of a day
- √ Sewage tank and waste water tank of sufficient size to handle food waste that can occur during a day of business hours
- √ Facilities for hygienic storage of food materials (ingredients)
- Safety facilities based on floor area
  - If the total floor area used for place of business is 100㎡ or more (or 66㎡ or more if the place of business is located in a basement), fire safety facilities, evacuation routes inside the place of business, and other safety facilities must be installed
  - However, if the place of business (excluding multi-level structures connected by internal stairs) are located on the ground floor or directly connected to the ground level, and the main entrance of the place of business is directly connected to the outside ground, safety facilities are not required.
- Place of business [Article 36 and item (a)1) and (b)1) of subparagraph 8 of attached Table 14 of 「Enforcement Rule of the Food Sanitation Act」]
  - Facilities required in a business establishment
    - The facilities must be separated, compartmentalized, or divided from independent buildings and facilities used for purposes other than those permitted for licensed or notified food service businesses (excluding general restaurants that engage in the meat sales business under Subparagraph 7(a) of Article 21 of the Enforcement Decree of the Livestock Products Sanitary Control Act」, rest restaurants that engage in the music record and music video retail business pursuant to Subparagraph 10 of Article 2 of the 「Music Industry Promotion Act, and bakeries that operate under license to sell alcoholic beverages received from the head of a competent tax office). However, the facilities must be separated where they fall under any of the following cases.
  - √ Where he/she intends to engage in a food service business that is different from the one licensed or notified; however, this is not applicable to those who intend to operate a bakery or a regular restaurant in a rest restaurant, a rest restaurant or a bakery in a regular restaurant, or a rest restaurant or a regular restaurant in a bakery
  - √ Where he/she intends to engage in a karaoke business under Subparagraph 13 of Article 2 of the Music Industry Promotion Act
  - √ Where he/she intends to engage in a colattheque business under Subparagraph 3 of Article 2 of the Enforcement Regulations of the Special Act on the Safety Control of Publicly Used Establishments
  - √ Where he/she intends to engage in a dance institute business or a dance hall business under Subparagraph 2 of Article 10(1) of the Installation and Utilization of Sports Facilities Act
  - √ Where he/she intends to engage in a business involving the entry, display or breeding of animals under Subparagraph 1 of Article 2 of the Animal Protection Act
  - The business establishment must ensure that smoke, hazardous gas, etc. are well ventilated.

- A business operator who installs sound and accompaniment facilities must ensure the business is equipped with soundproof facilities that meet the control criteria for daily life noise and vibration under Article 21 of the Noise and Vibration Control Act
- √ The entrance of the place of business directly adjacent to facilities involving the entry, exhibition, or breeding of animals, as defined in subparagraph 1 of Article 2 of 「Animal Protection Act」, must be equipped with devices and supplies for hand disinfection.
- Prohibited facilities in the business establishment
  - A coffee shop operator who intends to provide performance must install stage facilities separated from the seats in the business establishment, and such facilities must not be installed inside a room.
  - Video equipment for subtitles or automatic accompaniment equipment that customers are permitted to use are prohibited inside a coffee shop.
  - The place of business of a coffee shop must not install any equipment, machines, or furniture that could promote or lead to gambling or speculation, nor any equipment, machines, or furniture such as beds or bathrooms that could promote or lead to acts related to sex crimes.
- Cooking area [Article 36 and Subparagraph 8(a)(2) of attached Table 14 of the Enforcement Regulations of the Food Sanitation Act]
  - The cooking area must be installed in a structure that is visible for customers to look inside. However, the following cases are exceptions:
    - If the cooking area is installed within the same building for a bakery business as defined in Item (f) of subparagraph 8 of Article 21 of 「Enforcement Decree of the Food Sanitation Act」
    - For cooking areas in tourist hotels and tourist performance venues as defined in item (a) of subparagraph 2 and item (e) of subparagraph 3 of Article 2(1) of 「Enforcement Decree of the Tourism Promotion Act」
    - If a video system, such as closed-circuit television (CCTV), is installed to allow customers to view the cooking area in real time
  - If drains are located on the floor of the cooking area, covers must be installed over them.
  - In the cooking area, cooking facilities, cleaning facilities, waste containers, and hand washing facilities must be installed in order to allow hygienic cooking of handled foods, and waste containers must be covered with a lid and made of water-resistant materials to prevent sewage leak and odor.
  - The cooking area must be equipped with ultraviolet or electric sterilizers or hot-water washing and sterilizing facilities (must sterilize pathogenic microorganisms that cause food poisoning, etc.) to sterilize kitchen utensils.
  - The place must be equipped with facilities that provide sufficient ventilation. However, this will not apply to those with a structure where natural ventilation is available.
  - Refrigerators or freezers must be provided to maintain adequate temperature that meets the preservation and distribution standards for each type of foods.

- Joint use of a cooking area
- 1 operator may use a single cooking area for 2 or more businesses in the following cases.
  - √ Where he/she intends to operate a rest restaurant, a bakery, a general restaurant, or an instant sales and manufacturing business by using the same passageway in the same building as an entry
  - √ Where he/she intends to engage in 2 or more operations among rest restaurant, bakery or general restaurant at a specialized resort, general resort and general amusement complex pursuant to the Enforcement Decree of the Tourism Promotion Act
  - √ Where a general restaurant operator intends to engage in on-site sales, cooking, and processing of lunch boxes in a place directly in contact with the general restaurant's business establishment
  - √ Where a bakery operator intends to produce and supply confectionery and bakery items in the food production and processing or on-site sales, production, and processing industries
  - √ Where a bakery operator operates two or more bakeries in accordance with the following classification
    - ① The operator operates a bakery in the same jurisdiction in which the notifying office where the existing bakery's business was notified is located
    - ② The operator operates a bakery in a jurisdiction other than the jurisdiction in which the notifying office where the existing bakery's business was notified is located, and the distance between the bakeries is 5 kilometers or shorter.
- Water supply facilities [Article 36 and Subparagraph 8(a)(3) of Attached Table 14 of the 「Enforcement Regulations of the Food Sanitation Act」]
  - Facilities that supply tap water or groundwater that satisfy the water quality standards pursuant to Article 5 of the Drinking Water Management Act
  - If groundwater is used, the water intake must be located in a place that is not affected by the use of toilets, waste disposal facilities, animal slaughterhouses, or where groundwater may be contaminated.
- Toilet [Article 36 and Subparagraph 8(a)(4) of Attached Table 14 of the Enforcement Regulations of the Food Sanitation Act]
  - Toilets should be internally treated with concrete, etc. However, a separate toilet may not be installed in a business located in a station, terminal, and amusement park where public toilets are available, or a business located inside a building with public toilets, or if toilets that are convenient to use are in the vicinity of the business.
  - Toilets should be installed in areas that do not affect the cooking area.
  - Flush toilets must be installed with a septic tank. However, in areas where water and sewage facilities are not installed, non-flush toilets may be installed.
  - If non-flush toilets are to be installed, toilet lids and ventilation must be provided.
  - Toilets should be equipped with hand washing facilities.
- Special applications for common facility standards [Article 36 and Subparagraph

8(a)(5) of attached Table 14 of the Enforcement Regulations of the Food Sanitation Act]

- Notwithstanding the common facility standards, the facility standards may be set separately by the Special Self-Governing Province Governor, or the head of a Si/Gun/Gu (if food is cooked or sold in the city (si) or province, then city mayor or province governor) in the following cases.
    - Where a business is operated in a traditional market pursuant to Subparagraph 1 of Article 2 of the Special Act on the Development of Traditional Markets and Shopping Districts
    - In case of seasonal operation at a beach, etc.
    - In case of operating at rest areas such as highways, motorways, parks and amusement facilities
    - In case of operating at a construction site
    - Where a producing organization, etc. recognized by a local government or the Minister of Agriculture, Food and Rural Affairs intends to cook and sell foods in a specific place for up to 14 days to promote the sales and consumption of domestic agricultural, fishery and livestock products
    - Where a rest restaurant business, general restaurant business, or a bakery is operated at exhibition facilities pursuant to subparagraph 4 of Article 2 of the Act on the Development of Exhibition Industry
    - Where a rest restaurant business, general restaurant business, or bakery business is conducted at a local festival hosted, organized or sponsored by the head of a local government
  - For rural experiential and recreational villages
    - Where separate facility operation standards have been established for a rural experiential and recreational business that provides food as a service incidental to a rural experiential and recreational program, such standards should be observed (Article 10 of the Promotion of Mutual Exchange between Cities and Agricultural or Fishing Villages Act).
  - For department stores, etc.
    - Where an operator intends to operate in department stores, supermarkets, etc. or in certain places such as department stores (food malls) that specialize in cooking and selling food, and such operations are deemed to pose no sanitary hazards, separate barriers or partitions may not be installed to separate or compartmentalize each business establishment.
  - Where using facilities operating a shared kitchen
    - Where operating a rest restaurant business such as coffee shops through facilities operating a shared kitchen, the standards of the corresponding facility shall be complied with [subparagraph 8(a)5(d) of the Attached Table 14 of the Enforcement Rules of the Food Sanitation Act]
- ※ See the subparagraph 10 of the Attached Table 14 of the Enforcement Rules of the Food Sanitation Act to learn more about facility standards of the shared kitchen operation business.

### 3.3.3. Trade name and advertising materials

▶ In principle, a trade name may be freely selected.

■ Selection of a trade name

- "Trade name" refers to the name used by a merchant to display his/her identity for a business purpose. Since the trade name is the business name of a merchant, the name of the business other than the merchant is not a trade name [『Legal Terminology Casebook』, Ministry of Government Legislation · Korea Legislation Research Institute].
- A merchant may choose his/her name or other names as his/her trade name (Article 18 of the Commercial Act).
- Although the trade name may be freely selected in principle, the following restrictions still apply to ensure the safety of transactions and prevent reckless abuse of trade names.
  - A single trade name must be used in the same business (Article 21(1) of the Commercial Act).
  - No person, other than a company, may use in the trade name any lettering indicating a company (Former part of Article 20 of the Commercial Act).
- ※ Any person who violates this provision will be subject to an administrative fine not exceeding KRW 2 million (Article 28 of the Commercial Act).
- No person shall, for any unfair purpose, use any trade name likely to induce others to believe that it represents the business of another person (Article 23(1) of the Commercial Act).
- ※ Any person who violates this provision will be punished by an administrative fine not exceeding KRW 2 million (Article 28 of the Commercial Act).

■ Registration of a trade name

- No trade name registered by another person shall be registered as a trade name of the same kind of business in the same Special Metropolitan City, Metropolitan City, or Si/Gun (Article 22 of the Commercial Act).
- Any person who uses the registered trade name of another person in the same Special Metropolitan City, Metropolitan City, and Si/Gun, in respect of the same type of business shall be presumed to have done so for an unfair purpose (Article 23(4) of the Commercial Act).
- Registration procedure
  - A person who intends to register a trade name needs to submit an application for a new trade name registration (including electronic documents) to the district court that has jurisdiction over the applicant's business establishment, its branch or a registry [Article 4, Article 18 and Article 19 of the Commercial Registrations Act, Attached Form 1 of [the Established regulations on the format of the commercial registration application form](#)].

**Is it possible to use the same trade name for a store that I have acquired?**

(Question) 'A' acquired a thriving rice cake store from 'B' and began its operation.  
In order to attract existing customers of the rice cake store, A paid the premium to buy the trade name as well, but B opened a rice cake business nearby under the same trade name. Can A prevent B from using the trade name?

(Answer) Yes, A can.

In addition to being identical in core parts between the trade names of A and B, as their nature, contents, operating methods, operating areas and customer pools are closely related to each other, the general customers may mistakenly believe that B's trade name represents A's business.

Furthermore, the continued use of A's trade name known to nearby consumers by opening a new rice cake store after the transfer of business may be deemed to be use of the trade name for an unfair purpose of inducing others to believe that B's business represents the business of A.

This violates Article 23 of the Commercial Act, which prohibits the use of a trade name that is likely to induce others to believe it represents the business of a third party, A may file a lawsuit against B to obtain an injunction on B's use of the trade name.

< [Supreme Court 08. 21, 2008 Verdict 2006Da64757 Decision](#) >

▶ If you register the trademark of your trade name, the right to its usage will be protected.

■ Trademark registration

- Concept of the trademark

- The term "trademark" means a mark used to distinguish goods (including services or goods related to the provision of services except goods on which a geographical indication is used) of 1 business from those of others (Subparagraph 1 of Article 2(1) of the Trademark Act).
- The term "mark" refers to all indications used to identify the source of goods, irrespective of the composition or methods of the expression thereof, which include any sign, letter, figure, sound, smell, three-dimensional shape, hologram, movement, color, etc. (Subparagraph 2 of Article 2(1) of the Trademark Act).

■ Trademark registration

- Not everyone who starts a business must register the trademark of their trade names. However, the trade name not only distinguishes itself from other stores, but also represents its reputation if the store is successful, thereby creating the property value. Therefore trademark registration is one way to protect the value of your future property and protect your rights.
- Effect of trademark registration

- A trademark right holder will hold the exclusive right to use the registered trademark in relation to designated goods (Main body of Article 89 of the Trademark Act).
- √ The duration of trademark rights will be 10 years from the date of registration and its establishment, and such rights may be renewed for another 10 years by filing an application to register the renewal of its duration (Article 83(1) and (2) of the Trademark Act).
- A trademark rights holder or an exclusive licensee may seek an injunction requesting the prohibition or prevention of infringement against a person who infringes or is likely to infringe upon his/her rights (Article 107(1) of the Trademark Act).
- Application for Trademark Registration
  - Any person who intends to obtain trademark registration must submit the following documents to the Commissioner of the Korean Intellectual Property Office (Article 36(1) of the Trademark Act and Article 36(1) and Attached Form 3 of the Enforcement Regulations of the Trademark Act).
  - √ An application for trademark registration (Attached Form 3 of the Enforcement Regulations of the Trademark Act)
  - √ A copy of the trademark sample (excluding sound trademark, smell trademark, and other trademarks that cannot be visually recognized)
  - √ A copy of description about the trademark (applicable only to applications for trademark registration regarding ① a combination of colors or colors that are not combined with other items, holograms, movements, or other visually recognizable marks, or ② among sounds, smells, etc. that are not visually recognizable, symbols, letters, drawings, or other realistic visual representations)
  - √ A copy of articles of incorporation or bylaws, or their summaries that provide matters regarding collective marks or certification marks (applicable only to applications for the registration of collective marks, collective marks with geographical indication, certification marks, certification marks, and certification marks with geographical indication)
  - √ A written copy that evidences the managerial fact on the business (only for the registration applications of operation marks)
  - √ A copy of a sound file that conforms to the realistic representation of the corresponding mark in the form of symbols, letters, drawings or other visual means (only for the registration application of sound trademarks)
  - √ 3 airtight containers containing the smell of small samples that conform to the visual representation or 30 patches that contain the smell (only for the registration applications of small trademarks, the smell samples should be provided in sealed containers or smell patches designed to prevent the smell from disappearing or changing easily)
  - √ An electronic recording medium, such as a videotape, CD-ROM or optical disk, containing images showing the characteristics of motions (only for the registration application of motion trademarks)
  - √ A copy of the document demonstrating that the quality, origin, production method or other characteristics of the goods or services that require proof and the applicant's ability to manage such demonstrated matters (only applies to

registration application of certification trademarks)

√ A copy of the document certifying the right of representation of an agent in case the agent carries out the procedure

**▶ Signboards, etc. must be installed for the displaying methods in accordance with the Act on the Management of Outdoor Advertisements, Etc. and Promotion of Outdoor Advertisement Industry.**

■ Signboard installation

- Concept of outdoor advertisements

- The term "outdoor advertisements" means advertisements exposed to the public continuously or for a certain period and which can be seen by the public in places where they pass freely, such as signboards, standing signboards, placards, posters, leaflets, and others similar thereto (Subparagraph 1 of Article 2 of the Act on the Management of Outdoor Advertisements, Etc. and Promotion of Outdoor Advertisement Industry).

- Displaying methods for advertisements

- The letters of advertisements shall, in principle, be written in Korean alphabet in accordance with the Korean alphabet (Hangul) orthography, the rule of Romanizing Korean words, the rule of spelling foreign words in the Korean alphabet, etc., and when written in foreign letters, they shall be spelt side by side with the Korean alphabet, unless any special grounds exist (Article 12(2) of the Enforcement Decree of the Act on the Management of Outdoor Advertisements, Etc. and Promotion of Outdoor Advertisement Industry).
- Advertisements or display facilities (hereinafter referred to as "advertisements, etc.") may be displayed with diagrams, etc. symbolizing the commodities, place of business, etc. (Article 12(3) of the 「Enforcement Decree of the Act on the Management of Outdoor Advertisements, Etc. and Promotion of Outdoor Advertisement Industry」).
- Advertisements, etc. may be displayed in rectangular, square, round, or other forms to the extent not adversely affecting scenic landscapes and safety (Article 12(4) of the Enforcement Decree of the Act on the Management of Outdoor Advertisements, Etc. and Promotion of Outdoor Advertisement Industry).
- Advertisements, etc. shall be displayed in such a manner as to not cause any obstruction to the passage, etc. of pedestrians and vehicles and as to not tumble down or fall over by the wind, impacts, etc. (Article 12(5) of the Enforcement Decree of the Act on the Management of Outdoor Advertisements, Etc. and Promotion of Outdoor Advertisement Industry).
- Fluorescent or luminous paints (including the tapes applied with such paints) shall not be used for advertisements, etc. (Article 12(6) of the Enforcement Decree of the Act on the Management of Outdoor Advertisements, Etc. and Promotion of Outdoor Advertisement Industry).
- Advertisements, etc. shall be anchored to the ground, buildings, other artificial structures, etc., and no movable signboards shall be installed. However, standing signboards referred to in Subparagraph 6-2 of Article 3 of the Enforcement Decree of the Act on the Management of Outdoor Advertisements, Etc. and Promotion of Outdoor Advertisement Industry may be installed to the extent that they do not endanger public safety, in accordance with the municipal ordinance of a Si

(City)/Do (Article 12(7) of the Enforcement Decree of the Act on the Management of Outdoor Advertisements, Etc. and Promotion of Outdoor Advertisement Industry).

- The total number of signboards that may be displayed by a single business place shall be up to three, to be prescribed by municipal ordinance of a Si/Do (4 if the business concerned is situated at the corner where 2 roads meet or if it is situated in a building facing roads on the front and rear sides of it). However, the number of advertisements in the following shall be limited to the extent of the total number (Article 12(8) of the Enforcement Decree of the Act on the Management of Outdoor Advertisements and Promotion of Outdoor Advertisement Industry).

√ Standing signboards: 1 in total

√ 1 Digital advertising signboard placed on a wall of a large-sized store or a traditional market, where a micro-enterprise is housed (limited to cases where micro-enterprises jointly use it for self-advertisement)

- Additional methods of display other than those specified above may be prescribed by municipal ordinance of a Si/Do (Article 12(9) of the Enforcement Decree of the Act on the Management of Outdoor Advertisements, Etc. and Promotion of Outdoor Advertisement Industry).

**▶ Promotion should be effective, and unfair advertising is prohibited.**

■ Precautions to take for promotions

- No business entity, etc. shall place any of the following labeling or advertising that is likely to undermine fair trade order by deceiving or misleading consumers, or compel other business entities to do so (Article 3 of the Act on Fair Labeling and Advertising and Article 3 of the Enforcement Decree of the Act on Fair Labeling and Advertising).
- False or exaggerated advertising that advertises what is not true or inflates facts
- Deceptive labeling or advertising that labels or advertises through methods such as concealment or understatement of facts
- Unfair comparative labeling or advertising that labels or advertises oneself or his/her product or service (hereinafter referred to as "product, etc.") as being superior or advantageous in comparison with another business entity, business association (hereinafter referred to as "business entity, etc.") or product, etc. of a business entity, etc. without clearly stating the subject or standards of comparison, or without providing objective grounds.
- Slanderous labeling or advertising that slanders another business entity, etc. or the product of another business entity, etc. by labeling or advertising them with contents with no objective basis or engaging in defamation or slander by labeling or advertising unfavorable facts only

### 3.4. Purchase of materials

#### 3.4.1. Purchase of coffee and auxiliary materials

- ▶ Precautions to take when directly importing and selling coffee beans, etc.

- Precautions to take when directly importing coffee beans, etc.
  - Increasing number of coffee shops import coffee beans, etc. without getting their supplies from other suppliers to sell freshly roasted coffees. Anyone who intends to personally import and sell coffee beans, etc. must file an import declaration pursuant to the Special Act on Imported Food Safety Control.
- Import declaration for coffee beans, etc.
  - Submission of import declaration
    - Where a business entity intends to import(including filing an import declaration by proxy) food, etc. for the purpose of sale or for the purpose of using them for business, he/she shall file an import declaration of the relevant imported food, etc. to the head of a Regional Office of Food and Drug Safety having jurisdiction over customs clearance of imported food, etc. with the following documents (Article 20(1) of the Special Act on Imported Food Safety Control and former part of Article 27(1) of the Enforcement Rule of the Special Act on Imported Food Safety Control).
      - √ Import declaration for imported foods, etc. (Attached Form 25 of the Enforcement Rule of the Special Act on Imported Food Safety Control)
      - √ A wrapper printed in Korean (including wrappers to which a label printed in Korean is attached) or a document mentioning content in Korean
      - √ A test or inspection report issued by an overseas testing or inspection agency through detailed inspection (only applicable to imported food, etc. subject to detailed inspection under Subparagraph 2(c) of attached Table 9 of the Enforcement Rule of the Special Act on Imported Food Safety Control)
      - √ Any of the following documents [genetically modified foods, etc. (referring to foods which have undergone safety assessment as agricultural, livestock and fishery products, etc. cultivated or raised by using any of the genetic engineering techniques specified under Article 12-2(1) of the Food Sanitation Act or foods manufactured or processed with such products as raw materials) only applicable to where foods are subject to GMO labeling, but are not GMO-food labeled)]
        - (a) A certificate of separate distribution (referring to a document proving that imported food, etc. has been managed separately from genetically modified foods in handling processes including the purchase of seeds, production, manufacturing, storage, sorting, transportation and shipment)
        - (b) A certificate recognized by the government of a producing country as having the same effect as a certificate of separate distribution
        - (c) A test and inspection report showing that the imported foods are not required to be labeled as genetically modified foods, etc. issued by a test and inspection institution designated or deemed designated pursuant to Article 6 and Article 8 of the Act on Testing and Inspection in the Food and Drug Industry
      - √ A statement of reasons for setting the use-by-date or a statement of reasons for extending the use-by-date (only applicable to OEM-branded imported food, etc.)
      - √ An export plan (a specific plan after importing to the Republic of Korea shall be stated, and only applicable to where imported food, etc. is imported to acquire foreign currency pursuant to the Foreign Trade Act )

- √ A copy of the approval or permission document, such as a business permit, or a copy of a report of manufacturing items (only applicable to where imported food, etc. is imported as raw materials to acquire foreign currency or as raw materials for manufacturing the importer's products pursuant to the Foreign Trade Act; excluding where such documents are verified through a computer)
- √ A health certificate or inspection certificate(only applicable to fishery products imported from an exporting country withwhich the Republic of Korea has concluded an agreement, etc. concerning theattachment of a certificate, but excluding caseswhere the certificate issued by the information agency of the exporting countryis available for verification through a communication network recognized by theMinister of Food and Drug Safety.)
- √ An export health certificate (only applicable to livestock products or animal-based foods, except when the certificate issued by the government agency of the exporting country can be verified through a network recognized by the Minister of Food and Drug Safety)
- √ The following documents which the Minister of Food and Drug Safety deems necessary to secure the safety of imported food, etc.
  - (a) A certificate issued by the government of a producing country certifying that a raw material from a healthy ruminant not infected by bovine spongiform encephalopathy is used
  - (b) An inspection report on dioxin residue (only applicable when importing heat-treated salt)
  - (c) Other documents posted by the Minister of Food and Drug Safety on the Internet homepage of the Ministry of Food and Drug Safety in accordance with hazard information, such as documents issued by the government of the exporting country
- Period of declaration
  - In such cases, he/she may make an importdeclaration in advance up to 5 days before the scheduled date of arrival ofimported food, etc., and where important matters, such as the port of arrivalreported in advance, the scheduled date of arrival, the place where goods arebrought in and the scheduled date when goods are brought in, are changed,he/she shall immediately report the details thereof inwriting (latter part of Article 27(1) of the Enforcement Rule of theSpecial Act on Imported Food Safety Control).
- Sanctions for violations
  - Any person who is required to file an import declaration but fails to do so will be punished by imprisonment for no longer than 5 years or be subject to a fine not exceeding KRW 50 million, or may be punished by both imprisonment and the said fine (Subparagraph 2 of Article 42 of the Special Act on Imported Food Safety Control).
- Import declaration of an Internet purchase agent
  - Where a business entity engaged in the business of online purchasing of imported food, etc. by proxy intends to make an import declaration, it shall submit an import declaration (including an import declaration in electronic form) of imported food, etc. purchased on the Internet by proxy in attached Form 26 of the Enforcement Rule of the Special Act on Imported Food Safety Control) to the head of a Regional Office of Food and Drug Safety having jurisdiction over the place

where imported food, etc. is cleared through customs (Article 27(2) of the Enforcement Rule of the Special Act on Imported Food Safety Control).

■ Responsibilities of an import declarant

- A person who intends to file an import declaration or a person who has filed an import declaration shall be held responsible for the safety and quality of food, etc. that he/she imports, and shall not engage in any of the following conduct (Article 20(2) of the Special Act on Imported Food Safety Control).
  - An act of filing an import declaration by fraud or other improper means
  - Using or selling imported food, etc. for purposes other than what was declared in the import declaration; however, the foregoing shall not apply where a business operator who is deemed to be registered for business under Article 15(6) of 「Special Act on Imported Food Safety Control」 obtains approval to change the purpose after filing an import declaration for raw materials intended for manufacturing his/her own products or for foreign currency acquisition.
  - An act of re-importing imported food, etc. returned to an exporting country or taken out to another country after being subject to disposition of non-compliance as a result of inspection
  - An act of violating any of the conditions of import declaration under the latter part of Article 21(1) of the Special Act on Imported Food Safety Control
  - An act of filing an import declaration of imported food, etc. violating standards and specifications under Article 7 of the Food Sanitation Act, Article 14 of the 「Health Functional Foods Act」, and Article 4 of the Livestock Products Sanitary Control Act
- A person who violates any of the responsibilities of an import declarant will be punished by imprisonment for no longer than 5 years or a fine not exceeding KRW 50 million, or may be subject to punishment by both imprisonment and fine (Subparagraph 3 of Article 42 of the Special Act on Imported Food Safety Control).

■ Types of import inspections and foods that require such inspections

- Where the head of a Regional Office of Food and Drug Safety receives an import declaration (excluding imported food that falls under the category as provided in Article 29-2(1) of 「Enforcement Rule of the Special Act on Imported Food Safety Control」), he/she shall conduct an inspection of the relevant imported food, etc. in accordance with the methods of inspection as prescribed in attached Table 9 of 「Enforcement Rule of the Special Act on Imported Food Safety Control」. If he/she deems the results of inspection appropriate, he/she shall issue a certificate of confirmation of an import declaration of imported food, etc. (including such certificate of confirmation in electronic form) (attached Form 28 of 「Enforcement Rule of the Special Act on Imported Food Safety Control」) to a person who has made an import declaration (Article 21(5) of 「Special Act on Imported Food Safety Control」 and Article 30(1) of 「Enforcement Rule of the Special Act on Imported Food Safety Control」).

## 4. Operation

### 4.1. Shop operation

#### 4.1.1. Precautions to take for a successful operation

- ▶ **Check and supplement the status of your inventory and supplies.**
  - Management of inventory and supplies
    - Store facilities and supplies must be inspected and supplemented immediately after opening and before closing time (Startup Diary, Small and Medium Business Administration · Small Enterprise and Market Service, p. 293).
    - Efforts are required to quantify the inventory status after 3 months (Startup Diary, Small and Medium Business Administration · Small Enterprise and Market Service, p. 295).
- ▶ **Maximize your profits by reducing the costs.**
  - Fund management
    - Reduce the ratio of costs to maximize your gross margin (Startup Diary, Small and Medium Business Administration · Small Enterprise and Market Service, p. 293).
    - Sales and general administrative costs (expenses) should be minimized (Startup Diary, Small and Medium Business Administration · Small Enterprise and Market Service, p. 293).
    - In addition, interest costs for other loans should be managed effectively (Startup Diary, Small and Medium Business Administration · Small Enterprise and Market Service, p. 293).
- ▶ **Secure regular customers and achieve success.**
  - Customer management
    - Efforts are required to identify individual customers' purchasing characteristics and personal tastes, and to create customer lists and sales lists to increase the proportion of well-sold products and lower the proportion of poorly-sold products (Startup Diary, Small and Medium Business Administration · Small Enterprise and Market Service, p. 293).

#### 4.1.2. Precautions to take for store operation

- ▶ **Coffee shop operators and employees must receive medical examinations.**
  - Persons subject to the medical examination requirement and the time for implementing such examinations
    - Operators and employees (excluding those who are engaged in the transport or sales of fully packaged foods or food additives) who directly engage in the collecting, manufacturing, processing, cooking, storing, or transporting of foods or food additives (excluding sterilizers or disinfectants such as chemical synthetics or

apparatus) must receive medical examinations. However, those that undergo the same medical examination as that prescribed by other Acts and subordinate statutes shall be deemed to have undergone the medical examination under this Act (Article 40(1) of the Food Sanitation Act and Article 49(1) of the Enforcement Regulations of the Food Sanitation Act).

※ Any operators or employees who fail to undergo a medical examination in violation of the above provision shall be subject to a fine not exceeding KRW 200,000 for operators and KRW 100,000 for employees, respectively (Subparagraph 1 of Article 101(3) of the Food Sanitation Act and Article 67(1) and attached Table 2 of the Enforcement Decree of the Food Sanitation Act).

- An operator and his/her employees who are required to undergo a medical examination must do so before the commencement of the business or the engagement in the business. (Article 40(4) of the Food Sanitation Act and Article 49(2) of the Enforcement Regulations of the Food Sanitation Act).

▣ Restrictions on operations, etc.

- No person, who is recognized to have any of the following diseases that are likely to cause harm to third persons as a result of medical examination, shall be engaged in the relevant business (Article 40(2) and (4) of the Food Sanitation Act and Article 50 of the Enforcement Regulations of the Food Sanitation Act).

- Tuberculosis (excluding non-infectious cases) under Subparagraph 3 of Article 2 of the Infectious Disease Control and Prevention Act

- Infectious diseases under each Subparagraph of Article 33(1) of the Enforcement Regulation of the Infectious Disease Control and Prevention Act

- Skindiseases or other pyogenic (purulent) diseases

- Acquired immune deficiency syndrome (applicable only to workers who are required to undergo medical examination for venereal diseases under Article 19 of the Infectious Disease Control and Prevention Act)

- No business operator may order persons who have failed to undergo medical examination or who have a disease likely to cause harm to third persons as a result of medical examination to work in the relevant business (Article 40(3) of the Food Sanitation Act).

※ Any operator who violates this provision will be subject to an administrative fine not exceeding KRW 5 million (Subparagraph 1 of Article 101(3) of the Food Sanitation Act).

▶ **A coffee shop operator must receive training on food sanitation each year.**

▣ Persons required to receive training on food sanitation

- A person who intends to operate a coffee shop must receive training on food sanitation (hereinafter referred to as "training on food sanitation") in advance; if he/she is unable to receive such training in advance due to inevitable grounds, he/she may receive the training after the commencement of his/her business in accordance with 「Food Sanitation Education Regulations for Food-Related Business Operators」 (Article 41(2) of 「Food Sanitation Act」).

- Notwithstanding the above, a person who holds a chef's license, nutritionist's license, or sanitation officer's license and intends to operate a coffee shop is exempt from the requirement to receive training on food sanitation (Article 41(4)

of 「Food Sanitation Act」).

- A coffee shop operator must receive training on food sanitation every year (Article 41(1) of the Food Sanitation Act and Subparagraph 8 of Article 27 of the Enforcement Decree of the Food Sanitation Act).
- ※ Any person who fails to receive such training in violation of the provision shall be subject to an administrative fine not exceeding KRW 200,000 (Subparagraph 1 of Article 101(4) of the Food Sanitation Act and Article 67 and attached Table 2 of the Enforcement Decree of the Food Sanitation Act).

▣ Methods of Training on Food Sanitation

- Training on food sanitation shall be conducted through group training or remote education using information and communications media; however, the training on food sanitation that those intending to operate a business must receive in advance, as stipulated in Article 41(2) of 「Food Sanitation Act」, shall be conducted as group training (Article 41(6) of 「Food Sanitation Act」).
- When any person who is required to receive training on food sanitation does not directly engage in business or engages in business at not less than 2 places, a person in charge of food sanitation may be designated, from among employees, and receive training on behalf of the business operator (Main body of Article 41(3) of the Food Sanitation Act).
- No business operator shall allow persons who fail to receive training on food sanitation to engage in the relevant business unless there are extenuating circumstances (Article 41(5) of the Food Sanitation Act).
- ※ Any person who orders an employee who has failed to receive training on food sanitation to engage in the business shall be subject to an administrative fine not exceeding KRW 200,000 (Subparagraph 1 of Article 101(4) of the Food Sanitation Act and Article 67 and attached Table 2 of the Enforcement Decree of the Food Sanitation Act).
- If there are unavoidable reasons, such as those who are business owners and employees of islands, remote areas, etc., where it is difficult to receive food hygiene education, or if the Minister of Food and Drug Safety acknowledges that there is a risk of harm to national health due to an outbreak of infectious diseases, food hygiene education can be provided in accordance with the following (Article 41(7) of the Food Sanitation Act and Article 54(1) of the Enforcement Regulations of the Food Sanitation Act).
- For business owners and employees of islands, remote areas, etc.: Distributing educational materials to learn (only applicable to those who need food hygiene education and approved by the permitting office, reporting office, or registration office)
- Other cases: Distance education method using information and communication media

▣ Training institutions for food sanitation, etc.

- Institutions that provide training on food sanitation and sanitation management are training institutions specializing in food sanitation designated according to 「Designation of Sanitation Education Institutions for Food Business Operators」 or a trade association or the Korea Food Industry Association (Article 51(1) of 「Enforcement Rule of the Food Sanitation Act」).
- The contents to be taught in the training on food sanitation and sanitation

management include food sanitation, personal hygiene, food sanitation measures, and food quality control (Article 51(2) of 「Enforcement Rule of the Food Sanitation Act」).

■ Training hours

- A person who intends to operate a coffee shop must receive 6 hours of training on food sanitation (subparagraph 3 of Article 52(2) of 「Enforcement Rule of the Food Sanitation Act」).

※ If a person required to undergo training on food sanitation has closed for the entire period of the current year after filing a report on closure under Article 8(8) of 「Value-Added Tax Act」, he/she may not be required to undergo food sanitation education for that year (Article 52(6) of 「Enforcement Rule of the Food Sanitation Act」).

- According to Article 52(2) of 「Enforcement Rule of the Food Sanitation Act」, if a person who has received training on food sanitation falls under any of the following categories, he/she shall be deemed to have received training on food sanitation for the relevant business according to Article 52(2) of 「Enforcement Rule of the Food Sanitation Act」. In such cases, the person must receive training on food sanitation for the relevant business according to Article 52(1) of 「Enforcement Rule of the Food Sanitation Act」 in that year (Article 41(6) of 「Food Sanitation Act」 and Article 52(3) of 「Enforcement Rule of the Food Sanitation Act」):

- Where a person who received training on food sanitation according to Article 52(2) of 「Enforcement Rule of the Food Sanitation Act」 intends to engage in the same type of business as the one for which he/she received training
- Where a person who received training on food sanitation according to Article 52(2) of 「Enforcement Rule of the Food Sanitation Act」 intends to engage in another type of business

√ Rest restaurant business, general restaurant business and bakery business → Rest restaurant business, general restaurant business and bakery business

- In the event where a person who has received training on food sanitation under Article 52(1) of 「Enforcement Rule of the Food Sanitation Act」 falls under any of the following conditions, he/she shall be deemed to have received training on food sanitation required under the latter part of the part other than Article 52(1) or each subparagraph of Article 52(3) of 「Enforcement Rule of the Food Sanitation Act」 for the corresponding operation (Article 52(4) of 「Enforcement Rule of the Food Sanitation Act」).

- Where a person who has received training pursuant to Article 52(1) of 「Enforcement Rule of the Food Sanitation Act」 operates the same business as the business type he/she received training for in the jurisdiction of a Special Metropolitan City, a Metropolitan City, a Special Self-Governing City, a Province, or a Special Self-Governing Province where the existing business is located in the same year
- Where a person who has received training pursuant to Article 52(1) of 「Enforcement Rule of the Food Sanitation Act」 operates a business that is different from his/her previous business type among the following businesses as the business type he/she received training for in the jurisdiction of a Special

Metropolitan City, a Metropolitan City, a Special Self-Governing City, a Province, or a Special Self-Governing Province where the existing business is located in the same year

- (a) Food manufacturing·processing, on-site sales and manufacturing·processing, and manufacturing of food additives
- (b) Food subdivision business, distribution specialized sales business, collective meal service food sales business, other food sales businesses
- (c) Rest restaurant business, general restaurant business, and bakery business
- (d) Karaoke bar business and entertainment bar business

■ Teaching materials

- Institutions for training on food sanitation shall create teaching materials and provide them to those who are required to receive such training (Article 53(1) of 「Enforcement Rule of the Food Sanitation Act」).
- The institutions for training on food sanitation shall issue a certificate to a person who has completed the education on food sanitation, and report the education results to licensing, notifying, and registration offices within 1 month from the date on which the education was provided, and to the Minister of Food and Drug Safety within 1 month from the end of the corresponding year, and preserve and manage educational records such as the certificate issuance register for more than 2 years (Article 53(2) of 「Enforcement Rule of the Food Sanitation Act」).

▶ In addition, other requirements under the Food Sanitation Act must be satisfied.

■ Matters to be observed by operators and employees

- Coffee shop operators and their employees shall comply with the following matters so as to control the sanitation of business, maintain order and improve the health and sanitation of the people (Article 44(1) of the Food Sanitation Act and Subparagraph 7 of Article 29(1) of the Enforcement Decree of the Food Sanitation Act).
  1. No business operator shall transport, store, display or sell livestock products which have not undergone inspection under Article 12 of the Livestock Products Sanitary Control Act or animals used for experiments, etc., or use such livestock products or animals for manufacturing or processing of foods
  2. No business operator shall use or sell wildlife captured or gathered, in violation of the Wildlife Protection and Management Act, for manufacturing or processing of foods
  3. No business operator shall subdivide, transport, display or keep products, foods or the raw materials thereof whose shelf life has expired for manufacturing, processing, cooking or selling purposes, or sell or use such products, foods or materials for manufacturing, processing or cooking of foods
  4. Where a business operator uses groundwater, etc. which is not tap water as drinking water or for cooking foods, washing, etc., he/she shall use the water recognized as fit for drinking after getting tested by a drinking water quality testing institution under Article 43 of the Drinking Water Management Act. However, where 2 or more food service establishments use the same water source in the same building, the result of testing on 1 food service establishment may take

the place of testing on the other food service establishments

5. No business operator shall manufacture, process, sell, import, use and transport foods, etc. which have been temporarily prohibited until a risk assessment is completed pursuant to Article 15(2) of the Food Sanitation Act
  6. Where food poisoning occurs, no business operator shall damage the site by discarding or disinfecting foods being kept or used until an epidemiological investigation is completed, and he/she shall preserve such foods in the original condition and shall not interfere with any act to investigate the cause of food poisoning
  7. No business operator shall lure and solicit customers
  8. Other matters prescribed for the management of raw materials for business, manufacturing process, sanitary control, maintenance of order, promotion of health and hygiene of people, etc.
- ※ Other matters to be observed are available in attached Table 17-7 of the Enforcement Regulations of the Food Sanitation Act which provide matters to be observed by foodservice business operators (excluding catering service business operators) and their employees

## 4.2. Hiring of employees

### 4.2.1. Hiring of employees

▶ **When hiring an employee, an employment contract must be prepared.**

■ What is the employment contract?

- The term "labor contract" refers to a contract which is entered into in order that a worker offers work for which the employer pays its corresponding wages (Subparagraph 4 of Article 2(1) of the Labor Standards Act).

■ Details of the employment contract

- An employer shall state the following matters clearly (Article 17 and Article 93 of the Labor Standards Act and Article 8 of the Enforcement Decree of the Labor Standards Act).
  - Wages
  - Contractual work hours
  - Holidays
  - Annual paid leave
  - Terms and conditions relating to the place of employment and the job assigned
  - Matters set forth in the rules of employment written and notified pursuant to the Labor Standards Act (only applicable to employers who ordinarily employ 10 or more workers)
  - Terms and conditions as prescribed by dormitory rules (only applicable to cases where workers are accommodated in a dormitory attached to the workplace)

※ The term "contractual work hours" refers to work hours on which workers and their

employer made an agreement within the scope of work hours (Subparagraph 8 of Article 2(1) of the Labor Standards Act).

Q. Do I have to prepare an employment contract for part-time workers, too?

A. Yes. A part-time worker also falls within the scope of a worker, and thus an employment contract must be prepared. In order to protect the working conditions for workers and ensure their safety and guarantee compensation regarding accidents or risks that may occur during their working hours, employment contracts must be signed to prove the official employment relationship.

※ Please do not forget to include the wage and payment method, work hours, holidays, assigned jobs, etc. in the employment contract.

■ Sanctions for violations

- Any employer who fails to issue working terms and conditions in a written form shall be subject to a fine not exceeding KRW 5 million (Subparagraph 1 of Article 114 of the Labor Standards Act).

▶ Please remember that working conditions for teenagers are under special protection.

■ Protection of working teenagers

- As all citizens have the right to work, teenagers who are minors are also entitled to work (Article 32(1) of the Constitution of the Republic of Korea).

- Special protection is accorded to minors as socially, economically, and physically weak (Article 32(5) of the Constitution of the Republic of Korea).

▶ The minimum rights of the workers must be protected pursuant to the Labor Standards Act.

■ Guarantee of the minimum wage

- An employer shall pay employees that are covered by the minimum wage at least the minimum wage amount or more (Article 6(1) of the Minimum Wage Act).

- No employer may lower the previous wage level on the ground of the minimum wage (Article 6(2) of the Minimum Wage Act).

※ Any person who pays less than the minimum wage or lowers the previous wage level citing grounds of minimum wage shall be punished by imprisonment for not more than 3 years or be subject to a fine not exceeding KRW 20 million. In such cases, both the imprisonment and the fine may be imposed (Article 28(1) of the Minimum Wage Act).

- Where a labor contract between an employer and an employee covered by the minimum wage provides for a wage below the minimum wage amount, the relevant stipulation concerning the wage shall be null and void and the invalidated part shall be considered to stipulate that the same wage as the minimum wage amount shall be paid (Article 6(3) of the Minimum Wage Act).

■ Guarantee of recess hours

- An employer shall allow employees a recess of not less than 30 minutes in case of working for 4 hours, or a recess of not less than 1 hour in case of working for 8 hours during work hours (Article 54(1) of the Labor Standards Act).

- Recess hours may be freely used by employees (Article 54(2) of the Labor Standards Act).
- If the employer does not grant recess hours to the employee, the employer shall be punished by imprisonment for not more than 2 years or be subject to a fine of not more than KRW 20 million (Subparagraph 1 of Article 110 of the Labor Standards Act).
- Guarantee of holidays after work
  - An employer shall allow employees who have shown perfect attendance during contractual working days for 1 week and whose contractual work hours per week on an average of 4 weeks (in cases where their period of work is less than 4 weeks, the same period of work) amount to more than 15 hours at least 1 paid holiday per week on average (Article 18(3) and Article 55(1) of the Labor Standards Act, and Article 30 of the Enforcement Decree of the Labor Standards Act).
  - However, employees whose contractual work hours per week on an average of 4 weeks (in cases where their period of work is less than 4 weeks, the same period of work) are less than 15 hours shall not be entitled to receive paid holidays (Article 18(3) of the Labor Standards Act).
  - Any employer who fails to provide paid holidays to his/her employees who have shown perfect attendance during contractual working days for 1 week and whose contractual work hours per week on an average of 4 weeks amount to more than 15 hours at least shall be punished by imprisonment for not more than 2 years or be subject to a fine not exceeding KRW 20 million (Subparagraph 1 of Article 110 of the Labor Standards Act).

#### 4.2.2. 4 major insurances

- ▶ Any person who hires even a single worker is obliged to subscribe to the 4 major public insurances.
  - Obligation to subscribe to 4 major public insurances
    - "Four major public insurance" include national pension, national health insurance, industrial accident compensation insurance, and employment insurance, and business establishments that employ workers shall subscribe to 4 major public insurances (Article 8 of the National Pension Act, main text of Article 6(2) of the National Health Insurance Act, Article 8 of the Employment Insurance Act and Article 6 of the Industrial Accident Compensation Act).
    - A worker whose contractual monthly working hours in the business are less than 60 hours or whose standard weekly working hours are less than 15 hours is not required to be subscribed to the 4 major public insurances. However, workers or daily workers who work continuously for more than 3 months in a business are subject to the Employment Insurance Act, and it is recommended to check with the authorities after hiring an employee (Article 10(1)2 of the Employment Insurance Act and Article 3(1) and 3(2) of the Enforcement Decree of the Employment Insurance Act).
  - National pension
    - An employee or employer above the ages of 18 and under 60 in any of the workplaces (hereinafter referred to as "mandatorily applicable workplace") shall become

workplace-based insured as a matter of course (Main body of Article 8(1) of the National Pension Act and Article 19(1) of the Enforcement Decree of the National Pension Act).

- A workplace employing at least 1 employee
- A workplace of a foreign institution located in the Republic of Korea, which employs at least 1 national of the Republic of Korea
- Operator's reporting
  - An employer shall submit the following documents to the National Pension Service until 15<sup>th</sup> day of the month he/she became a mandatory applicable workplace (Article 21(1) of the National Pension Act and Article 3 of the Enforcement Regulations of the National Pension Act).
  - √ Report on falling under a mandatory applicable workplace (Attached Form of the Enforcement Regulations of the National Pension Act)
  - √ A copy of bankbook (applicable only if you are applying for an automatic transfer)
  - √ A copy of business license (the National Pension Service verifies the business license and corporation registration certificate through joint use of administrative information pursuant to 「Electronic Government Act」, and this is required only if the applicant does not agree to verification of the business license)
- National health insurance
  - All workers of workplaces excluding those who are hired for a period of less than a month shall become the employee insured (Subparagraph 1 of Article 6(2) of the National Health Insurance Act).
  - Reporting of business establishment
    - An employer whose workplace becomes a workplace of eligible persons shall submit the following documents within 14 days of such date to the National Health Insurance Service (Subparagraph 1 of Article 7 of the National Health Insurance Act and Article 3(1) and Article 4(2) of the Enforcement Regulations of the National Health Insurance Act).
    - √ Report on falling under a workplace (organization) of eligible persons (Attached Form 2 of the 「Enforcement Regulations of the National Health Insurance Act」)
    - √ A copy of bankbook (applicable only if you are applying for an automatic transfer)
    - √ Report on the eligibility for workplace subscriber (Attached Form 6 of the 「Enforcement Regulations of the National Health Insurance Act」)
    - √ A copy of business license (the National Pension Service verifies the business license and corporation registration certificate through joint use of administrative information pursuant to 「Electronic Government Act」, and this is required only if the applicant does not agree to verification of the business license)
- Employment insurance and industrial accident compensation insurance
  - Employment insurance
    - An employer and worker (except for exempted worker under Articles 10 and 10-2 of the Employment Insurance Act) who are subject to the Employment Insurance Act

shall be subscribed to the employment insurance as a matter of course (Article 5-(1) of the Act on the Collection of Insurance Premiums, Etc. For Employment Insurance and Industrial Accident Compensation Insurance).

- Industrial accident compensation insurance
  - An operator of a business that is subject to the Industrial Accident Compensation Insurance Act shall be subscribed to the industrial accident compensation insurance as a matter of course (Article 5(3) of the Act on the Collection of Insurance Premiums, Etc. For Employment Insurance and Industrial Accident Compensation Insurance).
- Reporting of business operator
  - A business owner shall report the formation of an insurance relationship to COMWEL with the following documents within 14 days from the date the insurance relationship is formed if he/she becomes an insurance policyholder automatically pursuant to the Employment Insurance Act or the Industrial Accident Compensation Insurance Act within 14 days from the date the insurance relationship is formed (Main body of Article 1(1) of the Act on the Collection of Insurance Premiums, Etc. For Employment Insurance and Industrial Accident Compensation Insurance).
  - √ A report on the formation of insurance relationship (Article 7(1) and Attached Form 2 of the Enforcement Regulations of the Act on the Collection of Insurance Premiums, Etc. For Employment Insurance and Industrial Accident Compensation Insurance)
  - √ A report on the entitlement to subscribe to the employment insurance and a report on employment subject to the industrial accident compensation insurance (Article 16-6 and Attached Form 22-5 of the Enforcement Regulations of the Act on the Collection of Insurance Premiums, Etc. For Employment Insurance and Industrial Accident Compensation Insurance)

**▶ A self-employed person may subscribe to an employment insurance for him/herself.**

- A special case for self-employed persons subscribing to an employment insurance policy
  - A business owner employing no employee or less than 50 employees who is a self-employed person meeting the requirements prescribed by the Presidential Decree may construe himself/herself as an employee and purchase an employment insurance policy with approval from COMWEL (Article 49-2(1) of the Act on the Collection of Insurance Premiums, Etc. for Employment Insurance and Industrial Accident Compensation Insurance and Article 56-18 of the Enforcement Decree of the Act on the Collection of Insurance Premiums, Etc. for Employment Insurance and Industrial Accident Compensation Insurance).
  - At the time of applying for the purchase of an employment insurance policy, the applicant shall fall under any of the following:
    - √ If the applicant has been granted a unique identifier under Article 168(5) of 「Income Tax Act」 and is actively conducting a business, and if he/she engages in a business as specified in 「Business Announcement for Self-Employed Individuals Holding Unique Identifier Certificates Subject to Employment Insurance」
    - √ If he/she has registered agricultural and fishery management information in accordance with Article 4(1) of 「Act on Fostering and Supporting Agricultural and Fisheries Business Entities」 and is conducting an actual business

- √ If the applicant has been granted a unique identifier under Article 168 (1) of the Income Tax Act and conducts the business, and if he/she engages in the business announced by the Minister of Employment and Labor, by means such as running a home daycare center under subparagraph 5 of Article 10 of the Child Care Act.
- The self-employed person has not received job-seeking benefits under Article 69-3 of the Employment Insurance Act within 2 years before the date of application for the purchase of an employment insurance policy.
- The relevant self-employed person must not engage in any of the following types of business
  - √ An agricultural business, a forestry business, and a fishery business run by any person, other than a juristic person, with not more than 4 full-time employees (Subparagraph 1 of Article 2(1) of the Enforcement Decree of the Employment Insurance Act)
  - √ A project for which the total construction costs do not exceed KRW 20 million (Subparagraph 2(a) of Article 2(1) of the Enforcement Decree of the Employment Insurance Act)
  - √ A project for construction of a building with a total floor area of not more than 100 square meters or substantial repair of a building with a total floor area of not more than 200 square meters (Subparagraph 2(b) of Article 2(1) of the Enforcement Decree of the Employment Insurance Act)
  - √ Employment activity of households and other unclassified self-consumption and self-production (Subparagraph 3 of Article 2(1) of the Enforcement Decree of the Employment Insurance Act)
  - √ Real estate leasing business (based on the subdivision of the Korea Standard Industrial Classification)

**Can a self-employed person subscribe to the employment insurance policy**

(Question) I would like to be self-employed after retirement. I would like to subscribe to an employment insurance in case the self-employment does not work out well. Am I allowed to do that?

(Answer) Yes, you are.

COMWELL allows a business owner employing ① no employee or ② less than 50 employees to subscribe to an employment insurance policy so as to provide support for the stable living of self-employed persons.

A self-employed person who wishes to subscribe to an employment insurance must sign up within 6 months of the date of business registration, and if he/she pays premiums for at least 1 year, he/she will be eligible for unemployment benefits after he/she closes his/her businesses for inevitable reasons such as decreased sales, sustained deficits or natural disasters.

Insurance premiums are the standard remuneration × insurance premium rate for self-employed persons, which allow them to choose from standard remunerations provided by the Ministry of Employment and Labor in consideration of the characteristics of the self-employed persons with irregular incomes. Unemployment benefits are available for up to 50% of the selected standard remuneration.

The period of receiving the unemployment benefit depends on the length of employment insurance policy, which is ① 90 days for a period that is longer than 1 year and less than 3 years, ② 120 days for a period that is longer than 3 years and less than 5 years, ③ 150 days for a period that is longer than 5 years and less than 10 years, and ④ 180 days for a period that is longer than 10 years.

< Employment Insurance Internet Service ([www.ei.go.kr](http://www.ei.go.kr)) - Employment Insurance Information - Employment Insurance for the Self-employed >

### 4.3. Tax

#### 4.3.1. Payment of tax

**▶ You must file a report on the status of your business establishment each year.**

▪ Operators required to report

- Any business operator (including business operators who permanently or temporarily close his/her business during the relevant taxable period) shall file a report on the present status of the relevant place of business (hereinafter referred to as

"report on the present status of a place of business") with the head of a tax office having jurisdiction over the place of business, by February 10 of the following year of the relevant taxable period (Main body of Article 78(1) of the Income Tax Act).

- However, a report on the present status of a place of business shall be deemed to be already filed in any of the following cases (A provision of Article 78(1) of the Income Tax Act):
  - Where the reporting period for the resident's tax base has been altered due to the death of a business operator or his/her departure from the Republic of Korea (Article 74 of the Income Tax Act)
  - Where a business operator who is required to pay VAT has reported scheduled or confirmed VAT, or a simplified taxable person has reported a tax report (Subparagraph 3 of Article 2, Article 48, Article 49, Article 66 and Article 67 of the Value-Added Tax Act)

■ Reporting method

- A business operator who is required to report the current status of his/her business establishment shall submit a current status of business establishment that contains the following matters to the head of a competent tax office along with the particulars of the amount of revenue and pertinent materials (Article 78(2) of the Income Tax Act, Article 141(1) and (2) of the Enforcement Decree of the of the Income Tax Act, and Attached Form 19 of the Enforcement Regulations of the Income Tax Act).
  - Personal information on the business operator
  - The particulars of the amount of revenue by business type
  - Details on the amount of revenue by payment method
  - Statement of account, tax invoice, credit card sales slip and cash receipt details
  - Other matters related to the current status of the business establishment as prescribed under 「Enforcement Rule of the Income Tax Act」

▶ Income tax must be paid for annual operating income incurred every year.

■ Tax payers

- Any individual who has his/her domicile or place of residence for at least 1 year in the Republic of Korea (hereinafter referred to as "resident") shall be imposed tax on all income (Subparagraph 1 of Article 1-2(1) and Article 3(1) of the Income Tax Act).

■ Tax declaration and payment

- A business operator shall report his/her income by filing a tax return with the head of a tax office having jurisdiction over his/her business establishment for tax payment, along with a ledger that contains the amount of business income and supporting documents, and shall pay the global income tax calculated based on such information (Article 70(4) and Article 76(1) of the Income Tax Act).

■ Period of declaration

- Period for filing a final return

- Any resident (including a resident with no tax base for global income or any loss) with the amount of global income in the relevant taxable period shall file a return on the tax base of such global income with the head of a tax office having jurisdiction over the place for tax payment, from May 1 to May 31 in the year following such taxable period to informational self-determination (Article 70(1) of the 「Income Tax Act」).
- Period of interim prepayment
  - The head of a tax office having jurisdiction over the business establishment for tax payment shall issue a payment bill of the amount of tax for interim repayment (an amount equivalent to 1/2 of the amount of tax paid or payable as income tax on global income) during the period from November 1 to November 15 to the residents liable to pay the tax for interim tax prepayment (Later part of Article 65(1) of the Income Tax Act).
- Persons subject to simple bookkeeping
  - The National Tax Service has specially devised the simple bookkeeping for small business operators, which makes it easy for the operators to draw up income and expenses as if they are writing a housekeeping ledger, and provides benefits for the business operators to report and pay income taxes by calculating their own income based on the said bookkeeping.
  - Any business operator below a certain scale by the following types of businesses shall be referred to as a "person subject to simple bookkeeping" and any business operator, other than a person subject to simple bookkeeping, shall be referred to as a "person subject to double-entry bookkeeping" (Article 160(3) of the 「Income Tax Act」 and Article 208(5) of the Enforcement Decree of the Income Tax Act).
    - A business operator commencing a new business in the relevant taxable period
    - A business operator whose total revenue for the preceding taxable period (including the revenue increased by determination or correction but excluding revenue occurring from transfer of for-business tangible assets under Article 19-(1)-20 of the Act) falls short of the following amount
      - (a) Agriculture, forestry, fishery, mining, wholesale and retail businesses as well as real estate sale business and other businesses not falling under items (b) and (c): KRW 300 million
      - (b) Manufacturing, lodging and restaurant business, electricity, gas, steam and water supply business, sewage, waste disposal, raw materials recycling and environment rehabilitation business, construction business (excluding non-residential building construction business), real property development and supply business (limited to residential building development and supply business), transportation business, publication, image, broadcast and telecommunications and information service business, financial and insurance business, and commodities brokerage service: KRW 150 million
      - (c) Real estate leasing service, real estate-related service, leasing service (excluding real estate leasing service), specialized, scientific, and technical service business, business facility management and business support service, educational service, health and social welfare service, service industry related to the arts, sports, and leisure, associations and organizations, repair and other personal service businesses, and family-employed activity: KRW 75 million

Benefits of simple bookkeeping
<p>(Question) What benefits does the simple bookkeeping offer?</p> <p>(Answer) Income tax is calculated based on the self-entered actual income, and therefore, if any loss (deficit) has incurred, such amount can be deducted from the amount of income generated during the past 15 years (arising out of the business income of real estate leasing service will be deducted from the corresponding business income only).</p> <p>Depreciation costs, bad debts, and reserves for retirement benefits may be recognized as necessary expenses. The income tax may be reduced by up to 20% by making entries in bookkeeping.</p> <p>√ Exemption from the additional 20% tax for negligent record-keeping (non-bookkeeping tax)</p> <p>√ Although the deduction for bookkeeping expenses was abolished for simple bookkeeping cases from 2011 onwards, if a person subject to simple bookkeeping reports income using double entry system, a 20% deduction on the tax calculated based on the bookkeeping is available (up to a limit of KRW 1,000,000).</p> <p style="text-align: right;">&lt; National Tax Service - Guide to Tax Reporting - Individual Reporting - Global Income - Guide to Bookkeeping Obligations - Guide to Simple Bookkeeping &gt;</p>

■ Calculation of the amount of income

- A business operator who has kept and recorded books shall calculate the amount of income in the following manner: Amount of income = Total amount of income - Necessary Expenses (refer to Article 45(1) of the Income Tax Act).

▶ You must pay value-added tax on your operating income.

■ Persons subject to taxation

- Any individual, corporation (including the State, a local government, or a local government association), unincorporated association or foundation, or other organization that falls under any of the following subparagraphs shall be liable to pay the value-added tax (Article 3(1) of the Value-Added Tax Act)
  - An entrepreneur
  - A person who imports goods

■ Taxation method

- The amount of VAT to be paid by an entrepreneur shall be (output tax amount -

input tax amount) (Article 37(2) of the Value-Added Tax Act).

■ Tax declaration and payment

- VAT shall be paid in the location of each business establishment, but if an entrepreneur has no business establishment, he/she shall pay VAT in the location of his/her domicile or residence (Article 6(1) and (3) of the Value-Added Tax Act).
- An entrepreneur shall register each of his/her business at the head of a tax office having jurisdiction over his/her business establishment within 20 days of the commencement date of his/her business. However, a person who intends to newly start a business may file an application for business registration even before the commencement date of the business (Article 8(1) of the Value-Added Tax Act).

■ Taxable period

- The taxable period of value-added taxes for entrepreneurs shall be as follows (Article 5(1) of the Value-Added Act)
  - ① Simplified taxable persons
    - From January 1 until December 31
  - ② General taxable persons
    - First period: From January 1 until June 30
    - Second period: From July 1 until December 31
- The initial taxable period for a person starting a new business shall be from the commencement date of the business until the end date of the taxable period in which the commencement date of the business is included. However, when an application for business registration is filed prior to the commencement date of the business, the initial taxable period shall be from the date of such application until the end date of the taxable period in which the date of application is included (Article 5(2) of the Value-Added Tax Act).

■ Simplified taxable persons

- Concept
  - "Simplified taxable persons" refers to individual entrepreneurs who proceeds (referring to proceeds including the value-added tax) from the supply of goods and services in the immediately preceding calendar year fall short of KRW 104 million (Article 61(1) of 「Value-Added Tax Act」 and Article 109(1) of 「Enforcement Decree of the Value-Added Tax Act」).
- Amount of tax payable by simplified taxable persons
  - The amount of tax payable by a simplified taxable person shall be an amount calculated according to the following formula. In such cases, if a simplified taxable person runs concurrently 2 or more types of businesses, the total amounts calculated by each of such business type shall be the amount of tax payable (Article 63(2) and (3) of the Value-Added Tax Act)
  - √ Amount of tax payable = [Revenue during the relevant taxable period (sum total of proceeds) × Value-added rate of the relevant business type × 10/100] - Deductible amount of tax (input tax amount entered in the tax invoice)
- Value-added rate of the relevant business type

- The value-added rate of the relevant business type required for calculating the amount of tax payable is as follows (Article 111(2) of the Enforcement Decree of the Value-Added Tax Act)
  - √ Electric power, gas, steam and waterworks business: 5/100
  - √ Retail trade, renewable materials collection and sales business, and food service activities: 10/100
  - √ Manufacturing business, agriculture, forestry and fisheries, accommodation services, and transport and communication services: 20/100
  - √ Construction services, real estate leasing services and other services: 30/100
- Returns by simplified taxable persons
  - A simplified taxable person shall submit a return on value-added tax of simplified taxable person, specifying the following particulars with the head of the tax office having jurisdiction over his/her place of tax payment, on the tax base and the amount of tax payable for each taxable period, and pay it to the head of the tax office having jurisdiction over the place of tax payment or the Bank of Korea, etc., within 25 days after the end of each relevant taxable period (Article 67(1) of the Value-Added Tax Act and Article 114(3) of the Enforcement Decree of the Value-Added Tax Act).
    - √ The entrepreneur's personal details
    - √ The amount of tax payable and the basis for calculation thereof
    - √ The amount of penalty tax and the basis for calculation thereof
    - √ The details of the list of total tax invoices by seller submitted
    - √ Other information for reference

**▶ Mutual aid funds will be deducted from the global income.**

- Income deductions for mutual aid funds for small entrepreneurs
  - Where a small entrepreneur joins, and makes deposits, in a mutual aid fund in the amount not exceeding KRW 3 million paid by installment on a quarterly basis, he/she shall be entitled to deduct the smaller of an amount deposited in the mutual aid fund for the relevant year, and of any of the following amounts, from the amount of business income for the relevant taxable year (Article 86-3(1) of the Restriction of Special Taxation Act」 and Article 80-3(1) of the 「Enforcement Decree of the Restriction of Special Taxation Act)
    - If the amount of business income for the relevant taxable year does not exceed KRW 40 million: KRW 5 million
    - If the amount of business income for the relevant taxable year is more than KRW 40 million and up to KRW 60 million: KRW 5 million
    - If the amount of business income for the relevant taxable year is more than KRW 60 million and up to KRW 100 million: KRW 4 million
    - If the amount of business income for the relevant taxable year exceeds KRW 100 million: KRW 2 million
  - Where a person receives mutual aid benefits from the mutual aid fund for small or micro enterprises, such benefits shall be deemed as retirement income, which shall be subject to income tax (Article 86-3(3) of the Restriction of Special

Taxation Act and Subparagraph 2 of Article 22(1) of the 「Income Tax Act」).

## 5. Closure

### 5.1. Reporting on closure

#### 5.1.1. Reporting on closure

**▶ Any person who intends to close his/her business must report such business closure.**

- Reporting on business closure (notification of commencement of business and business registration)

- Where any person who discontinues his/her business shall submit a report on closure to the Minister of Food and Drug Safety, the Mayor of a Special Self-Governing City, or the Governor of a Special Self-Governing Province or the head of a Si/Gun/Gu, along with a business license or a certificate of commencement of business (Article 37(3) of the Food Sanitation Act and Article 44(1) and Attached Form 42 of the Enforcement Regulations of the Food Sanitation Act).

- Any person who intends to file a report on closure who also wishes to file a declaration of closed business of business registration, he/she shall submit both reports as to the closure of a restaurant, etc. (Former part of Article 44(2) of the Enforcement Regulations of the Food Sanitation Act).

- The Minister of Food and Drug Safety, the Mayor of a Special Self-Governing City, the Governor of a Special Self-Governing Province or the head of a Si/Gun/Gu who has been submitted a report on closure shall immediately transmit (including transmissions via information and communications network) such report to the head of a tax office having jurisdiction over the business establishment without delay (Article 37(3) of the Food Sanitation Act and latter part of Article 44(2) of the Enforcement Regulations of the Food Sanitation Act).

- On the contrary, if a report on closure of a restaurant, etc. has been submitted along with a report on the closure of business registration to the head of a tax office having jurisdiction of the relevant business establishment, the head of the relevant tax office immediately transmits the reports to the Minister of Food and Drug Safety, the Mayor of a Special Self-Governing City, the Governor of a Special Self-Governing Province or the head of a Si/Gun/Gu without delay, and thus the report on closure is not required to be submitted again (Article 13(5) of the Enforcement Decree of the Value-Added Tax Act and Article 44(3) of the Enforcement Regulations of the Food Sanitation Act).

※ As the reports on closure vary according to licensing, approval, notifying, and registration procedures for each business type, please contact the registration office for further inquiries.

**▶ Value-added tax must be paid in full prior to business closure.**

- Full payment of VAT

- Filing a final return on VAT

- An entrepreneur shall pay the tax base and taxes payable during the period between

the commencement date of the taxable period in which the date of closing the business is included and the date of closing the business, no later than the 25th day of the month following the month whereto the date when business is closed belongs to the head of a tax office having jurisdiction over his/her place of tax payment (Article 5(3) and the main text of Article 49(1) of the Value-Added Tax Act).

- Payment of VAT

- An entrepreneur shall pay the taxes payable for the relevant taxable period along with a final return on value-added tax to the head of a tax office having jurisdiction over each of his/her place of tax payment or to the Bank of Korea or an office of communications along with a statement of payment in accordance with the National Tax Collection Act (Article 49(2) of the Value-Added Tax Act).

※ The global income tax can be paid after filing a return in May, the return-filing period for global income tax, subsequent to the relevant business closure.