



# SOUTH KOREA

## LGBT+ Business Climate Score

Out Leadership's snapshot of the current state of affairs for LGBT+ people, through the lens of international business.

The business Climate Score rating is out of ten possible points, and is based on ten independently verifiable indicators of the legal, cultural and business context for LGBT+ people.



# How to Use This Brief

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As a business leader, you have the opportunity to create change for LGBT+ people around the world – both within your organizations and in the countries where you do business. This brief provides valuable information to inform your conversations with:

**Internal Staff:** Ensure that staff at your company who do business in-country are aware of the laws and other regulations that impact LGBT+ people there, and that they've adopted the appropriate internal policies for their location.

**Government Leaders:** In your meetings with government leaders, particularly those focused on business expansion or diplomacy, we encourage you to bring up the information shared in this brief in an appropriate way, and help them understand how LGBT+ inclusive policies are part of your company's best practices, and acknowledged as global standards. You are the best person to judge whether you have the ability to have such a conversation with a local leader in an appropriate way. Your Government Affairs officer, Diversity & Inclusion head, or equivalent may be appropriate to include in these conversations.

**In-country Business Partners:** In conversations with business partners, when appropriate, ask them what they're doing to address LGBT+ inclusion, and help explain why inclusion positively impacts your ability to conduct business there.

## Talking Points

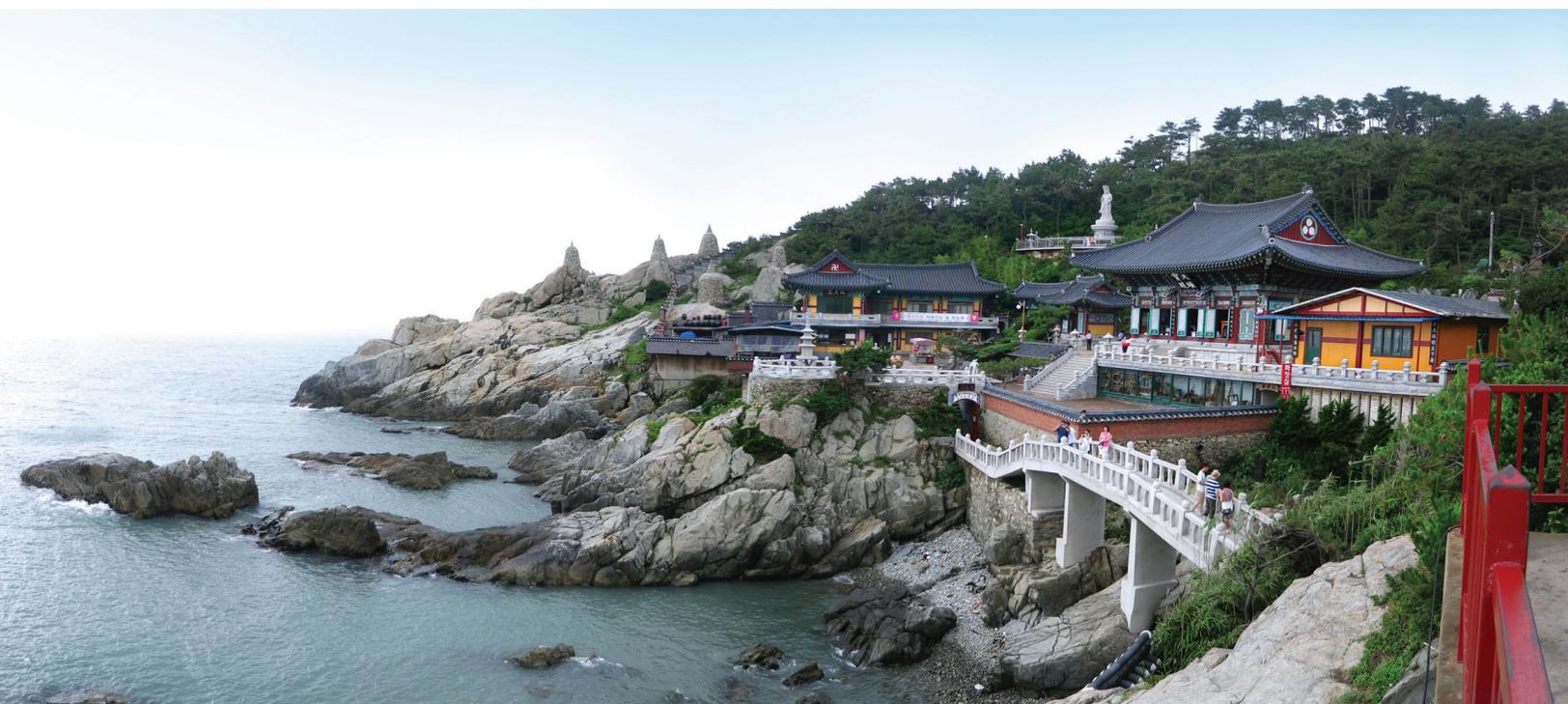
"Korea's lack of protections for LGBT+ people, including spousal visas, makes it hard for me consider moving some of my top talent here.

"Korea should include sexual orientation and gender identity in its national anti-discrimination laws so that the courts, instead of the Korean Human Rights Committee, could issue legally binding opinions.

"By extending protections against workplace discrimination, tens of thousands of LGBT+ Koreans would be able to participate fully and openly in the Korean economy, which would help to expand Korea's domestic market and drive economic growth.

"Korea's continued criminalization of same-sex relations in the military damages the country's international reputation. Repealing Article 92-6 of the Military Criminal Act would make it easier for multinationals to do business with Korea.

"Amending legislation to allow for transgender individuals to change their legal documents without discriminatory and restrictive requirements would allow that many more people to participate in the economy, and for our company to build an inclusive workplace consistent with our operations in other countries."



# Current Legal Status of LGBT+ People

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## *Legal Status of the Lesbian, Gay, and Bisexual Community*

Adult consensual same-sex sexual behavior is not criminalized in Korea, nor has it ever been, except while serving in the military.

Article 92 of the Military Penal Code carries a sentence of up to 2 years in prison for same-sex sexual relations, not distinguishing between consensual and non-consensual intercourse. Same-sex relations are labeled as reciprocal rape. As consent is not deemed possible in homosexual situations, all acts are seen as rape despite the willingness of both parties to perform sexual intercourse. The law, challenged in 2008, was upheld in Constitutional Court in July 2016. Military service is mandatory for men.

The Constitutional Court specifically held that Article 92 neither violates the clarity principle and the principle against excessive prohibition, nor impinges on the right to sexual self-determination and privacy, and the right of equality of homosexual people. The Court reasoned that the purpose of Article 92 is to ensure the welfare of the military community and reinforce the authority of the military discipline.

In April 2017, the military initiated a campaign to identify and oust gay and bisexual male soldiers and officers. After a video of two servicemen having sex was posted on the internet by one of the men, the Army investigated, interrogated, and compelled suspected gay and bisexual soldiers to admit their activities. Military investigators seized the mobile phones of more than 50 soldiers to identify other gay and bisexual servicemen.

There is no law explicitly forbidding discrimination based on sexual orientation in workplaces. The Labor Standards Act prohibits discrimination based on gender, nationality, faith, or societal identity, and one can argue that sexual orientation is included in either "gender" or "social identity." However, there is a scarcity of cases interpreting this provision, and the Ministry of Employment and Labor has not yet issued regulations or rules explicitly expanding the coverage this provision to encompass sexual orientation.

Discrimination on the grounds of sexual orientation is prohibited under Korean Human Rights Committee Law, but the Committee can only provide recommendations, not enforcement. There is no enforceable anti-discrimination legislation in Korea. There has been a case where the Korean Human Rights Committee decided that refusal to rent to sexual minority groups constitutes discrimination, but the decision does not carry legal force and is a mere recommendation.

There is no relationship recognition of any kind for LGB couples in Korea – presenting visa and immigration issues, posing difficulties for children of unmarried couples, and creating obstacles for inheritance and estate planning. Same-sex couples also are not able to adopt children. A film director attempting to force legal recognition of his same-sex marriage saw his efforts rebuffed in 2016, when a district court rejected the suit.

The government denied the charity status application of an LGBT+ organization for three years until 2017, where the Supreme Court ordered the government to reverse its discriminatory stance.

The current definition of rape fails to afford equal protection to survivors of assault by a person of the same-sex. Also, domestic violence protections do not extend to same-sex couples.

## *Legal Status of the Transgender and Gender-Diverse Communities*

In 2006, the Korean Supreme Court ruled that transgender individuals have the right to change their gender on legal documents if they have undergone sexual reassignment surgery. In 2013, the Seoul District Court ruled that it is not necessary to have external sexual reassignment surgery to change one's gender on legal documents.

According to a Supreme Court-issued guidance, an individual has to satisfy the following requirements to be eligible for transgender surgery: (1) diagnosis from the Sexual Subjectivity Disorder Psychiatry Department; (2) no ability to conceive children and no possibility exists for recovery; (3) external appearance after the surgery would be similar to the gender transferred to; (4) a statement of maintaining the transferred-to gender without desire to change to the original gender; (5) not currently in a marriage (must be divorced to undergo surgery); (6) no minor children; (7) over 19 years old; (8) parents' assent. These onerous restrictions on transgender people are a de facto ban on their having a family.

# Current Legal Status of LGBT+ People

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## *Government Statements and Actions*

The Christian Liberal Party, a far-right, anti-LGBT+ religious party formed in early 2016, earned 2.6% of the vote in the April 2016 elections, just short of the 3% required to win a seat on the national assembly.

Over the past decade, pushback from Korea's strong conservative and Christian lobby has repeatedly foiled attempts to pass an LGBT-inclusive anti-discrimination law.

In 2015, the Seoul Metropolitan Police Agency decided to ban the annual Korean Queer Culture Festival, but the decision was overturned by a court, and the event was held without incident.

Despite slow progress on LGBT+ rights in Korea, the country's delegation to the United Nations has leadership role on the issue there, voting for both the 2011 and 2014 Human Rights Council resolutions calling for an end to violence and discrimination based on sexual orientation and gender identity.

Choi Hyun Sook ran as the first openly lesbian candidate for national public office in 2008. Her bid was unsuccessful.

In 2013 the Justice Party, Labor Party and Green Party added LGBT+ rights to their platforms.

In 2018, the government approved Truvada for use as an HIV preventative measure, known as PrEP.

# Socio-cultural Environment of LGBT+ People

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## *Status of LGBT+ Organizing and Community*

There is a robust LGBT+ advocacy movement in South Korea. These groups include Chingusai, a human rights organization for homosexual men; Korean Sexual-Minority Culture and Rights Center; Lesbian Counselling Center, etc.

In 2015, both Samsung and Google Play banned gay dating applications.

Since 2000, the Korean Queer Culture Festival has been held in Seoul for two weeks every year. The events include a pride parade.

The Seoul PRIDE Film Festival, which began as part of the Culture Festival, became independent in 2011 and is now a member of the Asia Pacific Queer Film Festival.

The second largest LGBT+ festival in Korea is the Daegu Queer Festival, beginning in 2009.

Chingusai is the first LGBT+ rights organization in Korea. Founded in 1994, it now numbers over 100 members.

In May 2015, the authorities recognized the "Sinnanuen Center: LGBT Culture, Arts and Human Rights Center" as Korea's first registered LGBT+ nonprofit foundation.

The new main cultural event is the PRIDE Fair expo, starting in 2015, with more than 1000 attendees, and 30 companies with booths at the fair.

## *Cultural Views of the LGBT+ Community*

A 2013 Gallup poll found that 39% of Koreans believe homosexuality should be accepted by society – more than double the number (18%) who thought so in 2007. A 2017 Gallup Korea poll found that 90% of Koreans surveyed said they supported equal employment opportunities for sexual minorities.

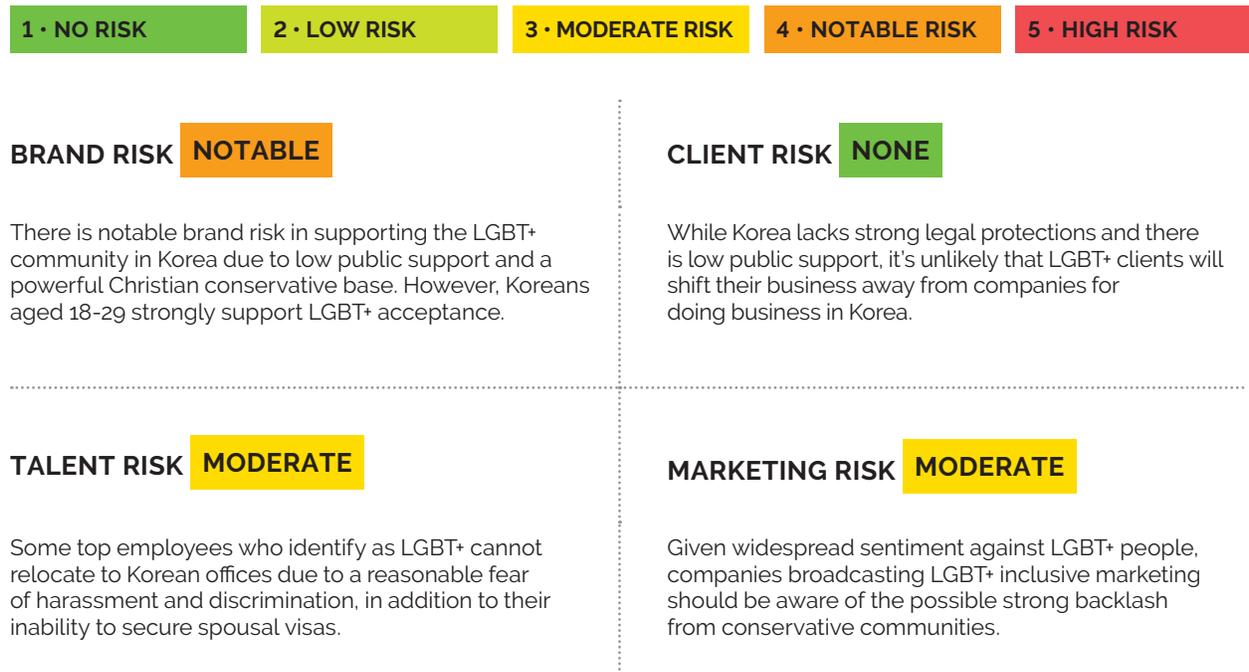
## Cultural Views of the LGBT+ Community (cont.)

Age is a key driver for Korean attitudes on LGBT+, and the younger generation is far more accepting: 71% of Koreans between 18-29 believing in acceptance while only 16% of Koreans aged 50+ shared this view.

While there has been considerable representation of LGBT+ people in the media, many shows have been cancelled because of public outcry.

Harisu is a well-known transgender celebrity who has gained considerable popularity as an actress, pop singer and model. Hong Seok-cheon came out as gay in 2000 and has since remained the most prominent openly gay celebrity in Korea.

## Impact of LGBT Discrimination on Business & Talent



## Local Leaders Advocating for LGBT Equality

There are many openly LGBT+ activists and experts in South Korea. Out Leadership recommends:

**Dave Kim**  
Seoul PRIDE Film Festival

**Nathalie Han**  
Seoul GLIFAA Representative, Hope and Law

**Sinnaneun Center**  
LGBT Culture, Art and Human Rights Center

## Purpose

Multinational companies face operational and reputational risk when they do business in countries where the legal and/or social atmosphere makes it difficult for LGBT+ people to live openly. Discrimination against LGBT+ people creates serious challenges for talent mobility, retention, and development.

Out Leadership's LGBT+ CEO Business Briefs seek to help C-Suite leaders understand and respond to these risks. Secondly, these Briefs seek to inform and empower corporate executives to engage in conversations with trade officials and other local stakeholders about why discrimination against LGBT+ people negatively impacts their ability to do business.



## Additional Resources

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### **2016 International Gay and Lesbian Association State Sponsored Homophobia Report**

This report contains a country-by-country analysis of anti-LGBT laws and policies around the world.

### **2016 Human Rights Watch World Report**

This report contains a country-by-country analysis of human rights concerns for 2014, and includes specific information pertinent to LGBT issues.

## Special Thanks

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Our partners and colleagues at the Global Equality Fund, 11.e Council/or Global Equality, The Palette Fund, The United States Department of State, Stonewall, Gay, Lesbian & Straight Education Network, Oogachaga, OutRight Action International, Human Rights Watch, and the Williams Institute were instrumental in the creation of this brief.

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### **Pro Bono Legal Partner**

We thank our partners at Ropes & Gray, who have vetted the legal facts in this brief.

**ROPES & GRAY**

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