SOUTH KOREA

Lee International IP & LAW GROUP

Choosing a corporate vehicle in Korea

By Timothy J. O'Brien

The corporate form most commonly used by foreign investors doing business in Korea is the joint stock company or *chusik hoesa*, which is similar to a stock corporation in other jurisdictions. A less commonly used form is the limited liability company or *yuhan hoesa*, which is similar to a U.S. LLC or a German GmbH. Absent of tax reasons for preferring a *yuhan hoesa*, many foreign investors tend to opt for a *chusik hoesa*. It's worth thinking twice about the differences before deciding.

There may be a certain cachet to a *chusik hoesa*, as it is the form used by the major corporations and is the only form permitted for a company to be publicly listed in Korea. If listing is expected, the *yuhan hoesa* is not really an option. However, absent of a specific reason for choosing a *chusik hoesa*, the *yuhan hoesa* offers many advantages.

> If listing is expected, the *yuhan hoesa* is not really an option. However, absent of a specific reason for choosing a *chusik hoesa*, the *yuhan hoesa* offers many advantages

More vs. fewer formalities

One of the key advantages of a *yuhan hoesa* is to minimise corporate formalities and the attendant delays and expenses. A *chusik hoesa* is required to have a board of directors, all of the members of which must be registered with the court on appointment and with every change. A statutory auditor must also be appointed if the paid-in capital is KRW 1,000,000,000 or more. A *yuhan hoesa* does not require a board (although it may establish one, and in any event it must have one director) and is not subject to any audit requirements.

Counsel are sometimes surprised to learn that a *chusik hoesa* is generally required to publish its financial statements in a designated newspaper, which can sometimes be a sensitive issue. There is no publication requirement for a *yuhan hoesa*.

When it comes to board meetings, a *chusik hoesa* board cannot take actions in writing in lieu of meeting, but must have an actual meeting in which a quorum is physically present or participating through a conference call in which each participant can hear the others. There is no such restriction on a *yuhan hoesa*, which has all the flexibility of a Delaware corporation in taking corporate action on both the board and the shareholder levels.

When restriction on transfer is essential

These issues are more or less ministerial – a *chusik hoesa* has some extra hoops to be jumped through that can be eliminated with a *yuhan hoesa*, but in ordinary circumstances none of them is terribly difficult. There may be a substantive advantage to using a *yuhan hoesa*, however, in the area or restrictions on transferability.

In the case of a *chusik hoesa*, Korean lawyers generally advise that restrictions on transfer in a shareholder agreement are legally valid but not specifically enforceable – in other words, if your joint venture partner seeks to transfer shares in the JV company in violation of a restriction in the shareholder agreement, it will be subject to damages (if provable, always an important caveat) but there will likely not be any ability to forestall or undo the transfer by injunction. This is not a common situation, but it is something lawyers tend to worry about, in which case using a *yuhan hoesa* provides a solution. A transfer of *yuhan hoesa* membership interests may require the unanimous vote of the members, as long as it is provided for in the articles of incorporation of the *yuhan hoesa*.

Something to think about.

Lee International IP & Law Group
14F Kukdong Bldg., Chungmuro 3-Ka
Chung-Ku, Seoul 100-705
Korea
Tel: (82) 2 2279 3631 / 2262 6017 (Direct)
Fax: (82) 2 2273 4605 / 2279 5020
Email: tjobrien@leeinternational.com
www.leeinternational.com