

# Project Financing Vehicles (PFVs)



**By Yeun-Sook Suh and Hyunah Kim**

The use of Special Purpose Companies (SPCs) has become prevalent in financing large projects that demand substantial amounts of money and time. The current legal framework for SPCs in Korea has proved to be problematic due to a double taxation issue that it gives rise to. When an SPC earns income through its business or pays dividends to its shareholders, corporate taxes are imposed on both the SPC's business income and the shareholders' dividend income. With the intention of combating this problem, many companies who qualify have chosen the route of Project Financing Vehicles (PFVs) instead.

A PFV is a paper company created based on Article 51-2, Section 1(9) of the Corporate Tax Act (CTA). Use of a PFV resolves the double taxation issue that creates problems for SPCs. At the same time, PFVs attract the attention of many investors due to this vehicle's ability to generate high profitability by (i) allowing the company to finance the project with the expected profitability of the business that the PFV manages as collateral; and (ii) awarding several tax benefits, including more lenient acquisition and registration taxes.

As stipulated in Article 51-2, Section 1(9) of the CTA, where any domestic company pays more than 90 percent of the profits available for dividends to its shareholders, the amount of the dividends will be deducted from the amount of taxable income for the relevant business year, and this will resolve any double taxation issue.

In addition, most corporations are required to pay treble acquisition and registration taxes if they are incorporated in a metropolitan area, but any PFV incorporated by December 31st, 2014 will be exempted and will pay only the base tax. Furthermore, a timely organised PFV will receive a 50 percent reduction on the acquisition tax for real estate. These added benefits of PFVs have the ability to enhance profitability in real estate development projects, which are also incentives that attract investors.

According to the CTA, in order to receive these benefits:

a. the PFV's assets must be used for an investment in plants and

infrastructure, the development of resources, or a specific business requiring a considerable time and money, whose profits are to be distributed to its shareholders (the 'Special Business Requirement');

- b. the company must not establish any business offices other than its headquarters and must not hire any employees and full-time officers;
- c. the company must only exist for a limited period of two years or more;
- d. the company must be a stock company (*Chusik Hoesa*);
- e. financial institutions must make an equity investment of 5 percent or more of the total equity of the company;

f. the company's capital must amount to KRW 5 billion or more (KRW 1 billion if it is implementing private investment projects pursuant to the Act on Public-Private Partnership Infrastructure); and

g. the business of managing, operating and disposing of assets must be entrusted to an asset management company (a corporation that makes an equity investment in the relevant company or that is incorporated independently or jointly by persons who make equity investments in the relevant company).

An individual who incorporates a PFV will be required to submit a paper company establishment report (*Myungmok-hoesa seol-lip shin-go-seo*) to the head of tax office that has jurisdiction within two months from the date on which the incorporation is registered.

However, there are no clear guidelines to determine whether companies fall within the

scope of the Special Business Requirement. Accordingly, we recommend companies seek official interpretations from the National Tax Services prior to selecting the appropriate vehicle for their project to ascertain whether their business falls under the Special Business Requirement.

... we recommend  
companies seek  
official interpretations  
from the National Tax  
Services prior to  
selecting the  
appropriate vehicle  
for their project to  
ascertain whether  
their business falls  
under the Special  
Business Requirement

## Lee International IP & Law Group

Poongsan Bldg., 23 Chungjeong-ro,  
Seodaemun-gu, Seoul 120-013, Korea

Tel: (82) 2 2279 3631

Fax: (82) 2 2279 4605

Email: [yssuh@leeinternational.com](mailto:yssuh@leeinternational.com)

[hkim@leeinternational.com](mailto:hkim@leeinternational.com)

[www.leeinternational.com](http://www.leeinternational.com)