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Expanding Korea's investment landscape, the creation of two new corporate entities


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On March 11, 2011, the Korean Commercial Code (the "KCC") was amended to allow for the formation of two new corporate structures, the *hapja johap* (similar to a limited partnership "LP") and the *yuhan chaekim hoesa* (similar to a limited liability company "LLC").

The *hapja johap*

Under the new regulations, a *hapja johap*, similar to an LP, is required to consist of both general and limited partners. Each general partner is required to bear unlimited liability while the liability of the limited partners can be limited to their capital contributions in the partnership. In addition to limiting the liability of the partners, the partners may agree, through a partnership agreement, on the roles of the partners, the profit sharing scheme, and other matters such as restrictions on transferability. Because of these features, it is anticipated that the *hapja johap* will likely be an attractive corporate structure for those involved in the entertainment industry, real estate or other types of investment ventures as they are used similarly around the world for short-term projects that require limited liability of investors and full control of the business by one or more general partners. It is also anticipated that the *hapja johap* will receive pass through tax treatment, although current tax laws have not been completely updated.

If, as anticipated, a *hapja johap* follows a typical LP structure, the general partners would be in control the day-to-day operations of the business and would be liable for the debts and obligations of the business as well. On the other hand, while the limited partners would have little say as to the operations of the business, they would also be personally shielded from the debts and obligations of the business. In order to protect themselves from unlimited liability, in many jurisdictions, general partners form other corporate entities to participate as general partners rather than acting as an individual. Korean law, however, is silent as to whether such practice will be allowed.

The *yuhan chaekim hoesa*

Another new business structure that can be established under Korean law is the *yuhan chaekim hoesa* which is similar to an LLC. Similar to the previous and currently existing *yuhan hoesa* (limited company), a *yuhan chaekim hoesa* provides limited liability protection to its members up to the amount of their capital contributions. In the past, numerous foreign companies have used the *yuhan hoesa* as a preferred local entity as it provides certain tax benefits under various tax treaties around the world. As the relevant tax laws have not been updated, it has yet to be seen whether the *yuhan chaekim hoesa*, may receive these benefits under the relevant tax laws and tax treaties.

In addition to the potential tax benefits of a *yuhan hoesa*, unlike a *yuhan hoesa*, a *yuhan chaekim hoesa* may issue corporate bonds and has certain flexible corporate formalities. Also, unlike the typical corporate forms of *chusik hoesa* and *yuhan hoesa*, there is no requirement to maintain directors or a statutory auditor. As such, the corporate establishment and ongoing formality process is simplified and the entity is somewhat easier to maintain.

A role in Korea's growth

The creation of two additional entities will hopefully foster business development in Korea by providing added benefits and simpler maintenance to corporate shareholders and business partners alike. As it is anticipated that Korean regulators will open up additional markets such as hedge funds, these new entities will likely play in important role in Korea's growth as a financial center in Asia.

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