Foreign Investor Guidelines to Establishing a Presence in Korea

I. Basic Types of Foreign Investors

As a foreign investor, one of the first steps to start your business and operations in Korea is to select and establish an appropriate entity—*i.e.,* a liaison office, branch office or subsidiary, considering three factors: (i) the scope of activities to be conducted in Korea; (ii) limited liability; and (iii) tax implications.

Liaison Office and Branch Office

In terms of the activities to be conducted in Korea, a liaison office is the most restrictive, since it may only conduct non-taxable activities[1] only for its overseas head office. Accordingly, a liaison office may not engage in taxable activities in Korea (e.g., sales, business supporting service, etc.). In addition, since a liaison office is not considered independently from its overseas head office, the overseas head office may be fully responsible for Korean liaison office's liability.

For the same reason, a branch office also may not provide liability protection. On the other hand, a branch office may engage in taxable activities. As a taxable entity in Korea, the branch office's taxable activities and income therefrom will be subject to Korean corporate income tax and VAT.

Subsidiary

In general, the purpose of establishing an entity in Korea would be to actively engage in sales in Korea through such entity. Unlike a liaison or branch office, a subsidiary provides limited liability protection, since it is treated as a separate legal entity from its parent company. However, in addition to being subject to Korean corporate income tax at the same rates as a branch office, foreign investors are generally subject to withholding of tax on dividend income from a Korean subsidiary at the rate of 22% (including the local income surtax), except where an applicable tax treaty provides otherwise.

There are three typical types of corporate forms that are usually utilized by a foreign investor: (i) a joint stock company ("*Jusik Hoesa*" in Korean); (ii) a limited company ("*Yuhan Hoesa*" in Korean); and (iii) a limited liability company ("*Yuhan Chaegim Hoesa*" in Korean).

[1] Non-taxable activities include: (i) advertising and public relations, (ii) collection and supply of public information on the Korean market, and (iii) other similar activities of a preliminary or auxiliary nature.

II. Types of Corporations in Korea

1. Joint Stock Company ("*Jusik Hoesa*" in Korean)

The equity capital of a joint stock company is funded by the issuance of "shares," which are, in principle, securitized and freely transferable. A joint stock company meeting certain requirements may be listed on a stock exchange. In addition, a joint stock company is an appropriate company to raise funds from external investors as it may raise capital from third parties by issuing bonds. Shareholders are liable for the company' liabilities to the extent of their own contributions, but are not held liable to the company's creditors. Moreover, shareholders may exercise their voting rights at a general meeting of shareholders based on the number of shares they hold. A joint stock company with the capital of KRW 1 billion or more must establish the board of directors and appoint a statutory auditor.

2. Limited Company ("*Yuhan Hoesa*" in Korean)

Members of a limited company assume limited liability to the company and may exercise their voting rights at a general meeting of members based on the number of units of contribution they subscribed for. In this light, they are similar to shareholders of a joint stock company. However, transfer of equity interests may be restricted by the company's articles of incorporation. Furthermore, a limited company may not securitize or list its equity interests on a stock exchange or issue bonds. In addition, important decisions of the company are made at a general meeting of members. A limited company is required to have one or more directors only, and does not have to establish a board of directors or appoint a statutory auditor. Therefore, the company may be operated by a small number of equity holders and officers.

3. Limited Liability Company ("*Yuhan Chaegim Hoesa*" in Korean)

Compared to the two types of companies explained above, a limited liability company has more autonomy in operation and management. In principle, a member of a limited liability company must obtain consent from other members to transfer of its equity interests in the company, unless otherwise stipulated in its articles of incorporation. For the purposes of management and operation, a limited liability company is only required to appoint a managing member, unlike Joint Stock Company or Limited Company. Moreover, a limited liability company's equity interests cannot be securitized or listed on an exchange, and it is generally understood that issuance of bonds by a limited liability company is not permitted in practice. Compared to the incorporation of joint stock companies and limited companies, the incorporation of a limited liability company is thus relatively rare, and some of the relevant legal principles are yet to be fully developed, since it is introduced by a recent amendment to the Korean Commercial Act.

	Joint Stock Company	Limited Company	Limited Liability Company
Equity Transfer	O (May require board approval under the company's articles of incorporation)	O (May be restricted by the company's articles of incorporation)	(Requires consent of other members in principle, but may be stipulated otherwise in the company's articles of incorporation)
Issuance of Share Certificate	O	X	X
Listing Status	O	X	X
Issuance of Bond	O	X	X
Organization	General meeting of shareholders and directors (If a joint stock company's paid-in capital is KRW 1 billion or more, it must have a board of directors and a statutory auditor.)	General meeting of members and director(s) (A limited company may establish a board of directors and appoint a statutory auditor.)	Managing member (who may be a member or a third party)

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