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**Legal Update**

## Dark Kitchens in Korea: Legal issues

Airbnb owns no real estate, Alibaba does not have any inventory, and Uber does not own any vehicles. Entrepreneurs around the world have developed businesses using the same conceptual DNA for restaurants. The move away from complex supply chains, escalating rent, and changing consumer demands has seen the general market shift towards online food delivery through 'dark kitchens' from London to Pasadena. Dark kitchens prepare food only to be delivered and arrange for such delivery to the consumer. There are no wait staff or dine-in options.

Through a system of shared kitchens, storage facilities, supply of ingredients, and delivery channels, the principal benefits of dark kitchens are convenience, reduction in overheads, and ease of expansion. In Korea, the busy lifestyles and the increase in those who prefer to do things, and be, alone (*honjok*) demand easier and faster access to a good variety of quality food.

Traditionally, food that is delivered in Korea has been limited to fried chicken, pizzas and *jjajang myeon*, which travel well and have been delivered by individual restaurants run by mums and dads. However, with the explosion of food delivery companies in Korea and matching consumer demand, the dense concentration of population in the main cities in Korea presents a strong case for the development of dark kitchens.

Companies such as ‘We Cook’ and ‘Garage Kitchen’ are responding to the needs of small restaurant owners by opening shared kitchens which rent out kitchen space to restaurateurs only. ‘We Cook,’ the first company to open a form of ‘shared’ kitchen in Korea, has announced plans to expand and ultimately open dark kitchens by 2022.

We take a look at some of the legal issues facing dark kitchens in Korea.

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## 1. Legal hurdles

The *Food Sanitation Act* requires that businesses that manufacture food be registered. However, the government’s current interpretation of the Act allows for only one business to be registered in a single business space.

Currently, a shared kitchen owner registers the business in its name and shared kitchen users sell their final products under the shared kitchen owner’s name, or walls are physically erected to divide the kitchen into sections so that they operate as independent businesses with their own facilities. Neither of these are ideal for a shared kitchen or dark kitchen in their truest form.

The government announced that it would support the shared kitchen business by amending the Act in March; however, no bills have been introduced to the National Assembly up to this point.

The government has led efforts to open shared kitchens in rest stops along highways, and a corporation has applied for a regulatory sandbox that will allow for multiple registered businesses within a single kitchen complex. However, the current regulatory framework does not support the establishment of shared kitchens or dark kitchens.

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## 2. Labor issues

As in the rest of the world, the gig economy continues to grow rapidly in Korea. Food delivery is easily facilitated through food delivery apps, which comprises roughly 40% of all food delivery orders. Food delivery apps such as ‘Baemin’ and ‘Yogiyo’ are registered as ‘online mail-order businesses’ under the *Act on the Consumer Protection in Electronic Commerce*.

The necessity for business operators to have a flexible delivery work force and the appropriate treatment of such work force are sensitive topics in Korea. There are issues as to whether such work force should be granted all of the protections under the relevant labour laws, whether they should be allowed the right to form a labour union, and to what extent they are permitted to be covered by the occupational health and safety laws. When starting up a dark kitchen in Korea, these labour issues need to be considered thoroughly and from the outset. It is an area that is fraught with complex issues.

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## 3. Other considerations

Risk allocation of civil and criminal liabilities for food hygiene among the various stakeholders is an area that requires careful consideration.

Related to this, with companies looking to integrate robots into production of ready to eat food, legislators and those seeking to use robots in such a way need to work together to ensure that issues of food safety are adequately addressed.

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Should you have any questions or need further information, please feel free to contact us.

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