



Limited Company (Yuhan Hoesa) under the Amended Korean Commercial Code

I. Background

A yuhan hoesa or limited company (sometimes referred to as a limited liability company) is designed to take advantage of operating a small-sized business in a closed manner. Yuhan hoesas, however, have not become popular business models as expected.

The Korean Commercial Code was recently amended (“Amended KCC”) and is expected to become effective in April 2012. Among other revisions, the Amended KCC enhances the availability of yuhan hoesas by providing more flexibility in operation, management, and governance structures (i.e., removal of minimum capital requirement and restriction on the total number of members, and transfer of units). Below is a summary of the major revisions relating to the yuhan hoesas under the Amended KCC.

II. Key revisions

1. Unlimited Number of Members (Article 545)

Under the KCC, the total number of members is limited to fifty (50) members (unless court approval provides otherwise). The Amended KCC removed this provision and no longer restricts the number of members.

2. No Minimum Capital Requirement (Article 546)

Under the KCC, a yuhan hoesa is required to have a minimum amount of capital equal to or above KRW 10,000,000. However, under the Amended KCC, there is no minimum capital requirement to establish a yuhan hoesa. For foreign investors desiring to establish a yuhan hoesa in Korea, the Foreign Investment Promotion Act still requires a minimum capital contribution of KRW 100 million. In addition, par value may be set at KRW 100 per unit under the Amended KCC.

3. No Restrictions on Transfer of Units(Article 556)

Under the KCC, members in a yuhan hoesa may transfer its units only after a special resolution has been adopted by the General Members' Meeting. Although a stricter process for unit transfers can be adopted in the company's Articles of Incorporation, any process that allows less than a special resolution among members is not permitted. The Amended KCC, however, permits members in a yuhan hoesa to transfer units freely and at their will. Also, any limitations or restrictions (if desired) can be reflected in the Articles of Incorporation.

4. Electronic Notice Permitted for General Meeting of Members (Article 571)

Under the KCC, a yuhan hoesa must deliver written notice to each member at least one (1) week prior to the date set for the General Members' Meeting. However, under the Amended KCC, an electronic notice of the General Members' Meeting may be sent to the members, as long as each member consents to such notice and it is followed up with a written notice.

5. Easier Conversion of a yuhan hoesa into a chusik hoesa (Article 607)

Under the KCC, converting a yuhan hoesa into a chusik hoesa (joint stock company) requires a unanimous resolution at a General Members' Meeting by all members. However, under the Amended KCC, the conversion may be approved through a special resolution (i.e., affirmative vote by (i) at least one half (1/2) of the total number of members, and (ii) at least 75% of all outstanding voting rights).

III. Future of Yuhan Hoesa under the Amended KCC

Until now, the operation of yuhan hoesas has been limited to (i) a small number of members managing a business with limited liability (similar to a sole proprietorship), (ii) a special purpose company, as defined under the Asset-Backed Securitization Act, or a company defined under the Financial Investment Services and Capital Markets Act.

The Amended KCC provides yuhan hoesas with simple and flexible operation and decision-making procedures. Cumbersome requirements (e.g., minimum capital requirement, member limitations, unit transfers) and inconvenient procedures (e.g., notice and conversion) provisions have been revised and we expect more businesses to take advantage of these changes by establishing a yuhan hoesas. However, yuhan hoesas are still not permitted to issue bonds under the Amended KCC. We anticipate more restrictions will be removed or eased for a yuhan hoesas in the near future, including allowing yuhan hoesas to be publicly listed.

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