DOING BUSINESS IN Korea

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### Business Structures:
What types of business structures are permitted?

A foreign investor has a range of business structures to choose from when doing business in Korea. The type it chooses will depend on what best suits the particular needs of the investor. The more common types of investment structures used in Korea include:

1. **Joint Stock Company (Chusik Hoesa)**
   - A joint stock company is appropriate where a number of parties wish to carry on business together, or for large businesses that require large amounts of fixed capital along with an ongoing procurement of funds. Shareholders of the company have limited liability up to their share of capital investment subscription.

2. **Limited Company (Yuhan Hoesa)**
   - Like a joint stock company, the liability of all members is limited to their respective contribution to the company. A limited company may be more appropriate for small to medium-sized enterprises.

3. **Domestic Branch Office**
   - A domestic branch office is a Korean branch office of a non-resident foreign corporation. A domestic branch may be a regular branch that conducts profit-generating activities in Korea.

4. **Liaison Office**
   - A liaison office carries on non-profit making functions such as business contact, market research, and R&D.

### Taxation:
Briefly explain the country’s tax regime including rates and how rates differ based on business structures.

Korea has both local and national taxes. Foreign investors will be subject to Korean tax laws unless the countries of which they are the residents entered into tax treaties with Korea. Foreign investors should work closely with tax professionals and legal advisers to ensure the compliance with all relevant tax regulations. Some of the key taxes to be aware of include:

1. **Corporate Tax**
   - The corporate tax rate is 10% for taxable income of KRW 200 million or less. For income between KRW 200 million and KRW 20 billion, the rate is KRW 20 million + 20% of the tax base amount exceeding KRW 200 million. For income between KRW 20 billion and KRW 300 billion, the rate is KRW 3.98 billion + 22% of the tax base amount exceeding KRW 20 billion. For income exceeding KRW 300 billion, the rate is KRW 65.58 billion + 25% of the tax base amount exceeding KRW 300 billion.

2. **Income Tax**
   - An individual is subject to income tax on income derived from Korean sources (unless a bilateral agreement applies). Income tax rates range from 6% to 42%.

3. **Value Added Tax**
   - This tax of 10% is levied against the purchase price for buildings (with corporations reimbursed) as well as any rent received or income generated from a leasing transaction.

4. **Capital Gains Tax**
   - Capital gains of individuals are subject to the capital gains tax (so-called “Transfer Income Tax” in Korea). Capital gains of corporations are included in corporate income, and thus taxed at normal corporate tax rates.

5. **Withholding Tax**
   - A withholding tax of 20% is levied on royalties (as well as interest) paid by a domestic company to a non-resident (where a 10% surtax also applies, resulting in an effective tax rate of 22%, which can be minimized or eliminated through tax treaties). The withholding tax rules also apply to dividends paid by a Korean company to a non-resident.
Immigration: Summarize immigration laws, including visas available for foreign employees.

The general matters of foreigners’ entry, exit, and stay are governed by the Immigration Control Act and its subordinate statutes. According to the Immigration Control Act, foreigners intending to enter into Korea must have a valid passport and Visa. That is, visitors who wish to stay in Korea for over 90 days or who wish to enter for profit-making activities must obtain a visa before entering the country. Visas may be obtained through Korean consulates. For some visa, they may be obtained by way of change of status after entering into Korea. The appropriate visa must be acquired prior to entering Korea or apply change of status after entering into Korea. Most non-resident visas are for a short-term stay, up to a maximum of 90 days; a special long-term visa is required to stay longer than 90 days. A valid passport is required for all visa applications. No visa entry includes Visa Waiver (B-1) and Tourist Pass (B-2). Except for the case where entry without visa is allowed as above, the Visa that can be issued is classified as follows according to the period of stay and purpose of stay.


Temporary News Coverage (C-1), Short-term Visitors (C-3) and Short-term Employment (C-4): Up to 90 days.

Culture/Art (D-1), Students (D-2), Technical Trainees (D-3), General Trainees (D-4), Residence Reporters (D-5) and Religious Workers (D-6), Employee Dispatch (D-7), Trade Management(D-9), Job Search(D-10): up to 2 years (up to 1 year for D-3, up to 6 months for D-10)

Business Investor (D-8)

Professors (E-1): Up to 5 years, Teaching Foreign Languages (E-2): Up to 2 years, Research (E-3): Up to 5 years, Special Technology Instruction (E-4): Up to 5 years, Specialty Occupation (E-5): Up to 5 years, Art and Entertainment (E-6): Up to 2 years, Particular Occupation (E-7): Up to 3 years in principle, Non-specialty Occupation (E-9): Up to 3 years, Sailor Employment(E-10): Up to 1 years

Visiting Cohort (F-1): Up to 2 years, Residence (F-2): Up to 3 years, Accompanying (F-3): Duration of Stay, Overseas Korean (F-4): Up to 2 years, Permanent Residence (F-5): Permanent, Marriage Immigration (F-6): Up to 3 years

Etc. (G-1): Up to 1 year. For foreigners who do not qualify for other status of residence and recognized by the Korean Minister of Justice.

Working holiday (H-1): as determined by agreement, Visiting Employment(H-2): Up to 3 years
**Foreign Investment Review and Issues:** Does the government review and approve foreign investments? What factors are considered?

Korea is generally foreigner-friendly when it comes to investment, with a continual relaxation and liberalization of its foreign investment regulations and restrictions.

1. **Forms of Foreign Direct Investment ("FDI")**
   - Acquisition of the stocks or shares of a domestic company;
   - Contribution to a Non-Profit Organization (NPO);
   - Long-term loans.

2. **Governing Law**
   - Foreign Investment Promotion Act ("FIPA") and its subordinate regulations.

3. **Incentives of FDI**
   - Tax benefits, Cash grants, and Business Location supports are provided to certain eligible companies or investors.
   - Tax Benefits: Corporate tax and Income Tax reduction, Local tax (Acquisitions tax and property tax) reduction, Customs Duty exemption.
   - Cash Grants: The Korean government supports foreign invested companies by granting cash supports for certain business expenses such as land purchase expenses, rental expenses, and costs for employee training and education.
   - Business Location support: The Korean government secures and develops business locations for foreign-invested companies and leases them at low cost or for free.

4. **Restrictions**
   - There are few restrictions regarding the types of foreign investment. These are the investments that: (1) threaten public order or national security; (2) harm the public health, environment, morals or customs of Korea; or (3) violate any other relevant Korean Acts. More specifically, such restrictions can be divided into business categories that exclude foreign investment and that limit foreign investment.

5. **Procedures**
   - For example, an overview of the procedures for setting up a new company in Korea by a foreign investors is as follows:
     - Foreign investment report (to KOTRA or foreign exchange bank)
     - Transfer of investment funds (foreign exchange bank)
     - Registration of incorporation & business (Court Registry office)
     - Transfer of the funds to corporate account (foreign exchange bank)
     - Foreign-invested Company Report.

**Dealing with the Government:** Identify major issues when dealing with local and federal governments.

Lobbying is NOT legally acknowledged in Korea. Korea recently enacted a strong Anti-corruption law, the Prohibition on Improper Solicitation and Graft Act (colloquially, Kim Young Ran Act), under which public officials, school employees, and journalists can be punished, among others, if they receive a monetary amount equal to or greater than KRW 30,000 for a meal, KRW 50,000 for a gift, and KRW 50,000 for a special event such as marriage and funeral, even if those amounts were not related to their job. Other corruption-related crimes such as general bribery, embezzlement, and money-laundering also are criminally punished as explained below.

**Dispute Resolution and Court Systems:** Summarize the court system, including the use of juries and arbitration.

1. **Courts**
   - Korea has a three-tier judicial court system. The District Courts, the High Courts and the Supreme Court form the basic three-tier system. In addition to these three-tier courts are the specialized courts with particular functions - the Patent Court, the Family Court, the Bankruptcy Court, and the Administrative Court. In addition to these seven courts, since 1988 Korea has had a Constitutional Court, which hears constitutional issues. The country also has military courts. Trial by jury made its debut in Korea in February 2008 under the Civil Participation System ("CPS"), which took effect that year as part of the judiciary reform. The CPS is still in its early stages. Under the CPS, criminal trial by jury is held only if several conditions are satisfied. The type of case must be identified as a felony such as rape, burglary or murder and the
accused has to request the participation of a jury. The court decides whether
a jury is necessary for the case. Jurors take part in trials by giving advisory
comments to judges. They give a verdict as to whether a defendant is guilty or
not by a majority vote. If the accused is found guilty by the judge, they debate
on sentencing. Taking note of the jurors’ opinions, the judge makes the final
decision on the judgment and sentence.

(2) Arbitration
Korea’s first arbitration law was the Arbitration Act 1966. In 1970, the Korean
Commercial Arbitration Board (“KCAB”) was created to handle both interna-
tional and domestic arbitrations. Three years later, Korea ratified the United
Nations Convention on the Recognition and Enforcement of Foreign Arbitral
was enacted to replace the then-outdated Arbitration Act 1966. The new law
was heavily influenced by the UNCITRAL Model Law on International Com-
mercial Arbitration of 1985. The KCAB and its corresponding rules respective-
ly oversee and make up the basic procedures for commercial arbitration in
Korea. Enforcement of arbitral awards depends on whether the arbitration
award is a domestic or a foreign award, and, if a foreign award, whether or
not the country in which the arbitration took place has ratified the New York
Convention. Grounds to refuse arbitration award enforcement are limited and
are narrowly interpreted by the Korean Supreme Court.

(3) Other forms of alternative dispute resolution
Other forms of alternative dispute resolution in Korea include compromise
and mediation.

Foreign Corrupt Practices:
What are the anti-corruption, anti-bribery and economic sanction laws which impact
doing business in the country?

(1) Anti-corruption, Anti-bribery Laws
According to the Criminal Law, public officials can be punished for bribery
if they accept, demand, or promise bribery related to their duties. (If the
amount of bribery is KRW 30 million or more, they can be subject to addi-
tional punishment according to the Act on Additional Punishment on Specific
Crimes). The bribing parties who bribe, show intentions to bribe, and promise
to bribe are also criminally punished. In addition, the person who handles the
affairs of another person is punished for breach of duty if he or she obtains
or has a third party obtain any financial gains upon unethical requests. The
person who solicits such breach of duty can also be punished. (Employees of
financial companies or their counterparts in this crime can be subject to se-
verer punishment according to the Act on Additional Punishment on Specific
Economic Crime) Embezzlements, other breaches of fiduciary duty, etc. are
also punished.

(2) Economic Sanction Laws
Anti-money laundering system is a legal and institutional device for detecting
and preventing the illegal, domestic, and international money laundering.
It is a comprehensive management system that links judicial system, finan-
cial system, and international cooperation. The most typical law relating to
anti-money laundering system in Korea is the Act on Reporting and Utilization
of Specific Financial Transaction Information (“Specific Financial Information
Act”). Based on the above law, the Korean government has established the
Financial Information Analysts’ Office affiliated to Financial Services Com-
mission, as a money-laundering prevention organization, and the Financial
Information Analysts’ Office is responsible for the tasks related to anti-money
laundering. Moreover, there exist other laws related to anti-money laundering
system including Law Concerning the Regulation and Punishment of Con-
cealed Revenue of Crime, the Special Act on the Prevention of Illegal Traf-
ficking of Narcotics, the Act on the Prohibition of Fund Raising Activities for
Public Intimidation and Proliferation of WMD.
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<th>Types of transaction: How may businesses combine?</th>
<th>A combination of businesses is the process in which two or more businesses form a single economic entity through capital, human, and organizational union. The Monopoly Regulation and Fair Trade Act (&quot;Fair Trade Act&quot;) defines the types of the combination of businesses as (1) acquisition and possession of stocks, (2) executives holding concurrent offices, (3) merger, (4) acquisition of businesses, and (5) participation in the establishment of a new corporation.</th>
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<td>Competition Law: How do laws impact competition?</td>
<td>In Korea, the Fair Trade Act applies in order to (1) prevent the abuse of the market dominance by a business operator; (2) prevent excessive concentration of economic power; (3) prevent unfair joint activities; and (4) promote fair and free competition by regulating unfair trade activities. Therefore, if an action of a business operator qualifies as any of (1) through (4), it is prohibited under the Fair Trade Act. It is the Korean government's policy that any actions taken place abroad are also subject to this Act.</td>
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<td>Employment Relations: Briefly summarize major laws impacting employment and employee relations.</td>
<td>(1) General Korea has a number of laws in relation to employment, with three types of labor laws under the Constitution: - the guarantee of employment - the protection of the workplace - social insurance The Labor Standards Act prescribes the minimum working conditions standards in Korea, and the Employment Insurance Act prescribes the employment insurance system. (2) Minimum wage The Minimum Wage Act sets a minimum wage in the workplace. In 2018, the minimum wage was set at KRW 7,530 per hour and KRW 1,573,770 per month. (3) Severance pay Employers shall provide their employees with a retirement benefit plan or a retirement pension plan in accordance with the Employee Retirement Benefit Security Act. (4) National pension Another pension scheme is a national pension plan. This plan, which has been governed by the National Pension Act, is aimed at securing the livelihood of the public against lost earning power from retirement, an unexpected accident or death on duty. (5) Employment insurance (EI) and industrial accident compensation insurance (IACI) These types of insurance form part of Korea’s social insurance system and protect against impoverishment due to job loss or occupational accidents or diseases (the latter under the Industrial Accident Compensation Insurance Act). (6) Anti-discrimination law and equal employment opportunity The Equal Employment Act promotes the equal opportunity and treatment of women and men and includes protections for women taking maternity leave. (7) Industrial safety and health and the labor inspection system The goal of the Industrial Safety and Health Act is to prevent industrial accidents and diseases. The labor inspection system ensures that the country’s workplaces adhere to Korea’s legal standards of working conditions and, if violations are found, provides for the enforcement of the labor standards law. Labor inspectors carry out various duties to protect employee working conditions.</td>
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Statutes and regulations: What are the main laws and regulations governing business combinations?

Civil Law, Commercial Law, Fair Trade Act, Foreign Investment Promotion Act, and Tax Laws such as Income Tax Act, the Corporate Tax Act, the Securities Transaction Tax Act, and the Local Tax Act.

Governing Law: What law typically governs the transaction agreements?

The Commercial Law applies first, then the general civil law applies to the contents not specified in the Commercial Law. However, depending on the types of transactions, the Fair Trade Act, the FIPA, and the Tax Laws such as the Income Tax Act, the Corporate Tax Act, the Securities Transaction Tax Act, and the Local Tax Act may also apply. When there are conflicts among these laws, special laws prevail over general laws.

Filings & Fees: Which government or stock exchange filings are necessary in connection with a business combination? Are there stamp taxes or other government fees payable in connection with a business combination?

(1) Government or stock exchange filings
The combination of businesses with a certain size is subject to reporting obligations to the Korea Fair Trade Commission (“KFTC”):
When an acquiring company (including its subsidiaries) has assets or revenues of KRW 200 billion or more, or when the other company (including its subsidiaries) has assets or revenues of KRW 20 billion or more, the acquiring company must report to the KFTC within 30 days from the date of combination. In principle, post-event reporting is the rule except for the situation in which a business combination has too much influence on the market. For example, if either an acquiring company or the company being combined has assets or revenues of KRW 2 trillion or more, the combining company must report to the KFTC before the date of the combination.

Types of Business Combination Subject to the Reporting Obligation:
Acquisitions of stocks: If one acquires 20% (15% for listed companies) or more of the total number of issued shares of the other company and thereby becomes the largest shareholder, it must report to the KFTC.
Executives holding concurrent offices: Always report.
Merger: Always report.
Acquisition of Business: Always report.
Participation in the Establishment of a New Business: If one becomes the largest shareholder, it must report to the KFTC.

(2) Stamp duties or other government fees
Establishing a new business: Registration fee of 1.44% of the capital investment in the case of metropolitan area. 0.48% in the case of non-metropolitan area. Filing fee is about KRW 30,000.
Merger: Registration fee of 1.44% of the capital investment if the principal place of business of the surviving company is in the metropolitan area, 0.48% if in non-metropolitan area. Filing fee is about KRW 8,000.
No other stamp duties or filing fees.

Information to be Disclosed: What information must be made public in a business combination? Does this depend on the structure used?

According to the types of business combination, the following information must be reported to the competent agencies and be made public:

(1) Transfer of stocks
Status of Substantial Shareholdings (5% or more. Only for listed companies)
Ownership status of the specific securities of executives and major shareholders (10% or more)
Change in stock ownership status of the largest shareholder.

(2) Merger
In case of merger, a timely disclosure must be made. When a listed corporation, etc. drafted a merger agreement and received an approval from the general shareholders meeting, a report on important matters stating such agreement and approval must be submitted to the Financial Services Commission (“FSC”) within (3) business days from the date of such event, and the FSC publishes the report.
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<th>Duties of directors and controlling shareholders:</th>
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<td><strong>What duties do the directors or managers of a company owe to the company’s shareholders, creditors and other stakeholders in connection with a business combination?</strong></td>
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<td><strong>Do shareholders have appraisal or similar rights in business combinations?</strong></td>
<td><strong>Do controlling shareholders have similar duties?</strong></td>
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**Approval rights**
In the case of a merger, the merging company and the target company must obtain a special approval from the general shareholders meeting (at least one-third of the total number of issued shares and at least two-thirds of the shareholders present).
In the case of transfer of business, a company selling all or a significant portion of its business must obtain a special approval from the general shareholders meeting (at least one-third of the total number of issued shares and at least two-thirds of the shareholders present).
Stock transfer can be done with a resolution of the board of directors, and a resolution of the general shareholders meeting is not required unless stipulated otherwise in the articles of incorporation.

**Appraisal rights**
In the case of a merger or transfer of business, if a shareholder objecting to the resolution has notified the Company in writing of its intention to oppose the resolution prior to the general shareholders meeting, he/she can request the company to buyback his shares by sending a letter showing the number and types of his/her shares to the company within 20 days from the date of the resolution, and the directors must require the company to purchase the shares within two months from the end of the above period.
On the other hand, in the case of stock transfer, the minority shareholders’ right to claim stock buyback is not recognized.

**Hostile transactions:**
A hostile takeover is conducted without the consent of the management or major shareholder of the target company, and is mainly conducted in the following manner:

1. **Tender offer**
   A tender offer means purchasing stocks publicly outside the Exchange by soliciting or subscribing unspecified persons to sell their stocks.
2. **Market Sweep**
   Market Sweep refers to the purchase of target stocks in a stock market in a non-public manner until reaching to the desired shareholding level. In order to prevent the unfair exploitation of the management rights by using this method, the Korean government imposes the reporting obligations with the 5% rule (Status of Substantial Shareholdings) and 10% rule (Ownership status of the major shareholders).

**Duties of directors and controlling shareholders:**

1. **Directors**
   Directors owe certain duties to the company according to the Commercial Law such as duty of care, duty of confidentiality, and fiduciary duty. They can be found liable to the company if they violate those duties. When a director committed a tort or wrongdoing that harmed the company, a shareholder, on behalf of the company, can bring a derivative suit against the director.

2. **Controlling Shareholders**
   In principle, controlling shareholders do not owe any duties to the company. However, under the Commercial Law, the controlling shareholders can be found liable to the company if they influenced a director of the company to carry out company business in certain ways.

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In addition, pursuant to the Commercial Law, if a company acquires shares of the target company in excess of one tenth of the total number of issued shares by purchasing issued shares or new shares, the other company shall be notified without delay.

### (3) Defense against a hostile takeover
When a hostile takeover happens, the management may actively defend. If the management acts for the benefits of itself, it may be in breach of fiduciary duty and breach of loyalty under the Commercial Law. A Poison Pill, the most typical defense tactic against a hostile takeover, is not yet legally recognized in Korea.

### Break-up fees – frustration of additional bidders
Which types of break-up and reverse break-up fees are allowed? What are the limitations on a company’s ability to protect deals from third-party bidders?

### (1) Break-up and reverse break-up fees
There is no statute regarding break-up fees or reverse break-up fees in Korea. They are agreeable by the parties in the contract.

### (2) A company’s ability to protect deals from third-party bidders
There is no statute regarding this. Parties can agree to this in the contract.

### Government influence
Other than through relevant competition regulations, or in specific industries in which business combinations are regulated, may government agencies influence or restrict the completion of business combinations, including for reasons of national security?

The FIPA prohibits foreign investments and business combinations in certain industries for reasons of national security, public order maintenance, sanitation, environmental protection, and the protection of certain traditional customs of Korea. There also are some restrictions on investment ratio for certain industries (e.g., newspaper publishing business and broadcasting business).

### Conditional offers
What conditions to a tender offer, exchange offer or other form of business combination are allowed? In a cash acquisition, may the financing be conditional?

### (1) A tender offer
According to the Capital Markets Act and its subordinate statutes, if the total number of shares of a listed corporation with voting rights, purchased from more than 10 persons during the period of 6 months, exceeds 5% of the total number of shares issued in the year, it must follow the tender offer procedure pursuant to the Capital Market Law. A person who intends to make a tender offer must (1) publish the identity of the offeror, the issuer of the stocks to be tendered, the purpose of the tender offer, the types and number of shares to be tendered, etc. (2) On the day of the tender offer announcement, a tender offer report must be filed with the FSC and the exchange. (3) In this case, a tender offer period is limited to from 20 days to 60 days.

### (2) An exchange offer
According to the Capital Markets Act and its subordinate statutes, if a company that intends to merge or acquire a business acquires the shares of a target company from the shareholders of the target company and sells its shares in return (soliciting more than 50 persons, except for special related persons including the largest shareholder, to subscribe to purchase the issued securities outside of the Exchange), a securities report must be submitted to and approved by the FSC.
### (3) A cash acquisition

In the case of a merger, although the principle is to issue the shares of the surviving company to the shareholders of the target company, the amended commercial law allows the payment to the shareholders of the target company with the proceeds of the merger or other assets, as well as stocks (cash acquisition). It is also used as an indirect means of expelling minority shareholders. The conditions of the financing can be agreed between the financier and the acquiring party. In other words, there is no statutory obligation for the parties to have the financing be conditional in a cash acquisition.

### Financing:

If a buyer needs to obtain financing for a transaction, how is this dealt with in the transaction documents? What are the typical obligations of the seller to assist in the buyer’s financing?

- When a buyer obtains acquisition financing from financial institutions, the terms and conditions of the agreement between the buyer and financier governs. The seller does not have any statutory obligations to assist in the buyer’s financing.

### Minority squeeze-out:

May minority stockholders be squeezed out? If so, what steps must be taken and what is the time frame for the process?

- Minority Shareholders can be squeezed out after (1) the approval of the general shareholders meeting, (2) the publication and notice of the squeeze-out to the shareholders and the pledgees, and (3) the determination of the stock price.

### Cross-border transactions:

How are cross-border transactions structured? Do specific laws and regulations apply to cross-border transactions?

- Cross-border transactions are categorized into (1) Foreign Direct Investment ("FDI") and (2) Overseas Direct Investment.
  
  **(1) FDI (Inbound)**
  
  A Foreign Direct Investment is that (1) a foreign investor owns the shares or stocks of the Korean corporation (the investment amount of KRW 100 million or more per foreigner and the foreigner owns at least 10% of the total number of voting stocks issued by a Korean corporation or a corporation run by a Korean citizen) and (2) a foreign parent company loans a long-term loan of at least five years to a foreign investing company in Korea. A foreigner who does FDI in Korea should report the investment to the Foreign Exchange Bank. The FDI is regulated by the FIPA and its subordinate statutes.

  **(2) Overseas Direct Investment (Outbound)**
  
  A resident who intends to make foreign direct investments overseas (acquiring 10% or more of the total number of shares issued by a foreign company) should report to a designated foreign exchange bank for each individual. The overseas direct investment is regulated by the Foreign Exchange Transactions Act and its subordinate statutes.

### Waiting or notification periods:

Other than as set forth in the competition laws, what are the relevant waiting or notification periods for completing business combinations?

- In the case of a merger, as a procedure to protect the creditors, the company must notify its creditors of and publish the merger and the resolution/approval of the general shareholders meeting. The company must give the creditors at least 1 month to object to the merger (waiting period). If there are objecting creditors, the company shall either: (1) repay the objecting creditors; (2) provide securities to the objecting creditors; or (3) place the funds into a trust account in the amount equivalent to the debts to the objecting creditors.
**Sector-specific rules:** Are companies in specific industries subject to additional regulations and statutes?

Regarding business combinations, the following specific industries are regulated:

1. **Banks**  
   According to the Banking Law, if a bank wants to merge or transfer business, it must be approved by the Financial Services Commission.

2. **Financial providers**  
   Under the Capital Markets Act, a financial investment company must obtain approval from the FSC when it intends to merge or transfer business.

3. **Insurance companies**  
   Under the Insurance Business Act, insurance companies must be approved by the FSC for mergers.

4. **Financial Institutions**  
   A merger between financial institutions such as banks and insurance companies must be approved by the FSC in advance under the Financial Stability Law.

5. **Business Operators under the Collective Energy Business Act**  
   In case of merger or acquisition of the businesses licensed under the Collective Energy Business Act, the surviving company or the acquiring company must notify the Minister of Industry, Commerce, and Resource within 30 days from the merger or transfer of business.

6. **Business operators under the Electricity Business Act**  
   Upon merger or acquisition of the businesses licensed under the Electricity Business Act, the surviving company or the acquiring company must obtain the approval of the Minister of Commerce, Industry and Energy.

7. **Business operators under the Broadcasting Law**  
   In case of merger or acquisition of businesses, Broadcasters, Cable Broadcasters, Music Cable Broadcasters and Electronic Display Broadcasters should obtain approval from the Korea Communications Commission ("KCC") for any changes. In addition, those who intend to become the largest shareholders of one of these broadcasting businesses through obtaining the stocks or shares and those who intend to practically control the management of such businesses must obtain the approval of the Minister of Science and ICT or the KCC, according to the classifications of such businesses.

8. **The Corporations subject to the Special Act for Enhancing Corporate Viability (the “One Shot Act”)**  
   In case of the industries that are expected to continuously decline considering the domestic and global market condition, (e.g. the steel industry and ship-building industry) the procedure for business combination can be shortened upon the government’s approval.

**Tax issues:** What basic tax issues are involved in business combinations?

Depending on the types of business combination, the following tax issues can arise:

1. **Stock transfer**  
   If the seller realizes capital gains, it must pay capital gains taxes if the seller is an individual and corporate taxes if the seller is a corporation. In addition, the seller shall bear the securities transaction taxes on the sale of the shares issued by a domestic company. If the purchaser becomes a majority shareholder by acquiring the shares of the corporation, the purchaser is deemed that he or she acquired the real property of the corporation, and he or she becomes subject to the acquisition tax.

2. **Merger**  
   The capital gains of the target corporation and the acquiring corporation are subject to corporate tax, and the capital gains of the shareholders of the target corporation are subject to capital gains tax.
### Transfer of Business

If an individual seller transfers a property subject to capital gains tax, the capital gains tax is imposed. A corporate seller is subject to corporate tax for the compensation for the transfer attributed to the money. A purchaser must pay the acquisition tax and the farming and fishing village special tax in accordance with the Local Taxation Act if the transferred properties include the property subject to acquisition tax.

### Labor and employee benefits

What is the basic regulatory framework governing labour and employee benefits in a business combination?

Depending on the types of business combination, the following issues arise:

1. **Stock transfer/Executives Holding Concurrent Offices**
   - In the case of stock transfer and executive holding concurrent offices, it is just a change in the ownership of the company, not a change in the corporate entity. Thus, the existing company-employee relationship remains unaffected.

2. **Merger**
   - Pursuant to the Commercial Law, in principle, the surviving company succeeds the company-employee relationship of the target company.

3. **Business Transfer**
   - In the case of business transfer, it is a principle that the transferee acquires the employment contract of the transferor as it is.

### Restructuring, bankruptcy or receivership

What are the special considerations for business combinations involving a target company that is in bankruptcy or receivership or engaged in a similar restructuring?

According to the Debtor Rehabilitation and Bankruptcy Act, a business combination with a company that is in bankruptcy or rehabilitation process requires a prior court approval. In recent cases, the Korean courts seem to encourage corporate revival through business combination. In order for a business combination with a company in a restructuring process, according to the Corporate Restructuring Promotion Act, a prior resolution of the Financial Creditors Council composed of the creditors of the target corporation is necessary.

### Anti-corruption and sanctions

What are the anti-corruption, anti-bribery and economic sanctions considerations in connection with business combinations?

No special statutes regarding anti-corruption, anti-bribery and economic sanctions in connection with business combinations. However, investors and business operators should take caution not to violate the Prohibition on Improper Solicitation and Graft Act (Kim Young Ran Act, explained above) and other anti-corruption and sanctions laws mentioned above in the process of filing, reporting, and seeking approvals.

### Disclosure of substantial shareholdings

What are the disclosure requirements for owners of large shareholdings in a company? Are the requirements affected if the company is a party to a business combination?

1. **Status of Substantial Shareholdings (5% rule)**
   - Initial Report: When holding 5% or more. Must report to the FSC and the Exchange within 5 business days from the date of holding.
   - Change Report: When change of 1% or more. Must report to the FSC and the Exchange within 5 business days from the date of change.
   - The FSC and Exchange must make the above information public.

2. **Ownership status of the specific securities of executives and major stockholder (10% rule)**
   - Initial Report: Shareholders owning 10% or more. Must report to the Securities and Futures Commission (“SFC”) and the exchange within 5 business days from the date of holding.
   - Change Report: Any changes in the ownership of the specific securities. Must report to the SFC within 5 business days from the date of change. Exempted from the reporting obligation if the change is less than 1,000 shares AND less...
than KRW 10,000,000. The SFC and Exchange must make the above information public.

(3) **Change in stock ownership status of the largest shareholder**
If there is a change in the number of shares owned by the largest shareholder, a listed corporation shall submit the change to the exchange without delay.