



| Seoul Bar Association for Milan Bar Association|

Doing Business in South Korea

-from practitioner's perspective-

2018. 5. 7.

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I. Overview

Let's say ...

- ▶ A local family-owned fashion company in Milan started online marketing by (i) entering into business agreement with Amazon (Google), and (ii) running its own website in English.
- ▶ One day a K-pop star (ex. BTS) accidentally found the products online, thought them very nice, then started wearing them in public
- ▶ The Company suddenly became very famous in Korea and a lot of Koreans directly bought the products through online
- ▶ In this situation, many Korean companies/people approached the company and proposed partnership for the sales of the products in Korea
- ▶ NOW, the company contacts your law firm and asks for advices on how to do business in Korea.

Korean Law?

▶ Highly developed legal system

- Historically influenced by Europe (German) via Japan

- These days, influenced by USA and EU

- Antitrust and Competition
- Bankruptcy and Restructuring
- Corporate / M&A
- Employment / Labor
- Environment
- Finance, Banking & Securities
- International Dispute Resolution
- International Trade & Customs
- Real Estate and Construction
- Regulatory and Government
- TMT
- Litigation
- Bio / Medical / Pharmaceutical
- Capital Markets
- Foreign Direct Investment
- Intellectual Property

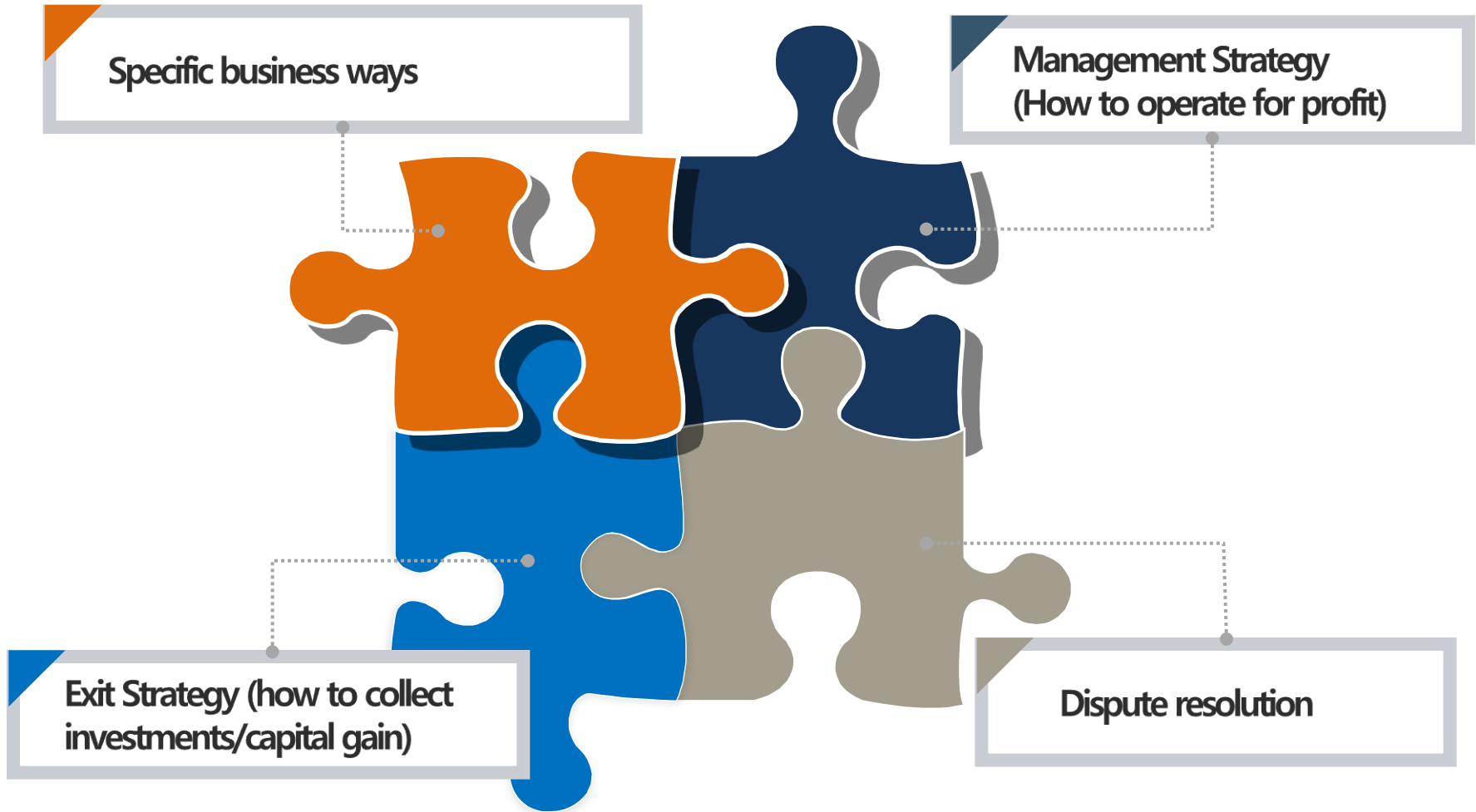
- Legislative Advisory
- Military Procurement / Defense Industry
- Private Equity / Joint Ventures
- Privacy / Data Protection
- Project and Structured Financing
- Tax / Accounting
- China, Japan, Vietnam, Europe and Russia/CIS
- Cross-Border Transactions
- Energy and Infrastructure





II. How to do business in Korea

1. Things to Consider



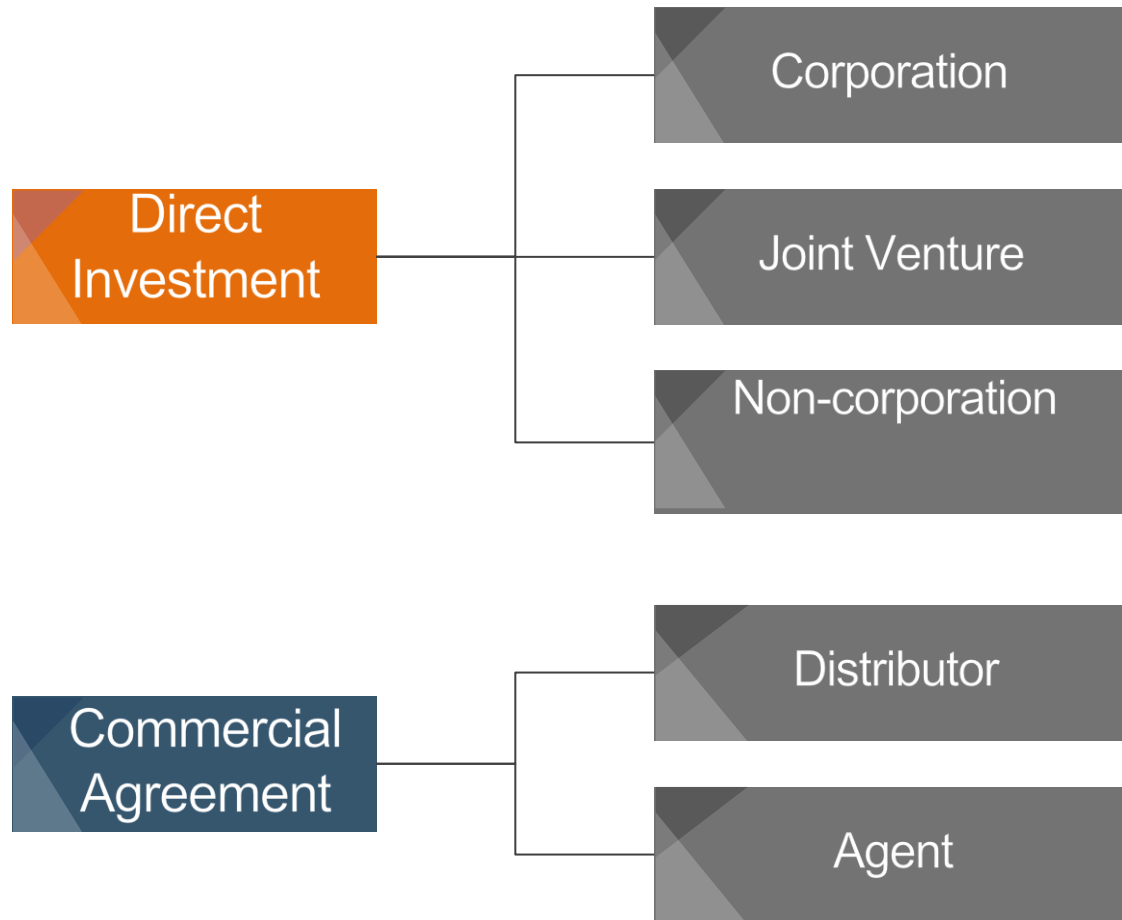
1. Things to Consider (cont'd)

Stage	Decisions to make
Select Business Partner	Business license, Partner's Reputation, Due Diligence
Select Business Ways	Direct Investment vs. Commercial Agreement
Drafting Relevant Contracts	Shareholder's agreement, Distributor/Agent Agreement
Collect Investment/capital	Foreign Currency Regulation etc.
Dispute Resolution	Settlement, Litigation, Arbitration

1. Things to Consider (cont'd)



2. Options of Doing Business





III. Direct Investment

Company vs. Non-company?

▶ Company Structure Investment

- **Korean Commercial Code (KCC) applies**
- **Joint Stock Company (*Chusik Hoesa*): most common**
- **Limited Liability Company (*Yuhan Hoesa*): feasible option for foreign investor**
- ***Hapmyung Hoesa: Investor's unlimited liability***
- ***Hapja Hoesa: Mixture of investors depending upon unlimited liability***

▶ Non-company Structure Investment

- **No Need to go through capitalization process**
- **Investor takes the direct legal liability (extraterritorial application issue?)**
- **Branch Office vs. Representative**
=> Mainly tax considerations (dual taxation, double taxation. Etc.)

Ways of Company Investment

▶ Purchasing Shares of Existing Company

- **Regulations on Stock ownership (ex. National defense, telecommunication, Airlines)**
- **merger filing to KFTC, report for approval to government agencies (ex. FSS)**

▶ Establishing 100 % Subsidiary

- No need to merger filing

▶ Joint Venture with Korean Company

- May be subject to merger filing

▶ If, Strategic/Minority Investment ?

- **Key issue: shareholder's agreement**
 - Management of company
 - Exit strategy (IPO, Tag-along, Drag-along, Right of first refusal/offer)
 - Dispute Resolution (court litigation vs. arbitration)
 - Private sector law issue (contract law, commercial law)

Company Investment-New Co

▶ Decide on relevant items and documents

- Director, Auditor, paid-in capital amount
- POA, minutes of general meeting of the shareholders. etc
- Some documents need to be notarized

▶ Register Investment with a Designated Bank

- **Foreign Investment Promotion Act (FIPA) applies when foreign investor invests money into Korea in foreign currency in the amount of KRW 100 million (about USD 100,000) or more**
- **Shall file a foreign investment report with a designated foreign exchanger bank (normally 1-2 days if the relevant documents are ready)**

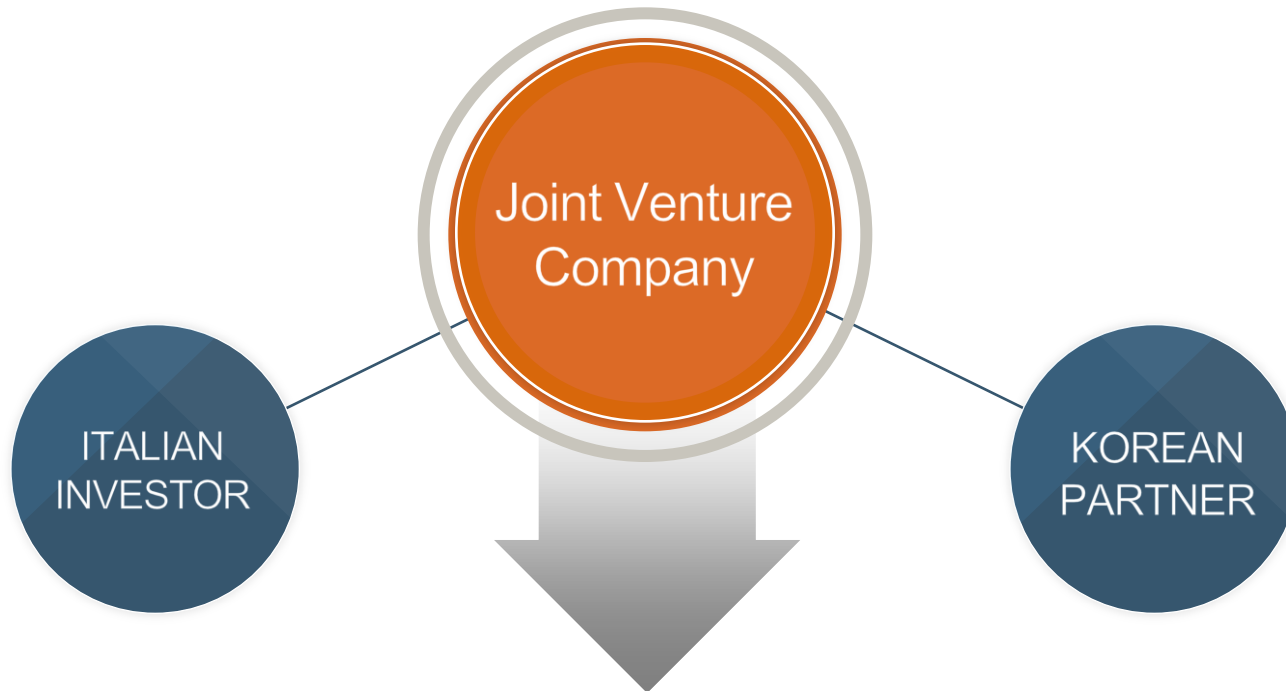
▶ Register with the Commercial Registry Office

- Commercial registry office of the district court with jurisdiction over the principal place of business

▶ Business Registration Certificate with District Tax Office

- Lease Agreement shall be submitted (normally 2- 7 Days)
-

Company Investment- JV



A. Can be a Good option especially with powerful distributor in Korea

- A. UNIQLO: FRL & Lotte Group (51:49)
- B. Starbucks: Starbucks & Shinsegye Group (50:50)

B. Key Issue

- A. How to solve Deadlock Situation : need to address in JVA in advance
- B. How to exit from JV or Korean market

IV. Commercial Agreement

No Capital Investment in Korea

▶ Agent Agreement

- **Commission**
- **Can control price to end-customer**
- **Abuse of bargaining position under MRFTA**
- **Unfair refusal to deal under MRFTA**
- **Compensation under Article 92-2 of KCC**

▶ Distributor Agreement

- **Margin (purchase and resell)**
- **Resale price maintenance under MRFTA**
- **Abuse of bargaining position under MRFTA**
- **Unfair refusal to deal under MRFTA**
- **Compensation under Article 92-2 of KCC ??? Supreme Court said yes on some conditions**

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V. Korean Competition Law Enforcement Trend

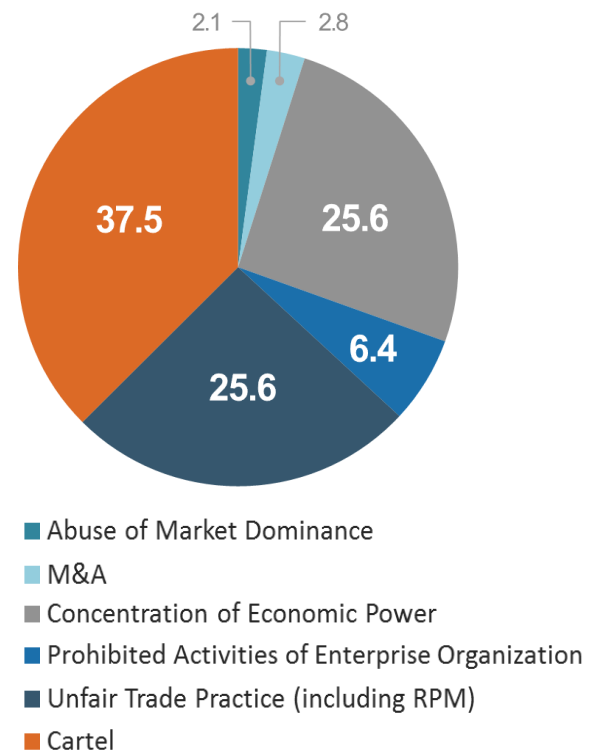
Enforcement Trend

▶ KFTC is very aggressive

What KFTC does

- KFTC formulates and administers competition policies, and deliberates, decides, and handles antitrust cases
- Monopoly Regulation and Fair Trade Act (“MRFTA”)
 - Abuse of market dominance
 - Cartel
 - Merger control
 - Unfair business practice
 - Resale price maintenance (“RPM”)
 - Regulation on concentration of economic power
- Violation of MRFTA may be subject to administrative sanctions (corrective measure, fines) and criminal sanctions

[Types of Antitrust violation (2016)]



Enforcement Trend (cont'd)

KFTC's Aggressive Enforcement Trends

- **World's leading competition enforcer - GCR Elite (Top) grade (2016-2017)**
- **In 5 years (2012-2016), total \$2.8B fine have been imposed in 385 cases**
 - Total surcharge imposed in 2016: USD 753M (36% increase compared to 2015)
- **The KFTC's referral of cases to the prosecutor's office for criminal sanctions drastically increased from 2013.**
 - Recently, the KFTC amended the guideline of filing a criminal charge **to strengthen the criminal punishment on the company as well as individual employees**
- **Active enforcement of the relevant laws concerning consumer protections and fair transaction conditions**



VI. Korean Labor Law Updates



Recent Updates

▶ Minimum Wage Increased

- Since January 1, 2018, minimum wage raised to **7,530 won/hour**
 - This is a 16.4% increase compared to the 2017 minimum wage (6,470 won/hour)
- By 2020, the Moon administration plans to raise the wage floor up to **10,000 won/hour**
- Criminal Sanction: Imprisonment up to 3 years and/or fine up to 20 million won



Recent Updates (cont'd)

▶ Employee Working Hours Reduced

- **National Assembly passed a revision bill of the Labor Standards Act**
 - Clarified maximum working hours is **52 hours/week** (not 68 hours/week)
 - Consist of 40 hours of regular work and 12 hours of overtime in a week
 - Define “week” as seven days including Saturdays and Sundays
 - Reduce the number of exempted industries from 26 to 5:
Ground transportation, water transportation, air transportation, other transportation services, and medical care services (hospitals and clinics)

Recent Updates (cont'd)

▶ Employee Working Hours Reduced

– When does the maximum statutory working hour go into effect?



- » Firms with **300** or more employees: from **July 1, 2018**
- » Firms with **50 to 299** employees: from **January 1, 2020**
- » Firms with **5 to 49** employees: from **July 1, 2021**
- » Criminal Sanction for violations of maximum working hours (Imprisonment up to two years/a fine up to 10 million won)

– Possibility of exceeding the maximum statutory working hours



- » Employees engaged in sales or R&D have tendency to exceed normal working hours
- » Implement alternative/discretionary working hour system



VII. Dispute Resolution

Litigation vs. Arbitration

▶ Litigation

- All types of litigation are possible (civil, criminal, administrative. Etc.)
- Roughly takes at least 6 months for the first judgment on merits due to lots of cases.
- Provisional Attachment, Preliminary Injunctions are critical in early stage
- No Attorney-Client Privilege
- No punitive damages with a few exceptions

▶ Arbitration

- Korea is actively trying to foster arbitration practice in Korea
- KCAB revised arbitration rules; (i) domestic, and (ii) int'l
- Seoul International Dispute Resolution Center is a good venue for hearing
- Seoul Bar Association recently launched arbitration practice training center

Which is better?

▶ Many concerns are actually meritless

- **Time and Cost**
- **Court's Neutrality**
- **Enforceability of Arbitral award**

▶ Strategic decisions are needed

- **No black-letter laws (Case by case analysis is required)**
- **Practically useful criteria**
 - How much money will be at stake?
 - Which party is more likely to resort to dispute resolution?
 - To which party will arbitration more burdensome?
 - Always think of agreeing litigation in your jurisdiction.



VIII. Enforcement of Awards and Judgements

Not a major concern !

▶ Case 1: Korean Court Judgment

- **No issues at all**
- **No discrimination between Korean nationals and foreign investors**

▶ Case 2: Milan (Italian) Court Judgment

- Article 217 of Korean Civil Procedure Act
- Key issue is public policy

▶ Case 3: International Arbitration Award

- **Korea is a signatory of New York Convention**
- **Key issue is public policy as well**
- **In practice, there are many cases appealing to court to deny arbitral award**
- **However, Korean Courts are very reluctant to accept “public policy” arguments**



IX. Q&A

Thank You

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