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Given the recent summits, this issue is dedicated to those considering opening a business in South Korea [Legal & Brief] and/or North Korea [Q&A]. The final responses in the North Korean Q&A were provided by Canadian Michael Spavor (MS), Director of Paektu Consulting and Paektu Cultural Exchange, a consultant with over 20 years of experience working with the DPRK.

## [Legal & Brief]

### **Advantages and Disadvantages of Opening a JSC or LC in Korea**

*Is your business license the right fit? JSC (joint stock corporation or chusik hoesa [주식회사]) vs. LC (limited corporation or yuhan hoesa [유한 회사]).*

A JSC offers shareholders limited liability and freely transferrable shares to a large degree. Because a JSC can raise capital by offering shares of stock or debt securities in public capital markets, it best suits expanding companies in need of large amounts of fixed capital and continued procurement of funds. The numerous regulations are the main drawback. Korean law requires an inspection at the formative stage, and a JSC must have an internal auditor. In addition (subject to a size threshold), there is a number of regulations on corporate formalities, including external audit requirements (see The Act on External Audit of Stock Companies, the “External Audit Act”) and public disclosure requirements.

As for an LC, limitations on capital sources are the main disadvantage as equity and debt securities are not traded. Of course, the LC’s much more relaxed regulations make it ideal for SMEs with few owners or need for additional capital: an LC requires only one director, is exempt from the internal auditor requirement, has no “one share, one vote” requirement, nor any external audit and public disclosure requirements.

※ A limited liability company (LLC) is one more option, but Korea’s LLC is substantially different from the LLC structure in the United States. LLC formation is not discussed here because there is not as much case law or legal precedent for LLCs as there is for corporations.

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	JSC	LC
<b>Capital</b>	Requires public registration	Only required to be stated in Articles of Incorporation
<b>Investigation by Inspectors at the time of Incorporation</b>	Yes (Article 299 of the Korean Commercial Code, "KCC")	No
<b>Public Offering</b>	Allowed (Incorporation by subscription allowed)	Not allowed
<b>Director</b>	3 or more  (A company with total capital below KRW 1,000,000,000 needs only 1 or 2 directors.)	1 or more
<b>Board of Directors</b>	Mandatory  (except for a company with total capital below KRW 1 bil.)	Not necessary
<b>Auditor</b>	Mandatory  (except for a company with total capital below KRW 1 bil.)	Optional
<b>Capital Increase</b>	Resolution of the board of directors	Special resolution of a general meeting of members
<b>Issuance of Bond</b>	Yes	No
<b>Voting Rights</b>	1 vote per 1 share  (No exceptions allowed)	1 vote per 1 unit of investment  (Unless <u>Articles of Incorporation state otherwise as allowed by Article 575 of the KCC</u> )
<b>Liabilities of the Investors</b>	Shareholder liability shall be limited to the subscription price paid for shares (Article 331 of the KCC)  Limited liability protects shareholders from claims by third-party creditors of the company.	Member liability shall be limited to the amount invested in a company (Article 553 of the KCC) and not extend to any third party creditors of the company  If upon incorporation it is discovered that investments have not been completed, the members shall be jointly and severally liable for the unpaid amount, which cannot be considered additional investment (Article 551 of the KCC)

<b>Falls under Korea's Act on External Audit of Stock Companies</b>	*Yes  *Provided the assets, liabilities, turnover, and number of employees satisfy requirements under the Act on External Audit of Stock Companies	*No (at present. However, starting in business year 2020 external audits will be mandatory for LCs.  *Provided the assets, liabilities, turnover, and number of employees satisfy requirements under the Act on External Audit of Stock Companies
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## [Q&A] North Korea as a Business/Travel Destination

### 1. Can foreign companies open businesses in North Korea?

*Yes, e.g., large Chinese and Egyptian companies have pursued mining and telecommunications operations there.*

However, sanctions imposed by the U.S. and UN place restrictions on many goods and services, and those businesses allowed in face complications from the poor infrastructure and arbitrary government demands. On the plus side, labor is well educated and skilled and labor costs are far below that of South Korea and China. Since summit-linked agreements could lift sanctions and strengthen legal protections more along the lines of those seen in China and Vietnam, it is best to wait. For those considering getting a head start, click [FindLaw](#) for a summary of key governing laws in North Korea as of the start of 2018.

MS: Existing non-sanctioned business is taking place. As far as new investments, they are still forbidden, and there are very strict and complicated rules concerning sanctioned items, and working with sanctioned organizations and individuals. That being said, our organization has seen a year-on-year three-fold increase in interest from investors seeking market research as well as face-to-face matchmaking with potential DPRK ministries and future partners. While most of the interest is coming from China and Asia, we have also interest from quite a few western based organizations wanting a head start over others if sanctions are lifted.

Most successful trade and investment projects have been facilitated through trusted interlocutors or businesses that have strong and long-term “relationships” with their DPRK partners, which take many years of experience to develop. You also need to know how to connect with the right people inside the country, which can also be challenging.

Not having a strong knowledge and grasp of the DPRK’s complex business environment and not having a deep understanding of some of the sensitivities and socio-political issues concerning the DPRK from a DPR Korean’s perspective can lead to problems. Misunderstandings or the wrong attitude can lead to offending or disrespecting your potential partners resulting in them deciding not to do business with you despite how lucrative your offer might appear.

## 2. Will the Kaesong Industrial Complex re-open?

*A delegation from the South visited June 8 to inspect conditions and prepare for the opening of a liaison office.*

According to [Yonhap](#), the South's Unification Ministry says the liaison office is not there to coordinate resumption of business operations – reopening the complex will be linked to progress in the denuclearization talks.

MS: I was in Kaesong last month and spoke to a few people that worked in the Kaesong Industrial Complex. They were very confident that the Complex would open soon. As this was a key strategic inter-Korean project and as high-level meetings are going extremely well, I believe that we should see the re-opening in the next 6 months.

## 3. Is it possible to travel to North Korea?

*The South Korean and U.S. governments restrict their citizens' travel to the North and strongly advise against it, citing harsh sentences following arbitrary arrests.*

In some places Chinese tourists are allowed to drive across the border. However most tourists must enter as part of a tour organized by companies based primarily in Pyongyang or Beijing.

MS: Yes, of course it's possible. We've never stopped bringing tourists, potential investors and business people during the past 20 years. Even though new investments are still sanctioned, many public and private groups meet with officials, do matchmaking and/or cultural exchanges and tourism. I first visited North Korea in 2001, and since 2005, we've brought in over a thousand people for a variety of purposes, from the three Dennis Rodman visits in 2013-2014, as well as larger organizations such as the Young Presidents Organization, private business interest groups, scientific surveys, tourists and a number of knowledge exchange projects and other specialized delegations. There are sometimes cultural or communication issues or misunderstandings on any visit to a foreign country; North Korea is no different, however these minor issues in our experience have always been worked out very professionally with our host organizations.

## [DR & AJU Firm News]

### **Preparing for the Best: New Team to Facilitate Business Opportunities in the North**

In a May 17 article about large Seoul-based firms preparing for the 'New South-North Reconciliation', the [Korean-language journal LawTimes.co.kr](#) covered the establishment of DR & AJU's "North Korea Economic Development Planning Team." The team was conceived by Managing Partner Lee Kyu Chul and aims to facilitate reproducing the South's successful rapid economic growth by advising both governments on the revision of North Korea's legal system. Former Vice Chairman of the Federation of Korean Industries Lee Seung-Chul has been called in as an adviser. The ultimate goals are encouraging global cooperation, promoting liberal democracy and market principles in North Korea and establishing the South's first law office in Pyongyang. In terms of private practice areas, the team is focused on (i) economic and infrastructure issues mainly from real estate investment, (ii) family and inheritance issues, (iii) other capital investment issues.

## Contacts

If you have a particular interest in any of the topics of our newsletter, please call your usual DR&AJU contact, or any of the following. We will provide new editions of IN&OUT during the course of the coming year.

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