

U.S. LEGAL REQUIREMENTS FOR KOREAN ISSUERS

GLOBAL CAPITAL MARKETS CONFERENCE
SEOUL, KOREA
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Morgan Lewis

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E. JOHN PARK

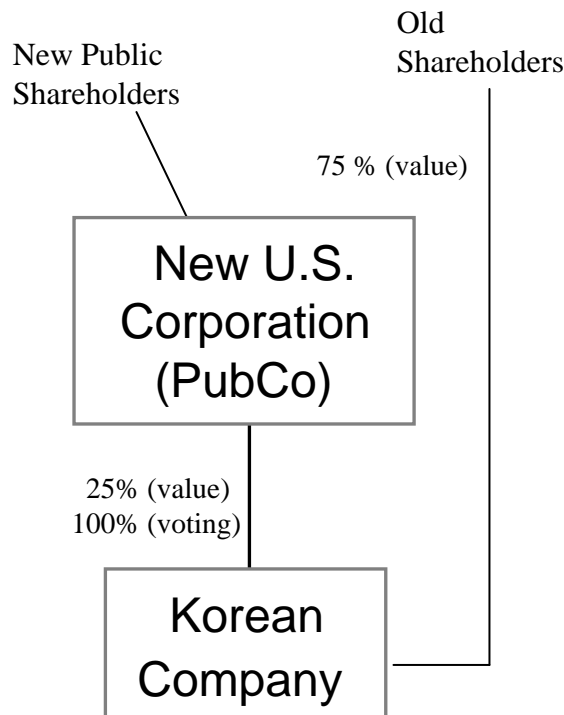
- 1997, J.D., University of Virginia
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 - Venture Capital Financing
 - Public Offerings
 - Mergers and Acquisitions
 - SEC Reporting

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OFFERING STRUCTURES

Alternative 1 - Partial Holding Company



Steps

1. Form PubCo under U.S. Law in Delaware.
2. PubCo serves as the IPO entity. Old Shareholders will exchange their voting common stock in the Korean company for (i) an equal amount of non-voting common stock in Korean company, (ii) a right to vote through the trust in PubCo matters (see next sentence) and (iii) a right to exchange their non-voting common stock in Korean company for PubCo common stock. A trust is set up as the vehicle for providing voting rights at the PubCo level to Old Shareholders. 25% of the value of Korean company is owned by PubCo and 75% is owned by the Old Shareholders. 100% of the voting common stock in Korean company is held by PubCo.

U.S. Legal Considerations

1. Delaware shareholder provisions
2. Full S-1 disclosure obligations

Korean Legal Considerations

1. Foreign Exchange Transaction Act
2. Bank of Korea Approvals

Advantages/Disadvantages

1. Old shareholders can participate in upside value post offering
2. Complex organization structure
3. Merger not required

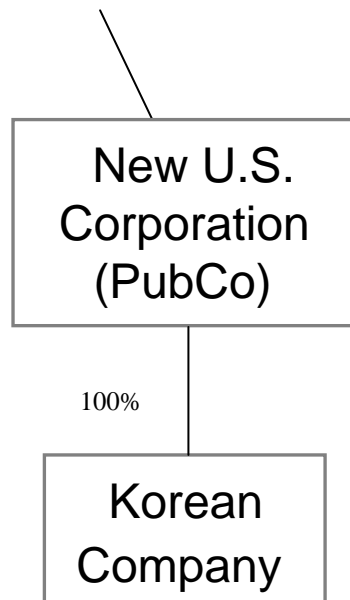
Example

1. Sohu.com

OFFERING STRUCTURES

Alternative 2 – Holding Company/Reincorporation

Old Shareholders
and New Public
Shareholders



Steps

1. Form PubCo under U.S. law in Delaware
2. Complete merger of Korean company with and into PubCo
3. Establish new Korean operating subsidiary

U.S. Legal Considerations

1. Delaware shareholder provisions
2. Full S-1 disclosures obligation

Korean Legal Considerations

1. Foreign Exchange Transaction Act
2. Bank of Korea approvals
3. Merger approvals

Advantages/Disadvantages

1. Greater acceptance in the U.S. market
2. More stringent reporting and obligations disclosure
3. Lack of natural market

Examples

1. UT Starcom

OFFERING STRUCTURES

Alternative 3 - ADR

Old Shareholders sell in the offering; New Public Shareholders receive ADRs



Steps

1. Engage with U.S. Trust company to issue depositary receipts

U.S. Legal Considerations

1. F-1 filings requirements

Korean Legal Considerations

1. Notification to MOFE

Advantages/Disadvantages

1. Reduced reporting and disclosure obligations/costs
2. Avoid U.S. corporate law requirements
3. Lack of analyst coverage, pricing fall post offering

Examples

1. Shanda
2. Gravity Mirae

AMERICAN DEPOSITARY RECEIPTS

- ADRs are issued by an approved U.S. bank or trust company against the deposit of the Korean shares with the bank or trust company

U.S. DISCLOSURE REQUIREMENTS

- Business Description
 - Key Products
 - Competitors
 - Strategy
 - Markets
 - Employees

U.S. DISCLOSURE REQUIREMENTS

- Risk Factors
 - Limited business insurance coverage in Korea
 - Currency restrictions
 - Political and security risks

U.S. DISCLOSURE REQUIREMENTS

- Executive Compensation
 - Stock option plan
 - Number of granted options
 - Exercise price

U.S. DISCLOSURE REQUIREMENTS

- Principal Shareholders
 - 5 percent shareholders
 - Officers and Directors
 - Selling shareholders

U.S. DISCLOSURE REQUIREMENTS

- Related Party Transactions
 - Insider transactions during the prior three years
 - Relationship between and among shareholders, officers and directors

U.S. DISCLOSURE REQUIREMENTS

- Management Discussion and Analysis of Financial Condition and Results of Operations
 - Revenue Recognition
 - Cost of Revenues
 - Segment Analysis
 - Liquidity and Capital Resources
 - Comparisons with Prior Three Years

U.S. CORPORATE GOVERNANCE REQUIREMENTS

- Management
 - Board of Directors
 - Execution offices
 - Minimum of three independent directors

U.S. CORPORATE GOVERNANCE REQUIREMENTS

- Audit Committee
 - Independent directors
 - Nasdaq
 - One independent member at time of IPO
 - Majority independent reimburse within 90 days of listing
 - All independent members within one year of IPO

U.S. UNDERWRITER REQUIREMENTS

- Lock-up agreements
 - 180 days following the offering
 - Rule 144

SARBANES-OXLEY FOR KOREAN ISSUERS

- Potential Requirements for Korean Issuers
 - Certifications
 - Non-GAAP Financial Measures
 - Expanded MD&A
 - Off Balance Sheet Arrangements
 - Table of Contractual Obligations
 - Critical Accounting Policies
 - New Guidance re Presentation
 - Forfeiture of Bonuses
 - Prohibitions on Loans
 - Audit Committee Requirements
 - Audit Committee Financial Expert

SARBANES-OXLEY FOR KOREAN ISSUERS

- Officer Certifications
 - Section 302
 - Applies to Form-20-F, not Form 6-K
 - Filed as an Exhibit
 - Section 906
 - Applies to Form-20-F, not Form 6-K
 - Filed as an Exhibit
 - Section 404
 - Management Report on Internal Control Over Financial Reporting
 - Required for Form 20-f for first fiscal year ending after June 15, 2005

SARBANES-OXLEY FOR KOREAN ISSUERS

- Audit Committee Requirements
 - Heightened Independence Requirement
 - No outside compensation from issuer or subsidiary
 - No affiliation with issuer (10%)
 - Solely responsible for selection, compensation and oversight of the auditor
 - Complaint Procedures
 - Authority to engage outside advisers
 - Accommodations for Non-U.S. Companies
 - Non-executive employees
 - Affiliate representative observer rights
 - Statutory auditors/boards of auditors

SARBANES-OXLEY FOR KOREAN ISSUERS

- Section 404 internal controls over financial reporting, management assessment
 - Applies to first annual report after IPO filing

KOREAN FOREIGN EXCHANGE CONTROLS AND SECURITIES REGULATIONS

- Foreign Exchange Transaction Law-MOFE oversight of the issuance of securities outside of Korea, may temporarily suspend payment or transactions to maintain international balance of payments
- Issuance of securities outside of Korea requires a filing with the MOFE
- Foreign investors with more than 10% of the outstanding shares are required to submit a report under the Foreign Investment Promotion Law

NASDAQ LISTING REQUIREMENTS

- Quantitative Maintenance Standard 1
 - 750,000 shares publicly held;
 - Market value of publicly held shares of \$5 million;
 - The issuer has stockholders' equity of at least \$10 million;
 - 400 shareholders of round lots;
 - Minimum bid price per share of \$1; and
 - At least two registered and active market makers.

NASDAQ LISTING REQUIREMENTS

- Quantitative Maintenance Standard 2
 - The issuer has:
 - a market value of listed securities of \$50 million; or
 - total assets and total revenue of \$50 million each for the most recently completed fiscal year or two of the last three most recently completed fiscal years.
 - 1,100,000 shares publicly held;
 - Market value of publicly held shares of \$15 million;
 - Minimum bid price per share of \$3;
 - 400 shareholders of round lots; and
 - At least four registered and active market makers.

NASDAQ LISTING REQUIREMENTS

- Initial Qualification Requirements
 - stockholders' equity of \$5 million;
 - market value of listed securities of U.S. \$50 million (currently traded issuers must meet this requirement for 90 consecutive trading days prior to applying for listing); or
 - net income of U.S. \$750,000 (excluding extraordinary or non-recurring items) in the most recently completed fiscal year or in two of the last three most recently completed fiscal years.

NASDAQ LISTING REQUIREMENTS

- Continued Qualification Requirements
 - stockholders' equity of \$2.5 million;
 - market value of listed securities of U.S. \$35 million; or
 - net income of U.S. \$500,000 (excluding extraordinary or non-recurring items) in the most recently completed fiscal year or in two of the last three most recently completed fiscal years.

NASDAQ LISTING REQUIREMENTS

- Qualitative Listing Requirements
 - Additionally, to maintain National Market designation, companies must meet certain corporate governance requirements relating to, among other things, the distribution of annual and interim reports, the composition of Boards of Directors, the establishment of audit committees, the issues for which shareholder approval is necessary and the solicitation of proxies.

NASDAQ EXEMPTIONS FOR KOREAN ISSUERS

- Such requirements do not oblige any Korean issuer to do any act that is contrary to a law, rule or regulation of any public authority exercising jurisdiction over such issuer or that is contrary to generally accepted business practices in the Republic of Korea. Nasdaq has the ability to provide exemptions from the applicability of these provisions as may be necessary or appropriate to carry out this intent. Specifically with respect to voting rights, Nasdaq will accept any action or issuance relating to the voting rights structure of a non U.S. issuer that is in compliance with The Nasdaq Stock Market's requirements for domestic companies or that is not prohibited by the issuer's home country law.