

# Jisung Horizon Newsletter

June 2009 Vol.1. No.1

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(Firm News)

## **Seminar for Practicing in the Carbon Dioxide Market and New Alternative Energy Industry**

“Seminar for Practicing in the Carbon Dioxide Market and New Alternative Energy Industry” is under way, jointly organized by Jisung Horizon, Korea Energy Management Corporation, Korea Investment and Securities, and Keimyung University.

The seminar will be held at Level B2 of the Korea Chamber of Commerce and Industry Building, on June 25, 2009 at 2 p.m. It is scheduled to run for three hours.

Jisung Horizon aims to provide information on various aspects of this emerging industry which experts have been citing as one of the most promising markets of the near future.

The speakers will include a government official, a professor, a finance expert, and two of Jisung Horizon's partners who will lecture on the legal issues arising from this potentially lucrative industry.

(Firm News)

## ‘Russia Energy Legal System Seminar’ Held with Great Success

Jisung Horizon Attorneys at Law has successfully held the ‘Russia Energy Legal System Seminar.’ Organized by the Korea Chamber of Commerce & Industry and Korea Investment & Securities Co., Ltd., on April 28, 2009, the seminar thoroughly presented information regarding all aspects of successful investment by and expansion of Korean companies in Russia.

Lecturers were government officials, a private institutional investor and Russian legal experts, making for a concise and to-the-point, yet enriching experience for participants.

The Department Chief Byung-Chul Lee of the Ministry of Knowledge Economy delivered his presentation titled ‘Strategies for Overseas Resource Development,’ after which Chul-Hwan Kwon from Korea Investment & Securities Co., Ltd. unveiled ‘Strategies for Russian Resource Energy Project.’

In the second half, led by Jisung Horizon members, Russian Attorney Seung-Min Lee and Korean Attorney Hye-Jung Ryu showcased their in-depth knowledge on ‘Russian Resource Development Legal System’ and ‘Participation Plan of Korean Companies for Russian Resource Development Project.’

Jisung Horizon says the event is merely the beginning of more lectures to come. It will continue to make great efforts for its clients by holding seminars that are practically helpful for their domestic and overseas operations and help them to undertake their businesses successfully.

### ■ Summary of Seminar

#### **Session 1: Strategies for Overseas Resource Development (Department Chief Byung-Chul Lee of the Ministry of Knowledge Economy)**

The global crude oil prices are expected to hover between 80 and 100 dollars for a long term due to worsening systematic demand and supply imbalance. Interest rates, foreign exchange rates and prices of raw materials similarly continue to experience fluctuations. To this end, the countries, that have been labeled as major consumers of natural resources, have been making full-scale efforts including political and economic measures to secure energy sources, while the supplying countries are faced with weakening nationalism due to dropping oil prices and slumping economies.

Meanwhile, the incumbent administration has decided that the overseas natural resources development will be its pan-government agenda and is fully striving for successful development. In other words, it is pushing for aggressive and speedy investment to fight the current crisis with the following strategies:

- (1) M&A and Purchase of Mining Areas
- (2) Active Cooperation for Energy Source Development
- (3) Raising Funds and Financing for Natural Resources Development
- (4) Revitalization of Investment and Improvement of Infrastructure

## **Session 2: Strategies for Russian Resource Energy Project (Department Manager Chul-Hwan Kwon of Korea Investment & Securities Co., Ltd.)**

With Russia renowned as a resource rich nation, Sakhalin has been recently receiving attention as Russia's rich repository of natural resources. As the area is filled with oil, gas, and coal, a mid to long-term plan for infrastructure development is currently being made.

Financial institutions provide services including drawing up investment structure, risk-hedging through derivatives, as well as providing various exit measures with regard to investment in resources and energy. Korea Investment & Securities has been drawing up and implementing various plans for investment strategies by closely studying the qualities of this area. An example is an investment in "Uglegorskugol" LLC, which possesses a coal mine where a 'resources + SOC Package Scheme,' implemented through a simultaneous project for petroleum, bituminous coal and SOC development, will maximize the growth potential of the area and energy self-sufficiency as well as profits.

## **Session 3.1: Russian Resource Development Legal System (Russian Attorney Seung-Min Lee of Jisung Horizon Attorneys at Law)**

Fifty-nine laws and ordinances are in force to regulate the development of resources in Russia. Of those, the core law governing the general use of minerals including coal and gas is the "Federal Law (hereinafter "FL") on Subsoil" (hereinafter referred to as 'Subsoil Law'). The Subsoil Law provides a guideline for regulations with regard to designation and use of subsoil.

In addition, "FL on Production Sharing Agreement" regulates all aspects for mining areas in relation to product distribution agreements such as geological surveys, exploration, development and production between the state and a private contractor (applicable for both Russians and foreigners). However, in current practice this law is generally not applied.

Meanwhile, the "FL on Continental Shelf in Russian Federation" regulates geological surveys, exploration, and mining of minerals buried in other outside jurisdictions of Russia such as inland seas, continental shelves, and exclusive economic zones. The "FL On Procedures for Foreign Investments in

Companies of Strategic Significance for National Defense and Security” touches upon restrictions on share acquisitions by foreign investors in companies operating within 42 strategic industries related to national defense and security.

Other state laws relating to resource development include “FL on Concession Agreement, ‘FL on Gas Export,’ ‘FL on Gas Supply,’ ‘FL on Depopulated Traditional Ecological Areas such as North, Siberia and Far East,’ ‘FL on Social Protection of Laborers and Mining of Coals,’ ‘FL on Exploitation of the Atomic Energy.’ ‘FL on Energy Efficiency,’ ‘FL on Natural Monopoly,’ ‘FL on Electric Industry’.

### **Session 3.2: Participation Plan of Korean Companies for Russian Resource Development Project (Korean Attorney Hye-Jung Ryu of Jisung Horizon Attorneys at Law)**

Methods commonly used for participating in resource development projects in Russia include creating product distribution agreements, License/Royalty agreements, and M&As with local developers. Each of them has its own pros and cons, bearing legal risks under the Russian laws.

A rising issue with regard to obtaining licenses is that the government is recently restricting opportunities for foreign investors to obtain such license through various laws and regulations.

Therefore, there is a call for reviews and cooperation by experts, as legal and business issues are mounting at each stage - from preliminary studies to due diligence, signing master agreement, acquiring license for and prior to contract implementations, and implementation and registration of agreements.

#### ■ Reference materials

1. [Information for the Seminar](#)

2. Korean Article Reference

[Yonhap News - The Korea Chamber of Commerce and Industry holds ‘Russia Energy Legal System Seminar’](#)

3. Photos



Session 1: Strategies for Overseas Resource Development



Session 2: Strategies for Russian Resource Energy Project



Session 3,1: Russian Resource Development Legal System



Session 3,2: Participation Plan of Korean Companies for Russian Resource Development Project



JISUNG HORIZON 'Russia Energy Legal System Seminar' (2009. 4. 28)



## (Firm News)

### Jisung Horizon Consults Mirae Asset PEF on Takeover of Yedang Online

Korea's leading newspapers have reported that Yedang Online Corp. an online game company, has been sold to an affiliate of Mirae Asset Private Equity Fund.

Maeil Business Newspaper, one of the nation's most read dailies, and news wire Yonhap News Agency reported on March 3, 2009 that shares held by the CEO of the online game company, representing 36.48% of the entire capital of the company, were purchased by the domestic fund at 54.2 billion won.

Yedang Online has reportedly acquired over 100 million members for just one of its most successfully sold games, "Audition," in 30 countries.

For the sale, Jisung Horizon has been representing and providing legal consulting services to Mirae Asset Private Equity Fund of Mirae Asset Maps Investment Management Inc.

#### [Korean Article Reference]

- [Yonhap - Yedang Online Sold to Mirae Asset](#)
- [Maeil Business Newspaper – Mirae Asset PEF Buys Yedang Online](#)
- [Newsis – Mirae Asset PEF to become Largest Shareholders of Yedang Online... Acquired 36.48% of Shares](#)

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## (Firm News)

### Jisung Horizon Selected as Legal Advisor in Sale of Hyundai Corporation

The nation's two leading business newspapers reported that Woori Investment & Securities, Development Bank M&A team Consortium, and NH Investment & Securities Co., Ltd. had been jointly selected as the sale advisors for the sale of Hyundai Corporation.

The Maeil Business Newspaper and the Hankyung said on February 2, 2009 that Korea Exchange Bank announced the decision made by a task force management committee, which had been evaluating candidates with a 'table for evaluation of sale manager candidates.'

Meanwhile, Jisung Horizon Attorneys at law has been selected as the legal advisor, due to its experience and competence in various large-scale projects such as the acquisitions of Jinro Ltd., Daewoo Shipbuilding & Marine Engineering, Ssangyong Engineering Construction Co., Ltd. and C&M Co., Ltd., etc.,

The firm has also recently participated as a legal consultant in the sale of Bellwave.

#### [Korean Article Reference]

- [Maeil Business Newspaper - Organizer for Hyundai Corporation Sale Selected](#)
- [Hankyung - Woori, KDB and NH Selected as Organizers for Hyundai Corporation Sale](#)

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(Firm News)

## **Asian Legal Business - Jisung Horizon, 10 firms to watch in 2009**

Jisung Horizon is one of the 10 law firms to watch for 2009, says the Asian Legal Business.

In its January publications of this year, the internationally renowned monthly journal selected ten law firms that would “dictate the play in the year ahead.”

It explained, while the prospect for this region was “ebullient or brazen even,” the 10 firms “managed to balance the often-competing concerns of ambitions, risk and growth with pragmatism,” to discover what would distinguish them from the rest.

It added their lawyers unanimously agree that the change in client behavior and expectations amid the global economic slump presents the area of untapped, boundless opportunities for growth to challenge against their larger rivals and poach more high-end clients.

Jisung Horizon was the only Korean law firm on the list.

### **[Korean Article Reference]**

- [Asian Legal Business - 10 firms to watch in 2009 \(PDF\)](#)

(Columns)

## Around the Time of the Capital Market Act Enforcement



(Jisung Horizon [Korean Attorney Haeng-Gyu Lee](#))

The Financial Investment Services and Capital Market Act (hereinafter the “Capital Market Act”) came into force on February 4, 2009. Due to the acceleration of the global economic recession that started from last year’s financial crisis in the U.S., the Capital Market Act that was enacted to foster the global IB has struggled through many difficulties. There have been numerous amendments even before the law was enforced and an amendment that recommends the deferment of the Capital Market Act’s enforcement has even been proposed. Due to the KIKO situation, an amendment that classified a listed corporation as an ordinary investor for the sale of derivatives products, which used to be classified as a professional investor unitarily in the past has been passed and enforced together.

A change to a negative system regarding the financial product to promote the advent of various financial investment products has been made by the Capital Market Act. Such measure was intended for the development of various derivative products inside and outside the market. However, since such derivative products were indicated as the main cause of the global financial crisis, considerable doubts arose as to whether the advent of such various derivative products is desirable to Korea’s financial system.

Another major change following the Capital Market Act is that due to the extension of the scope of the financial investment work, a side job is allowed in full measure if it is classified within the scope of the financial investment work. Unlike in the past, such financial investment work is regulated under the same measure according to its functions. Particularly, a financial investment business entity can carry on investment dealing, brokerage business together with collective investment business (former asset management) under the Capital Market Act. Such combination of management of another business was not allowed under the Indirect Investment Asset Management Business Act, which was incorporated into the Capital Market Act. This has been controversial during the enactment process due to the conflict of interest considerations.

In order to prevent the possibility of such conflict of interest, the Capital Market Act has implemented various

types of measures to protect investors such as imposition of fiduciary duties, installation of the Chinese Wall, ban on holding more than one office, imposition of various regulation on conduct, establishment and operation of conflict of interest management systems, etc. However, above all, it is important that the financial investment business entities themselves make efforts to prevent the conflict of interest and win confidence of the market through such efforts. The entire business will suffer if one persists in short term objectives or creating profits.

On the other hand, the Capital Market Act made clear that the financial investment shall be made on one's own risk and at the same time established new institutional measures to help investors make rational judgments. Before recommending or selling financial investment products, the financial investment business entities (i) shall confirm whether the investor is an ordinary investor or a professional investor; (ii) shall grasp information regarding the investment purpose, financial condition and the investment experience of the ordinary investor, etc. through interviews or questions before recommending investment to ordinary investors and shall receive written confirmation from such ordinary investors; (iii) shall not recommend inappropriate investment to such ordinary investors; and (iv) shall explain about the financial investment products when recommending investment to ordinary investors so that they may understand (so called, 'Know-Your-Customer Rule,' 'Suitability Rule'). In addition, conclusive judgment on false or uncertain matters, solicitation by real-time conversation such as visitation and telecommunications without a request for solicitation, and unsolicited calls are strictly prohibited. If such regulations on solicitation under the Capital Market Act are complied with properly, the sale of fund, which only used to take 10 minutes for the completion of the sale in the past, may take about an hour. However, in order to recover confidence of the market and for the system to be put into practice, such inconveniences must be endured.

The implementation of the Capital Market Act does not automatically mean that the global IB will be fostered in Korea. Moreover, a developed financial market, which was the model and was referred to at the time of enacting the Capital Market Act, has failed in many ways. Nevertheless, it is unreasonable to disregard the last one and a half year period of preparation for the enforcement of the Capital Market Act and defer its enforcement without an alternative plan. The Act has come into force and whether the Capital Market Act will contribute to the development of the national economy by promoting fairness, confidence, and effectiveness of the capital market as set forth in Article 1 of the Capital Market Act depends on us. We should face up to the reality of the financial market and take note of the restructuring flow of the world financial system.

(Columns)

## Economic Crisis and Fair Trade



(Jisung Horizon [Korean Attorney Hyung-Sam PARK](#))

It is hard to predict at this point what the consequences of the global economic crisis, which started with the bankruptcy of Lehman Brothers Holdings on September 1, 2008, will be. Korea's economic growth rate has also fallen into the negatives in the fourth quarter of 2008 for the first time after the 1997 Asian Currency Crisis, and the dominant view is that such a trend will be difficult to overturn. Recently, the International Monetary Fund (IMC) has adjusted this year's economic growth rate of Korea from 2% to -3.7%.

In the midst of such economic conditions, the Fair Trade Commission has released its "2009 Policy Plan" on December 18, 2008. It mostly states that it will prevent economic damages on common people and small and midsize companies, continuously improve corporate regulations in order to overcome economic crisis, and actively cope with the issues regarding the improvement of consumer rights and the globalization of law enforcement on competition.

The Monopoly Regulation and Fair Trade Act is a regulatory Act with the primary purpose to prevent abuse of market-dominating positions by enterprisers and any excessive concentration of economic power, as well as to regulate unjust collaborative acts and unfair trade practices. As this Act indicates, issues regarding monopolistic market structure or unfair competition cannot be neglected simply because of the economic crisis. On the contrary, it is true that there is a higher possibility of concentration of economic power or rationalization of anti-market conducts under the pretext of resolving the global economic crisis. Nevertheless, the authority that should focus its administrative capacity on prioritizing the enforcement of competition laws cannot ignore such national economic conditions. From that perspective, it seems that the FTC's policy plan for this year has been made by considerably reflecting such economic conditions.

Looking at the policy plan of the FTC and etc. collectively, it is advised that much attention is required for the following:

First, it is expected that inspections will be focused on price fixings in areas that are closely connected to the

lives of the common people. It has been reported that a secret investigation of the FTC on the price fixing of school uniforms has already commenced early this year. Last year, the private education, automobile, mobile communication, gas oil, and medical sectors have been designated as the five main supervisory business areas, and collusion has been found in bank fees, insurance premiums, movie tickets, LPG, and oils sectors. According to the parliamentary inspection data of the FTC, it has imposed a correction order in connection with 80 collusion cases and KRW 17,570,000,000 of fines in connection with 53 collusion cases including 5 cases that involved criminal prosecutions, since September 30, 2008. In sum, inspection on price fixing will continue to be the main duty of the FTC in the future.

Second, an inspection on the areas that may have damaging effects on the common people (such as illegal multilevel marketing, funeral service business, loaning business, etc.) and franchise businesses such as small capital self-employed enterprises is expected. The illegal multilevel marketing, funeral service business, loaning business and the franchise business is closely related to the deterioration of the economic condition and the increase in the unemployment rate. Experts expect a loss of 180,000 jobs if the economic growth rate falls to -2%. If this year's economic growth rate falls to the level of the IMF's forecast (-3.7%), then almost 400,000 jobs will disappear. The official number of the unemployed was just shy of 780,000 by the end of December, 2008 and is expected to eventually exceed 1,000,000. However, this is only the official estimate of the unemployed and the actual number of the jobless is estimated to be over 2,000,000. Common people who are suffering from the difficult economic conditions will be attracted to the illegal multilevel marketing or high income franchise business to start a small-capital enterprise or loans. As a result, there is a high probability that the common people will suffer damages from profiteers. The recent unfair agreements of the funeral service business, bankruptcy, vanishing after closing business, etc. that have become a social issue are good examples.

Thirdly, a regular inspection on unfair subcontracting and unfair trade practices of the distribution industries, such as department stores and large retail outlets, is expected in order to protect small and midsize companies. A business that is in a superior position in transactions, such as large corporations, may pass expenses to the businesses in inferior positions when the economy deteriorates. Therefore, unfair practices in subcontracting (such as unjust reduction in unit cost, usurpation of technology and payments in substitutes) and unfair practices in department stores and large retail outlets (such as unjust returning of goods, etc) may occur. The FTC has arranged for the creation of the fair trade agreement between 79 large corporations and around 27,000 partner firms thus far and is continuously inspecting the performance of the agreement.

Lastly, the mitigation of corporate regulations will continue. Especially regarding M&A, the intent of the FTC is to minimize corporate burden through a corporate merger review. The threshold for selecting large

business groups that will be subject to the investment ceiling has already been raised last year, but it is uncertain whether the amendments to the laws regarding the abolition of the investment ceiling and the softening of regulations regarding the holding company and private equity fund may be passed by the National Assembly.

The current economic crisis should be overcome by the cooperation of all economic entities. In the process of overcoming an economic crisis, it is difficult if only certain economic entities are coerced to make unjust sacrifices. The legislative purpose of the Fair Trade Act - which encourages creative corporate activities, protects customers, and pulls together a balanced development of the national economy by promoting fair and free competition - is a virtue that should be complied with in all economic circumstances.



(Columns)

## Debate on New Intellectual Property Right Demands Systematic Management



(Jisung Horizon [Korean Attorney Beom-Hee KIM](#))

In the past, the debate on intellectual property rights centered on industrial property rights and copyrights such as patents, practical devices, trademarks, designs, etc. Recently, however, there has been a rise in the debate over so-called “new intellectual property rights,” which includes trade secrets, rights on work-for-hire invention, and unfair competition practices.

In Korea, there has been an increase in attention to work-for-hire invention rights since the lawsuit against a cell phone manufacturer demanding compensation for work-for-hire inventions on “cheonjiin,” a Korean character text message input system. The work-for-hire invention right covers employee’s duties regarding patents on new devices and creations of invention designs within the scope of the employer’s official role. Each country has different rules on whether this work-for-hire invention right belongs to the company (employer-centered approach) or the employee/inventor (inventor-centered approach). Korea, like Germany and Japan, takes the inventor-centered approach where the inventor acquires the right first.

In the past, the regulation on work-for-hire inventions was provided separately from the Patent Act, Utility Model Act, Design Protection Act, and Invention Promotion Act. After March 3, 2003, however, an amended Invention Promotion Act regulates the work-for-hire invention right in its entirety. According to the amended Invention Promotion Act, when an employee of a company completes a work-for-hire invention, he or she must promptly notify the company in writing and upon receiving such notice the company must notify the inventor within 4 months whether the company will acquire such work-for-hire invention right or not. The company may, through an employment contract or employment regulation, make a pre-agreement in advance with the employee to transfer and acquire the work-for-hire invention right. The required procedures and the work-for-hire invention right of the company will differ depending on the existence or absence of such an agreement. Generally, it is more advantageous for the company to enter into a pre-engagement succession agreement in advance.

In any event, when a company has obtained the work-for-hire invention right, the inventor has the right to ask

the company for just compensation. There have been no regulations on what constitutes a just compensation, so the courts calculated it at its own discretion. Now, the amended Invention Promotion Act provides that if the employer has thoroughly collected opinions and discussed the compensation standards on the work-for-hire invention with its employees, then the law acknowledges such compensation as being just (Section 15.2 of Invention Promotion Act).

Since the amended Act provides an unprecedented standard on just compensation, an increase in disputes regarding the work-for-hire invention compensation is expected to arise, namely on whether the compensation standard provided by the company is established through sufficient discussion procedures between the employer and the employee. Therefore, even if an employer has established the rules for compensation, it should provide evidence proving that the rules have been established after full discussion with its employees.

The core issue in the dispute over work-for-hire invention compensation is the standard that courts will use to come up with just compensation. In cases where the user himself has created the work-for-hire invention, the issue becomes a matter of calculating compensation based on the user's benefit. This is because even if the user does not succeed in acquiring the work-for-hire invention right, it has been understood that he has the free and nonexclusive right to use what he has invented. Japan has already established the laws regarding this issue through a series of cases decided by its courts. Korean courts have rendered judgments based on similar standards.

On the other hand, in cases where the employer has succeeded in acquiring the work-for-hire invention right and does not apply for industrial property such as a patent, etc. and keeps it as business property, the employer is still responsible for compensation. An important aspect of business property is 'secrecy,' but when a certain technology has been publicized through patent registration it cannot be protected as a business property to the extent of that publicity. Therefore, the employer has to choose whether to acquire a patent for the work-for-hire invention technology or to keep it as business property. Even in cases where the employer seeks to keep it as a business property, the Act provides for compensation of work-for-hire inventions to protect the inventor's rights.

As can be seen, there are various problems that may arise from the conflict of interest between companies and their employees in relation to managing and compensating for work-for-hire inventions. Companies must therefore think strategically and establish a comprehensive system to manage work-for-hire inventions.

(New Cases)

## **Judgment Regarding Cancellation of Imposition of Registration Tax, etc (Case No. 2007Du26629)**

### **1. Summary of Facts**

Star Holdings, a Belgium corporation, purchased the stocks of the Plaintiff (a corporation established in 1996 under the name of 'C&J Trading Co., Ltd.', but currently not in business), and on the same day changed Plaintiff's name to 'Star Tower Co., Ltd.' (which again changed to its current name, Gangnam Finance Center Co., Ltd. in 2006). After terminating the employment of all former directors and auditors, the Plaintiff appointed new directors and auditors, drafted new articles of incorporation, and completed the registration reflecting such changes.

The Plaintiff increased its capital to KRW 5,368,750,000 around June 2001 and completed the registration thereof. Around August 2001, Plaintiff purchased from Hyundai Development Company a piece of land located in 737 Yeoksam-dong Gangnam-gu, Seoul as well as the building on such land (hereinafter the "real property of this case"), completing the registration for the real property of this case. In registering the above-mentioned capital increase and the real property of this case, Plaintiff applied a general tax rate and reported and paid its registration tax and local education tax accordingly.

### **2. Tax Imposition**

The Defendants (the administrative offices) imposed the registration tax and local education tax on the Plaintiff on May 29, 2006, applying a heavier tax rate than the one previously reported and paid by the Plaintiff. Their reason for such heavy taxation was that the Plaintiff should be deemed a newly formed corporation, since (1) all of its corporate stocks that remained unprofitable after the closing down of its business was transferred, (2) the corporate name and all of its directors and auditors were changed, and (3) the Plaintiff was no longer identical to the previous corporation. The Defendants thus regarded the transactions above as a capital increase and acquisition of real property within five (5) years of incorporation in a metropolis (Local Tax Act, Article 138) and thereby applied the heavy tax rate.

### **3. Summary of Decision**

According to the 'principle of taxation' provided in the Constitution of Korea, an expanded construction of that principle for mere administrative convenience is not allowed, notwithstanding the necessity of tax imposition. Taxpayers are entitled to select one law over others for the purpose of pursuing their economic interests in conducting their business. Furthermore, a separate and specific prohibition clause is required in order for the administrative office of taxation to negate the effectiveness of such conduct under the 'principle of actual taxation.'

According to Korean Civil Law and Commercial Law regarding incorporation, both an act of incorporation and registration of incorporation are generally required for the incorporation to be complete. Therefore, incorporation cannot be effected without registration, and once incorporation has been accomplished through such registration, there cannot be a new incorporation through the same registration unless such corporation becomes extinct.

Under the legal principles discussed above, it is impermissible to construe the tax regulation expansively or analogically without reasonable cause and to impose heavy registration tax on the Plaintiff by deeming the Plaintiff's conduct as 'incorporation' under the Local Tax Act. This is true even if it is necessary to regulate the Plaintiff's conduct that is considered an evasion of heavy registration tax. Any action to the contrary will require a separate provision which is different from the aforementioned general legal principles (or a specific legal provision that invalidates the Plaintiff's conduct of avoiding tax).



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