

Opening of the Hermit Kingdom Liberalization of the Korean Legal Services Market Pursuant to the Korea-U.S. Free Trade Agreement

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South Korea remains one of the last countries in Asia to liberalize its legal services market. Currently, foreign law firms are prohibited from establishing offices in Korea, and lawyers with foreign licenses are not officially allowed to practice foreign law. Although there are approximately 400 foreign attorneys employed as “foreign legal consultants” in various Korean law firms, they are not permitted to work independently and there is no formal registration system recognizing their status as foreign lawyers.

But the landscape may be about to change. The Ministry of Justice announced in July 2007 that a draft bill of the Foreign Legal Consultants Act (the “Act”) will be put before the National Assembly later this year.² The Act is the Korean government’s first measure taken to comply with the Free Trade Agreement (“FTA”) signed between the United States and Korea in June 2007. According to the Ministry of Justice, the government expects to have the Act instituted before the FTA becomes effective.

The Act, once enacted, will open the legal market in three stages. First, it will allow foreign lawyers to establish operations in South Korea as “foreign legal consultants” and advise clients on the law of their home jurisdictions, public international law and international arbitrations. Second, within two years from entry into force, foreign law firms can enter into specific cooperative agreements with Korean law firms to handle cases that involve both domestic and foreign legal issues. Finally, within five years, foreign

law firms will be permitted to establish joint ventures with Korean law firms and hire Korean-licensed lawyers as partners or associates.

The Act applies only to lawyers licensed and law firms registered in countries with which Korea has a trade treaty. Thus, assuming that the Korea-U.S. FTA becomes effective this year, the legal services market in Korea is expected to fully open itself to U.S. competition in 2013. The same will be true for Chile, Singapore and member countries of the European Free Trade Association (“EFTA”) ³ whose free trade agreement with Korea is already in effect, since those free trade agreements accord most favored nation status. It is anticipated that more countries will be able to take advantage of the opening of Korea’s legal services market; Korea is in talks with the European Union, ⁴ Japan, Canada, Mexico and the Association of Southeast Asian Nations ⁵ (“ASEAN”) regarding additional free trade agreements.

The time frame for the opening of the Korean legal market according to the Act closely follows Korea’s obligations under the Korea-U.S. FTA. In addition to providing a measure for the opening of the Korean legal market, the Act adopts certain restrictive measures regarding foreign lawyers, which are permitted as part of Korea’s reservations under the FTA. First, foreign lawyers are prohibited from using the title “lawyer.” Instead, they must use the title of “foreign legal consultants.” Similarly, foreign law firms cannot represent themselves as law offices. They are to

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This paper presents the views of the authors, not necessarily those of Drinker Biddle & Reath LLP or its clients.

²The bill was originally introduced in November 2006 but was withdrawn in view of the FTA negotiations with the United States.

³EFTA is comprised of Switzerland, Norway, Iceland and Liechtenstein.

⁴EU currently has 27 member countries including Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the United Kingdom.

⁵ASEAN countries are Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, Philippines, Singapore, Thailand and Vietnam.

display, after their name, a sign that says “foreign legal consultant office.” Some critics believe that this unfamiliar title will confuse legal consumers, who will be unable to determine whether a “foreign legal consultant” is licensed to practice law at all. Indeed, insistence on the title “foreign legal consultants” seems an unnecessary restriction since titles such as “foreign lawyer,” “U.S. lawyer” or “Japanese lawyer” are not likely to be confused with Korean lawyers.

Second, the Act requires all foreign lawyers to have at least three years of experience in their respective jurisdictions. For lawyers who are also partners or representatives of an office, the requirement is three years in their jurisdiction of license with seven years of experience overall. Absent a suitable “grandfather” clause, this restriction could pose an obstacle to foreign lawyers who are already working in Korea. On the other hand, this restriction may result in an increase in the overall quality of foreign legal services, ensuring that foreign lawyers obtain valuable practice experience and training where they are licensed rather than starting their legal careers without any experience, having only the bare minimum of obtaining a foreign law license.

Third, to practice as a foreign legal consultant, a foreign lawyer must stay in Korea for a minimum of 180 days per year. Many suspect that this provision is included because the Korean government’s basis for taxation of individuals is a minimum residency of 180 days per year. The Korean government claims that the residency requirement is widely adopted in the countries with an open legal services market. In the United States, however, only two states require residency and 11 states require foreign legal consultants to establish an in-state office.

Finally, the Act requires a foreign law firm to have operated at least five years where it is registered before opening a branch office in Korea. Foreign Law firms are also prohibited from having more than one office in Korea. While at first glance this seems an unnecessary provision hindering market access by foreign law firms, Korean law firms are likewise prohibited from operating multiple offices.

Despite these restrictions, the Act appears to be a significant step toward opening the legal services market in Korea. U.S. companies looking to conduct businesses in Korea may benefit enormously from the change. In the past, it was necessary for such companies to hire a Korean law firm because foreign attorneys were prohibited from executing legal documents on behalf of their clients in Korea. Now companies will have available to them fully integrated, one-stop international law firms that can meet the local needs as well as provide them with global know-how and resources. These changes could reduce the cost and inconvenience to both Korean and U.S. businesses in locating and retaining

experienced U.S. counsel in Korea. The availability of U.S. law firms in Korea may also provide U.S. companies with a certain “comfort factor” that could further facilitate Korea’s long sought foreign investment activity. Perhaps the greatest benefit to U.S. companies will be the caliber of legal services that will be available in Korea. There is currently a disproportionately small number of Korean lawyers who are experienced in sophisticated finance or corporate transactions. According to a survey conducted by the Korea Economic Daily in 2003, in which 150 major companies operating in Korea participated, 91.3% desired full opening of the market and 97.3% answered that Korean law firms fall behind world standards in the areas of corporate law. Opening of the legal services market means transfer of best practices and expertise of international law firms. Competition will also catalyze the creation of larger law firms with a capacity to handle large-scale transactions. With an open market, U.S. businesses can expect significant improvement in the overall quality of legal services in Korea.

In addition to the Act, the Korean government has recently adopted the U.S. law school system under which all bar admission applicants are required to complete a three-year post graduate law program. The schools are set to open in 2009 but the total number of students admitted per year will be limited to 1,500 which will gradually increase to 2,000 students by 2012. The new system is an effort by the Korean government to increase the number of attorneys in Korea as well as to diversify the field with attorneys who have various educational and professional backgrounds.

Under the current system, to qualify as an attorney an individual must pass the Korean bar examination and spend two years at the Judicial Research and Training Institute, at the end of which one decides whether to practice as an attorney, judge or prosecutor. Approximately 30,000 students sit for the bar exam each year but only 1,000 are permitted to pass, a limit that was gradually raised from 300 in 1996. Along with Japan and Taiwan, Korea is one of only three countries in the world that set a quota on bar admissions. As of year-end 2006, Korea, a country with a population nearing 50 million, had a tightly knit legal community of 8,423 lawyers who enjoy an exalted status as the society’s most elite. The overall ratio of general population to attorneys is 7,633 in Korea whereas in the United States the number is 267. Even in comparison to Japan (ratio of 5,517 to 1) and Taiwan (5,500 to 1), the ratio is staggeringly high.

The Korean government’s plans with respect to liberalization of the legal services market follow, but will proceed more rapidly, than those of Japan. Japan went through a lengthy transition period during which it opened the legal services market in three stages: in 1987, foreign attorneys were allowed to practice as foreign legal consultants; in

1994, foreign law firms were allowed to jointly retain clients with Japanese firms for qualified matters and share profits; finally, in 2004, joint ventures with Japanese firms and hiring of Japanese lawyers were permitted. Japan also introduced the U.S. law school system in 2002 but it does not set a cap on the number of students admitted to the schools.

It is difficult to predict how the landscape of the legal services market in Korea will change. However, studying the changes Japan has undergone in the last 20 years may serve as a guide in what to expect in Korea. Since 1987, Japan has seen a gradual expansion of Japanese law firms. This expansion was partly realized through mergers with other Japanese firms to create full-practice megafirms. Another approach was the formation of joint enterprises with foreign firms, thereby creating full-service law firms with a mix of Japanese and foreign lawyers. While many firms moved toward larger, more diverse practices, other Japanese firms chose to focus on areas of specialization. The cost of obtaining counsel for sophisticated legal issues or complex litigation increased, while fees for standardized services fell slightly. Many expect to see the same changes take place in

Korea, although the fact that Korea's liberalization plans will be rolled out over the next five years, rather than the 17 years it took in Japan, could lead the Korean market through a different course.

In the last 50 years, Korea has undergone an exciting transformation from a mostly agricultural economy to a fully developed industrial economy, now ranking as the 11th largest in the world. Today, Korea's legal services market has an opportunity to catch up to the rapid growth of the corporate sector. Currently, the number of legal advisors in Korea with expertise in international finance, structured finance and capital markets transactions is insufficient for a country undergoing fast-paced globalization. Thus, the Korean government's proposal of the Act is a long waited, welcome change toward liberalization. Although the attitude toward liberalization in Korea is one of caution rather than eagerness, Koreans realize that competition in the legal services market may further advance its goal of becoming an important logistics and financial hub of Northeast Asia and attracting additional foreign investment.