

New Amendment to the Foreign Legal Consultant Act: In the Perspective of U.S. Attorney's Legal Services in Korea under the FTA between Korea and the U.S.

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Abstract

Just after Korea and the U.S. officially pronounced the commencement of negotiations for the KORUS FTA on February 3, 2006, the two nations entered into the first negotiation on June 5, 2006. As a result of several negotiations, a compromised settlement was reached and the KORUS FTA was signed on June 30, 2007. After parliamentary endorsements in both countries in 2011, the date of the effectuation of the KORUS FTA was announced on February 21, 2012. According to the announcement, the KORUS FTA would go into effect on March 15, 2012. The KORUS FTA will create significant changes to the legal services market in Korea, since the KORUS FTA prescribes the opening of the Korean LSM to foreign attorneys, including U.S. attorneys. Prior to the effectuation of the KORUS FTA, the Legal services of U.S. attorneys could not enter the LSM in Korea. However, the Korean government introduced a new legal educational system in order to fundamentally change the Korean legal system. Under the new system, the pass rate of the Lawyer Admission Test in the first year is 75%. Indeed, a 75% pass rate is a tremendous change to the Korean legal system, compared to a 3% pass rate of the previous Korean Bar Examination. Therefore, the change of the Korean legal education system has served as the first step of the total reform of the Korean legal system, including the opening of the Korean LSM.

The purpose of this article is to aid the understanding of the Korean legal profession, in light of the significant changes which are taking place in the Korean legal system, which is of particular importance to the foreign attorney, including the U.S. attorney. This article examines the contents of the KORUS FTA, as it relates to opening the Korean LSM to the foreign attorney, written as the foreign legal consultant in the KORUS FTA. Then the Article analyzes the 2011 Amendment of the FLCA in detail which gives authority to foreign attorneys to work in the Korean Legal Service Market as Foreign Legal Consultants.

Key Words: Legal Profession, Attorney, Legal Consultant, Foreign Legal Consultant Act, FTA, KORUS FTA, Legal Service, Law Firm

I . Introduction

Just after the late President of the Republic of Korea (hereinafter “Korea”), Rho Moo Hyun promulgated his strong desire to negotiate the Free Trade Agreement (hereinafter “FTA”) with the U.S., on January 18, 2006, Korea and the U.S. officially pronounced the commencement of negotiations for the FTA between Korea and the U.S. (hereinafter “KORUS FTA”) on February 3, 2006, at the U.S. Capitol. The first negotiation was entered into on June 5, 2006. As a result of several negotiations, a compromised settlement of the KORUS FTA was reached on April 2, 2007, which was signed on June 30, 2007. Although the KORUS FTA had been signed by both nations, additional negotiations over specific topics continued over a period of four years. Subsequently, the U.S. Congress passed the Implementation Act of the KORUS FTA on October 12, 2011, and the Korean National Assembly passed the KORUS FTA on November 22, 2011. Following parliamentary endorsements in both countries, the two nations announced the date of the KORUS FTA’s effectuation on February 21, 2012. According to the announcement, the KORUS FTA would go into effect on March 15, 2012, six years after the two nations kicked off talks on the trade pact in June 2006.

The KORUS FTA will affect a wide scope of the two nations’ trading markets, such as agriculture, textiles, pharmaceuticals, financial services, telecommunications, labor, environmental and electronic commerce.¹ Among those markets, the KORUS FTA will bring substantial change to the legal services market (“LSM”) in Korea, since the KORUS FTA prescribes the opening of the Korean LSM to U.S. attorneys. Previously, no legal services of U.S. attorney could enter the LSM in Korea prior to the KORUS FTA’s

1. The KORUS FTA consists of 24 Chapters and 3 Annexes, including the Preamble. The 24 Chapters are as below: 1. Initial Provisions and Definitions; 2. National Treatment and Market Access for Goods; 3. Agriculture; 4. Textiles and Apparel; 5. Pharmaceutical Products and Medical Devices; 6. Rules of Origin and Origin Procedures; 7. Customs Administration and Trade Facilitation; 8. Sanitary and Phytosanitary Measures; 9. Technical Barriers to Trade; 10. Trade Remedies; 11. Investment; 12. Cross-Border Trade in Services; 13. Financial Services; 14. Telecommunications; 15. Electronic Commerce; 16. Competition-Related Matters; 17. Government Procurement; 18. Intellectual Property Rights; 19. Labor; 20. Environment; 21. Transparency; 22. Institutional Provisions and Dispute Settlement; 23. Exceptions; and 24. Final Provisions. The full text of the KORUS FTA is *available at* http://www.fta.go.kr/KORUS/img/pdf/eng/2E_all.pdf (last visited on March 6, 2012).

effectuation.

Generally speaking, each country has its own unique legal system as well as its own unique historical and cultural background of the legal profession.² The history of democracy and constitutionalism in Korea is relatively recent, owing in part to the military regimes which obstructed the realization of democracy. As a result, fundamental human rights of Koreans had not been properly protected.³ Therefore, the legal profession is regarded as a performance of public duties rather than merely legal services or even commercial business.⁴ On the basis of the public nature of the legal profession in Korea, the nation has demanded that the attorney to realize social justice more than any other profession. Attorneys in Korea were selected only after meeting the stringent qualification standards of the Korean Bar Examination, reflected in the low pass rates of the Korean Bar Examination of approximately 3% despite the fact that the quota had been raised from 300 per year to the current 1,000 per year in 1996.⁵ As a result of these characteristics of the Korean legal profession, it was expected that the LSM in Korea could not be opened up to foreign attorneys until now.

However, the Korean government took steps to introduce a new legal educational system, closely modeled on the U.S. law school system, to bring fundamental change to the existing state of affairs through passing the Act on the Establishment and Management of Professional Law Schools (hereinafter “Korean Law School Act” or “KLSA”) on July 27, 2007.⁶ Under the KLSA, only 25 Graduate Law Schools, with an enrollment of only 2,000 students throughout the country, selected by the Korean government started in 2009.⁷

2. Ham Jung-Ho, “*The Unique Characteristics of Korean Attorneys’ System*,” 18 Dick. J. Int’l L. 171 (1999), 171.

3. *Id.*

4. *Id.* Therefore, the Korean “Attorney-at-Law Act” prescribes that the mission of an attorney “shall be to defend fundamental human rights and realize social justice.” KOREAN ATTORNEY-AT-LAW ACT, Act. No. 10627, May 17, 2011, art. 1(1) (S. Kor.). Also, each attorney “shall faithfully perform his/her duties and work to maintain social order and to improve the legal system in accordance with his/her mission.” *Id.* (2).

5. See Ham Jung-Ho, *supra*, at 172.

6. Act No. 8544, July 27, 2007; Amended by Act No. 8852, Feb. 29, 2008; Amended by Act No. 10866, July 21, 2011; Amended by Act No. 11212, Jan. 26, 2012.

7. The 25 law schools are: Seoul National University (150), Korea University (120), Yonsei University (120), Sungkyunkwan University (120), Kyungpook National University (120), Pusan National University (120), Hanyang University (100), Ewha Womans University

In the same way as the U.S. system, under the new system, only those who attend one of the 25 law schools for three years and receive a J.D. degree are eligible to take the Lawyer Admission Test, which is identical to the former Korean Bar Examination.⁸ The pass rate of the Lawyer Admission Test in the first year is 75%⁹, and is anticipated to remain the same in the second year despite the fact that it is yet to be fixed. Indeed, a 75% pass rate is a tremendous change to the Korean legal system, compared to the previous 3% pass rate. However, Korea has dealt well with this big change. Undoubtedly, there are arguments for and against the opening the LSM in Korea to foreign attorneys. Nevertheless, the Korean government has decided to open it to the world after experiencing the change in the legal education system in Korea. Thus, it can be said that the change of the Korean legal education system functioned as the first step towards the total reform of the Korean legal system, including the opening of the LSM.

The Foreign Legal Consultant Act in Korea (hereinafter “FLCA”) is the only regulation governing the activity of foreign attorneys in the Korean LSM, with the exception of the Korean Attorney-at-Law Act (hereinafter “KALA”), which prohibits the unauthorized practice of law in Korea.¹⁰

(100), Chungnam National University (100), Dong-A University (80), Chonnam National University (120), Chonbuk National University (80), Yeungnam University (70), Kyunghee University (60), Wonkwang University (60), Chungang University (50), Hankuk University of Foreign Studies (50), University of Seoul (50), Ajou University (50), Inha University (50), Konkuk University (40), Sogang University (40), Gangwon University (40), Cheju National University (40), and Chungbuk National University (70). The number in parenthesis is the enrollment of students, so the total number of students enrolled in all 25 law schools in Korea per year is 2,000. For more about these 25 law schools in Korea, see <http://info.leet.or.kr> (the website of the “Korean Association of Law Schools”)

8. However, the old system will run parallel to the new system until 2013, and under the old system anyone can take the Korean Bar Examination even though he or she does not have the LL.B. or even any undergraduate degree at all. Jasper Kim, “*Socrates v. Confucius: An Analysis of South Korea’s Implementation of the American Law School Model*,” 10 *Asian-Pac. L. & Pol’y J.* 322, 326 (2009).
9. January 2012, the first Lawyer Admission Test was taken by the first students to graduate from Korean law schools in the history of the new legal system in Korea. As a result of the first Lawyer Admission Test, 1,500 new attorneys will be eligible to practice law and 700 more attorneys will join the Korean Bar who passed the Korean Bar Examination under the old system. Therefore, there will be 2,300 new attorneys in total coming into the LSM in Korea.
10. Only a person “who has completed the required curriculum of the Judicial Research and

Therefore, no foreign attorney can act in the LSM in Korea without the regulation of the FLCA, which was enacted in 2009 as a part of the three-stage process, formulated and incorporated into the KORUS FTA, for the opening of the Korean LSM. However, the FLCA was amended in 2011 in order to create a concrete form for the foreign attorney's activity in Korea and to realize the contents of the FTA following the compromised settlement of the KORUS FTA. Thus, in order to understand the legal profession in Korea for the foreign attorney, including the U.S. attorney, this Article examines the contents of the KORUS FTA as it relates to opening the Korean LSM to the foreign attorney, written as the foreign legal consultant in the KORUS FTA. Then the Article analyzes the 2011 Amendment of the FLCA in detail.

II. Opening the Korean LSM under the KORUS FTA

A. General Principle: Annex I of the KORUS FTA

Annex I of the KORUS FTA basically prescribes the Korean legal services that are generally not open to the U.S. Under Annex I, only Korean attorneys registered with the Korean Bar Association may supply legal services and establish a law office, a law company with the characteristics of partnership, a limited-liability law company, or a limited-liability partnership law office. For greater certainty, a person other than a Korean-licensed attorney is not permitted to invest in any of these types of legal entity.¹¹ Annex I reserves some exceptions to Annex II.¹² Thus, it is very important to examine Annex II of the KORUS FTA, i.e. the commitments undertaken in the entry for Legal Services – Foreign Legal Consultants in the Schedule to Annex II, in order to understand the scope of the opening up of the Korean LSM.

Training Institute after the [Korean Bar Examination]" or "who is qualified as a judge or public prosecutor," or "who has passed the [Attorney Admission Test]" is qualified to be an attorney in Korea. *See*, KALA art. 4.

11. *See* "Sector : Professional Services - Legal Services," Annex I Schedule of Korea , KORUS FTA (2007), at Annex I-Korea-25, *available at* <http://www.fta.go.kr/KORUS/img/pdf/eng/e63.pdf> (last visited Mar. 20, 2012).

12. *Id.*

B. Opening Process: Annex II of the KORUS FTA

Annex II of the KORUS FTA regards the entry to the LSM in Korea of foreign legal consultants (hereinafter “FLC”). Annex II uses the term foreign “legal consultants” instead of “attorney.”¹³ The term “legal consultants” written in Annex II is crucial because Annex II of the KORUS FTA limits the activity of U.S. attorneys in the Korean LSM to the business of legal consultancy. Therefore, the U.S. attorney cannot appear in Korean court.

Annex II of the KORUS FTA provides a three-stage process of the opening up of the Korean LSM to the U.S. attorney for the business of legal consultancy. In the first stage, which is scheduled for 2012 in the U.S., no later than the date the KORUS FTA has entered into force, U.S. law firms can establish representative Foreign Legal Consultant offices in Korea, and U.S. attorneys can provide legal advisory services regarding the laws of the jurisdiction in which they are licensed and public international law as foreign legal consultants in Korea.¹⁴

In the second stage, which is scheduled for 2014 in the U.S., no later than two years after the date the KORUS FTA has entered into force, U.S. law firms will be permitted to enter into specific cooperative agreements with Korean law firms in order to be able to jointly deal with cases where domestic and foreign legal issues are mixed, and to share profits derived from such cases.¹⁵

In the third stage, which is scheduled in 2017 to the U.S., no later than five years after the date the KORUS FTA has entered into force, U.S. law firms¹⁶ can establish joint-venture firms with Korean law firms.¹⁷ However, restrictions may be imposed on U.S. law firms with regards to the proportion of voting shares or equity interests of the joint venture firms.¹⁸ For greater certainty, the joint-ventures in Korea may employ Korean attorney as partners or

13. See “Sector: Legal Services – Foreign Legal Consultants,” Annex II Schedule of Korea, KORUS FTA (2007), at Annex II-Korea-45, available at <http://www.fta.go.kr/KORUS/img/pdf/eng/e66.pdf> (last visited Mar. 20, 2012).

14. See, *supra*, Description 2 (a), at Annex II-Korea-46.

15. See, *supra*, Description 2 (b), at Annex II-Korea-46.

16. The U.S. law firm means a law firm organized under U.S. law and headquartered in the United States. *Supra*, Description 3, at Annex II-Korea-46.

17. See, *supra*, Description 2 (c), at Annex II-Korea-46.

18. *Id.*

associates.¹⁹

Since the KORUS FTA reserves that Korea should maintain the measures adopted to implement its commitments of opening the Korean LSM, the Korean government enacted the FLCA in 2009 and amended the FLCA in 2011 in order to provide some specific measures for U.S. attorneys for the first stage of opening, which is scheduled for this year, under Annex II of the KORUS FTA.

III. New Amendment to the FLCA

A. Overview

When the FLCA was enacted in 2009, it aimed to legalize the first stage of the opening of the Korean LSM to foreign countries with which Korea had signed the FTA, the U.S. and the Association of Southeast Asian Nations (ASEAN),²⁰ an economic alliance of 10 South Asian Countries.²¹ The FLCA in 2009 did not contain concrete provisions for the second and third stages of opening of the Korean LSM. Rather, it was the initial step toward the further opening of the Korean LSM to foreign countries.²²

However, the FLCA had to provide specific provisions for the second stage of opening, which were not included in the enactment of the FLCA in 2009, such as an application fee for the qualification approval of foreign legal consultants,²³ disclosure obligation of the Korean Bar Association for the

19. *Id.*

20. ASEAN was established on 8 August 1967 in Bangkok, Thailand, with the signing of the ASEAN Declaration (Bangkok Declaration) by Indonesia, Malaysia, Philippines, Singapore and Thailand. After the establishment, Brunei Darussalam joined on 7 January 1984, Viet Nam on 28 July 1995, Lao PDR and Myanmar on 23 July 1997, and Cambodia on 30 April 1999, making up what is today the ten Member States of ASEAN. For more about ASEAN, available at <http://www.aseansec.org> (last visited Mar. 20, 2012).

21. Si-Soo Park, *Foreign Law Firms Can Open Consultant Office Here*, The Korea Times, Mar. 3, 2009, available at http://www.koreatimes.co.kr/www/news/nation/2009/03/117_40616.html (last visited Mar. 20, 2012).

22. *Id.*

23. FLCA art. 3 (4), 15 (4).

registration of foreign legal consultant offices,²⁴ revocation of authorization for the establishment of foreign legal consultant offices,²⁵ the title of foreign legal consultant offices,²⁶ some matters of joint handling of cases of foreign legal consultant offices,²⁷ penal provisions,²⁸ and so forth.²⁹ Therefore, the FLCA was amended by Act no. 10542, on April 5, 2011, in order to enforce the above mentioned provisions for the second stage of opening the Korean LSM. However, this first amendment of the FLCA in 2011 included details with regards to the enforcement of the second stage of opening, not for the third stage of opening the Korean LSM. Below is the substantial content of the FLCA, focusing on the specific enforcement of the 2011 Amendment.

B. Who Can Practice Legal Services

As mentioned above, Annex II of the KORUS FTA employs the term foreign “legal consultants” instead of the “attorney.”³⁰ Consequently, Korea enacted the “Foreign Legal Consultant” Act, instead of something along the lines of the “Foreign Attorney” Act. Furthermore, the FLCA declares that its purpose is to provide for necessary matters regarding qualification approval, registration, and practice of “*Foreign Legal Consultants*” who deal with foreign legal services in Korea.³¹ Therefore, even though the U.S. attorney or any foreign attorney whose home country of license is a party of FTA,³² the

24. *Id.* 18(5).

25. *Id.* 19 (1), (2).

26. *Id.* 27 (2).

27. *Id.* 34-2, 34-3, 34-4 and 34-5.

28. *Id.* 47.

29. *Id.* 53(2).

30. See “Sector: Legal Services – Foreign Legal Consultants,” Annex II Schedule of Korea, KORUS FTA (2007), at Annex II-Korea-45, available at <http://www.fta.go.kr/KORUS/img/pdf/eng/e66.pdf> (last visited Mar. 20, 2012).

31. FLCA art. 1.

32. The home country of license means a country in which overseas-licensed lawyers acquired qualifications and completed procedures required to perform legal services and which is designated by the Korean Minister of Justice to allow overseas-licensed lawyers to provide advisory services, etc. in Korea on the law of the country in which they are admitted to practice. *Provided*, that if a country has provinces, states, prefectures, or autonomous districts which grant qualification recognized only within a certain province, state, prefecture or autonomous district, the entire region where the qualification is recognized

attorney cannot perform the full range of activities, only those of legal consultancy. According to the FLCA, the *attorney* is a lawyer in accordance with the KALA³³ and the *overseas-licensed lawyer*, i.e. foreign attorney, such as a U.S. attorney, is a person who has acquired qualification as a legal professional, and is equivalent to the attorney-at-law in the U.S. or in the home country of license.³⁴ In addition, the *FLC* is a person whose qualification has been approved by the Korean Minister of Justice and is registered with the Korean Bar Association following qualification as an overseas-licensed lawyer.³⁵ The U.S. attorney or any other foreign attorney must obtain a qualification approval in order to perform legal services in the Korean LSM as a FLC by the Korean Minister of Justice.³⁶

Additionally, in a case where the FLC is affiliated with a law office or legal entity established mainly to provide legal services in his or her home country of license, the FLC may establish a Foreign Legal Consultant Office (hereinafter “FLCO”)³⁷ in Korea when the FLC gets authorization from the Korean Minister of Justice.³⁸ When the FLC establishes the FLCO in Korea, the FLCO will be the branch office of the head law office or legal entity in his or her home country of license.³⁹ In this case, the FLC can establish only

in accordance with the law of the country shall be regarded as a home country of license. *Id.* art. 2 (5).

33. FLCA art. 2(1).

34. *Id.* 2(2).

35. *Id.* 2(3).

36. *Id.* 3(1). An application must include: ① Copies of applicant’s passport, Certificate of Alien Registration or any other document attesting his or her status; ② Curriculum Vitae; ③ Certificates of Foreign Attorney(CFA); ④ Certificate of Ability (CA) to compensate for damage in regards to performing legal services; ⑤ Sworn Statement; ⑥ Statement of Certificates of CFA; and ⑦ Other references if any. *See* PRESIDENTIAL DECREE of FLCA Article 2.

37. The Foreign Legal Consultant Office is an office established by FLCs to practice foreign law in accordance with the FLCA. FLCA art. 2(4).

38. *Id.* 15(1). In order to obtain authorization, a FLC who will be the representative of the office should file a written application with ① any document certifying that an applicant is a Foreign Legal Consultant; ② any document certifying requirements in accordance of the FLCA Article 16(1); ③ other documents for reference. The documentary evidence shall be an original document or a certified copy. If these documents were not prepared in Korean language, these must be accompanied by a duly authenticated Korean translation. *Id.* 15(2); PRESIDENTIAL DECREE of FLCA art 7(1).

39. FLCA Article 15(1).

one FLCO in Korea.⁴⁰

Moreover, the U.S. attorney or any foreign attorney should have three or more years of experience with legal services in his or her home country of license in order to be eligible to obtain qualification approval as a FLC.⁴¹ If the attorney has performed legal services in any other foreign countries, the period of performing legal services within the limit of three years may be included.⁴² If an applicant investigates, researches, or reports on the acts and subordinate statutes of a home country of license for an employer under the employment contract as his or her primary practice in Korea, such period of practice, within the limit of two years, may also be included.⁴³ If the attorney has any disqualifications, they cannot qualify as a FLC.⁴⁴ Moreover, the Korean Ministry of Justice should revoke the qualification of approval of a FLC when his or her home country's license becomes null and void or is suspended, or some disqualifications are found or have occurred after the approval.⁴⁵ Additionally, the Korean Ministry of Justice may revoke the qualification of approval of a FLC under certain conditions.⁴⁶

40. *Id.* 15(3).

41. *Id.* 4(1).

42. *Id.* 4(2); PRESIDENTIAL DECREE of FLCA Article 4(1).

43. FLCA art. 4(3); PRESIDENTIAL DECREE of FLCA art. 4(2).

44. FLCA art. 5. Any person who falls under any of the below shall be disqualified as a FLC: A person, regardless of nationality, ① who has been sentenced to imprisonment without prison labor or heavier punishment and for whom five years have yet to elapse after the execution of such sentence was terminated or the exemption from the execution of such sentence was made definite; ② who has been granted a stay of execution without prison labor or heavier punishment, or for whom two years have yet to elapse after the lapse of the stay period; ③ who has been granted a stay of sentencing after he/she has been sentenced to a stay of imprisonment without prison labor or heavier punishment; ④ for whom five years have yet to elapse after he/she was dismissed from a public service position through impeachment, or three years have yet to elapse after he/she was dismissed or given heavier punishment through disciplinary action; ⑤ who was subject to an action equivalent to actions in accordance with KALA and for whom such action has not yet been invalidated; and ⑥ A person who is incompetent, quasi-competent, or has been declared bankrupt and has not yet rehabilitated, and a person who is treated likewise in accordance with the Acts and subordinate statutes of a home country of license. *Id.*

45. *Id.* 7(1).

46. *Id.* 7(2). if the FLC falls under any of the following subparagraphs: ① Where an important part of an application form or documentary evidence is omitted, or there are justifiable grounds to deem the content of the application form or evidence thereof to be false; ② Where there is concern that a FLC may cause damage to his/her client or a third party due

C. What Legal Services Can Be Practiced

Once the U.S. attorney or any foreign attorney is qualified as a FLC in accordance with the FLCA, the FLC can perform legal services in the Korean LSM. Knowing what kinds of legal services can be performed in the LSM in Korea by the FLC under the FLCA becomes important because it defines the scope of business for the FLC in Korea. The legal services which can be performed by the FLC in the Korean LSM include the following: First, the FLC can perform legal services with respect to the laws, regulations, and subordinate statutes of his or her home country of license.⁴⁷ Second, the FLC can also perform legal services with respect to agreements of which the home country of license is a party, and to universally approved international customary law.⁴⁸ Finally, the FLC can represent international arbitration cases.⁴⁹ However, in this case, if the parties of the arbitration case are determined not to apply the above first and second laws to the arbitration, the FLC should not represent the case from the moment of the determination.⁵⁰

D. How Legal Services Can Be Practiced

The FLC can practice in the Korean LSM only if he or she is a partner of a FLCO; a non-partner of a FLC affiliated with a FLCO; or a FLC affiliated with a law office, law firm, law firm in the form of Limited Liability Company, or association of law offices.⁵¹ However, the FLC is prohibited from being affiliated or employed by more than two FLCOs, law offices, law firms, law firms in the form of Limited Liability Company, or associations of law

to his/her severely deteriorated work ability or economic status, and hence the revocation of qualification approval is deemed inevitable to prevent damage thereof; ③ Where a FLC fails to report or submit materials, or falsely reports or submits materials; ④ Where a FLC fails to file an application for registration to the Korean Bar Association without any reasonable grounds, within a year after his/her qualification was approved; ⑤ Where a FLC fails to register within three years after the validation period of the registration expires.

47. *Id.* 24(1).

48. *Id.* 24(2).

49. *Id.* 24(3).

50. *Id.*

51. FLCA art. 25(1).

offices at the same time, or from holding concurrent positions.⁵²

Once the FLC commences practice, he or she must notify the Korean Ministry of Justice if he or she suspends practice temporarily or changes his or her place of work.⁵³ When the FLC performs legal services, he or she must use a job title which combines “Beop jamunsa (Legal Consultant)” with the name of the home country of license accepted in Korea.⁵⁴ In such cases, the FLC may indicate his or her job title and, in the parenthesis, the name of the home country of license combined with a corresponding job title as overseas-licensed lawyer in his or her native language, followed by the name of the home country of license in Korean language combined with an expression “Byeonhosa (attorney-at-law).”⁵⁵ The FLC must clarify his or her home country of license and scope of practice to clients before creating a contract on foreign legal services with clients.⁵⁶ In case of a FLC(O), a FLC(O) must use “Oegukbeop jamun beopryul samuso (FLCO)” which combines the name of the head office with “Foreign Legal Consultant Office” as a suffix,⁵⁷ and the FLC(O) should not establish a branch office in Korea.⁵⁸ The method of the performance of practice by the FLC(O) and the restriction of practice on its partners, etc. should be applied *mutatis mutandis* by the KALA.⁵⁹

However, the FLC should stay in Korea for more than 180 days per year from the starting date of doing business in the Korean LSM. Should the FLC be forced to reside in foreign countries because of personal injury or illness, or in order to provide care for or visiting injured or ill relatives, those periods in foreign countries should be considered residency in Korea.⁶⁰ The FLC and FLC(O) may advertise FLC(O) or the partners of FLC(O)’s home countries of license, education, careers, expertise, performance records, and other matters necessary for publicizing services through media, such as broadcasts, news-

52. *Id.* 25(2).

53. *Id.* 26(1).

54. FLCA art. 27(1).

55. *Ibid.* And No person, other than a FLC, shall use any title or indication which represents or causes to be mistakenly recognized as a Foreign Legal Consultant. *Id.* 27(6).

56. *Id.* 27(5).

57. *Id.* 27(2).

58. *Id.* 23(1).

59. *Id.* 23(2); KALA arts. 50(1), (3)-(6), and the main sentence of (7); KALA art. 52.

60. FLCA arts. 29(1), (2).

papers, magazines, and computer communications.⁶¹ In the meantime, the Korean Minister of Justice and the Korean Bar Association will supervise the activities of the FLC and FLCO⁶² and may require the FLC or the FLCO to submit data on the current status of his/her/its practice and property, details of accepted cases, accounting records, and other necessary data.⁶³ The FLC or FLCO should comply with such requirements.⁶⁴

E. Can Legal Services Be Practiced With Korean Legal Consultant

1. Principle: the First Stage of Opening

Basically, the FLC or FLCO cannot employ any Korean Legal Consultants (hereinafter “KLC”), such as an attorney, judicial scrivener, patent attorney, certified public accountant, tax accountant, or customs broker who could provide legal services.⁶⁵ In addition, the FLC or FLCO cannot deal with clients’ cases in any manner including partnership, affiliation, establishment of a comprehensively collaborative relationship, or joint acceptance of cases.⁶⁶ The FLC or FLCO cannot share compensation or proceeds therefrom with any KLCs.⁶⁷ Furthermore, the FLC or FLCO should not create contracts of association, establish a law firm, hold shares with, or entrust the operation to any KLC or Korean Legal Consultant Offices (hereinafter “KLCO”).⁶⁸

61. *Id.* 31(1). The Korean Bar Association should establish the Foreign Legal Consultant Advertisement Review Committee in order to review matters regarding the FLC(O)’s advertisement. *Id.* 31(2).

62. *Id.* 32.

63. *Id.* 33.

64. *Id.*

65. FLCA art. 34(1). Hereinafter, the Korean Legal Consultants (“KLC”) would mean Korean attorney-at-law, Korean-certified judicial scrivener, Korean-licensed patent attorney, Korean-certified public accountant, Korean-certified tax accountant, or Korean customs broker. *Ibid.*

66. FLCA art. 34(2).

67. *Id.*

68. FLCA art. 34(3). Hereinafter, KLCO would mean law office, law firm, law firm (in the form of Limited Liability Company), association of law offices, Korean-certified judicial scrivener office, joint firm of Korean-certified judicial scriveners, patent lawyer’s office, patent firm, Korean-certified public accountant office, accounting firm, Korean-certified

Furthermore, the FLC or FLCO should not, in any manner, jointly establish or operate, or engage in partnerships with any Korean Legal Consultant Offices.⁶⁹ As a result, the FLC or FLCO should perform their own business, without the involvement of persons or entities mentioned above. However, the FLC may be hired by the KLC or KLCO.

2. Exception: the Second Stage of Opening

As mentioned the above, the FLCA should be amended in order to apply it to the second stage of opening under the KORUS FTA. In the second stage, the KORUS FTA permits U.S. law firms to enter into specific cooperative agreements with Korean law firms to enable U.S. law firms to deal jointly with cases where domestic and foreign legal issues are mixed, and to share profits derived from such cases.⁷⁰ Thus, the FLCO may practice jointly on a case, combined with Korean legal services and foreign legal services, based on a separate contract by case, together with KLCOs⁷¹ only where the FLCO is registered in advance for the joint handling of cases with the Korean Bar Association.⁷² In this case, by January 31 each year, the representative of the FLCO should report the name and business location of the KLCO who is a party to a contract concluded in the previous year by the FLCO to the Korean Bar Association, as well as the date of contract and other matters which are prescribed by the Korean Bar Association.⁷³

tax accountant office, tax firm, Korean customs broker office, and customs firm. *Ibid.*

69. *Id.*

70. See, "Sector: Legal Services – Foreign Legal Consultants," Annex II Schedule of Korea, KORUS FTA (2007), at Annex II-Korea-46, available at <http://www.fta.go.kr/KORUS/img/pdf/e>; Annex II-Korea-46, available at <http://www.fta.go.kr/KORUS/img/pdf/eng/e66.pdf> (last visited Mar. 20, 2012).

71. FLCA art. 34-2(1).

72. If the FLCO intends to jointly handle a case, the representative of the FLCO should file a written application for the registration for joint handling of cases. When the representative files a registration, the Korean Bar Association, should register the office with the list of FLCO without delay and issue the certificate of registration of the FLCO to the applicant. The Korean Bar Association should make a written notice on its purpose to the applicant and the Minister of Justice. FLCA arts. 34-3 (1), (2).

73. FLCA art. 34-5(1).

IV. Conclusion

As of March 15, 2012, the first day of the KORUS FTA's effectuation, 10 U.S. law firms and 1 U.K. law firm filed an application for the FLC approval qualification to the Korean Minister of Justice. As seen in the table below, the sizes of nine of the law firms are bigger than the biggest Korean law firm, KIM & CHANG.⁷⁴ There are some worries that the KORUS FTA will be a typhoon for the Korean LSM, that there will be no surviving Korean law firms following the third stage of opening the Korean LSM to the world scheduled for 2017 in the U.S., since even the top-tier law firms in Korea, such as the KIM & Chang, do not have a comparative advantage over the world's largest law firms which will act as the FLCs in Korea from this year in the Korean LSM.⁷⁵

However, some Korean attorneys of Korean law firms see the bright side: the opening of the Korean LSM would expand the boundaries of Korean legal services to the world legal services market and give Korean law firms the chance to strategically align themselves with the world's competitive law firms.⁷⁶ In any event, the Korean LSM is definitely an attractive market to foreign law firms, including U.S. law firms. With respect to the present data of filing foreign law firms for the FLC in the Korean LSM, the Korean LSM is the most interesting market to the U.S. law firms. Therefore, the U.S. attorney who is interested in doing business in Korea should have a sound grasp of the provisions of the KORUS FTA and the FLCA. Moreover, as of yet, there are no foreign law firms in the Korean LSM, and the first foreign law firms will enter this year under the 2011 Amendment of FLCA, which is suitable for the second stage of opening the Korean LSM. However, as mentioned above, the 2011 Amendment of the FLCA does not reflect any

74. Kim & Chang had 347 attorneys as of 2010 and was selected as the top law firm in Korea in 2011 by THE ASIA PACIFIC LEGAL 500, available at http://www.kimchang.com/USR_main.asp??=LEGAL/NEWS/L_AWARD/view&bbs_no=3592&lang_cd=kr; <http://www.legal500.com/c/south-korea> (last visited Mar. 20, 2012).

75. Jeongpill Lee, *Swirling of Foreign Law Firm to the LSM after the KORUS FTA*, Daily News of Asia Today, Mar. 14, 2012, available at <http://www.asiatoday.co.kr/news/view.asp?seq=610889> (translated by the author, last visited Mar. 20, 2012).

76. Kichul Choi, *Domestic law firms against to the Opening the LSM with overseas expansion*, Newstomato, Mar. 15, 2012, available at <http://www.newstomato.com/ReadNews.aspx?no=233895> (translated by the author, last visited Mar. 20, 2012).

substantial regulations for the third stage of opening. Thus it is of utmost importance that the law firms as FLC or FLCO of the second stage understand the present FLCA in order to perform their business in the Korean LSM and in order for proposals for effective schemes for the near-future amendment of the FLCA for the third stage of opening to be made.

<Table: List of Foreign Law Firms Filed for the FLC Qualification Approval>⁷⁷

| Receipt Order | Name of Law Firm | Nation | Amount of Sales (100,000 US Dollar) | Number of Attorneys | World Ranking |
|---------------|----------------------------------|--------|-------------------------------------|---------------------|---------------|
| 1 | Paul Hastings | U.S. | \$ 9,020 | 917 | 27 |
| 2 | Ropes & Gray | U.S. | \$ 8,225 | 920 | 31 |
| 3 | Sheppard Mullin | U.S. | \$ 3,680 | 479 | 95 |
| 4 | Cleary Gottlieb | U.S. | \$ 10,500 | 1,055 | 21 |
| 5 | Cohen & Gresser | U.S. | N/A | 40 | N/A |
| 6 | Squire Sanders | U.S. | \$ 5,180 | 838 | 64 |
| 7 | Law Offices of Park & Associates | U.S. | N/A | 4 | N/A |
| 8 | Covington & Burling | U.S. | \$ 5,815 | 698 | 52 |
| 9 | McDermott Will & Emery LLP | U.S. | \$ 7,885 | 1,001 | 32 |
| 10 | Clifford Chance | U.K. | \$ 23,000 | 2,586 | 3 |
| 11 | Simpson Thacher & Bartler | U.S. | \$ 9,235 | 841 | 25 |

77. See *supra*, Fns. 75 and 76. The majority of the data in this table has been compiled by the Korean Ministry of Justice. Some numbers have been separately acquired by the law firms' website by the author.

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