March 10, 2015

International Legal Affairs Division
Ministry of Justice of the Republic of Korea
Building No. 1, Government Complex-Gwacheon
Jungang-dong 1, Gwacheon-si
Gyeonggi-do, Republic of Korea

Dear Sirs:

On behalf of the American Bar Association, I write in regard to the ongoing initiative to develop legislation necessary to implement the third stage of the legal services provisions in the Free Trade Agreement between the Republic of Korea and the United States (Korea-US FTA).

The Korea-US FTA marked a significant advance in facilitating cooperation between the U.S. and Korean legal professions, which in turn has had a positive impact on the promotion of trade and investment between our two countries. The third stage of the implementation, authorizing joint ventures, will be a key component of the ultimate success of the legal services regime. We are concerned, however, that some of the proposals potentially being considered are overly restrictive and would adversely impact the ability of both U.S. and Korean lawyers and firms to effectively serve their clients.

We understand that the pending proposal may include a provision narrowly defining “joint venture” to include only a separately capitalized de novo juridical person with a foreign law firm partner and a Korean law firm partner as equity holders. Further, we understand that the structure and operation of the joint ventures would be restricted by measures such as the following: requiring a majority number of Korea-qualified partners; restricting the amount of distributions that may be made to non-Korea qualified partners of the joint venture; and requiring the Korean law firm partner in the joint venture to have been existence for a certain number of years, and to have a minimum number of Korea-qualified partners.

We would instead encourage that the new regime allow for maximum flexibility so that the foreign law firm may instead maintain its current representative office structure and hire Korean partners and associates as needed or, alternatively, to combine and integrate fully with a Korean law firm. Korean and U.S. firms themselves are in the best position to determine the structure, personnel, and operating flexibility necessary to serve the interests of both the firms and their clients. The ABA recognized this fact by including robust association and affiliation
rights within its own Model Rule for the Licensing and Practice of Foreign Legal Consultants, which has been adopted by a majority of U.S. jurisdictions.

The intent of the commitments made in the legal services market opening provisions of the Korea-US FTA would be undermined by adoption of legislation that imposes rigid requirements on the structure and operations of joint venture firms. This would be to the detriment of both the firms and their clients. We respectfully request that these factors will be seriously considered as the process of drafting the legislation moves forward.

Thank you for the opportunity to share our views.

Sincerely,

Thomas Susman
Director
Governmental Affairs Office