May 7, 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 (“ABA”), I appreciate the opportunity to submit the following comments in response to the proposed draft amendment to the Foreign Legal Consultant Act (“draft amendment”) issued by the Ministry of Justice on March 27, 2015.

The American Bar Association is among the world’s largest voluntary professional organizations, with a membership of over 350,000 lawyers, judges, legal academics, and law students. The ABA has members located in over 130 countries and our more than 250 members in the Republic of Korea include both U.S.- and Korea-licensed lawyers. These lawyers have a significant interest in the successful implementation of the third-phase opening of the legal services market under the Free Trade Agreement between the Republic of Korea and the United States (Korea-US FTA).

As a general matter, we are concerned that the draft amendment is far more restrictive than what is required under the text of the Korea-US FTA, and, from our understanding, than what was contemplated by the parties during the negotiation of the treaty. The U.S. law firms that have entered the Korean market made substantial investments to establish their operations and did so in anticipation of a legal services regime that would, upon implementation of the third-phase opening, enable them to offer integrated services in demand by their Korean and U.S. clients alike. The draft amendment will prevent them from doing so, and would similarly limit opportunities for Korean lawyers and law firms to affiliate with U.S. firms.

For example, the draft amendment defines “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. The text of the FTA does not mandate such a narrow reading of the term. A joint venture should instead be more liberally interpreted to allow U.S. and Korean lawyers and law firms more flexibility to determine the nature of their affiliation and the structure of their joint operations. We would therefore support a model that would allow a U.S. law firm to 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. This is the model that the ABA has supported in terms of foreign lawyer and law firm
access in the U.S. and a majority of U.S. jurisdictions have adopted rules that follow this model.

Further, the structure and operation of the joint ventures under the draft amendment would be
significantly restricted by measures such as: 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 note that the text of the FTA does provide that Korea “may impose
restrictions on the proportion of voting shares or equity interests of the joint venture firms.”
However, this provision is discretionary rather than mandatory.

To put in place such restrictive measures as those included in the draft amendment to
implement the third phase of legal services market liberalization is effectively to not implement
it at all. It is likely that U.S. firms (and other foreign firms from countries party to an FTA) may
simply decline to pursue joint ventures with Korean firms, and thereby frustrate the intent of
the agreement reached under the FTA. This ultimately harms the interests of both Korean and
U.S. lawyers and law firms, as well as their clients.

The ABA has long supported liberalization of access to the legal service markets, both in the
U.S. and abroad, as a means to enhance the ability of lawyers and law firms to serve their
clients effectively through cross-border practice. We take this view not to advance one group
of lawyers or law firms, but rather to ensure that all clients, regardless of jurisdiction, have the
ability to benefit from the advice of their counsel of choice. The ABA believes that allowing
these activities is critical not only for the mutual benefit of our legal practitioners and their
clients, but also to fulfilling the goal of the Korea-US FTA to promote the robust growth of trade
and investment between our two countries. We hope that you will take these issues into
account as you consider the draft amendment.

Thank you for this opportunity to share our comments.

Sincerely,

William C. Hubbard
President