April 11, 2016

Ministry of Justice of the Republic of Korea
Building No. 1, Government Complex-Gwacheon
47, Gwanmun-ro, Gwacheon-si
Gyeongi-do 13809, Republic of Korea

Dear Sirs:

On behalf of the American Bar Association (ABA), I respectfully submit the following comments regarding the amended Foreign Legal Consultant Act (FLCA) and the subsequent amendments to the Enforcement Decree and Enforcement Rules proclaimed on March 2, 2016 by the Ministry of Justice.

The ABA is among the world's largest voluntary professional organizations, with a membership of over 400,000 lawyers, judges, legal academics, and law students. The ABA has members in over 130 countries and our more than 250 members in the Republic of Korea include both U.S.- and Korea-licensed lawyers. The opening of the Korean legal services market is of significant interest to our members and to the American legal community and, as such, we have followed closely the developments that have taken place pursuant to the Free Trade Agreement between the Republic of Korea and the United States (KORUS).

We appreciated the opportunity to offer comments previously in response to the proposed draft amendment to the Foreign Legal Consultant Act issued by the Ministry of Justice on March 27, 2015. At that time, we expressed concerns that many of the provisions in the proposed draft were overly restrictive and, in the ABA’s view, did not comply with the letter or spirit of the agreement under KORUS. While we recognize some minor changes were made to the legislation prior to its passage by the National Assembly on February 5, 2016, we were disappointed to note that the final bill substantially maintained the restrictions that were the focus of the ABA comments. Therefore, we would like to reiterate our views on several key aspects of the newly enacted FLCA.

It is our concern that under the new law, the nearly two dozen U.S. law firms that have already established offices in Seoul would find it difficult or even impossible to exercise their choice to be engaged in the practice of local law as negotiated and embodied in KORUS. We highlight again here three specific provisions which, among others, create serious impediments to the successful implementation of the final stage of the legal services provisions of KORUS.

- The imposition of a substantial in-time requirement for the formation of joint-ventures between U.S. and Korean firms presents a serious obstacle. Article 35(8) of the FLCA requires that a Korean firm be in existence for three years before it can form a joint-venture with a U.S. firm. Given the structure of the Korean legal market and the absence of small firms serving international clients, U.S. firms choosing to enter the local market will not merge with existing
firms, but need, instead, to hire skilled Korean lawyers and form joint-ventures with them. The three-year requirement makes this impossible since the Korean lawyers sought by U.S. firms are spread throughout a relatively small number of long-established Korean law firms that now compete for in-bound international clients that require local legal services. The ABA believes that the three-year requirement will effectively prevent the formation of the envisioned joint ventures. It also significantly impinges on the freedom of association of Korean lawyers, denying most the opportunity to benefit from the experience of practicing at an international law firm.

• While KORUS permits Korea to impose “restrictions on the proportion of voting shares or equity interests of the joint venture firms,” Article 35(16) of the FLCA mandates a 49-51 U.S.-Korean equity ratio. After making substantial investments to open, staff and equip offices in Korea, American law firms would not be able to, and should not be forced to, agree to such a restrictive financial arrangement. The ABA believes equity ratios should be established by private parties rather than by regulatory fiat; however, if they are to be established by law, they should at a minimum be fair and practicable. A joint venture should instead 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.

• Articles 24 and 35(19) of the FLCA places certain practice areas such intellectual property, labor and real estate laws off limits to joint venture law firms. We would note that KORUS did not contain any provisions to exclude specific legal subject matter, and we believe this practice restriction violates the agreement. Moreover, it unfairly restricts Korean-licensed lawyers choosing to participate in a joint venture from practicing the full scope of law that they are qualified to practice, and puts them at a disadvantage compared to their colleagues at Korean firms.

It is likely that these and other restrictive measures enacted under the FLCA will result in U.S. firms (and other foreign firms from countries party to an FTA) declining to pursue joint ventures with Korean firms, and thereby frustrate the intent of the agreement. This harms the interests of both Korean and U.S. lawyers and law firms, as well as their clients. We believe it also ultimately undermines the broader purpose of KORUS to increase cross-border transactions and strengthen the economic relationship between our two countries.

We hope that Korea will reconsider and further amend the FLCA to provide for more robust and flexible associations between U.S. and Korean law firms and lawyers. Thank you very much for your consideration of our comments.

Sincerely,

Thomas Susman
Director
Governmental Affairs Office