

Korea Legal Market Developments: Liberalization, Phase 3

by Laurie Lebrun

On April 14, 2015, Major, Lindsey & Africa Partner, Laurie Lebrun, was invited to speak at a meeting of the Legal Affairs Committee of the American Chamber of Commerce in Korea to provide an update on the ongoing liberalization of the legal market in Korea. The presentation, entitled **Liberalization of the legal services market in Korea - Looking back at the past 3 years and looking forward to phase 3** drew an audience of nearly 70 lawyers from domestic and foreign law firms, as well as counsel from domestic and multinational companies.

It had been just over three years since Ms. Lebrun first gave a presentation to the AmCham group addressing the potential impact of the EU and US Free Trade Agreements on the legal market in Korea. In these past three years, Ms. Lebrun has remained actively involved in the Seoul legal market, assisting international law firms and multinational companies in hiring lawyers in Korea. This article highlights a few key points made during her recent presentation.

First, a review of the regulatory framework for liberalization established by the FTAs may be instructive. In Phase 1, international law firms were permitted to establish branch offices in Seoul provided that they only advised their clients on foreign law. In Phase 2, the Seoul offices of foreign firms were permitted to enter into fee-sharing relationships with Korean law firms in order to facilitate their ability to work together on cross-border matters for the same client when such matters required both Korean and foreign law advice. And, finally, in the still to come Phase 3, foreign and Korean lawyers will theoretically be permitted to work together in some sort of still to be determined partnership arrangement.

Today, there are 22 international law firms that have opened offices in Seoul. We are aware of several other firms that are getting close to announcing new Seoul offices as well, and at least a handful of others that are still considering the possibility. Ms. Lebrun estimates that there will be approximately 30 international firms with offices in Seoul by the time Phase 3 begins for UK firms in July 2016.

The first wave of market entrants was comprised of three firms opening their doors in July of 2012. One UK firm, Clifford Chance, and two US firms, Ropes & Gray and Sheppard Mullin. All three firms had important Korea practices in place prior to the passage of the FTAs, but they were arguably not the biggest or most well-known international firms doing business in Korea at that time. The fall of 2012 saw the largest influx of foreign firms into Seoul, with nine firms opening their doors in a two month period. This second wave saw the entry of some of the biggest foreign offices to date, including Cleary Gottlieb, Paul Hastings, Simpson

Thacher and others. By May of 2013, another seven firms had joined the increasingly crowded market of new Seoul offices. But the rate and number of new entrants then started to subside. Since the summer of 2013, only four more firms have opened offices in Seoul.

The results of Phase 1 for most firms have been promising. Firms that initially entered Seoul with only one or two partners, have started hiring additional associates to staff their matters locally and some firms are starting to consider whether they should add additional partners to their growing offices. On the less positive side, the economy in Korea has not been exactly cooperating. There also is a concern that internal firm pressures to show positive early signs of a growing business in the new offices is leading certain firms to try to get deals by becoming lower cost providers rather than by improving their client relationships and market reputation by providing excellent legal services.

While Phase 1 was responsible for major changes in the competitive landscape in the legal services market in Korea, Phase 2 has had almost no additional impact. Its main objective was to permit the foreign law firms to enter into cooperative fee-sharing arrangements with Korean law firms when working together jointly on client matters that had a mix of Korean and foreign law. In order to do so, firms were expected to file reports notifying the Ministry of Justice (MOJ) of the contemplated fee-sharing. Of course, international law firms and Korean firms have been jointly representing clients on matters with cross-border components since long before the FTAs were passed and continued to do so in Phase 1 of the liberalization process, whether or not they had established a Seoul office. The added administrative burden technically introduced in Phase 2 has essentially been ignored by the firms as they go about their business as usual.

Time is now ticking for the regulators as they prepare the necessary legal framework for Phase 3, which is scheduled to go into effect for UK firms in July 2016, followed by the US firms in March of 2017. As contemplated by the FTAs, in Phase 3 international law firms will theoretically be able to enter into joint ventures with Korean law firms and such joint ventures will be permitted to employ both foreign and Korean qualified lawyers. However, the Foreign Legal Consultant Act needs to be revised to clarify the specifics of these permissible joint ventures. As recently as March 27, 2015, the MOJ issued a draft of the proposed revisions to The Foreign Legal Consultants Act, starting a 40-day public comment period which will end in early May. Based on this draft, it appears that an overly protectionist regulatory structure will be adopted that will make it commercially impracticable for foreign firms to open such joint ventures in Korea, essentially nullifying

the purpose of Phase 3.

For truly global international law firms such as DLA Piper, K&L Gates and others with broad international platforms, Phase 3 represents a potential opportunity to expand their business in Korea exponentially, so they care deeply about the rules that will be adopted. Currently, many of these global firms regularly refer work to Korean law firms that they cannot handle themselves as they lack Korean law capability. These firms hope that in Phase 3 they will be able to add a domestic law practice to their Seoul office and retain this work for themselves, thereby increasing the overall profitability of their Seoul office.

Korean lawyers and Korean companies would also benefit from the further liberalization of the legal market in Korea. The establishment of successful joint ventures between foreign and Korean law firms could lead to the provision of more seamless, cost-effective and higher quality legal services that would encourage an increased volume of cross-border transactions, contributing to economic growth in Korea. In addition, such joint ventures could provide additional work opportunities for Korean lawyers at a time when some lawyers are finding it more difficult to secure employment. Promoting collaboration between foreign qualified and Korean lawyers should also create an optimal learning environment for young lawyers who are interested in working on international matters. These types of benefits are aligned with the key goals of the free trade agreement. Increased competition in the Korean legal market and the creation of a regulatory framework that promotes the free association of lawyers should be beneficial for both consumers of legal services and the lawyers themselves.

All of this discussion may be moot, however, if the regulatory framework adopted is aimed to discourage such collaboration between lawyers out of fear that increased competition will actually have a negative impact on Korean law firms. The following key proposals for Phase 3 have now been issued in writing by the MOJ as part of the March 27th proposed amendments to the Foreign Legal Consultant Act: 1) the principals of the Joint Venture Law Firms ("JVLF") will be required to be foreign and Korean law firms, not individual partners; 2) the foreign law firm and the Korean law firm forming the JVLF will be required to participate as "unlimited liability partners"; 3) the law firms that form the JVLF must have been legally established and operated for 5 years or more prior to the creation of the JVLF; 4) the law firms that establish the JVLF must each have more than 5 attorneys who have at least 5 years of experience; 5) the equity ratio of the foreign law firm in the JVLF will be limited to 49%

and the decision-making process of the JVLF must be based on such equity ratio of the joint venture partners; 6) the number of the partner level attorneys from the foreign law firm in the JVLF may not be more than the number of the partner level attorneys from the Korean law firm; 7) each firm must have no fewer than 3 lawyers who are partners in their respective firms; and 8) Foreign Legal Consultants will be restricted from providing business instructions or *unduly managing* Korean attorneys on matters outside of such Foreign Legal Consultant's scope of work. There are other proposals, but these listed ones have elicited the greatest level of discussion among the Seoul legal community.

In essence, these provisions would work together to create a framework under which foreign firms have unlimited liability, no management control, and no ability to select the Korean qualified lawyers with whom they wish to associate. The anti-cherry picking rules which require a Korean firm to be established for five years prior to entering into a JVLF arrangement, would completely foreclose the opportunity for groups of lawyers from the top Korean firms to break off and join the foreign firms in the creation of JVLFs. In order to create profitable joint ventures that align with the high-end clients and sophisticated cross-border business of the foreign firms, the JVLFs will need to attract Korean qualified lawyers at the top of their respective fields who have strong English communication skills and top-notch reputations in the Korean market. It just does not make sense for foreign firms to pursue JVLFs with an entire large full-service Korean law firm that does a high percentage of purely domestic work. Thus, it is not surprising that representatives of the foreign firms in Korea are seeking to revise the proposed rules before they become law.

Following the ongoing 40-day public comment period, the proposed revised Act will be sent to the Judicial Committee of the National Assembly, providing one last opportunity for members of the legal community to try to have their voices heard before the proposed rules for Phase 3 are sent to the Main Floor of the National Assembly, most likely in September. Where things eventually will stand only time can tell. But anyone with a stake in the market should weigh in on this discussion now, as advocacy efforts from the various constituencies will be critical to the outcome.

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