

LIBERALIZATION OF LEGAL SERVICES MARKET IN KOREA

Dr. Woong Shik Shin

Shin & Shin

Seoul, Korea

Tel: 822-565-6300

Fax: 822-565-7400

History & Background

Problems of liberalizing legal services market to foreign lawyers first started in 1974 between France and U.S. on a bilateral basis. Richard Nixon, then the President of U.S., who was also a lawyer, advocated the opening of legal services market to American lawyers in France. France reluctantly opened its legal services market to U.S. lawyers, and in return, New York reciprocated by opening its bar membership to French lawyers to practice within the State of New York.

In early 1980's, when U.S. was facing huge trade deficit, the U.S. Trade Representative at the time urged Japan to open its legal services market to U.S. and Japan to eliminate non-trade barriers. Thus, the Japanese Bar Association and American Bar Association began to discuss Japan's liberalization of its legal services market to foreign lawyers. Then, through GATS (General Agreement on Trade and Services) and Uruguay Round of 1986, Japan facilitated the opening of its legal services market. On May 23, 1986, Japan finally enacted a special law to permit foreign lawyers to practice in Japan on a limited basis. The law went into effect as of April 1, 1987.

Problem of liberalizing legal services market has also been made an issue in Korea-U.S. trade relationship. And since 1986, Korea has been under bilateral pressure from U.S. via Dialogue for Economic Cooperation between U.S. and Korea to liberalize Korean legal services market to foreign lawyers.

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Major Issues

Major issues to consider in liberalizing legal services market to foreign lawyers are as follows:

1) Whether foreign lawyers are permitted to establish a legal entity in the host country to limit their professional liability.

- 2) Whether foreign lawyers are permitted to participate in host country's local practice by equity participation. If so, then by how much percentage of participation?
- 3) Whether foreign lawyers can form partnership, affiliation or hire, if necessary, host country's local lawyers.
- 4) Whether lawyers will be permitted to form multi-disciplinary partnership such as a partnership between law and accounting firms.
- 5) Whether there will be a citizenship or residency requirement.
- 6) Whether opening of legal services market will be on reciprocal basis.
- 7) How to internationally standardize and recognize legal qualification and license?

Japan as an Illustration

Each country's experience and process in liberalizing its legal services market would be different from other countries, but due to many similarities between Korean and Japanese legal services market, I think Japan's experience would serve as a good illustration for Korea's path for liberalizing its legal services market.

In 1945 during U.S. occupation of Japan, America's provisional government in Japan admitted about 70 U.S. lawyers into Japanese Bar. Currently, there are about 10 U.S. lawyers still registered with Japanese Bar Association and practicing in Japan.

Since 1982, U.S. pressure on liberalizing Japanese legal services market was becoming serious so, Japan and U.S. formally opened talks to discuss the opening of Japanese legal services market to American lawyers on a bilateral basis. Moreover, in 1986, Uruguay Round put additional pressure on Japan to liberalize its legal services market to all foreigners.

Finally, on May 23, 1986, Japan enacted "Special Measures Law Concerning the Handling of Legal Business by Foreign Lawyers" and formally opened its legal services market to all foreign lawyers. However, Japan's Special Law had various restrictions such as:

- 1) foreign lawyers may only practice in international matters for which they have been trained and licensed;
- 2) only individual foreign lawyers may practice, and foreign law firms are not permitted to practice; and
- 3) foreign lawyers are not permitted to form partnership or association with local Japanese lawyers, or hire local Japanese lawyers.

In November 1989, the U.S. Trade Representative criticized Japan's Special Law of 1986 for having severe restrictions and urged Japan to further liberalize its legal services market. He particularly emphasized and demanded that foreign lawyers should be allowed to form a partnership with local Japanese lawyers and if necessary, to hire Japanese lawyers.

In June 1994, Japan amended Special Law of 1986 and further liberalized its legal services market in response

to increasing international pressure. The Special Law of 1986 as amended in 1986 as amended in 1994 still requires foreign lawyers to practice only in international matters, but foreign lawyers are now permitted to form project partnership with local Japanese lawyers to work together on specific cases

. As of October 1991, there were 81 foreign lawyers practicing locally in Japan. Out of 81 foreign lawyer, 60 of them were American lawyers, 20 of them were British lawyers and one of them was a German lawyer. Out of 60 American lawyers, 6 of them were local Japanese who received their bar membership from the U.S.

Korea's Road to Liberalizing its Legal Services Market

In 1945, Korean Lawyer's Law provided for foreign lawyers to receive honorary Korean Bar Membership. Between 1945 and 1953, during the period after Korea Won its independence from Japan and up to the end of Korean War, 299 foreign lawyers received honorary Korean Bar Membership. Although an additional approval was required for honorary bar members to actually practice in Korea, none of 299 foreign lawyers applied for such approvals. Even if any of the 299 honorary members sought to practice in Korea, it would not have been permitted under Korean Immigration Law, since it does not permit non-Koreans to practice law in Korea.

In 1986 Korea participated in the Uruguay Round where Korea opened its insurance, finance and telecommunication markets. Although there was a pressure to open Korea's legal services market, it was held over in favor of opening insurance, finance and other markets which were greater in size and amount.

In 1992, during the Dialogue for Economic Cooperation between U.S. and Korea, Korea was put on pressure to liberalize its legal services market at least to permit "international affiliation" between U.S. law firms and local Korean law firms. In 1994, issue of liberalizing Korean legal services market was raised again as a bilateral issue between U.S. and Korea.

On March 29, 1995, Korea applied for a membership in the OECD. As a part of the application process, Korea had to satisfy some initial qualification criteria in the legal services market. Thus, in December 1996, Korea voluntarily removed legal services market from prohibitive category to free category by amending Korea's Foreign Investment Law. In the same year, Korea also voluntarily amended its Lawyer's Law to permit non-Korean citizens to sit for the Korean bar examination and to permit legal practice. However in reality, it is impossible for foreign lawyers to pass the Korean bar examination, mostly because of foreign lawyer's lack of fluency in Korean language.

Korea at last became a member of the OECD on December 12, 1996. Consequently, Korea's membership in the OECD has caused greater pressure on Korea to liberalize its legal services market than ever before. OECD widely advocates liberalization of legal services market and has "OECD Workshop on Professional Services" to facilitate opening of such market.

The OECD workshop first met in 1994 and met for a second time in 1995 before Korea became a member of OECD in 1997. The fact that Korea was unable to participate in the two OECD Workshop meetings places Korea in a precarious position. Though Korea did not have any input in the two OECD Workshop meetings, by virtue of Korea's membership on OECD, it still has to follow and be bound by OECD group resolution as a whole. The third and the most recent OECD workshop was held on February 21, 1997 in Paris on which Korea participated.

Korea is now in a dilemma because it has to follow OECD's more stringent collective resolution on liberalizing its legal services market by virtue of its membership in OECD. Under WTO, Korea could have delayed liberalization of legal services market, since WTO permits progressive liberalization individually tailored to each country's unique situation. Now, negotiation by Korean Government with other WTO member countries on individual basis or against OECD's decision has become very difficult.

Korea's commitment to liberalizing its legal services market was uncertain and its process unclear before Korea's OECD membership. But now, Korea's road to liberalizing its legal services market has become more definite and the issues more crystallized. Like Japan, Korea will have to open its legal services market in more definite terms and under schedule.

Currently, the Korean Bar Association and government ministries have various forms of study groups on the effects of liberalizing Korean legal services market. In fact, the Korean Bar Association has been studying issues regarding foreign lawyers working in Korea under a Korean Bar Association panel which was established in 1986.

Current Legal Services Market in Korea

There are only about 3,000 practicing attorneys as of 1997 in Korea and most of them are solo practitioners. There are about 70 law firms or law partnerships and only about 7 of the law firms have over 10 lawyers as members of the firm. Korean lawyers are much like barristers in England where their practice is almost exclusively in litigation. This is very different from U.S., where there are over 700,000 lawyers and their roles as lawyers are multifaceted. Lawyers in U.S. have close ties with business enterprises and law firms themselves tend to serve as information and consulting business firms. In fact, lawyers have come to be a part of just about every business process and commercial decision-making in America.

U.S. lawyers are trained differently from Korean lawyers and equipped with vastly different professional education received from professional law schools. Korean lawyers are university graduates mostly with only undergraduate law degrees who attended judicial training school for subsequent professional training and education.

During the growth of Korean economy, Korea has come to see the need for "American style" lawyers. Consequently, such small number of practicing lawyers in Korea presents a problem. On one level, there are too few practicing Korean lawyers to supply the high demand of Korea's present and future booming market for more American style lawyers. On another level, Korean legal culture, legal education and training do not sufficiently equip Korean lawyers to provide Korea's ever increasing need for American style lawyers. Korea's selection process of its lawyers is very severe and highly competitive. Bar examination is extremely difficult and is further exacerbated by quota on how many lawyers to admit each year.

Under the most recent attempts at reforming Korean legal profession, the Korean Bar Association decided to increase the number of lawyers admitted to the Bar each year until it reaches up to 600 per year. Until about ten years ago, only about 50 to 100 lawyers were admitted to the bar each year. Then about 3 years ago, the number of lawyers admitted to the bar steadily increased to 300 per year. Under the current reform, lawyers admitted to the bar will increase to 400, then to 500 and then to 600 by year 1998.

Out of total number of lawyers admitted to the Korean Bar each year, about one third of them go to courts to

become judges, another one third of them go to prosecutor's office to become prosecutors and only remaining one third of them go on to private practice as lawyers. In Korea, however there are quasi-lawyers. Currently, there are about 250 patent agents, 2,600 judicial scriveners and 2,700 tax agents.

American Legal Services Market for Foreign Lawyers

Currently in U.S., only fifteen states permit bar membership to foreign lawyers including New York and California. New York opened its bar membership to foreigners in 1974 and California opened its bar membership in 1993. In New York, there are 169 foreign lawyers with New York bar. Out of 169 foreign lawyers, there is only one Japanese lawyer and there is no Korean lawyer. In California, there are eight foreign lawyers with California Bar Membership. Out of eight foreign lawyers, there is only one Korean lawyer. Following are the fifteen states and the year in which those states opened its bar membership to foreign lawyers:

New York:	6/6/74	Alaska:	1/15/89
Michigan:	11/27/85	Oregon:	4/2/90
Washington, D.C.:	3/11/86	Washington:	9/1/90
Hawaii:	6/1/86	Illinois:	12/7/90
California:	4/2/87	Connecticut:	10/1/91
Texas:	1/1/88	Georgia:	2/1/92
Ohio:	1/1/89	Florida:	1/1/93
New Jersey	1/2/89		

Many Koreans would ask how U.S. can push Korea's liberalization of bar membership when U.S. as a whole country has not yet liberalized its own legal services market. Despite U.S.'s federalism form of government, liberalization of legal services market should be on country to country basis, not on country to state basis.

It is worthy of note that China has opened its legal services market in 1995. So far, there are about 20 foreign law firms practicing mainly from Beijing and Shanghai. In Spain recently, there was a merger between a law firm and an accounting firm indicating a development of multi-disciplinary professional services market.

Future Development of Korean Legal Services Market

Korea is at its last stages of industrialized society and ranks as 11th largest economic power in the world. This new era calls for a change in Korean lawyers' traditional role in providing legal services which is primarily in litigation and dispute conciliation.

With coming of a new era, Korean lawyers must provide more American style legal services. Korean lawyers must form close ties with their business and corporate clients in providing wide range of legal services beyond litigation to include consultation, legal and business advice, business administration advice, legal risk analysis and management, etc.

Currently, Korean lawyers are not fully prepared to fill these needs due to lack of American style professional education and training. In the face of increasing demand for American style legal services, only small number

of Korean lawyers are actually qualified to provide such services. This shortage of American style "Super Lawyers" in Korea will become even more serious in the near future.

Already, there are serious problems of conflict of interest, because the number of qualified Korean providing legal services is too small compared to demand. In addition, there is no professional liability insurance for Korean lawyers. And this cause Korean lawyers to be more conservative and prudent in their practice, thereby limiting their range of legal practice.

Ever vigilant standards of professional ethics for lawyers and active self-monitoring of the profession by the Korean Bar Association will also have to be studied and implemented in order to open the Korean legal services market to foreign lawyers in the near future.

Demand for "Super Lawyers" will increase in geometric proportion and Korea's legal services market must be prepared to keep up with the demand of Korea's new economic, business and social culture. In this respect, I think cooperation with foreign lawyers will be essential in the development of Korea's new legal culture to be merged with Korea's traditional legal culture.

Foreign Lawyers in Korea

Foreign lawyers have an important role to play in liberalization of Korean legal services market and development of a new era in Korean legal services Market. For some time in the near future, foreign lawyers in Korea will have to fill the needs and the void in Korea's increasing demand for American style lawyers. This is especially true for Korean-American lawyers who were educated and trained in U.S.

Currently, there are many foreign lawyers working in Korea as foreign legal consultants in the capacity of associate attorneys in law firms and as in-house counsels in private companies. The advent of foreign law firms in Korea will soon be inevitable.