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# LEGAL MARKET LIBERALIZATION IN SOUTH KOREA: PREPARATIONS FOR CHANGE

Hyung Tae Kim<sup>†</sup>

*Abstract:* South Korea's World Trade Organization membership requires the "Land of the Morning Calm" to liberalize its legal market. South Korea submitted its proposal for liberalization in the spring of 2003 and planned to begin opening its legal market in 2005. However, disagreements between South Korea and other World Trade Organization members over the scope of liberalization have led to a one-year negotiation period extension, pushing back the planned market opening to early 2007. The Korean Bar Association has strongly opposed liberalization, claiming that liberalization will lead to the foreign domination of South Korea's legal market. On the other hand, most South Korean and foreign businesses, as well as foreign lawyers, have suggested that such concerns are exaggerated and that the benefits from liberalization will far outweigh its harms. Indeed, legal market liberalization will not only benefit businesses and lawyers by improving legal services quality and lowering legal costs, but it will also promote South Korea's rise as an important financial hub in East Asia. This Comment asserts that despite the potential benefits, liberalization can only be successful if South Korea simultaneously implements proper legislative revisions, reforms enforcement and oversight mechanisms, and promotes domestic firm expansion and educational reform.

## I. INTRODUCTION

South Korea ("Korea") plans to liberalize its legal market in January of 2007, in compliance with its World Trade Organization ("WTO") obligations.<sup>1</sup> Korea currently possesses one of the most restricted legal markets in the world.<sup>2</sup> In accordance with the Doha Declaration and the General Agreement on Trade in Services ("GATS"), the Korean government submitted its initial offer for legal market liberalization to the WTO in

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<sup>1</sup> Seung Jin Choi, *We-guk Byun-ho-sa-ga Ohn-da, Guk-ne Bup-ryul-shi-jang Cho-to-hwa Woo-ryu* [Foreign Lawyers to Arrive, Fears of Devastation of Domestic Legal Market], CBS, Nocutnews.com (Sept. 27, 2004) at <http://www.cbs.co.kr/nocut/show.asp?id=29228>; see also Young-Hwa Kim, *Guk-Nae Law-Firm Dae-hyung/Jun-moon-hwa-ro Bup-ryul-shi-jang Gae-bang-pa-go Dol-pa* [Breaking through the Wave of Legal Market Liberalization through the Enlargement and Specialization of Domestic Firms], KOREA TIMES, Sept. 12, 2004, available at <http://search.hankooki.com/>.

<sup>2</sup> The European Union Chamber of Commerce in Korea ("EUCCK"), in its yearly publication, described Korea as "one of the last countries in Asia which has not even partially liberalized its legal services market." See *Legal Services Suffer from Closed Market, Elite System*, KOREA.NET, May 20, 2001, at [http://www.korea.net/News/News/NewsView.asp?serial\\_no=20010520014](http://www.korea.net/News/News/NewsView.asp?serial_no=20010520014) [hereinafter *Elite System*].

March of 2003.<sup>3</sup> GATS was a commitment by WTO member governments to undertake successive rounds of negotiations to progressively liberalize trade in services, including legal services. It officially came into effect in 2000 when the first round of negotiations was initiated.<sup>4</sup> The Doha Declaration of 2001 reaffirmed various negotiation guidelines of GATS and set forth a number of important timelines.<sup>5</sup> Despite earlier plans to initiate the liberalization process by 2005, the WTO has pushed back the planned liberalization date to early 2007 due to disputes between Korea and other WTO countries over the extent of legal market liberalization.<sup>6</sup>

Korea's 2003 proposal to liberalize its legal market laid out a plan of limited liberalization, similar to that of Japan during the 1990s,<sup>7</sup> which would allow foreign firms to open offices in Seoul under their official firm titles.<sup>8</sup> This seemed to be a step in the right direction, because Japan managed successfully to liberalize its market and benefit from the change, while simultaneously protecting its domestic legal industry.<sup>9</sup> Although Korea's proposal calls for a less extensive liberalization than Japan's current level of liberalization,<sup>10</sup> Korea can hope to attain the benefits of limited liberalization similar to those of Japan. Under the Korean plan, foreign firms would only be able to provide services dealing with foreign corporate and international law and would be prohibited from offering any domestic legal advice, forming partnerships with Korean firms, or employing local

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<sup>3</sup> Jee-Yeon Seo, *Closed Legal Services Market Hinders Foreign Investment*, KOREA TIMES, Mar. 12, 2004, available at <http://search.hankooki.com/times/>.

<sup>4</sup> WORLD TRADE ORGANIZATION, THE DOHA DECLARATION EXPLAINED, at [http://www.wto.org/english/tratop\\_e/dda\\_e/dohaexplained\\_e.htm](http://www.wto.org/english/tratop_e/dda_e/dohaexplained_e.htm) (last visited Nov. 14, 2005) [hereinafter *WTO Doha*].

<sup>5</sup> *Id.*

<sup>6</sup> Seung Jin Choi, *supra* note 1.

<sup>7</sup> See R. Daniel Kelemen & Eric C. Sibbitt, *The Americanization of Japanese Law*, 23 U. PA. J. INT'L ECON. L. 269, 300 (2002).

<sup>8</sup> See Richard Tromans, *Korea to Follow Japan's JV Model*, *Legal Week*, KOREA TIMES, Jan. 15, 2004, available at <http://www.legalweek.net/PrintItem.asp?id=17898>.

<sup>9</sup> Both Japanese and foreign companies agree that foreign lawyers are valuable to their business. In a 1996-1998 survey of 2000 foreign and 2000 Japanese companies, over seventy-eight percent responded favorably to legal market liberalization. See Leonardo Ciano & Drew Martin, *Japan's Foreign Lawyer Law: Disparate Views*, ALSB INT'L BUS. L.J. 101 (2001); see also Misasha Suzuki, *The Protectionist Bar Against Foreign Lawyers in Japan, China, and Korea: Domestic Control in the Face of Internationalization*, 16 COLUMN. J. ASIAN. L. 385, 395 (2003).

China is another country that has successfully balanced foreign lawyers' access with domestic firm protection through a limited liberalization policy. *Bit-jang-pul-li-neun Bup-ryul Shi-jang: We-guk Law Firm-gan Gyung-jeng-yoo-do* [Legal Market Liberalization: Promoting Competition Among Foreign Firms], MAEIL BUSINESS NEWSPAPER, July 31, 2003, available at <http://news.mk.co.kr/newsReadPrint.php?year=2003&no=253948>.

<sup>10</sup> The "specified joint enterprise" structure allows domestic firms to join in partnerships with foreign firms. These joint enterprise firms have become increasingly popular, because they offer an appealing combination of Japanese and foreign attorneys to clients. See Suzuki, *supra* note 9, at 396; see also Kelemen & Sibbitt, *supra* note 7, at 300-01.

lawyers.<sup>11</sup> The conservative nature of the proposal stems from fears among Korean lawyers and the Korean Bar Association (“Association”), which exerts enormous influence on the nation’s legal market, that liberalization will lead to the demolition of domestic firms by larger and more sophisticated multinational firms.<sup>12</sup>

In response, the United States, the European Union, and a number of other WTO member countries have demanded a broader legal market deregulation on “a swift and full-scale basis.”<sup>13</sup> Specifically, they have called for allowing the formation of partnerships between Korean and foreign law firms, which is outside the scope of the current proposal.<sup>14</sup> These countries seek to provide broader access to Korea’s financial market for their national businesses, which have expressed a great deal of disappointment in the lack of quality legal services for international finance and cross-border transactions in Korea.<sup>15</sup> Foreign companies have been arguing for years that Korea’s legal market is too small and unsophisticated compared to the size of the nation’s economy and financial system.<sup>16</sup> They have suggested that Korea’s legal market is currently incapable of providing specialized and sophisticated services needed for international business and transactional matters. In large-scale transactions, foreign companies and investors generally prefer advanced multinational firms that are already familiar with their needs.<sup>17</sup> They frequently employ the services of foreign law firms with offices in nearby countries. However, the inability of foreign firms to maintain offices in Korea adds additional costs to their services and limits their activity within the country. International law firms that either conduct Korea-related practices from offshore hubs or seek to expand their

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<sup>11</sup> Korea’s plan calls for the formal recognition of Foreign Legal Consultants (“FLC”), who are authorized to advise on matters related to foreign laws. However, the extent of practice allowed for FLCs is very limited. FLCs are not considered official lawyers and thus function solely within their own firms. In 2002, there were 211 FLC’s employed by domestic firms to assist in foreign legal issues. That number has been continuously growing throughout the years. See Jin Suk Lee, *We-guk-in Byun-ho-sa Chwee-ub Geub-jeung* [Rapid Increase in Foreign Legal Consultants], CHOSUN DAILY NEWS, Nov. 18, 2002, available at <http://www.chosun.com/svc/news/www/viewArticle.html?id=200211180339>; see also Jung Eun Lee, *5 de Bun-ya Uh-dduh-ge Dal-la-ji-na* [How the Five Sectors Will Change], DONG-AH DAILY NEWS, Nov. 18, 2001, available at <http://www.donga.com/fbin/output ?n=200111230229>; Tromans, *supra* note 8.

<sup>12</sup> Suzuki, *supra* note 9, at 405.

<sup>13</sup> Jee-Yeon Seo, *supra* note 3.

<sup>14</sup> Seung Jin Choi, *supra* note 1.

<sup>15</sup> Jee-Yeon Seo, *supra* note 3.

<sup>16</sup> *Elite System*, *supra* note 2.

<sup>17</sup> Hyeonjoo Ko, *Opening the Legal Market in Korea to Foreign Lawyers* (June 2002) (unpublished L.L.M. thesis, University of Washington School of Law) (on file with the University of Washington Gallagher Library).

practices to Korea have also criticized Korea's closed legal market.<sup>18</sup> They see an increasing demand among Korean and foreign businesses for advanced legal services that can efficiently handle international business matters.<sup>19</sup>

This Comment argues that although legal market liberalization can be beneficial for Korea's economic development and will offer many opportunities for Korean and foreign firms and businesses, it must include the following legal and policy measures to be successful:

First, legislative revisions allowing for effective liberalization must be enacted. The legislature must modify the Attorney-at-Law Act to allow foreign lawyer and firms to practice in Korea, taking into consideration both authorization requirements and the extent of practice for foreign lawyers.

Second, oversight and enforcement mechanisms regarding foreign lawyers should be implemented. Such mechanisms are vital in maintaining proper professional responsibility and client protection, particularly in a larger liberalized legal market.

Third, Korean domestic firms need to raise their competitiveness through mergers and restructuring. Korean firms are currently much less developed than their foreign counterparts. In order to ensure fair competition and a healthy and balanced growth of the legal market, Korean firms should implement structural changes that will allow them to better compete and cooperate with larger foreign firms. The Korean government, in turn, should promote greater structural flexibility to Korean firms by allowing the formation of Limited Liability Partnerships ("LLP").

Finally, Korea must undertake legal educational reform in order to provide greater practical emphasis and expand opportunities for specialization. Market liberalization will lead to increased demand for lawyers with focused expertise. The legal educational system should be modified accordingly to provide such lawyers.

Part II of this Comment gives an overview of the Korean legal system and discusses its current status in relation to Korea's WTO commitment. Part III describes the benefits of opening the legal market. Part IV addresses some of the concerns and resistance among Korean lawyers regarding liberalization. Part V discusses four important legal and policy conditions that must be met before legal market opening can properly yield the benefits expected of it. Finally, Part VI concludes that although legal market

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<sup>18</sup> See Sean Hayes, *Korea Opening Its Legal Market to Foreigners*, OHMYNEWS INTERNATIONAL, Aug. 19 2004, available at [http://english.ohmynews.com/articleview/article\\_view.asp?menu=c10400&no=183244&rel\\_no=1](http://english.ohmynews.com/articleview/article_view.asp?menu=c10400&no=183244&rel_no=1).

<sup>19</sup> Jee-Yeon Seo, *supra* note 3.

liberalization holds much beneficial potential, it will only be successful when legislative revisions, enforcement and oversight mechanisms, domestic firm expansion, and educational reform also take place.

## II. AN OVERVIEW OF THE KOREAN LEGAL SYSTEM

Korea's legal market has remained firmly closed to foreign firms and lawyers, despite continuous international pressure and the Asian financial crisis. The Attorney-at-Law Act tightly regulates the legal market and has precluded the possibility of foreign practice in Korea through a rigorous and exclusive educational requirement.<sup>20</sup> However, in 2003, Korea submitted a proposal for legal market liberalization to the WTO and is currently negotiating the terms of the agreement.

### A. *The Korean Legal Market Has a Long History of Protectionism*

The Korean legal market has been described as a "small, elitist, and closed market."<sup>21</sup> With fewer than 7000 lawyers in a country of over forty-eight million people,<sup>22</sup> it is tightly controlled by the Association, which has an enormous lobbying influence over legal policy. The Association has consistently argued that Korea must keep its legal market closed in order to protect domestic firms and lawyers from foreign competition.<sup>23</sup> It points to past examples in Germany, where nine out of the ten largest firms merged with U.S. or British firms,<sup>24</sup> and France, where the legal market was also hard-hit by the entrance of U.S. firms, ultimately leading to the dissolution of numerous domestic firms.<sup>25</sup> Due to the strong influence of the

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<sup>20</sup> Chapter 2 section 1 of the Act deals with the requirements for practicing law in Korea. Code civil [C. civ.] art. 7357 (S. Korea) [hereinafter *Attorney-at-Law Act*].

<sup>21</sup> A description of the Korean legal market by the American Chamber of Commerce in Korea ("AmCham"). *Elite System*, *supra* note 2.

<sup>22</sup> There are currently 6817 lawyers in Korea. There were 6107 lawyers in 2004, 5586 in 2003, 5073 in 2002, 4618 in 2001, and 4228 in 2000. See Gwi-Soo Kim, *Bup-jo-in Ah-jik-do Tae-boo-jok* [Legal Professional Still Scarce], SEGYE DAILY NEWS, May 11, 2005, available at <http://www.segye.com/Service5/ShellView.asp?TreeID=1510&PCode=0007&DataID=200505111632000189>. The term "lawyer" refers to those who have passed the bar examination and have chosen private practice or practice at a law firm. It does not include judges, prosecutors, or in-house counsel. Furthermore, patent lawyers, or *byul-li-sas*, are not considered "attorneys," as they have their own examination and set of qualifications. However, many lawyers who are not patent lawyers do engage in patent legal advice.

<sup>23</sup> Suzuki, *supra* note 9.

<sup>24</sup> Jin-Woo Lee, *Task Force to Hammer Out Steps for Legal Market Opening*, KOREA TIMES, Sept. 12, 2004, available at <http://search.hankooki.com/times/>.

<sup>25</sup> Seung Jin Choi, *supra* note 1.

Association, Korea's legal market has remained closed to foreign competition and legal investment since its modern inception.<sup>26</sup>

Korea's domestic firms are much smaller than their foreign counterparts. Korea possesses a small and tightly-knit legal community that is comprised of three different types of firms: domestic business firms, international business firms, and "Seocho-Dong" lawyers.<sup>27</sup> The Seocho-Dong lawyers, named for their proximity to the courthouses in the Seocho-Dong area in Southern Seoul, tend to practice individually, focusing on various domestic litigation matters.<sup>28</sup> International business firms, on the other hand, are firms consisting of around fifty to two hundred-fifty lawyers and focus on mergers and acquisitions and other international transactional work.<sup>29</sup> Finally, a number of domestic business firms, usually comprised of fewer than ten lawyers, mostly deal with domestic business affairs.<sup>30</sup>

In contrast, most foreign firms that seek to enter the Korean market are colossal in size and have global reach.<sup>31</sup> For instance, British firm Clifford Chance was comprised of 2868 lawyers, while U.S. firm Baker & McKenzie had 2923 lawyers in 2001.<sup>32</sup> Both firms have maintained leading Korea-related practices throughout the years and are passionate advocates of legal market liberalization. Not only are these foreign firms capable of providing efficient transnational services, but they also possess the highest quality, specialization, and sophistication of legal services.<sup>33</sup> In contrast, Korea's largest domestic firm, Kim & Chang, currently has only about 280 lawyers.<sup>34</sup> Although Korean lawyers may be as competent and qualified as their foreign counterparts, Korean firms lack the specialization and corporate competitiveness of the much larger foreign firms.<sup>35</sup>

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<sup>26</sup> See generally Kevin Y. Jung, *Opening the Legal Services Market in Korea*, Washington State Bar Association (Aug. 2004), available at <http://www.wsba.org/media/publications/barnews/2004/aug-04-jung.htm>.

<sup>27</sup> *Elite System*, supra note 2.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> Jung Eun Lee, supra note 11.

<sup>32</sup> Koo Yul Kang, *Byun-ho-sa Ho Shi-jul Gat-da* [Good Times for Lawyers Have Gone], SEGYE DAILY NEWS, Feb. 25, 2005, available at <http://segye.com/Service5/ShellView.asp?TreeID=1052&PCode=0007&DataID=200502251503000063>.

<sup>33</sup> *Id.* For a summary of the factors of U.S. competitiveness, see Carole Silver, *Globalization and the U.S. Market in Legal Services—Shifting Identities*, 31 LAW & POL'Y INT'L BUS. 1093, 1095-97 (2000).

<sup>34</sup> Koo Yul Kang, supra note 32.

<sup>35</sup> See Guk Sung Kang, Chang Hoon Lee, Eun Pyo Kim, Yong Ha Yoo, *Gyung-jae Gyu-mo 11wi Han-guk Shi-jang Mee, Young Dae-hyoung Law Firm-deul Gun-chim* [Large U.S. and British Firms Enticed by World's Eleventh Largest Economy in Korea], MAEIL BUSINESS NEWSPAPER, July 17, 2003, available at <http://search.mk.co.kr/contentView.php?docid=127882&cid=0&key>.

The Association has sought to keep the Korean legal market closed, arguing that foreign firms will drive out their smaller domestic competitors.<sup>36</sup> Businesses and investors generally prefer the size, sophistication, and experience in international business matters of foreign firms.<sup>37</sup> Also, these foreign firms will attract an increasing number of talented attorneys with superior funds, technology, and benefits.<sup>38</sup> Thus, the Association suggests that while the largest domestic firms, such as Kim & Chang, may be able to hold their own against foreign competition through restructuring and “home-field advantages,” most of the smaller firms and private practices in Korea lack the structure and sophistication to deal with their foreign counterparts.<sup>39</sup>

*B. The Attorney-at-Law Act Regulates the Korean Legal Market by Making It Virtually Impossible for Foreign Lawyers to Practice in Korea*

Korea protects its legal market through an extremely rigorous educational requirement laid out in Article 2 of the Attorney-at-Law Act.<sup>40</sup> Although a rule requiring all prospective lawyers to be Korean citizens was abolished in December 1996 with Korea’s joining of the Organization for Economic Co-operation and Development,<sup>41</sup> the Attorney-at-Law Act continues to maintain a tight seal on Korea’s legal market in other ways. A prospective lawyer wishing to become a member of the Korean Bar usually attends a four-year college and majors in law, although a college education is not mandatory.<sup>42</sup> Thereafter, the prospective lawyer takes the law examination (“exam”), which is equivalent to the bar examination in the United States.<sup>43</sup> Once the prospective lawyer passes the exam, he or she must undergo a two year training course conducted by the Judicial Training

<sup>36</sup> See Suzuki, *supra* note 9; see also Hayes, *supra* note 18.

<sup>37</sup> Jee-Yeon Seo, *supra* note 3.

<sup>38</sup> *Bit-jang Pul-li-neun Bup-Ryul Shi-jang: We-guk-gye Scout Na-sut-da* [Legal Market Opening: Foreign Firms Begin Scouting], MAEIL BUSINESS NEWSPAPER, May 29, 2003, available at [http://search.mk.co.kr/contentView.php?docid=99640&cid=0&key=\[hereinafter Scouting\]](http://search.mk.co.kr/contentView.php?docid=99640&cid=0&key=[hereinafter Scouting]); see also Seung Jin Choi, *supra* note 1.

<sup>39</sup> *Scouting*, *supra* note 38.

<sup>40</sup> Chapter 2 of the Act deals with the requirements for practicing law in Korea. See *Attorney-at-Law Act*, *supra* note 20.

<sup>41</sup> Soon Duk Kim, *Seminar: Doha Gae-bal Agenda Hyub-sang-gwa Bup-mu-shi-jang Gae-bang* [Seminar: Doha Development Agenda Negotiations and Legal Market Liberalization], BUP-RYUL SHIN-MUN, no. 3120, Nov. 7, 2002, available at <http://www.lawtimes.co.kr/LawPnnn/Pnnyn/PnnynContent.aspx?serial=1563&m=pnnyn>.

<sup>42</sup> *Elite System*, *supra* note 2.

<sup>43</sup> See *Attorney at-Law Act*, *supra* note 20, at ch.2 sec. 4.



and Research Institute,<sup>44</sup> which is run by the Supreme Court.<sup>45</sup> Article 2 of the Attorney-at-Law Act limits the right to practice as a lawyer to those people who pass the highly competitive exam and complete the training course.<sup>46</sup> Historically, the passage rate for the exam has been around one to two percent.<sup>47</sup> For example, from 1997 to 1999, only 2013 of the 64,270 people who took the exam passed.<sup>48</sup> Although the Judicial Training and Research Institute has allowed more people to pass in recent years, the passage rate still remains around six to seven percent.<sup>49</sup> Further, the exam is only offered in Korean; therefore, it is virtually impossible for foreigners to pass the exam. In fact, the Association states that no foreigner has ever passed the examination.<sup>50</sup>

In limited circumstances, the Attorney-at-Law Act purports to allow foreign lawyers to practice in Korea.<sup>51</sup> Article 2 Section 6 of the Attorney-at-Law Act, which deals with foreign lawyers, states that the Minister of Justice may allow a foreign lawyer to practice law in Korea if there is some “significant reason” to grant permission to practice.<sup>52</sup> However, there have yet to be any foreign lawyers authorized to practice as lawyers in Korea.<sup>53</sup> Although there is a growing number of foreign attorneys who serve as in-house counsel or “foreign legal consultants” in Korean firms, their roles and authority are limited to assisting Korean lawyers.<sup>54</sup> The ineffectiveness of the provision, together with the education requirement laid out in the Attorney-at-Law Act, has acted as a critical barrier to foreign lawyers and

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<sup>44</sup> The Judicial Research and Training Institute, which oversees the law exam and provides training for those who pass the exam, was established in 1971 as a branch of the Korean Supreme Court. After completing their training at the institute, graduates usually become judges, prosecutors, or lawyers, according to their interests and performance on the bar exam, as well as at the institute. Seung Wha Chang, *The Role of Law in Economic Development and Adjustment Process: The Case of Korea*, 23 INT’L LAW. 267, 273 (2000).

<sup>45</sup> For information on the judicial system and the Supreme Court of Korea, see MINISTRY OF COURT ADMINISTRATION: THE SUPREME COURT OF KOREA, THE JUDICIAL SYSTEM OF KOREA 24 (2000).

<sup>46</sup> See *Attorney at-Law Act*, *supra* note 20, at ch.2 sec. 4.

<sup>47</sup> *Elite System*, *supra* note 2.

<sup>48</sup> *Id.* The Association places a limit on the number of those who can pass the law examination. Although this number has increased during the past few years, it still lingers around 1000 per year. Suzuki, *supra* note 9, at 392.

<sup>49</sup> The passage rate in 2004 was 6.5%. The rate in 1995 had been 1.48%. Kyung Ho Park, *Sa-bup Shi-hum Hap-gyuk-seng 41%-ga 30-dae [41% of Those Who Passed Law Examination in their Thirties]*, SEOUL NEWSPAPER, May 12, 2005, available at [http://news.naver.com/print\\_form.php?office\\_id=081&article\\_id=0000042356](http://news.naver.com/print_form.php?office_id=081&article_id=0000042356).

<sup>50</sup> Suzuki, *supra* note 9, at 403; see also Hayes, *supra* note 18.

<sup>51</sup> See *Attorney-at-Law Act*, *supra* note 20, at ch.2 sec. 6.

<sup>52</sup> *Id.*

<sup>53</sup> See EUROPEAN UNION CHAMBER OF COMMERCE IN KOREA, BUP-RYUL SERVICE WEE-WON-HWE [LEGAL SERVICE BOARD]: TRADE ISSUES AND RECOMMENDATIONS (2004), available at [http://www.eucck.org/trade2004\\_new/trade2004\\_k/legal.htm](http://www.eucck.org/trade2004_new/trade2004_k/legal.htm) [hereinafter *EUCC*].

<sup>54</sup> See Jin Suk Lee, *supra* note 11.

firms. Thus, the Attorney-at-Law Act prevents the entrance of foreign lawyers into Korea's legal market by setting requirements that are virtually impossible to fulfill.

*C. Korea's Efforts for Legal Market Liberalization Falter*

During the late 1980s and 1990s, the Korean government made a number of attempts to liberalize the nation's legal market. However, these attempts proved to be ineffective, half-hearted gestures. For example, in 1986, the Korean Foreign Trade Act gave the Ministry of Commerce, Industry, and Energy the power to oversee international trade and called for the promotion of exports and regulation of imports.<sup>55</sup> This act was amended in 1996, however, in response to President Kim Young-Sam's globalization policy.<sup>56</sup> The revision called for the expansion of international transactions and essentially gave the Ministry of Commerce, Industry, and Energy the authority to force the internationalization of the services sectors.<sup>57</sup>

Despite its newfound powers, the Ministry was hesitant to act because of domestic pressures.<sup>58</sup> Many Koreans viewed the Korean Foreign Trade Act as an involuntary bowing by the government to external pressure.<sup>59</sup> Further, Korean lawyers created a hostile atmosphere for foreign competition by describing the opening of Korea's legal market as a "crisis."<sup>60</sup> Other government gestures toward legal market liberalization, such as the Foreign Direct Investment Plan of 1996, which forecasted legal market liberalization by the following year, were also largely ineffective.<sup>61</sup>

*D. The Korean Legal Market Remains Closed Even in the Aftermath of the Asian Financial Crisis.*

Korea's legal market was one of the few sectors that managed to retain the status quo amidst the wave of liberalization following the Asian financial crisis. The 1997 Asian financial crisis affirmed to many the need for change in Korea's economic structure. Although Korea had experienced

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<sup>55</sup> Julia Tonkovich, *Changes in South Korea's Legal Landscape: The Hermit Kingdom Broadens Access for International Law Firms*, 32 *LAW & POL'Y INT'L BUS.* 571, 575 (2001); see also Code civil [C. civ.] art. 3895 (S. Korea).

<sup>56</sup> Code civil [C.civ.], *supra* note 55, at art. 5211.

<sup>57</sup> Eun-sup Lee, *Foreign Trade Regulation of Korea in the WTO World*, 8 *J. TRANSNAT'L L. & POL'Y* 231, 244 (1999), *quoted in* Tonkovich, *supra* note 55.

<sup>58</sup> Suzuki, *supra* note 9, at 404.

<sup>59</sup> Tae-Soo Sohn, *Gov't, Businesses Step Up Efforts to Lower U.S. Import Barrier*, *KOREA HERALD*, Jan. 9, 1999, available at 1999 WL 2047039, *cited in* Tonkovich, *supra* note 55, at 576.

<sup>60</sup> Tonkovich, *supra* note 55, at 576.

<sup>61</sup> Suzuki, *supra* note 9, at 404.

miraculous growth during the past decades, rapid overexpansion by the government-guided *chaebols*, or family-owned mega-corporations, ultimately led to an economic disaster.<sup>62</sup> A vast number of Korean banks and companies went bankrupt as the value of the Korean *won* depreciated seventy percent between mid-October and mid-December of 1997.<sup>63</sup> Korea was forced to seek financial assistance from the International Monetary Fund. In order to receive this assistance, however, Korea agreed to undergo financial structural reform and show greater compliance with WTO requirements.<sup>64</sup>

As a result, during the next few years, Korea underwent various reforms and extensive liberalization of its financial and accounting sectors. The Korean government encouraged foreign investment and removed many barriers on trade.<sup>65</sup> It also strengthened corporate governance, while establishing the Financial Supervisory Commission to strengthen financial institutions.<sup>66</sup> Further, it sought to privatize state-owned corporations by restructuring and minimizing government corporate institutions.<sup>67</sup> This “open-market policy” and privatization strategy allowed the nation to experience rapid economic recovery, enabling it to repay its loans of U.S. \$58 billion to the International Monetary Fund two years before the loans matured.<sup>68</sup>

Although its various economic reforms and legislative initiatives allowed Korea to improve corporate transparency and financial stability,<sup>69</sup> Korea’s legal market remained closed. Meanwhile, broader financial liberalization and international transactions led to a greater demand for international corporate lawyers in Korea.<sup>70</sup> While the Korean Ministry of Commerce, Industry, and Energy signaled vaguely in January 1999 that Korea would allow foreign law firms to open offices in the country, it would be years before any actual action would be taken.<sup>71</sup>

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<sup>62</sup> Tonkovich, *supra* note 55, at 573.

<sup>63</sup> Hyeonjoo Ko, *supra* note 17, at 5; *see also* John W. Head, *Lessons from the Asian Financial Crisis: the Role of the IMF and the U.S.*, 7 KAN J.L. & PUB POL’Y 70 (1998), *cited in* Hyeonjoo Ko, *supra* note 17. *See also* DAE-KYU YOON, ED., *RECENT TRANSFORMATIONS IN KOREAN LAW AND SOCIETY* 267 (Seoul National Univ. Press 2000).

<sup>64</sup> DAE-KYU YOON, *supra* note 63, at 268.

<sup>65</sup> Hyeonjoo Ko, *supra* note 17, at 5.

<sup>66</sup> Seung Wha Chang, *supra* note 44, at 279.

<sup>67</sup> *Id.*

<sup>68</sup> Jung, *supra* note 26.

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

<sup>71</sup> Tonkovich, *supra* note 55, at 575.

### E. Korea Engages in WTO Negotiations

Korea must liberalize its legal services market to fulfill its obligations as a party to GATS.<sup>72</sup> GATS, a product of the WTO Uruguay Round,<sup>73</sup> is a set of multilateral rules regarding international trade and services.<sup>74</sup> It commits member governments to engage in negotiations on specific issues and to progressively liberalize trade in services.<sup>75</sup> Negotiations under GATS involve a process of multilateral trade negotiations, consisting of a number of bilateral “request and offer” negotiations.<sup>76</sup> In these negotiations, each member country seeks greater access to a service sector of another member country, in exchange for increased liberalization in one of its own sectors.<sup>77</sup> When a member state promises to liberalize one of its sectors, it places the sector in its “schedule.”<sup>78</sup> This schedule lists the sectors being opened, the extent of market access to those sectors, and any limitations on national treatment.<sup>79</sup> Once a sector is listed in a member’s schedule, the member state is bound to progressively reduce trade barriers imposed on the sector.<sup>80</sup> Such liberalization must be given Most Favored Nation treatment and must thus be executed across the board to all WTO members, unless the liberalizing nation has attained a Most Favored Nation exemption.<sup>81</sup> The Doha Development Agenda, which set out concrete timelines and plans for the implementation of GATS, states in paragraph 15 that “participants shall submit initial requests for specific commitments by 30 June 2002 and initial

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<sup>72</sup> *EUCC supra* note 53.

<sup>73</sup> The Uruguay Round established the WTO, which replaced the General Agreement on Tariffs and Trade. It spanned over seven years and was the largest trade negotiation in history. By the end of the Round in 1994, there were 123 member countries committed to the WTO. The agreements produced from the Round covered almost every area of trade. See World Trade Organization, *The Uruguay Round*, at [http://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/fact5\\_e.htm](http://www.wto.org/english/thewto_e/whatis_e/tif_e/fact5_e.htm) (last visited Nov. 15, 2005). For WTO legal texts from the Uruguay Round, see WORLD TRADE ORGANIZATION, *WTO LEGAL TEXTS*, available at [http://www.wto.org/english/docs\\_e/legal\\_e/legal\\_e.htm](http://www.wto.org/english/docs_e/legal_e/legal_e.htm) (last visited Nov. 15, 2005).

<sup>74</sup> World Trade Organization, *Services: Rules for Growth and Investment*, at [http://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/agrm6\\_e.htm](http://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm6_e.htm) (last visited Nov. 15, 2005) [hereinafter *WTO Services*].

<sup>75</sup> *WTO Doha, supra* note 4.

<sup>76</sup> *WTO Services, supra* note 74.

<sup>77</sup> *Id.*

<sup>78</sup> *Id.*

<sup>79</sup> The extent of market access refers to restrictions on ownership by foreign companies. The limitation on national treatment refers to whether some rights given to domestic companies will not be granted to foreign ones. *Id.*

<sup>80</sup> *Id.*

<sup>81</sup> *Id.*

offers by 31 March 2003.”<sup>82</sup> The overall negotiation deadline was set for January 1, 2005.<sup>83</sup>

Since negotiations under GATS began in 2001, Korea has received requests for legal market liberalization from eleven WTO member countries.<sup>84</sup> In response, the Korean government submitted its initial proposal for opening its legal market in March of 2003.<sup>85</sup> The proposal allowed foreign firms to set up branch offices in Korea and to advise clients regarding international and foreign law matters.<sup>86</sup> However, it prohibited foreign firms from forming partnerships with Korean firms, hiring Korean attorneys, advising on domestic legal matters, or appearing in Korean courts.<sup>87</sup> The United States and European Union, who sought a more dramatic liberalization of the Korean market, responded with criticism to the restrictive and limited liberalization proposed by the Korean government.<sup>88</sup>

Disagreements over whether to allow partnerships between Korean and foreign firms prompted the WTO to issue a one-year negotiation extension period, pushing back the planned date for market liberalization to early 2007.<sup>89</sup> Accordingly, Korea is currently negotiating the terms of liberalization with the other WTO countries. Upon reaching an agreement, Korea plans to implement these terms by passing and revising statutes and regulations.

### III. LEGAL MARKET LIBERALIZATION WILL BENEFIT BOTH KOREAN AND FOREIGN BUSINESSES, WHILE ENABLING KOREA TO RISE AS AN IMPORTANT FINANCIAL HUB IN EAST ASIA

Legal market liberalization is vital for Korea’s continued economic development and international image, both of which are necessary to achieve the country’s goal of becoming a major East Asian financial hub. Korean and foreign businesses will benefit equally. Korea’s legal market currently remains largely underdeveloped and provides an inadequate level of services to major businesses.<sup>90</sup> Market liberalization will improve the quality of

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<sup>82</sup> WORLD TRADE ORGANIZATION, THE NEW NEGOTIATIONS, [http://www.wto.org/english/tratop\\_e/serv\\_e/s\\_negs\\_e.htm](http://www.wto.org/english/tratop_e/serv_e/s_negs_e.htm) (last visited Nov. 15, 2005).

<sup>83</sup> *Id.*

<sup>84</sup> Koo Yul Kang, *supra* note 32.

<sup>85</sup> Tromans, *supra* note 8.

<sup>86</sup> *Id.*

<sup>87</sup> *Id.*

<sup>88</sup> See Jung-Min Kim, *Hwang Mok Park to Compete with Global Firms*, KOREA HERALD, Nov. 24, 2004, available at <http://news.media.daum.net/foreign/englishnews/200411/24/korherald/v7790634.html>.

<sup>89</sup> Seung Jin Choi, *supra* note 1; see also Young-Hwa Kim, *supra* note 1.

<sup>90</sup> See Joo-Yeon Seo, *supra* note 3.

overall legal services by increasing competition and lowering the cost of services.

A. *Korea's Legal Market Is Currently Inadequate and Underdeveloped*

Legal services are a vital component of trade and commercial transactions.<sup>91</sup> The rise and expansion of corporations, international mergers and acquisitions, and intellectual property related issues have heightened the need for sophisticated and high-quality legal services.<sup>92</sup> Lawyers play an important role in helping businesses understand the intricacies of the law and ensuring their safe navigation through complex regulatory waters.<sup>93</sup>

Both domestic and foreign businesses assert that Korea's current legal services are well below world standards. Korea's economy, one of the largest in the world, continues to grow, while the country's legal market remains small and heavily regulated.<sup>94</sup> According to a 2003 survey by Lexis-Nexis, Maeil Business Newspaper, and Dikaion law firm, of 150 major Korean companies, 91.3% favored a full legal market opening, while 97.3% said that Korean firms were below world standards in providing advice on corporate legal matters.<sup>95</sup>

Korean companies have already begun to hire foreign firms that operate from nearby hub countries, and spending on foreign legal services among Korean companies continues to increase.<sup>96</sup> In 2001, Korean

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<sup>91</sup> See Michel J. Chapman & Paul J. Tauber, *Liberalizing International Trade in Legal Services: A Proposal for an Annex on Legal Services Under the General Agreement on Trade in Services*, 16 MICH. J. INT'L L. 941, 955 (1995).

<sup>92</sup> See Silver, *supra* note 33, at 1132.

<sup>93</sup> See Carole Silver, *Lawyers on Foreign Ground 1-2*, available at [http://www.law.northwestern.edu/faculty/fulltime/silver/documents/chapter\\_foreign\\_lawyer.pdf](http://www.law.northwestern.edu/faculty/fulltime/silver/documents/chapter_foreign_lawyer.pdf) (last visited Nov. 15, 2005). See also Carole Silver, *Regulatory Mismatch in the International Market for Legal Services*, 23 NW. J. INT'L L. & BUS. 487, 497-508 (2003).

<sup>94</sup> Joo-Yeon Seo, *supra* note 3. Korea was the sixteenth largest economy in the world in 2004. It is one of the top producers of semiconductors worldwide and is also a leader in the automobile, electronics, and shipping industries. CENTRAL INTELLIGENCE AGENCY, THE WORLD FACTBOOK, *Rank Order-GDP* (2005), at <http://www.cia.gov/cia/publications/factbook/rankorder/2001rank.html>.

<sup>95</sup> This survey was also conducted on 117 Korean attorneys. 60.7% of them opposed legal market liberalization, compared to the less than 10% opposition found among the surveyed companies. Surprisingly, however, nearly 40% of the attorneys were actually in favor of liberalization. Joo-Yeon Seo, *supra* note 3. See also *Bit-jang Pul-li-neun Bup-ryul-shi-jang: Go-gek-eun Shi-jang-gae-bang Won-han-da* [Legal Market Barrier Falling: Clients Want Liberalization], MAEIL BUSINESS NEWSPAPER, May 15, 2003, available at <http://news.mk.co.kr/newsReadPrint.php?year=2003&no=163282>.

<sup>96</sup> The total value of legal service exports for the United States in 2001 amounted to U.S. \$3.14 billion. The total value of legal service imports for the same year was U.S. \$755 million. Guk-Sung Hwang, Chang Hoon Lee, Eun Pyo Kim, Yong Ha Yoo, *Bit-jang Pul-li-neun Bup-ryul-shi-jang: Shi-jang Gae-bang no-ri-neun, Young, Mee Law Firm-deul (Ha)* [Legal Market Opening: American and British Firms Looking Forward to Liberalization], MAEIL BUSINESS NEWSPAPER, July 24, 2003, available at <http://news.mk.co.kr/newsReadPrint.php?year=2003&no=245971>; see also Joo Yeon Seo, *supra* note 3.

companies spent an estimated 68.7 billion won or U.S. \$55 million on services from American firms alone.<sup>97</sup> British firms have also fared well in attracting Korean companies in recent years. Allen & Overy advised LG in its credit card operations, while Freshfields provided expertise for Samsung.<sup>98</sup>

Foreign businesses that engage in Korea-related activities have also expressed their disappointment over the lack of quality legal services for international finance and cross-border transactions.<sup>99</sup> In large-scale transactions, these companies tend to want to employ advanced legal services that are already familiar with the company's needs.<sup>100</sup> The small scale and restrictiveness of Korea's legal market greatly limit the number of possibilities regarding legal service for these foreign companies.

*B. Legal Market Liberalization Will Elevate the Quality of Legal Services Through Increased Competition*

Korea can raise the quality of its legal services to international standards through market liberalization. Greater competition from an open legal market can improve the overall quality of legal services by promoting firm development, greater specialization, and increased client contact.<sup>101</sup> The inflow of large-scale foreign firms would raise the competitiveness in the legal market and pressure domestic firms either to restructure themselves along the lines of more advanced foreign firms or to join those foreign firms.<sup>102</sup> Not only would this bring greater specialization in such areas as international corporate securities and banking law, but it would also improve the quality and marketability of Korean lawyers.<sup>103</sup>

Legal market liberalization would also give businesses greater flexibility regarding their choice of legal services as a larger number of firms

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<sup>97</sup> Joo-Yeon Seo, *supra* note 3.

<sup>98</sup> Guk-Sung Hwang et al., *supra* note 96.

<sup>99</sup> See Jung, *supra* note 26.

<sup>100</sup> See Hyeonjoo Ko, *supra* note 17.

<sup>101</sup> See Chapman & Tauber, *supra* note 91, at 956.

<sup>102</sup> See Kelemen & Sibbitt, *supra* note 7, at 279.

<sup>103</sup> James Walker, a partner at Clifford Chance and head of the firm's Asia funds practice, stated in a July 2004 interview that liberalization would result in a stronger and more competitive domestic legal profession. He also noted that it would bring specialization in new areas of international corporate, securities and banking law and would improve the local and international marketability of Korean lawyers. Korea's closed market has led to inefficiencies in the inflow of important legal know-how, which is vital for financial and corporate restructuring. Furthermore, there are supplemental legal costs associated with both inward and outward investment. See Rambabu Garikipati, *Legal Services Need Liberalization*, KOREA HERALD, July 28, 2004, available at 2004 WL 55442406 (West 2005); see also Chapman & Tauber, *supra* note 91, at 954.

seek to engage in Korea-related practices.<sup>104</sup> Domestic and foreign businesses would be able to seek or retain the services of the firms that best fit their needs.

Also, an open legal market would enable foreign firms to alleviate some of the linguistic and cultural obstacles foreign investors frequently face.<sup>105</sup> Broader opportunities to deal with multi-jurisdictional issues would allow foreign lawyers to overcome cultural gaps that exist in many international transactions, allowing them to better serve their clients' needs.<sup>106</sup>

Moreover, foreign firms would be able to provide "one-stop" legal services to their clients, instead of having to operate out of nearby hubs such as Hong Kong or Japan.<sup>107</sup> This would save legal costs for clients doing business in Korea and would allow Korea to retain much of the operational capital currently being spent in nearby hub countries.

The liberalization of legal markets in other countries demonstrates the benefits Korea could reap. For example, legal market liberalization in Singapore has been a key factor in the nation's becoming a regional financial hub.<sup>108</sup> In an effort to promote the nation's image and attractiveness to investors, the Singaporean government allowed the British firm Freshfields to practice both domestic and foreign law in the country.<sup>109</sup> As the only foreign firm to receive such authorization under the government's "experiment" with liberalization, Freshfield's partners received expedited admission to the local bar.<sup>110</sup> The success of Freshfields' integrated practice led a number of businesses originally planning to go to Hong Kong to enter Singapore instead.<sup>111</sup> Furthermore, it also helped domestic lawyers increase the quality and sophistication of their practices.<sup>112</sup> Hence, not only did a liberalization policy raise the level of foreign direct investment in Singapore, it also improved the competitiveness of domestic lawyers.

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<sup>104</sup> See Hyeonjoo Ko, *supra* note 17, at 6.

<sup>105</sup> See Chapman & Tauber, *supra* note 91, at 956.

<sup>106</sup> See *id.*

<sup>107</sup> Joo-Yeon Seo, *supra* note 3.

<sup>108</sup> *Id.* (quoting Oh Kapsuo, a member of the non-profit organization Seoul Financial Forum).

<sup>109</sup> See Darryl D. Chiang, *Foreign Lawyer Provisions in Hong Kong and the Republic of China on Taiwan*, 13 UCLA PAC. BASIN L. J. 306, n.171 (1995)

<sup>110</sup> *Id.*

<sup>111</sup> *Id.*

<sup>112</sup> Singapore later revoked Freshfields' domestic license because of a leaked internal memo disparaging the level of Singaporean lawyers and efforts to give equal treatment to all foreign firms. *Id.* See also *What has Happened to Freshfields in Singapore Highlights the Problems that Firms Can Face When Opening Offices in Other Jurisdictions*, EUROMONEY INT'L FIN. L. REV., Apr. 10, 1986, at 6, available at LEXIS, Asiapc Library, ALLASI File.



Liberalization has also improved the level of legal services in Japan, a country which possesses a legal structure similar to that of Korea. Japan took a limited and restrictive approach to its liberalization. Foreign firms are still prohibited from directly advising on Japanese domestic law and from hiring domestic lawyers in Japan.<sup>113</sup> However, since the mid-1990s they have been allowed to form “specified joint enterprises” with domestic firms through which Japanese lawyers are able to advise on Japanese law.<sup>114</sup>

Japanese domestic firms have become larger and increasingly competitive through mergers and restructurings.<sup>115</sup> Realizing that expansion and sophistication are necessary for effective competition or cooperation with foreign firms, Japanese firms have expanded rapidly in both size and number and have also become increasingly specialized.<sup>116</sup> Further, an increasing number of these firms have pursued cooperative arrangements with foreign firms through specified joint enterprises.<sup>117</sup> The largest firm in Japan in 2002 stood at approximately 150 lawyers, while just five years before, the largest firm had only fifty lawyers.<sup>118</sup> Furthermore, between 1985 and 1998, the number of firms with more than ten lawyers doubled in Tokyo and quadrupled in Osaka.<sup>119</sup> Such changes have heightened the effectiveness of Japanese firms in dealing with such complicated work as due diligence for mergers and acquisitions and asset securitization.<sup>120</sup> In this way, liberalization has improved legal services in Japan.

As was the case in Japan and Singapore, legal market liberalization would raise the quality of Korea’s legal services through increased competition.<sup>121</sup> Such advancements will benefit both domestic and foreign businesses, which seek high level legal services. The rise of legal services quality will also bring about greater foreign investment and trade, resulting in economic growth for Korea. Furthermore, legal market liberalization will heighten Korea’s international image by showing the world that Korea firmly adheres to its international commitments. Such trust-building with other countries is vital for Korea if it hopes to become a major East Asian financial hub.<sup>122</sup>

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<sup>113</sup> Chiang, *supra* note 109, at 311-12.

<sup>114</sup> Kelemen & Sibbitt, *supra* note 7, at 300.

<sup>115</sup> *See id.* at 300-01; *see also* Suzuki, *supra* note 9, at 395.

<sup>116</sup> *See* Kelemen & Sibbitt, *supra* note 7, at 301-02.

<sup>117</sup> Suzuki, *supra* note 9, at 396.

<sup>118</sup> *Id.* at 301.

<sup>119</sup> *Id.* at 302.

<sup>120</sup> Kelemen & Sibbitt, *supra* note 7, at 301-02.

<sup>121</sup> *See* Chapman & Tauber, *supra* note 91, at 956.

<sup>122</sup> Peter Williamson, President of the Law Society of England and Wales, said in a 2004 interview that “[i]f Korea wishes to become the regional financial center, and if that will happen, it has to provide

### C. *Legal Market Liberalization Will Lower Legal Costs*

In addition to improving quality, legal market liberalization will also lower the cost of legal services in Korea. The restricted nature of Korea's legal market results in a dearth of available services, driving up legal service costs.<sup>123</sup> The small and tightly-knit Korean legal community has taken advantage of its monopoly status and has enjoyed high income throughout the years.<sup>124</sup> Clients lack alternatives and reluctantly pay the high rates lawyers charge for their services.<sup>125</sup> In international transactions, both foreign and domestic businesses have preferred the services of foreign law firms operating out of nearby Hong Kong or Japan. Acquiring such services has been costly, however, because of added fees, such as supplemental transactional fees, attorney accommodation fees, and travel costs.<sup>126</sup> A liberalized legal market would lower general legal costs by forcing firms to more actively compete for clients.<sup>127</sup> Instead of a small group of lawyers setting the price of legal services, the market would be able to dictate more reasonable legal fee rates. Also, foreign transactional legal costs would drop because foreign firms could open branches in Korea, averting many of the added fees charged for operating from branches in other countries.

### IV. KOREAN LAWYERS RESIST DEREGULATION EVEN THOUGH DEREGULATION WOULD ULTIMATELY BENEFIT EVERYONE

Despite its benefits, opponents of liberalization, most notably the Association, have consistently emphasized the dangers posed by the inflow of foreign law firms into an open Korean legal market.<sup>128</sup> They believe that legal market liberalization will lead to the foreign domination of Korea's legal market, which will cause a "domino effect" that will hurt all domestic

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legal services for (companies) from all other countries." So-young Kim, *Korea Must Liberalize Legal Services Market*, KOREA HERALD, Jan. 14, 2004, available at 2004 WL 55438095.

<sup>123</sup> See generally Milton C. Regan, Jr., *Corporate Norms and Contemporary Law Firm Practice*, 70 GEO. WASH. L. REV. 931, 933 (2002) (discussing law firm competition and legal costs). See also Hyeonjoo Ko, *supra* note 17, at 6.

<sup>124</sup> Although there were fewer than 6000 lawyers in Korea, total value of Korea's legal services market amounted to 1,850.4 billion won, or \$1609 million, in 2003. See Euromonitor International, *Legal Services in Korea*, Oct. 2004, at [http://www.euromonitor.com/legal\\_services\\_in\\_south\\_korea\\_\(mmp\)](http://www.euromonitor.com/legal_services_in_south_korea_(mmp)); see also Gwi-Soo Kim, *supra* note 22. The Attorney-at-Law Act directs the Association to set standard legal fees, which are not binding. *Attorney-at-Law Act*, *supra* note 20, at ch 4. sec. 19.

<sup>125</sup> Hyeonjoo Ko, *supra* note 17, at 6.

<sup>126</sup> See Joo-Yeon Seo, *supra* note 2; see also Garikipati, *supra* note 103.

<sup>127</sup> See Hyeonjoo Ko, *supra* note 17, at 6.

<sup>128</sup> *Gov't to Open FLC Business to Foreign Law Firms*, KOREA.NET, (Feb. 18, 2003), available at [http://www.korea.net/News/News/NewsView.asp?serial\\_no=20030218002](http://www.korea.net/News/News/NewsView.asp?serial_no=20030218002) [hereinafter *FLC Business*].

firms and private practices.<sup>129</sup> They further point out that differences between Korean and Western perceptions of law will cause harm to Korean society.<sup>130</sup>

A. *The “Domino Effect” Is an Exaggerated Threat*

The Association has argued that larger and more advanced foreign firms will dominate the Korean legal market, driving domestic firms and practices out of business.<sup>131</sup> Some experts have predicted that liberalization will cause foreign firms to take away much business from large domestic firms, forcing domestic firms to merge, dissociate, or make up for their losses by engaging more in areas of domestic practice.<sup>132</sup> They argue that smaller firms and practices that specialize in domestic legal matters will also suffer, as there will be increased competition in their narrow area of practice, forcing these firms and practices to look to other sources of income, such as accounting or patent law.<sup>133</sup> In addition, many lawyers may be forced to take more desperate measures, such as “ambulance-chasing” or illegal practices.<sup>134</sup> Such a “domino-effect” could wreak havoc on the Korean legal market.<sup>135</sup> Although such warnings are not without basis, they exaggerate the effects of liberalization and fail to address some of the realities of Korea’s legal market.

A surprising number of Korean lawyers support legal market liberalization. In a 2003 survey of 117 Korean attorneys, 39.3% supported liberalization.<sup>136</sup> Such proponents of liberalization have argued that a deregulated legal market will bring forth much benefit to Korea’s economic development and that fears of market domination by foreign firms have been exaggerated.<sup>137</sup> For instance, Ju-Myung Hwang, managing partner of Hwang Mok Park P.C., a mid-sized Korean firm of about sixty lawyers,

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<sup>129</sup> *Scouting*, *supra* note 38; *see also* Seung Jin Choi, *supra* note 1.

<sup>130</sup> Suzuki, *supra* note 9, at 405-06.

<sup>131</sup> *Id.* at 405.

<sup>132</sup> *Scouting*, *supra* note 38; *see also* Seung Jin Choi, *supra* note 1.

<sup>133</sup> *See* Seung Jin Choi, *supra* note 1.

<sup>134</sup> *See* Doo Shik Park, *Byun-ho-sa Baek-soo Shi-dae [Era of Unemployed Lawyers]*, CHOSUN DAILY NEWS, Nov. 29, 2003, available at <http://www.chosun.com/w21data/html/news/200311/200311280310.html>.

<sup>135</sup> *Scouting*, *supra* note 38; *see also* Seung Jin Choi, *supra* note 1.

<sup>136</sup> *EUCCK*, *supra* note 53.

<sup>137</sup> Many Korean lawyers do not believe that liberalization will pose a significant threat to domestic lawyers. They have argued that foreign firms will not be as successful in Korea as they were in Europe, because of Korea’s inconsistent and fluctuating policies as well as cultural and language barriers. They have also pointed to the fact that Korean lawyers, who are representative of the brightest elites of the society, will effectively adapt to liberalization and will pose significant competition to foreign lawyers. Guk-Sung Hwang et al., *supra* note 96. *See also* Jung-Min Kim, *supra* note 88.

suggested that even with market liberalization, foreign lawyers would not be concerned with small domestic cases or non-business related claims but will be occupied with international transactions and foreign investment related matters.<sup>138</sup> Furthermore, foreign firms are already operating extensive Korea-related practices from nearby hubs,<sup>139</sup> and liberalization will not significantly increase their market-share. These lawyers argue that as business opportunities increase, liberalization will “expand the pie” for all competing firms.<sup>140</sup>

*B. The Culture Argument Is Not a Logically Sound Basis for Opposing Legal Market Liberalization*

Opponents of liberalization also argue that a deregulated legal market would conflict with traditional Korean perceptions of law. The Association suggests that Western notions of litigation and rule of law simply do not fit with Korean societal tendencies.<sup>141</sup> It argues that Koreans are non-litigious and uncomfortable with the rule of law and its democratic structure.<sup>142</sup>

Korea indeed possesses very different notions of law from Western societies. A five thousand-year-old nation with rich culture, customs, and traditions, Korea has traditionally been a highly non-litigious nation.<sup>143</sup> This trait stems from Korea’s strong Confucian roots and unfamiliarity with the rule of law.<sup>144</sup> Although Buddhism had prospered in Korea for a long period, Confucianism took over as the most influential ideology in the fourteenth century.<sup>145</sup> Reintroduced to Korean society during the Chosun Dynasty by the royal family in order to rid the country of the strong political influence of Buddhism, Confucianism came to dominate the lives of Koreans. It established the basis for social order through its teachings of human relationships and hierarchy.<sup>146</sup> Although Confucianism no longer

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<sup>138</sup> Jung-Min Kim, *supra* note 88.

<sup>139</sup> ASIA-PACIFIC LEGAL 500, SOUTH KOREA: OVERVIEW: LEGAL MARKET (2004), available at [http://www.legal500.com/as500/frames/sk\\_fr.htm](http://www.legal500.com/as500/frames/sk_fr.htm).

<sup>140</sup> *Guk-ne Bup-ryul Shi-jang Gae-bang Il-jung, Pok Dal-la-ji-na?* [Domestic Legal Market Liberalization Schedule, Will it be Enlarged?], LEGAL TIMES, (Mar. 23, 2005), available at <http://www.legaltimes.co.kr/view.htm?kind=&keys=&UID=2068>.

<sup>141</sup> Suzuki, *supra* note 9, at 405-06.

<sup>142</sup> *Id.*

<sup>143</sup> See Michael C. Kalton, *Korean Ideas and Values*, in LAW IN EAST ASIA: KOREA 9 (Stanley Wagner, Jr. & Kee-Young Yeun, comp., 1989).

<sup>144</sup> See *Id.* See also Suzuki, *supra* note 9, at 406.

<sup>145</sup> Kalton, *supra* note 143, at 9-12.

<sup>146</sup> *Id.* at 9.

stands as a publicly or nationally revered ideology today, Korean mentality and society remain strongly rooted in its remnants.<sup>147</sup>

Confucian notions generally conflict with Western philosophy of law.<sup>148</sup> Confucianism emphasizes the importance of different types of “special relationships” that are essential to humanity.<sup>149</sup> These relationships, which have been a basis for the hierarchical traditions throughout East Asia, emphasize the importance of respect to others, harmony, and order.<sup>150</sup> Formal decorum, filial piety, and personal loyalties are considered vital for a healthy society.<sup>151</sup> Individualism and creativity, on the other hand, which are most revered in the West, are less important than human relationships and consideration for others, and can be sources of disorder if they lead to irreverence.<sup>152</sup> As a result, Korean newspapers and magazines have frequently criticized individualism as Western society’s greatest flaw.<sup>153</sup>

Such Confucian notions are an important factor in the non-litigious character of Koreans. For example, in situations where there is a dispute, Koreans choose to resolve conflicts in private and without legal action, because they consider their relationships with others as very important.<sup>154</sup> When they choose to mediate, their primary goal is the preservation of relationships rather than actual dispute resolution.<sup>155</sup>

Moreover, Koreans also tend to avoid litigation because of their discomfort with the notion of rule of law. Modern law originated in Korea during the nation’s colonial period under Japan, and even then, it was used as a tool for the exploitation and destruction of Korean traditional society.<sup>156</sup> Only with independence in 1945 was Korea introduced to a truly democratic form of law based on sovereignty and a constitution.<sup>157</sup> However, war and recovery efforts then posed as obstacles for the development of the rule of law in Korea.

Despite such concerns, Koreans have increasingly embraced the rule of law throughout the years, particularly since the establishment of non-

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<sup>147</sup> *Id.*

<sup>148</sup> *See id.* at 10.

<sup>149</sup> *Id.* at 10.

<sup>150</sup> *Id.* at 11.

<sup>151</sup> *Id.* at 12-17.

<sup>152</sup> *Id.* at 11.

<sup>153</sup> *Id.* at 11.

<sup>154</sup> Tonkovich, *supra* note 55, at 579.

<sup>155</sup> *Id.* at 579-80.

<sup>156</sup> *See* Chan Jin Kim, *Korean Attitudes Towards Law*, 10 PAC. RIM L. & POL’Y J. 1, 15 (2000).

<sup>157</sup> *See id.* at 8.

military governments in the 1990s.<sup>158</sup> Furthermore, the culture argument laid out by opponents of liberalization appears meaningless. If liberalization does indeed conflict with traditional Korean culture and societal tendencies, Koreans will simply not accept the inflow of foreign lawyers, relieving any fears of foreign domination of Korea's legal market.<sup>159</sup> On the other hand, if people accept liberalization and adapt to the inflow of foreign lawyers, the culture argument does not stand any longer.<sup>160</sup> In any case, culture and traditional tendencies do not support the closure of Korea's legal market.

V. THE OPENING OF THE LEGAL MARKET WILL YIELD BENEFICIAL RESULTS ONLY WHEN LEGISLATIVE, STRUCTURAL, AND EDUCATIONAL REFORMS ARE IMPLEMENTED

Legal market liberalization is necessary for Korea's continued progress, but it will not lead to the expected benefits for Korean and foreign businesses and firms without a number of key reforms. First, legislative reform is necessary to create an environment that permits an effective and smooth liberalization process. Second, oversight and enforcement mechanisms should be implemented to ensure professional responsibility and client protection. Third, domestic firms should raise their competitiveness through mergers and restructuring. Finally, there must be educational reform to better equip Korean lawyers with the skills and knowledge necessary to operate on a global scale. The current legal education system does not provide students with the specialization and quality required to compete in a liberalized legal market.

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<sup>158</sup> The author of this comment was fortunate enough to spend a substantial period of his life in Korea and has visited the country every year since moving to the United States. Koreans have indeed become much more accustomed to the rule of law. While traffic violations and various petty offenses were considered quite normal behavior among Koreans until the early nineties, such behavior has become much rarer in recent years. Further, during the 2003 World Cup in Korea and Japan, Korean fans exhibited an orderly and rule-abiding behavior rarely witnessed in any other country. For instance, the hundreds of thousands of fans who filled the streets to watch their national team's matches organized themselves after the games to clean up the streets. It was truly amazing to see the return to normalcy in Seoul's streets on days after the Korean team's matches were held. See also Chan Jin Kim, *supra* note 156 at 45.

<sup>159</sup> Interview with Prof. Michael Dowdle, Visiting Professor, University of Washington School of Law; Associate Professor, Chinese Univ. of Hong Kong, (May 12, 2005) [hereinafter *Interview*].

<sup>160</sup> *Id.*

A. *Korean Legislators Must Enact Legislative Revisions*

The basic prerequisite for opening the legal market is legislative reform. The Attorney-at-Law Act, which tightly restricts the right to practice in Korea,<sup>161</sup> needs to be modified to effectively regulate the activities of non-Korean bar-licensed legal professionals, including foreign lawyers. This can be achieved through an authorization and registration requirement that sets out various conditions for practice. In addition, experience and residency conditions will allow foreign lawyers the opportunity to practice in Korea, while still maintaining necessary standards.<sup>162</sup> Clear definitions and regulation of the roles of foreign lawyers in the Korean legal system, identifying the scope of practice for foreign lawyers, will allow for efficient oversight of foreign lawyers and will ease some fears among Korean lawyers of market domination by foreign firms. Furthermore, allowing for greater flexibility in firm structure by introducing the LLP model will promote a more balanced market. Not only will it incentivize domestic firms to expand by restricting liability,<sup>163</sup> but it will also give foreign firms structural flexibility in entering Korea's market. Finally, legislative revisions that clarify the scope of practice of lawyers, tax accountants, and patent lawyers are necessary to prevent conflict between the different professions amidst liberalization.

1. *Foreign Lawyers and Firms Should Be Allowed to Practice and Should Be Required to Obtain Proper Authorization from the Association*

One essential requirement is that foreign lawyers and firms attain proper authorization for practice from the Association. This will allow for the effective control and maintenance of the Korean legal market amidst rapid expansion and heightened competition.<sup>164</sup> In order for there to be

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<sup>161</sup> Jung, *supra* note 26.

<sup>162</sup> Hyeonjoo Ko, *supra* note 17, at 14.

<sup>163</sup> The absolute liability system in Korea has been a significant obstacle to firm expansion. Regardless of whether they were involved, firm attorneys can currently be held liable for the misconduct of other attorneys in the firm. Thus, there is a tendency among firms to limit the number of its member lawyers. Soon Duk Kim, *supra* note 41.

<sup>164</sup> In China, strict requirements for foreign lawyers seeking authorization has protected the quality of legal services in the country. It has also led to increased competition among foreign firms to enter the Chinese legal market. Foreign firms are allowed to open one office per firm and are prohibited from joining in partnerships with domestic firms. Their scope of practice is limited to matters relating to foreign law. In order to ensure professional responsibility and high quality services, foreign lawyers are required to have at least three years of professional legal experience in their own countries. See *We-guk Law Firm-gan Gyung-jeng-yoo-do [Promoting Competition among Foreign Firms]*, MAEIL BUSINESS NEWSPAPER, July 31, 2004, available at <http://search.mk.co.kr/contentView.php?docid=136495&cid=0>.

proper authorization and monitoring, Korea's legislature must modify the Attorney-at-Law Act to allow foreign lawyers and firms a realistic chance to access Korea's legal market. One way this can be accomplished is to exempt foreign lawyers from the Act's education requirement. Instead of the overly broad "special reason" clause in chapter 2, section 6, the Attorney-at-Law Act should be modified to allow foreign lawyers to attain authorization and register with the Association upon fulfillment of a number of concrete conditions, such as experience of practice in the lawyer's own country and current residency in Korea. A separate set of conditions, such as past history of good faith and responsible practice, should also be required for firms. These requirements will allow foreign lawyers to practice in Korea, while also ensuring that they are reliable and competent practitioners.

2. *Requiring Experience and Residency for Foreign Lawyers Would Enable the Korean Legal Market to Maintain Certain Standards of Practice*

Korea should implement a set of regulations similar to Japan's, because, unlike the more liberal Hong Kong approach, it would allow access for foreign lawyers to Korea's legal market while ensuring that only qualified lawyers can actually engage in practice. During Japan's first wave of legal market opening, for example, foreign lawyers were required to maintain residency in Japan and have five years of practice experience in their own country.<sup>165</sup> While the last condition has gradually been relaxed throughout the years to three years of experience,<sup>166</sup> registration and continued residency requirements remain intact. Such regulations have allowed Japan to control the inflow of foreign lawyers, while ensuring that foreign lawyers in Japan are experienced and capable. Furthermore, they minimize some of the outflow of Japanese currency to other countries by forcing foreign lawyers to reside within the country.

In contrast, Hong Kong took a far more liberal approach regarding experience and residency requirements.<sup>167</sup> The 1994 Foreign Lawyers Registration Rules that accompanied liberalization required that at least one of each foreign firm's partners stationed in Hong Kong have at least five years of experience in his or her home jurisdiction.<sup>168</sup> Furthermore, he or she needed to have worked for the firm during the immediately preceding

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<sup>165</sup> Hyeonjoo Ko, *supra* note 17, at 14.

<sup>166</sup> *Id.*

<sup>167</sup> Chiang, *supra* note 109, at 324.

<sup>168</sup> *Id.* at 324-25.



year and for an additional year during the four-year period immediately preceding the last year.<sup>169</sup> While this arrangement appears restrictive at first glance, it actually allows for both partner-level attorneys and less-experienced associates to practice in Hong Kong, because it applies the experience requirement to only one person per firm rather than to every foreign lawyer.<sup>170</sup> Hong Kong's lenient requirements failed to protect the domestic legal industry, as an enormous inflow of foreign lawyers drove out small interest businesses.<sup>171</sup>

The Korean government has proposed to the WTO a set of requirements similar to those of Japan. The plan is to require all foreign lawyers entering Korea's legal market to have at least five years of legal experience in their home jurisdictions.<sup>172</sup> By implementing more restrictive requirements for practice, Korea can hope to avoid the pitfalls of over-liberalization Hong Kong experienced. It can restrict entry to the legal market to experienced higher-level lawyers capable of handling international matters. Further, it can later choose to shorten the required years of experience if such a need arises. Therefore, the conditions proposed by Korea's government should be an effective means of regulating foreign attorneys and ensuring that they are qualified practitioners of law.

### 3. *The Scope of Practice for Foreign Lawyers Should Be Clarified and Limited*

In addition to modifying the law to enable foreign lawyers to enter Korea, Article 2 of the Attorney-at-Law Act should also include a provision outlining the scope of practice that is allowed for foreign lawyers. This would be important as a guideline for oversight of foreign lawyers and could also ease some of the fears of foreign domination among domestic lawyers. In Japan, for example, foreign lawyers are currently prohibited from practicing Japanese domestic law and are only allowed to handle international legal matters.<sup>173</sup> While there has been some indirect practice of domestic law through the formation of specified joint venture arrangements with domestic firms, foreign firms in Japan still mostly tend to provide international trade and commerce-related services to businesses.<sup>174</sup>

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<sup>169</sup> *Id.* at 325.

<sup>170</sup> *Id.* at 325.

<sup>171</sup> *Interview, supra* note 159.

<sup>172</sup> Soon Duk Kim, *supra* note 41.

<sup>173</sup> Kohei Nakabo & Yohei Suda, *Judicial Reforms and the State of Japan's Attorney System: A Discussion of Attorney Reform Issues and the Future of the Judiciary*, 11 PAC. RIM L. & POL'Y J. 147, 169. (2002).

<sup>174</sup> *See* Kelemen & Sibbitt, *supra* note 7, at 302.

Korea's small and unsophisticated legal service sector has been unable to satisfy the needs of large-scale businesses and investors.<sup>175</sup> Clients seeking advice on domestic legal matters, on the other hand, do not require the manpower and superior technology of large international firms.<sup>176</sup> Thus, the main goal of Korea's legal market liberalization should be the expansion of commercial and transactional legal capabilities.<sup>177</sup> These are also the sectors foreign firms are most interested in when seeking to enter Korea.<sup>178</sup> By explicitly limiting through legislation the scope of practice for foreign lawyers to internationally-related matters, Korea can prod foreign firms to focus on the area of law that they are best equipped to handle, while protecting many of the smaller domestic firms and private practices.

#### 4. *The Status of Different Legal-Related Professions Needs to Be Simplified*

Another issue that must be straightened out by legislative reform is the status of lawyers, tax accountants, and patent lawyers. Korea should eliminate the distinctions between these professions in order to allow foreign firms to better incorporate themselves into the Korean legal market. Furthermore, by simplifying the variety of legal-related professions, Korea can hope to alleviate some of the conflict among the different professions.

Lawyers, tax accountants, and patent lawyers are considered separate professions in Korea and are governed by their own respective rules and associations. Despite such professional distinctions, there is widespread overlap in activities among the three professions, leading to disputes over the extent of practice for each profession.<sup>179</sup> For example, lawyers frequently provide accounting and patent law services for clients.<sup>180</sup> Such functional confusion has led to much conflict between the different professions. Korean attorneys have come under fire from tax accountants, known as *se-moo-sas*, and patent lawyers, or *byul-lee-sas*,<sup>181</sup> who have

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<sup>175</sup> See Joo-Yeon Seo *supra* note 3.

<sup>176</sup> Guk-Sung Hwang et al., *supra* note 96; see also Jung-Min Kim, *supra* note 88.

<sup>177</sup> Sae-Hoon Chang, *Jah-gyuk-sa Youn-yuk-da-toom 'Goo-hwek-jung-ri' [Turf War Among Licensees]*, DAEHAN DAILY NEWS, Oct. 27, 2003, available at <http://www.seoul.co.kr/news/newsView.php?id=20031027007002&code=seoul&keyword>.

<sup>178</sup> See Guk-Sung Hwang et al., *supra* note 96; see also Jung-Min Kim, *supra* note 88.

<sup>179</sup> See Sae-Hoon Chang, *supra* note 177; see also Koo Yul Kang, *supra* note 32.

<sup>180</sup> See Sae-Hoon Chang, *supra* note 177.

<sup>181</sup> In Korea, *byul-lee-sas*, or patent lawyers, are deemed professionally distinct from lawyers. However, lawyers frequently cross the line of expertise and give advice on patent law. *Id.*; see also Tae Sung Cho & Hye Seung Kang, *Ih-jen Law School Shi-dae: Jun-mun Ja-gyuk-sa Young-yuk Da-toom [The Age of Law Schools Have Arrived: Professional Licensees Fight Over Operational Turf]*, DAEHAN DAILY

criticized lawyers for frequently practicing outside their profession.<sup>182</sup> Not only does such conflict disrupt the smooth and effective functioning of the different law-related professions by producing costly disputes and litigation, but it also poses an obstacle to classifying incoming foreign lawyers. Foreign firms usually group all their members under the single title of lawyer, rather than differentiate between lawyers and patent lawyers. When a foreign firm enters the Korean market, however, confusion may arise as to what institutions and regulations different types of lawyers must respectively follow.

Therefore, Korea should eliminate some or all of the distinctions between legal-related professions. For instance, it could group lawyers and patent lawyers into a single classification. Of course, this will require legislation and reorganization of institutions. However, by doing so, Korea can solve many of the problems and confusion arising from cross-professional activities among the legal-related professions.

*B. The Korean Government and Association Should Cooperate to Implement Optimal Oversight and Enforcement Mechanisms*

In addition to legislative reform, proper oversight and enforcement mechanisms would protect both Korean and foreign lawyers and businesses from the harms of liberalization. Without an effective mechanism to govern and regulate the behavior of foreign lawyers, inexperienced lawyers could engage in irresponsible practice and unethical lawyers could flourish.

An institution dedicated to oversight and enforcement of the activities of foreign lawyers would ensure a level of professional responsibility in the legal market and would protect clients from irresponsible and negligent representation. This institution could achieve the level of organization and sophistication required for proper enforcement of law. A database of licensing and background information would also be helpful to ensure proper oversight. This institution would help to continuously survey and regulate foreign firms for improper and unethical activities. In its most effective form, the institution would be authorized to implement disciplinary measures.

Hong Kong provides an example of an oversight system for foreign lawyers. In Hong Kong, the Law Society, which is the professional organization for solicitors, is in charge of the inspection and regulation of

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NEWS, Oct. 25, 2004, available at <http://www.seoul.co.kr/news/newsView.php?id=20041025007002&code=seoul&keyword>.

<sup>182</sup> See Sae-Hoon Chang, *supra* note 177.

foreign lawyers.<sup>183</sup> It has been given broad disciplinary authorities, including revocation, suspension, and imposition of conditions on a foreign lawyer's registration. It can also order monetary penalties or censure foreign lawyers.<sup>184</sup>

Taiwan, on the other hand, has authorized the Ministry of Justice to oversee the regulation of foreign lawyers.<sup>185</sup> The Ministry plays the dual role of designating requirements for practice for foreign lawyers and enforcing their commitment to rules and regulations.<sup>186</sup>

Korea should carefully consider which institution would be most effective in overseeing foreign firms and enforcing proper conduct among foreign lawyers in Korea. The Association has been the traditional legal oversight institution.<sup>187</sup> Foreign firms will have to register with the Association before practicing in Korea. However, the Association is currently a strong opponent of liberalization and may be more biased than other institutions when regulating foreign firms. The Ministry of Justice has been actively involved in drafting liberalization proposals for the WTO negotiations.<sup>188</sup> It would play a major role in formulating the practice requirements for foreign lawyers. However, the Ministry might be overburdened by oversight and enforcement duties because of its other administrative roles. The creation of a separate institution is also a possibility. But such an endeavor could be costly and require a significant build-up period. Upon analyzing its options, the Korean government should designate an institution and confer upon it the necessary funds and authority for effective oversight and enforcement. The institution, in turn, must formulate optimal methods of surveying and regulating foreign firms.

### C. *Domestic Firms Should Improve Their Competitiveness Through Mergers, Restructuring, and Specialization*

Domestic firms can prepare for liberalization by raising their competitiveness. There currently remains a large gap in the quality and sophistication of legal services between Korean and foreign firms.<sup>189</sup> The Association points out that an inflow of foreign firms into the Korean legal

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<sup>183</sup> Chiang, *supra* note 109, at 327.

<sup>184</sup> *Id.*

<sup>185</sup> *Id.* at 368.

<sup>186</sup> *Id.*

<sup>187</sup> See *Attorney-at-Law Act supra* note 20, at ch. 3. See also ASIA-PACIFIC LEGAL 500, LEGAL SYSTEM: SOUTH KOREA (2005), available at [http://www.legal500.com/as500/frames/sk\\_fr.htm](http://www.legal500.com/as500/frames/sk_fr.htm).

<sup>188</sup> See *FLC Business, supra* note 128.

<sup>189</sup> In a survey of 150 Korean companies and 117 Korean lawyers, seventy percent suggested that foreign firms are more competitive than Korean firms. *Scouting, supra* note 38.

market may seriously harm or drive out uncompetitive domestic firms.<sup>190</sup> Even if such firms manage to survive in the short term, they will eventually suffer because of difficulties in cooperating or interacting with foreign firms. Domestic firms should seek to elevate their size and efficiency in order to both compete and cooperate with their larger foreign counterparts.

One way domestic firms could expand their capabilities is through mergers. Many of the major legal service areas, such as international commerce and trade, require a great deal of manpower and technology. Mergers would enable Korean firms to combine their labor, resources, and different areas of specialization, raising their effectiveness in an open legal market. A number of the larger domestic firms have sought to expand their effectiveness and compliment their weaknesses through mergers. For example, in 2001, Lee & Ko merged with Park & Partners, while Shin & Kim supplemented its litigation division by absorbing Yeollin Law.<sup>191</sup> The largest merger was between Yoon & Partners, dedicated primarily to corporate law, and litigation firm Roh & Yang in February of 2003.<sup>192</sup> This merger resulted in the creation of one of the five largest firms in Korea, Yoon & Yang, which has over a hundred lawyers.<sup>193</sup> Despite such efforts, creation and expansion of law firms in Korea has been hindered by an inflexible regime governing firm structure.

In order to promote further expansion of domestic firms, the Korean government must pass legislation that allows for the creation of LLPs, because limited liability for Korean lawyers is necessary for firms to grow. Indeed, a proposal submitted in the Korean National Assembly in the fall of 2004 called for the modification of the Attorney-at-Law Act to allow for the creation of LLPs.<sup>194</sup> All Korean firms are currently limited to absolute liability structures, which hold every lawyer jointly liable for the fault of every other member in the firm.<sup>195</sup> This has been an obstacle to the formation and expansion of Korean firms, which have been hesitant to increase the number of partners for fear of extended liability.<sup>196</sup> Amidst the upcoming inflow of foreign firms, the introduction of the LLP structure

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<sup>190</sup> *FLC Business*, *supra* note 128.

<sup>191</sup> ASIA-PACIFIC LEGAL 500, *supra* note 139.

<sup>192</sup> *Id.*

<sup>193</sup> *Id.*

<sup>194</sup> Jin-Won Kim, *Law Firm-gwa Byun-ho-sa-bup Gae-jung-ahn* [Law Firms and Proposal for Revision of the Attorney-at-Law Act], LEGAL TIMES, Aug. 18, 2004, available at [http://www.legaltimes.co.kr/view.htm?kind=menu\\_code03&keys=10&UID=943](http://www.legaltimes.co.kr/view.htm?kind=menu_code03&keys=10&UID=943).

<sup>195</sup> Sang Ho Han, *Byun-ho-sa-bup Gae-jung-gwa Law Firm-eui Jo-jik Hyung-Tae* [Revision of the Attorney-at-Law Act and the Structure of Law Firms], LAW TIMES, No. 3172, May 22, 2003, available at <http://www.lawtimes.co.kr/LawPnnn/Pnnyn/PnnynContent.aspx?serial=1593&m=pnnyn>.

<sup>196</sup> Soon Duk Kim, *supra* note 41.

would give Korean firms greater flexibility and enable them to increase their competitiveness through such means as mergers and restructuring. Furthermore, it would allow foreign firms to more easily transition into Korea's legal market by providing them with broader structural options.

Specialization is another way for domestic firms to increase their competitiveness.<sup>197</sup> Korean lawyers currently tend to serve and deal with all types of cases regardless of the area of law.<sup>198</sup> This lack of specialization has been pointed out as a major reason for the low level of practical efficiency and slow decision-making among Korean lawyers.<sup>199</sup> Because they must deal with issues arising from a variety of legal fields, Korean lawyers are less effective and less responsive to their clients' specific needs. While such inefficiencies may be tolerable to clients of small firms and private practices who usually seek advice on smaller, everyday issues, they do not meet the standards of specialization and quality required by the large companies who hire larger firms. Several Korean firms have realized the importance of specialization in recent years. For example, firms like Bae, Kim, & Lee and Lee & Ko have broken down their respective services by different areas of law to better meet their clients' specific needs.<sup>200</sup> Specialty firms, such as medical malpractice firm Hankang, entertainment firm Doowoo, and military-related litigation firm YBL, have also become popular.<sup>201</sup>

In order to prevent the foreign domination of Korea's legal market and to ensure a balanced growth among Korean and foreign firms, Korean firms should seek to elevate their competitiveness and efficiency through merger, restructuring, and specialization.

#### *D. Educational Reforms Are Needed to Better Prepare Korean Lawyers for Global Practice*

Educational reform is another important ancillary measure for legal market liberalization. Korea must seek to provide more practical emphasis while diversifying its legal educational curriculum. Korea's educational

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<sup>197</sup> Guk Cho, *Dong-buk-ah 'Bub-ryul Hub' reul Man-deul-lyu-myun [To make an 'East Asian Hub']*, Jan. 24, 2004, JOONGANG DAILY NEWS, available at <http://news.joins.com/opinion/200401/24/200401241818535471100010101012.html>.

<sup>198</sup> Korean law firms are nicknamed "hospitals without specialized doctors." One lawyer or law firm usually practices every field of law, including criminal, civil, family, patent, and administrative law. Yoo-Mi Kim, *Jung-Chi Focus: Byun-ho-sa Gang-je-joo-eui [Political Focus: Doctrine Requiring the Hiring of Lawyers]*, available at <http://www.lawvoice.com.ne.kr/magazine/41-8.html>.

<sup>199</sup> *Id.*

<sup>200</sup> Tae-Sung Cho, Dong-Hwan Ahn, & Ji-Min Hong, *Bup-ryul Shi-jang Gae-bang: Guk-ne Law Firm Bi-sang [Legal Market Opening: Domestic Firms on Alert]*, DAEHAN DAILY NEWS, Jan. 8, 2003, at 29, available at [http://www.potent.co.kr/bbs/read.cgi?board=free&y\\_number=1947](http://www.potent.co.kr/bbs/read.cgi?board=free&y_number=1947).

<sup>201</sup> Yoo-Mi Kim, *supra* note 198.

system currently provides minimal practical emphasis, instead focusing on the systematic memorization of theory and code law. Furthermore, its strong focus on the highly competitive law examination prevents students from pursuing a wide variety of studies. Such one-dimensional educational system limits diversity in legal studies and obstructs specialization.<sup>202</sup>

In addition, Korea must also expand the number of lawyers by increasing the law examination passage rate. Only when it is able to provide a larger flow of lawyers into the legal market will it be able to promote firm expansion and specialization.

1. *The Educational System Should Provide Greater Practical Emphasis and a More Diverse Curriculum*

Many Korean lawyers currently lack specialization and other necessary skills for legal success in an era of globalization, such as foreign language ability, management skills, and technological knowledge.<sup>203</sup> Korea's legal education focuses on the memorization of codes and theories. It does not promote practical application of the law, nor does it allow for diversity of study. Currently, there are no educational requirements for eligibility to take the exam. Therefore, a person need not graduate from high school or college in order to take the exam.

Because Korea's legal educational system focuses so much on passing the exam, prospective lawyers lack the opportunity to pursue practical legal training, such as professional internships. They are also limited in their ability to pursue particular legal areas of interest or to study international legal issues and foreign languages.<sup>204</sup> Most university students who major in law tend to ignore their curricula studies and instead study for the law exam at *go-shi-chons*, which are dorm-like facilities used for both living and exam preparation.<sup>205</sup> Even after passing the exam, students enter preparation classes to prepare for their entrance into the Judicial Training and Research Institute.<sup>206</sup> Such one-dimensional education leads to a lack of diversity and specialization among Korean lawyers, both of which are important for global competition.<sup>207</sup>

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<sup>202</sup> Soo-Geun Oh, *Globalization in Legal Education of Korea*, Conference: Education Lawyers for Transnational Challenges, Association of American Law Schools, May 21, 2004, available at <http://www.aals.org/international2004/Papers/Oh.pdf>.

<sup>203</sup> Guk Cho, *supra* note 197.

<sup>204</sup> Soo-Geun Oh, *supra* note 202.

<sup>205</sup> Yoo-Mi Kim, *supra* note 198.

<sup>206</sup> *Id.*

<sup>207</sup> Soo-Geun Oh, *supra* note 202.

In order for both Korean and foreign firms and businesses to acquire the necessary personnel and truly benefit from legal market opening, the educational system must offer greater practical emphasis and promote a more well-rounded legal education.<sup>208</sup> Internships, foreign language studies, and specialized legal studies must be promoted. Universities must diversify their legal curriculum.<sup>209</sup> The law examination passage rate should be increased to allow prospective lawyers greater opportunity to focus on their areas of legal interest and to pursue more international and foreign language studies.

Legislation passed in 2004, calling for the establishment of law schools, may be a first step in achieving such educational reform. The legislation, which takes effect in 2008, will make law school education a prerequisite for taking the law exam.<sup>210</sup> Because applicants to law schools will be admitted based on both their academic records and entrance examination scores, the law exam will become easier and will be given less weight than before in the selection process. This will allow prospective lawyers to focus more on their coursework and pursue various academic and practical experience opportunities. Although the transition into a law school system has its set of difficulties, such as the lack of both funds and qualified people willing to become professors, it will allow for a more versatile and diverse pool of potential lawyers.<sup>211</sup> Further, it will likely lead to broader opportunities for practical training and specialization. Such practical and specialized education is an important component of legal practice amidst global competition.<sup>212</sup>

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<sup>208</sup> Interview, *supra* note 159.

<sup>209</sup> Soo-Geun Oh, *supra* note 202.

<sup>210</sup> Suk-Min Sohn, *Law School 2008-nyun Shi-heng Chwe-jong Hwak-jung [Final Decision Made to Begin Law Schools in 2008]*, SEOUL BROADCASTING STATION, Oct. 5, 2004, available at [http://news.sbs.co.kr/sbsnews\\_NewsDetail.jhtml?news\\_id=N0311671217](http://news.sbs.co.kr/sbsnews_NewsDetail.jhtml?news_id=N0311671217).

<sup>211</sup> See Chung-Sik Kang, *Law School Q&A*, SEOUL NEWSPAPER, Oct. 6, 2004, available at <http://www.seoul.co.kr/news/newsView.php?id=20041006011002&code=seoul&keyword>.

<sup>212</sup> One of the major problems in cultivating lawyers who are capable of successfully operating internationally is the language barrier. Because many Korean lawyers feel uncomfortable with English, they tend to avoid meeting and communicating with foreigners. Such discomfort is intensified when the topic of conversation relates to legal matters, due to the expertise and professional terms involved. English language education is thus a vital component of the "globalization of legal education." See Soo-Geun Oh, *supra* note 202.



2. *Korea's Increased Number of Lawyers in Recent Years Constitutes a Step in the Right Direction*

Korea currently has only a small number of lawyers. The legal professional to population ratio in 2005 stands at one professional for every 5783 citizens.<sup>213</sup> In comparison, the United States, Great Britain, Germany, and France have ratios of one to 266, 557, 578, and 1509 respectively.<sup>214</sup> While the number of legal professionals admitted to the bar has continuously increased in recent years, the legal market remains relatively small.<sup>215</sup> This is problematic for firm expansion and specialization, which are vital components for maintaining domestic competitiveness amidst liberalization. Furthermore, lack of legal professionals, and lawyers in particular, prevents broader access among Koreans to the legal system and contributes to high legal costs.

Korea's progressive increase of the annual quota for legal professionals in recent years will allow for an easier transition into an open legal market structure. An increased flow of lawyers into the legal market will increase the number and size of domestic firms. In addition, less stringent conditions for entry into the bar will allow prospective lawyers to focus more on practical experience, international legal studies, and other areas of law in which they are interested. In such ways, educational reform will better provide Korean firms and lawyers with the type of focus and skills required for global practice.<sup>216</sup>

## VI. CONCLUSION

Legal market liberalization holds great potential benefits for not only Korean and foreign businesses and firms, but also for Korea as a nation. Not only would liberalization improve the quality and lower the costs of legal services in Korea by promoting competition, it would also promote Korea's continued economic development by raising the country's appeal to foreign investors.

In order to achieve successful liberalization and reap these benefits, however, Korea must implement a number of key ancillary legal and policy measures. It must enact legislative revisions to enable and regulate the

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<sup>213</sup> "Legal professionals" include all people qualified to practice law and who engage in law-related jobs. They may include judges, prosecutors, or lawyers. In most countries, legal professionals are those who pass the country's bar examination. Gwi-Soo Kim, *supra* note 22.

<sup>214</sup> *Id.*

<sup>215</sup> *Id.*

<sup>216</sup> Soo-Geun Oh, *supra* note 202.

practice of foreign lawyers in Korea. It must also set in place proper enforcement and oversight mechanisms in order to protect the legal market from irresponsible practices. Furthermore, it should promote domestic firm expansion and specialization to prepare and protect the domestic market from the inflow of larger foreign firms. Finally, Korea must undergo educational reform to provide the legal market with a larger number of domestic lawyers capable of successfully practicing amidst global competition. By implementing these measures, Korea can look forward to a liberalization that will bring forth a healthy balance and competition among Korean and foreign firms. Not only will this contribute to Korea's economic growth and development, it will also promote the nation's rise as a key financial hub.