

Fall 2012

The KORUS FTA on Foreign Law Firms and Attorneys in South Korea—a Contemporary Analysis on Expansion into East Asia

Jeanne John
Northwestern University

Follow this and additional works at: <http://scholarlycommons.law.northwestern.edu/njilb>

Recommended Citation

Jeanne John, *The KORUS FTA on Foreign Law Firms and Attorneys in South Korea—a Contemporary Analysis on Expansion into East Asia*, 33 NW. J. INT'L L. & BUS. 237 (2012).
<http://scholarlycommons.law.northwestern.edu/njilb/vol33/iss1/5>

This Comment is brought to you for free and open access by Northwestern University School of Law Scholarly Commons. It has been accepted for inclusion in Northwestern Journal of International Law & Business by an authorized administrator of Northwestern University School of Law Scholarly Commons.

The KORUS FTA on Foreign Law Firms and Attorneys in South Korea—a Contemporary Analysis on Expansion into East Asia

*By Jeanne Lee John**

Abstract: South Korea has historically restricted foreign entry into its domestic legal services market, but has finally opened up its market to the practicing attorneys of any country with which it has a free trade agreement. U.S. firms and attorneys have been applying to open offices in Korea since March 2012, when the Korea-U.S. Free Trade Agreement went into effect. The global legal community has been forecasting the moves into Korea as well as the broader effect foreign entry will have on the Korean domestic legal services market. Many point to Germany as the gloomy example of a country whose certain legal markets were dominated by foreign presence. Few recall Japan, where foreign and domestic firms adapt to and complement each other's market strength, even though Korea has specifically modeled its own liberalization after Japan's market opening over the last fifteen years. This Comment provides an analysis of the buzz surrounding Korea's legal services market liberalization, specifically addressing perceptions both for and against it. By focusing on (1) the legal education system, (2) the history leading up to foreign entry and the period of time following foreign entry, as well as (3) the current state of the legal services market in Germany, Japan, and Korea, this Comment concludes with five lessons that suggest that Korea's legal services market will remain relatively unchanged.

* Candidate for joint J.D. and LL.M. in International Human Rights, 2014, Northwestern University School of Law; B.A., Political Science and Psychology, 2008, Northwestern University. I would like to thank: Brian Park for this topic; DeJohn Allen for the right encouragement; Pat Disbennett for our extensive quibbles; Sumin Kim for being an acceptable life coach; and Mirae Yang for walking with me to print and submit this. Lastly, but not least-ly, Matthew Kim, for all the quesadillas, and my parents and brothers, for all the love—thank you.

TABLE OF CONTENTS

I.	Introduction.....	238
II.	The Buzz: Who Cares About Korea?.....	241
III.	The Wait: A History Lesson on the Korean Legal System.....	244
	A. Historical Protectionism and Anti-Competitive Practices.....	245
	B. Setting the Policy of the General Agreement on Trade in Services in Motion.....	247
	C. The Foreign Legal Consultant Act and the KORUS FTA.....	248
IV.	A Look Backward: The Legal Markets of Germany and Japan.....	250
	A. Germany: Not Merely a Story of Large Foreign Law Firms... 250	
	1. Legal Education and Entry into the Legal Profession.....	251
	2. Merger Mania.....	252
	3. The Current Legal Market: A Market Predominantly of Small Practices.....	256
	B. Japan: Korea's Precursor.....	258
	1. Historical Protectionism Followed by Internal Merger Mania.....	259
	2. Legal Education Reform.....	261
	3. The Current Legal Market: A Symbiotic Relationship.....	263
V.	A Look Forward: The Future of Korea's Legal Market.....	264
	A. The Continued Success of Korean Law Firms.....	264
	1. Lesson #1: Korea Has a Sophisticated Legal Market and Is Implementing Recent Legal Education Reform.....	265
	2. Lesson #2: The Legal Profession Will Become Increasingly Specialized in Korea.....	270
	3. Lesson #3: The Heightened Value of Branding in Korea Will Keep Both Elite Korean Law Firms and Long- Established Foreign Korea Practices at the Top.....	272
	4. Lesson #4: Korean Clients with International Legal Concerns Are Too Few to Demand a Large Foreign Supply Pool.....	273
	5. Lesson #5: U.K. Firms Facing Hurdles Will Be Further Reluctant to Enter Korea.....	275
	B. Evidence in Action So Far.....	277
	C. Other General Benefits of the Liberalization.....	280
VI.	Conclusion.....	281

I. INTRODUCTION

Law firms are exploring the benefits of a geographically diverse

footprint by looking for growth opportunities abroad.¹ In fact, the largest U.S.-based law firms have grown in their activities abroad at a rate of ten-to-one over their growth within U.S. borders.² In light of the financial turmoil shaking the globe since 2008, however, lawyers and law firms are warily testing “the promise of benefits from a diversified practice” that reaches the laws and people in jurisdictions around the world.³ As firms and attorneys in the Eastern and Western hemispheres of the globe contemplate setting up shop in South Korea (Korea)⁴, now an emerging option for expansion, this Comment spotlights the liberalization of the Korean legal services market.

Foreign attorneys or law firms have never been allowed to work autonomously in Korea—until now. Korea has entered into Free Trade Agreements (FTAs) with countries around the world to affirmatively allow foreign entry into its legal market for the first time in history.⁵ In October 2011, both chambers of the U.S. Congress approved legislation to implement the FTA between Korea and the United States (KORUS FTA), which President Obama signed into law.⁶ Just one month later, the Korean National Assembly also passed the agreement.⁷ By March 15, 2012, the FTA had entered into force.⁸ U.S. firms and attorneys will now join those of other countries with whom Korea has FTAs in the pool of legal professionals eligible to finally enter the Korean legal services market.

Proponents of the legal market liberalization in particular have always argued that the opening will lead to lower legal costs, and increase the overall quality of legal services in Korea because of increased competition.⁹ A ministry official explained that the anticipation would galvanize the local

¹ Laurel S. Terry et al., *Transnational Legal Practice*, 43 INT’L LAW. 943, 943 (2009).

² *Id.*

³ *Id.*

⁴ While “Korea” may accurately refer to either North Korea or South Korea, or even the two sovereign states combined, for purposes of this Comment, the term will be used as a less cumbersome reference to South Korea, officially the Republic of Korea.

⁵ Si-soo Park, *Foreign Law Firms Can Open Consultant Offices Here*, KOR. TIMES (Mar. 3, 2009, 6:31 PM), http://www.koreatimes.co.kr/www/news/nation/2009/03/117_40616.html.

⁶ United States-Korea Free Trade Agreement Implementation Act, Pub. L. No. 112-41, 125 Stat. 428 (2011).

⁷ Press Release, Office of the U.S. Trade Rep., Statement by U.S. Trade Rep. Ron Kirk on Kor. Parliament’s Passage of U.S.-Korea Free Trade Agreement (Nov. 22, 2011), <http://www.ustr.gov/about-us/press-office/press-releases/2011/november/statement-us-trade-representative-ron-kirk-korean>.

⁸ Press Release, Office of the U.S. Trade Rep., U.S., Kor. Set Date for Entry Into Force of U.S.-Kor. Trade Agreement (Feb. 2012), <http://www.ustr.gov/about-us/press-office/press-releases/2012/february/united-states-korea-set-date-entry-force-us-korea>.

⁹ See, e.g., Hyung Tae Kim, Comment, *Legal Market Liberalization in South Korea: Preparations for Change*, 15 PAC. RIM L. & POL’Y J. 199, 212–15 (2006).

bar association, domestic firms, and Korean attorneys, and that the ultimate goal of the opening was not to create more jobs for foreigners but to upgrade the Korean legal services industry.¹⁰ Moreover, these proponents have predicted that foreign firms will not directly compete with Korean firms, but rather carve out their own niches in cross-border practices areas,¹¹ focusing on international transactions, capital markets, and foreign investment related matters.¹² Finally, liberalization proponents suggest that the resulting presence of and collaboration with U.S. firms in particular will attract foreign direct investment activity to benefit all.¹³

The reaction to the liberalization, however, has not been entirely positive, and it is perhaps the nerves of the domestic legal community that have made the wait more buzz-worthy. The legal community and local bar of Korea have expressed concern that domestic firms in Korea are currently inadequate and too underdeveloped to compete with foreign firms.¹⁴ As early as 2007, attorneys in prominent positions at top law firms in Korea were making statements of what should or would be done with foreign entry into their markets.¹⁵ These attorneys warned that domestic law firms would either lose their elite employees to foreign firms or be forced to carry out a restructuring.¹⁶ They stated that these domestic firms had to build a more solid foundation through aggressive local mergers and acquisitions (M&A).¹⁷ The discourse regarding the future of the Korean legal services market has healthily raised a global awareness of the hopeful expectations as well as potential problems of the opening, but nonetheless has largely lacked a cohesive and methodical analysis, which this Comment consequently attempts to provide.

After a review of the history leading up to the anticipated opening to foreign entry of legal professionals in Korea in Parts II and III, Part IV of

¹⁰ Park, *supra* note 5.

¹¹ H. Park et al., *South Korean Law Firms in Expansion Mode Following Legal Market Liberalization*, FIN. TIMES (Aug. 12, 2011, 9:18 PM), <http://www.ft.com/intl/cms/s/2/9a4931de-c51e-11e0-ba51-00144feabdc0.html#axzz1izo2z6yd>.

¹² For an example of a firm's Korea practice, see *Korea*, CLEARY GOTTlieb STEEN & HAMILTON LLP, <http://www.cgsh.com/korea/> (last visited Feb. 5, 2012) (highlighting the firm's extensive experience in transactional work, specifically with assisting clients on capital investment).

¹³ Choong-yong Ahn, *Time for FDI Through KORUS FTA*, KOR. TIMES (Dec. 11, 2011, 4:19 PM), http://www.koreatimes.co.kr/www/news/bizfocus/2011/12/346_100547.html; Sang Hyuk Park & Gene Oh Kim, *Foreign Investment in Korea*, AM. LAW., May 2011, at 75.

¹⁴ Kim, *supra* note 9, at 215–19.

¹⁵ See *Domestic Law Firms Face Tough Competition*, DONG-A ILBO (Apr. 13, 2007, 7:58 AM), available at <http://english.donga.com/srv/service.php3?biid=2007041342438>.

¹⁶ *Id.*

¹⁷ *Id.*

this Comment analyzes the development of legal markets in Germany and Japan over the past thirty years: Germany as an commonly cited example of the success, perhaps domination, large foreign law firms have achieved in a country, and Japan as an example of a once highly protectionist East Asian country from which Korea has modeled its current liberalization. By comparing and contrasting the past and current status of the legal profession and legal markets in Germany, Japan, and Korea, Part V concludes with five lessons which propose that Korea's legal market will likely remain relatively unchanged. Specifically, because of its sophisticated domestic legal market and use of dual-educated local attorneys, heightened awareness of international branding, and small pool of clients in need of foreign legal advice, Korea will make way for increased legal services specialization, maintain its elite local large law firms, continue to share its legal market with previously established Korea practices of foreign law firms, and see more U.S. than U.K. presence.

II. THE BUZZ: WHO CARES ABOUT KOREA?

The entry into Korea's legal services market has been the cause of both hope and anxiety for at least six decades.¹⁸ The practice of law in Korea was restricted to Korean nationals for forty-seven years, until 1996, when the Korean Attorney-at-Law Act—which governs the practice of law and qualifications of attorneys—was revised for the first time to theoretically allow foreign legal participation in Korea.¹⁹ The actual acknowledged and official legal practice of foreigners in Korea never occurred, however, until recently.²⁰ The talk surrounding the opening of Korea's legal market has been seen on both sides of the world, and has not been confined to chatter

¹⁸ See generally Byeonhosabeob [Attorney-at-Law Act], Act No. 63, Nov. 7, 1949 (S. Kor.) (first version of the Attorney-At-Law Act, which has been amended numerous times since).

¹⁹ See *id.*, amended by Act No. 5177, June 30, 1996, arts. 4, 6 (S. Kor.).

²⁰ See discussion *infra* Part III. As a note to the self-conscious reader, foreign attorneys are not freely permitted to practice in the United States. Just as attorneys in the United States are regulated by the bar council of every state, oversight of foreign-educated law graduates and foreign-licensed lawyers is also controlled by each state of the Union, and varies across the country. The different approaches and considerations regarding foreign attorneys include allowing for temporary practice, permitting lawyers to practice as foreign legal consultants, and allowing full admission. See Carol A. Needham, *Practicing Non-U.S. Law in the United States: Multijurisdictional Practice, Foreign Legal Consultants and Other Aspects of Cross-Border Legal Practice*, 15 MICH. ST. J. INT'L L. 605 (2007) (focusing on provisions in the United States that govern in-bound practice by lawyers licensed in other countries). For more resources on the various issues surrounding U.S. transnational legal practice developments, see American Bar Association, *Commission on Multijurisdictional Practice*, AM. B. ASS'N, http://www.americanbar.org/groups/professional_responsibility/committees_commissions/commission_on_multijurisdictional_practice.html (last visited Mar. 15, 2012).

in the legal community. Rather, “Korea” has been the buzzword for media outlets,²¹ legal and business professionals, and government agencies in both the United States and Korea.

Korea has grown to be among the world’s twenty largest economies since it was established only sixty-four years ago.²² Although its total population²³ is about twice the size of the population of Texas,²⁴ and it takes up a geographic space that is only slightly bigger than the state of Indiana,²⁵ Korea has transformed into one of the world’s leading economies and is now home to major business conglomerates, such as Samsung, LG, and Hyundai-Kia Motors, making it an attractive business market.²⁶ Geographically, it is well situated for business in Northern Asia between China and Japan—two of the world’s largest economies.²⁷ Politically, Korean leaders have a large regional role in the East Asian area, and the Korean government is an integral consideration for U.S. foreign policy with regards to China and North Korea.²⁸ According to the Obama administration, “. . . South Korea has emerged as the United States’ closest ally in East Asia.”²⁹

Consequently, the KORUS FTA has received much public attention, mentioned in 2012 by President Obama in his first State of the Union address following the FTA’s ratification.³⁰ With the earlier passing of an FTA between the European Union (EU) and Korea (KOREU FTA)³¹ in July

²¹ A Google search one month after the ratification by both countries resulted in numerous articles by The American Lawyer, The Asian Lawyer, JD Journal, the New York Times, and Bloomberg Businessweek, for example. The same search done on the eve of the KORUS FTA’s entry into force in mid-March 2012 resulted in more articles in the Washington Post, the Wall Street Journal, the Chicago Tribune, the Orange County Register, and CNN Money.

²² The April 2012 estimate of the Korean population was 48,754,657. *Background Note: South Korea*, U.S. DEP’T OF STATE (Apr. 12, 2012), <http://www.state.gov/r/pa/ei/bgn/2800.htm>.

²³ *Id.*

²⁴ See U.S. CENSUS BUREAU, STATISTICAL ABSTRACT OF THE UNITED STATES: 2012 § 1, at 21 (2011).

²⁵ *Background Note: South Korea*, *supra* note 22.

²⁶ MARK E. MANYIN ET AL., CONG. RESEARCH SERV., R41481, U.S.-SOUTH KOREA RELATIONS 7–8 (2011), available at <http://www.fas.org/sgp/crs/row/R41481.pdf>; see also Emad Mekay, *US Readies for Korean Business*, ASIA TIMES ONLINE (Apr. 4, 2007), <http://www.atimes.com/atimes/Korea/ID04Dg01.html> (citing favorable and unfavorable business sentiments regarding the FTA around its signing in 2007).

²⁷ *Spotlight on Korea: Korea Q&A*, AM. LAW., Oct. 1, 2010, at 84.

²⁸ MANYIN ET AL., *supra* note 26, at 7–8.

²⁹ *Id.* at 1.

³⁰ See President Barack Obama, State of the Union Address: An America Built to Last (Jan. 24, 2012), available at http://www.c-span.org/uploadedFiles/Content/The_Administration/State_of_the_Union/SOTU-2012.pdf.

³¹ An EU priority during FTA negotiations with Korea was to secure Korea’s

2011,³² the U.S. government had been under pressure not to fall behind to the opportunities an FTA with Korea would allow for legal services and other markets alike.³³ The KORUS FTA is the United States' second largest FTA after the North American Free Trade Agreement, as well as Korea's second largest FTA after the KOREU FTA.³⁴ Economists have projected that the KORUS FTA will generate billions of dollars in increased trade and investment between the two countries, boosting economic growth and job creation for both.³⁵

Korea has also been particularly aggressive in the FTA push, having completed six other FTAs besides the KORUS FTA since 2002,³⁶ and beginning negotiations on several others,³⁷ including most recently with eyes on China.³⁸ Soon after the KORUS FTA was signed, former

commitment to allow EU law firms to increase their onsite presence in Korea. The KOREU FTA, like the KORUS FTA, has given EU-based law firms and attorneys access to Korea's legal market in a procedure similar to that given to the United States. See generally 2011 O.J. (L 127), available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:127:FULL:EN:PDF>. For example, the entry will be done in three similar stages. *Id.* at Annex 7-A-4, available at http://trade.ec.europa.eu/doclib/docs/2009/october/tradoc_145171.pdf; see also discussion *infra* Part III.C. For an in-depth analysis of the KOREU FTA and its implications for the United States, see WILLIAM H. COOPER ET AL., CONG. RESEARCH SERV., R41534, THE EU-SOUTH KOREA FREE TRADE AGREEMENT AND ITS IMPLICATIONS FOR THE UNITED STATES 1–24 (2011), available at <http://www.fas.org/sgp/crs/row/R41534.pdf>. For an overview of the differences between KORUS FTA and KOREU FTA, see Yeongkwan Song, *KORUS FTA vs. Korea-EU FTA: Why the Differences?*, KOR. ECON. INST. ACADEMIC PAPER SERIES, May 2011, available at http://www.keia.org/sites/default/files/publications/song_final_paper.pdf.

³² MANYIN ET AL., *supra* note 26, at 1.

³³ Press Release, Office of the U.S. Trade Rep., U.S. Trade Rep. Ron Kirk Calls for Swift Passage of Trade Agreements (Oct. 3, 2011), <http://www.ustr.gov/about-us/press-office/press-releases/2011/october/us-trade-representative-ron-kirk-calls-swift-passa>.

³⁴ MANYIN ET AL., *supra* note 26, at 1.

³⁵ *Background Note: South Korea*, *supra* note 22; but cf. *Why We Oppose the KORUS FTA—KCTU Position Paper on KORUS FTA*, KOR. CONFEDERATION OF TRADE UNIONS (Feb. 8, 2011, 9:47 AM), http://kctu.org/?mid=documents&listStyle=gallery&document_srl=9928 (arguing that the KORUS FTA will kill jobs, damage domestic industries, and lead to failure to meet labor standards). For a U.S. report on negotiations leading up to the KORUS FTA, see *The U.S.-Korea Free Trade Agreement Negotiations: Hearing on the U.S.-Korea Free Trade Agreement Negotiations Before the Subcomm. on Trade of the H. Comm. on Ways and Means*, 110th Cong. 26 (2007), available at <http://www.gpo.gov/fdsys/pkg/CHRG-110hhrg40312/pdf/CHRG-110hhrg40312.pdf>.

³⁶ COOPER ET AL., *supra* note 31, at 24 (Chile, Singapore, India, Peru, EU, and the ASEAN, which includes Brunei Darussalam, Cambodia, Indonesia, Laos, Malaysia, Myanmar, The Philippines, Singapore, Thailand, and Vietnam).

³⁷ *Id.* (Canada, Mexico, Australia, New Zealand, Colombia, Turkey, and the GCC, which includes Saudi Arabia, Kuwait, Bahrain, Qatar, the United Arab Emirates, and Oman); MANYIN ET AL., *supra* note 26, at 25.

³⁸ See John Power, *Should Korea Sign an FTA with China?*, KOR. HERALD (Feb. 6, 2012,

“President Lee Myung-bak was elected in December 2007 on a platform that promised to boost [the country’s] economic growth rate through deregulation . . . increased [foreign direct investment] . . . and . . . FTAs with major markets.”³⁹ Indeed, Korea’s regulatory environment is increasingly business friendly,⁴⁰ having very few remaining barriers to foreign direct investment.⁴¹ Keeping the significance of Korea’s overall market and economy in mind, Part III turns to the history behind Korea’s legal system.

III. THE WAIT: A HISTORY LESSON ON THE KOREAN LEGAL SYSTEM

Some have called the restriction on foreign entry into the Korean legal services market “a draconian [one] unique among the major East Asian countries.”⁴² Indeed Korea is the last country of the Organisation for Economic Co-operation and Development (OECD)⁴³ to officially liberalize its legal services market.⁴⁴ Korea has always prohibited foreign law firms “from opening offices in Korea, forming partnerships with Korean law firms, and recruiting Korean lawyers to provide . . . multijurisdictional services.”⁴⁵ Foreign lawyers who have worked for Korean law firms have

10:45 AM), <http://www.koreaherald.com/national/Detail.jsp?newsMLId=20120205000382>.

³⁹ *Background Note: South Korea*, *supra* note 22.

⁴⁰ Kyung-Won Choi et al., *Korea Recent Trends in Government Enforcement and Dispute Resolution*, AM. LAW., Oct. 2009, at 90, 90.

⁴¹ *Q&A Kim & Chang*, AM. LAW., Oct. 2008, at 105, 105.

⁴² *Id.* at 127.

⁴³ The OECD, established in 1961, is an international organization helping governments promote policies that “will improve the economic and social well-being of people around the world.” *About the OECD*, OECD, http://www.oecd.org/pages/0,3417,en_36734052_36734103_1_1_1_1_1_1,00.html (last visited Feb. 5, 2012). Its member countries include all of the former G7 states. *Member Countries*, OECD, http://www.oecd.org/countrieslist/0,3351,en_33873108_33844430_1_1_1_1_1_1,00.html (last visited Feb. 5, 2012).

⁴⁴ *The Impact of Legal Market Liberalization in Korea on U.S. Firms*, KOR. SOC’Y, http://www.koreasociety.org/business/business/the_impact_of_legal_market_liberalization_in_korea_on_u.s._firms.html (last visited Feb. 5, 2012) (providing an abstract for the April 8, 2008 presentation by attorney David Cho of Orrick, Herrington & Sutcliffe, LLP, on the expected practical impacts of the KORUS FTA on his practice). Admittedly, other countries that technically allow foreign access to their domestic legal services markets through foreign legal consultants have stringent requirements, reminiscent of Korea’s historical barriers discussed *infra* Part III.A, that still effectively exclude foreign attorneys and firms from practicing within their borders. One surprising example is India. See Arno L. Eisen, *Legal Services in India: Is There an Obligation Under the GATS or Are There Policy Reasons for India to Open Its Legal Services Market to Foreign Legal Consultants?*, 11 RICH. J. GLOBAL L. & BUS. 273 (2012).

⁴⁵ Song, *supra* note 31, at 10.

also faced limitations in their ability to represent Korean and international clients in the country.⁴⁶ To stay within the law, foreign attorneys have been operating their “Korea practices” out of their Hong Kong or Tokyo offices,⁴⁷ which have been equipped to handle Korean-related legal work from outside Korea’s borders.⁴⁸ For decades, these attorneys have traveled on three-hour flights, doing much of their business in Seoul hotel rooms.⁴⁹ Now, these same attorneys and law firms may continue their work involving Korean matters from offices located in Korea, and in the future, in joint ventures⁵⁰ with Korean law firms while employing Korean attorneys. The KORUS FTA, as the final necessary ingredient for the official opening of Korea’s legal market, has thus been long awaited and expected.⁵¹ It was never a question of *if* Korea would reach agreement with the United States, but *when*.⁵²

A. Historical Protectionism and Anti-Competitive Practices

Korea has traditionally applied restrictive business practices to protect its domestic services market at large, practices which have been regarded by other countries as trade barriers hampering flow of trade and fair competition.⁵³ Valuing self-sufficiency and historically antipathetic to foreign influence, Korea earned the title of “Hermit Kingdom” in the 19th century.⁵⁴ During Korea’s period of economic growth and development between the 1960s and 1990s, the Korean government had much more direct and positive involvement than the governments of other Asian countries; it made major decisions to manage the country’s economy, and

⁴⁶ *Quarterly Updates*, CORP. COUNS. Q., Oct. 2009, at 681, 718–19.

⁴⁷ Rachel Brash & Roger Parloff, *A World of Lawyers: Asia, Australia, and the Pacific Rim*, AM. LAW., Nov. 1998, at 50, 63.

⁴⁸ Misasha Suzuki, Note, *The Protectionist Bar Against Foreign Lawyers in Japan, China, and Korea: Domestic Control in the Face of Internationalization*, 16 COLUM. J. ASIAN L. 385, 404 (2003).

⁴⁹ Elizabeth Goldberg, *Closed Society*, AM. LAW., Oct. 2006, at 113, 113.

⁵⁰ “Joint ventures” refer to the business association under the third stage of the KORUS FTA legal market liberalization, where foreign and Korean law firms will be able to employ Korean attorneys and establish voting shares or equity interests. See Free Trade Agreement Between the United States of America and the Republic of Korea, U.S.-S. Kor. Annex II, June 30, 2007, available at <http://www.ustr.gov/trade-agreements/free-trade-agreements/korus-fta/final-text> [hereinafter KORUS FTA Annex II]; see also discussion *infra* Part III.C.

⁵¹ See Sean C. Hayes, *The KORUS FTA Will Pass: Don’t Hold Your Breath*, KOR. L. BLOG (Aug. 6, 2011), <http://www.thekoreanlawblog.com/2011/08/korus-fta-will-pass.html>.

⁵² Goldberg, *supra* note 49 (citing Jeong-ho Roh, director of the Center for Korean Legal Studies at Columbia University).

⁵³ Eun Sup Lee, *Anti-Competitive Practice as Trade Barriers Used By Korea and Japan: Focusing on Service and Investment Markets*, 16 BOND L. REV. 117, 118 (2004).

⁵⁴ See *Background Note: South Korea*, *supra* note 22.

this custom carried the day through the 21st century.⁵⁵ Korea has had a history of restricting foreign participation in various industries, including advertising, film, engineering, construction, and the legal services market.⁵⁶ While many of these industries were liberalized after the 1990s, the Korean government still found reason to restrict domestic access to foreign attorneys.⁵⁷ It cited reasons commonly given by countries around the world, including the “infant industry” theory—the fear that foreign lawyers and firms would overwhelm local firms and stifle the development of the local bar.⁵⁸

Specifically, the Korean Attorney-at-Law Act⁵⁹ has always protected the Korean legal market through extremely rigorous educational requirements.⁶⁰ In 1996, while the Act was revised⁶¹ to theoretically allow foreigners to practice in Korea by abolishing a rule that restricted legal practice to Korean nationals, by even a decade later, no foreign attorney had been authorized by the Ministry of Justice to practice as a lawyer.⁶² Impossible educational requirements included passing an exam offered only in Korean, which, for at least four decades, yielded annual pass rates ranging from less than 5% at best and around 0.25% at worst.⁶³ Thereafter,

⁵⁵ Lee, *supra* note 53, at 141. Korea is well-known for its *chaebols*, large Korean business conglomerates that were historically family-owned and spurred on by aggressive governmental support and finance. For a more comprehensive history of the formation of Korean *chaebols* and their significant contribution to Korea’s early economic growth, see MYONG HUN KANG, *THE KOREAN BUSINESS CONGLOMERATE: CHAEBOL THEN AND NOW* (1996); RICHARD M. STEERS ET AL., *THE CHAEBOL: KOREA’S NEW INDUSTRIAL MIGHT* (1989).

⁵⁶ Lee, *supra* note 53, at 143–44.

⁵⁷ *Id.* at 145–46 n.162.

⁵⁸ *Id.*; see also Michael J. Chapman & Paul J. Tauber, Note, *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, 952–53 (1995) (proposing four other reasons for host countries to restrict access to foreign attorneys, including: (1) lack of national loyalty and shared cultural values; (2) lack of necessary competence to practice domestic law; (3) inability to redress injury to citizens by foreign attorneys; and (4) lack of reciprocal access to foreign legal markets).

⁵⁹ Byeonhosabeob [Attorney-at-Law Act], Act No. 63, Nov. 7, 1949 (S. Kor.).

⁶⁰ See Kim, *supra* note 9, at 205–06.

⁶¹ Attorney-at-Law Act, amended by Act No. 5177, June 30, 1996 (S. Kor.).

⁶² Kim, *supra* note 9, at 205–06.

⁶³ Jasper Kim, *Socrates v. Confucius: An Analysis of South Korea’s Implementation of the American Law School Model*, 10 ASIAN-PAC. L. & POL’Y J. 322, 337–38 (2009); see also Matthew J. Wilson, *U.S. Legal Education Methods and Ideals: Application to the Japanese and Korean Systems*, 18 CARDOZO J. INT’L & COMP. L. 295, 336 (2010). For a look into a particular individual’s attempt to pass the exam, see John M. Glionna, *Seoul’s Intellectual Pressure Cooker*, L.A. TIMES, Aug. 21, 2011, <http://articles.latimes.com/2011/aug/21/world/la-fg-south-korea-exam-village-20110822> (after giving up on passing the exam, Park Jin-hun still dreams about whether he could do it, thirteen years after first trying).

the Act limited licensing of attorneys to individuals who completed a two-year training course offered solely through the Judicial Training and Research Institute (JTRI).⁶⁴ Regulating entry in this manner through compliance requirements with technical qualifications, rather than expressly restricting entry, was an effective move⁶⁵ made by countries faced with continuing domestic policy concerns for maintaining the quality of the profession⁶⁶ even after the adoption of more formal commitments to market liberalization.⁶⁷

B. Setting the Policy of the General Agreement on Trade in Services in Motion

Various forms of trade agreements include bilateral investment treaties, which generally help protect private investment, agreements under the World Trade Organization (WTO),⁶⁸ and FTAs, which can be between two or multiple states.⁶⁹ An FTA generally reduces barriers to exports of products and services between trading parties to the FTA, such as by eliminating or reducing tariffs and quotas.⁷⁰ While major global trade agreements have covered “goods” for more than sixty years, “services” have been covered by international agreements for less than twenty.⁷¹ As the share of services in international trade steadily increased, efforts to regulate that trade culminated in the adoption of the General Agreement on Trade in Services (GATS) in 1994.⁷² In 1995—the year before Korea

⁶⁴ Kim, *supra* note 9, at 205–06.

⁶⁵ Dai-kwon Choi, *Korea. A Legal Profession in Transformation: The Korean Experience, in Reorganisation and Resistance: Legal Professions Confront a Changing World* 171, 176 (William L.F. Felstiner, ed., 2005).

⁶⁶ Lee, *supra* note 53, at 125.

⁶⁷ See *supra* note 44.

⁶⁸ The World Trade Organization deals with regulation of trade between participating countries, providing a forum or framework for negotiating and formalizing trade agreements. See *What Is the World Trade Organization?*, WORLD TRADE ORG., http://www.wto.org/english/thewto_e/whatis_e/tif_e/fact1_e.htm (last visited Jan. 4, 2012).

⁶⁹ *Trade Agreements*, OFFICE U.S. TRADE REP., <http://www.ustr.gov/trade-agreements> (last visited Sept. 4, 2012).

⁷⁰ *Free Trade Agreements*, INT’L TRADE ADMIN., <http://trade.gov/fta/> (last visited Sept. 4, 2012).

⁷¹ Laurel S. Terry, *From GATS to APEC: The Impact of Trade Agreements on Legal Services*, 43 AKRON L. REV. 875, 878 (2010).

⁷² The GATS was a product of the WTO’s Uruguay Round on trade based on the view that technical and regulatory innovations enhanced the “tradability of services,” and it applies to all service sectors except those “supplied in the exercise of governmental authority,” such as health and education, and air transport services. For the full text of the GATS, see Marrakesh Agreement Establishing the World Trade Organization annex 1B, Apr. 15, 1994, 1867 U.N.T.S. 283, available at http://wto.org/english/docs_e/legal_e/26-gats.pdf [hereinafter GATS Annex 1B].

theoretically allowed foreign attorneys to practice within its borders through its amendment to the Attorney-at-Law Act⁷³—Korea joined the WTO.⁷⁴ Under the newly minted GATS, Korea, as a member government, was committed to engage in negotiations with other WTO members to progressively liberalize trade not only in goods, but also in services.⁷⁵ Heightening awareness of services internationally,⁷⁶ GATS inspired a new generation of regional trade agreements.⁷⁷ These trade agreements address a broad range of services, including transportation, finance, legal, construction, telecommunications, and environmental⁷⁸—industries that Korea historically restricted.⁷⁹ Korea concluded its first FTA with Chile in 2002,⁸⁰ and almost twelve years after committing itself to negotiating trade regulations with other WTO countries, informally signed the KORUS FTA in 2007.⁸¹ With high hopes in the spirit of GATS policy, the KORUS FTA is projected to generate billions of dollars in increased trade and investment in a wide-range of goods and services between Korea and the United States.⁸²

C. The Foreign Legal Consultant Act and the KORUS FTA

As a result of the Korean government's efforts to satisfy its obligations under the KORUS FTA,⁸³ and before the FTA's formal ratification by both governments, Korea's Ministry of Justice passed the Foreign Legal Consultant Act (FLCA) in March 2009.⁸⁴ The FLCA is the statutory mechanism that specifies which foreign lawyers and firms may work in Korea.⁸⁵ It also invalidates Article 109 of the Attorney-at-Law Act, which

⁷³ Byeonhosabeob [Attorney-at-Law Act], Act No. 63, Nov. 7, 1949, *amended by* Act No. 5177, June 30, 1996 (S. Kor.).

⁷⁴ *Members and Observers*, WORLD TRADE ORG., http://www.wto.org/english/thewto_e/whatis_e/tif_e/org6_e.htm (last visited Jan. 4, 2012).

⁷⁵ GATS Annex 1B, *supra* note 72, art. XIX.

⁷⁶ Gary Hufbauer & Sherry Stephenson, *Services Trade: Past Liberalization and Future Challenges*, 10 J. INT'L ECON. L. 605, 612 (2007).

⁷⁷ *Id.* at 618–21.

⁷⁸ COOPER ET AL., *supra* note 31, at 16.

⁷⁹ *See* Lee, *supra* note 53, at 143–44.

⁸⁰ *See* Hae-kwan Chung, *The Korea-Chile FTA: Significance and Implications*, E. ASIAN REV., Spring 2003, at 71, 71.

⁸¹ *See* MANYIN ET AL., *supra* note 26, at 1.

⁸² *See Background Note: South Korea*, *supra* note 22.

⁸³ *See* Kyungho Choi, *Korean Foreign Legal Consultants Act: Legal Profession of American Lawyers in South Korea*, 11 ASIAN-PAC. L. & POL'Y J. 100, 102 (2010).

⁸⁴ *Id.* at 101.

⁸⁵ For more information regarding the registration and requirements of foreign legal consultants and foreign legal offices, as well as sources on Korean regulations, see *Foreign Legal Consultant (FLC)*, KOR. B. ASS'N, http://www.koreanbar.or.kr/eng/sub/sub04_01.asp (last visited Feb. 5, 2012).

prohibited foreign attorneys from an unauthorized practice of law.⁸⁶ Article 1 of the FLCA declares that the Act's purpose is to establish prerequisites to qualify, register, and allow a foreign legal consultant (FLC) to work in Korea.⁸⁷ In general, a registered FLC is a practicing attorney in good standing in an eligible foreign country.⁸⁸ An eligible foreign country is one that has an existing FTA with Korea, ratified by both countries.⁸⁹ Thus, despite the enactment of the FLCA in 2009, it was not until November 2011 after the KORUS FTA was ratified by both the United States and Korea that U.S. lawyers and law firms could benefit from the provisions of either the KORUS FTA or FLCA.⁹⁰

Under the KORUS FTA, lawyers and law firms will enter the Korean legal services market in three stages.⁹¹ First, U.S. law firms may establish branch offices in Korea.⁹² U.S. attorneys may also provide legal advisory services on U.S. and public international law, but not domestic law.⁹³ This first stage focuses on allowing foreign *individuals* to transact business in Korea.⁹⁴ Second, in 2014, Korean and foreign law firms will be able to collaborate in matters where domestic and foreign legal issues are mixed, and share profits realized from such collaboration.⁹⁵ This stage focuses on greater integration by foreign *law firms*.⁹⁶ In the third stage, estimated to take place around 2017, foreign law firms will be able to enter into joint ventures with Korean law firms, as well as directly employ Korean legal professionals.⁹⁷ This last stage envisions the fullest integration of foreign legal professionals in Korea, and the creation of international law firms.⁹⁸

The market will not be an open free-for-all for any FLC to establish a practice, however, and foreign attorneys will still be constrained in other ways.⁹⁹ As a preliminary matter, the FLCA provides for certain

⁸⁶ Choi, *supra* note 83, at 101.

⁸⁷ Waegukbeobjamunsahbeob [Foreign Legal Consultant Act], Act No. 9524, Mar. 25, 2009 (S. Kor.).

⁸⁸ *Id.* art. 2.

⁸⁹ *Id.* art. 6(1)1.

⁹⁰ See Choi, *supra* note 83, at 102.

⁹¹ See KORUS FTA Annex II, *supra* note 50, at 45. Note that this model is not unique to the United States, but is also used, for example, in the KOREU FTA, and while the discussion here uses "U.S." attorneys and firms, the same schedule generally applies to attorneys and firms of other countries with whom Korea has an FTA. See sources cited *supra* note 31 (liberalization with the EU).

⁹² KORUS FTA Annex II, *supra* note 50, at 45.

⁹³ *Id.*

⁹⁴ Choi, *supra* note 83, at 103.

⁹⁵ KORUS FTA Annex II, *supra* note 50, at 45.

⁹⁶ Choi, *supra* note 83, at 103.

⁹⁷ KORUS FTA Annex II, *supra* note 50, at 45.

⁹⁸ Choi, *supra* note 83, at 103.

⁹⁹ See Sheppard Mullin Richter & Hampton LLP, *Korea Passes Foreign Legal*

qualifications, including licensing and minimum practical experience requirements.¹⁰⁰ Also, as the title “consultant” suggests, no foreign attorney may autonomously represent clients in Korean courtrooms or be self-employed, but must work with some established firm, whether Korean or foreign.¹⁰¹ While these foreign attorneys may maintain their titles as known in their home jurisdictions, such as “attorney at law,” and also use the Korean word for “lawyer”—or *byeonhosa*—they must still always present themselves to the public as FLCs.¹⁰² These kinds of details indicate the research and deliberation that have gone into completing Korea’s agreement to finally open its legal services market.¹⁰³

IV. A LOOK BACKWARD: THE LEGAL MARKETS OF GERMANY AND JAPAN

To robustly forecast the effects of Korea’s legal services market liberalization, a look back to prior foreign entry into the legal markets of Germany and Japan is indispensable. Although foreign firms have entered both German and Japanese legal services markets, the various legal players have also paved different paths in the two countries—differences that provide guideposts to the likely success of Korea’s future legal market.

A. Germany: Not Merely a Story of Large Foreign Law Firms¹⁰⁴

While a discussion of a country on another continent may seem inappropriate for an exposition on Korea at first glance, Germany has often

Consultant Act, Opening the Country’s Legal Service Market to Law Firms in Foreign Countries that are Parties to Effective Free Trade Agreements with Korea, ANTITRUST L. BLOG (Apr. 13, 2009, 2:40 PM), <http://www.antitrustlawblog.com/2009/04/articles/article/korea-passes-foreign-legal-consultant-act-opening-the-countrys-legal-service-market-to-law-firms-in-foreign-countries-that-are-parties-to-effective-free-trade-agreements-with-korea/>.

¹⁰⁰ See *infra* notes 359–67 and accompanying text.

¹⁰¹ Park, *supra* note 5.

¹⁰² Waegukbeobjamunsahbeob [Foreign Legal Consultant Act], Act No. 9524, Mar. 25, 2009, art. 27(1) (S. Kor.).

¹⁰³ Foreign law firms in Japan, for example, were initially prohibited from using their official “brand names,” which “has become a crucial element in determining and securing the value of a law firm” in any foreign jurisdiction. John Flood, *Lawyers as Sanctifiers: The Role of Elite Law Firms in International Business Transactions*, 14 IND. J. GLOBAL LEGAL STUD. 35, 66 (2007); see also *infra* notes 186–87 and accompanying text.

¹⁰⁴ The discussion that follows is one that focuses on a very limited timeframe in recent years and does not look into pre-1980 history of the legal profession in Germany. This older history, however, is a very interesting topic, notably surrounding the changes of the profession from before and after Adolf Hitler’s rule in Germany. While sources on the topic are myriad, the author suggests MICHAEL STOLLEIS, *THE LAW UNDER THE SWASTIKA: STUDIES ON LEGAL HISTORY IN NAZI GERMANY* (Thomas Dunlap, trans., Univ. of Chicago Press 1998) for one perspective on the legal profession through Nazi Germany in particular.

been cited in Korea and other East Asian countries¹⁰⁵ as the gloomy example of foreign infiltration and domination in domestic legal services markets.¹⁰⁶ Before the KORUS FTA was first signed, an article in *The Korea Times*¹⁰⁷ analyzed this common reference, noting generally that “[d]oomsayers point to the case of Germany, which saw eight of its top ten law firms taken over by larger British competitors just more than a decade after opening its legal services market.”¹⁰⁸ One scholar, upon studying large law firms in Germany, has suggested that developments in Germany may serve as an exemplar of what will happen in the legal markets of liberalizing countries, including Korea.¹⁰⁹ To clarify the flawed comparisons between Korean and German legal markets and the unwarranted resulting fallacies in Part V, this subpart provides an overview of: (1) the legal education system in Germany, which is now distinct from the systems of Japan¹¹⁰ and Korea;¹¹¹ (2) the growth of German law firms coupled with foreign entry¹¹² into the German legal services market; and (3) the German legal market’s current structure.

1. Legal Education and Entry into the Legal Profession

The largest and most successful of *large law firms* in Germany are U.K.-based, but this fact paints a very one-sided picture of the German legal services market, which begins, as it does anywhere, with a legal education. German students begin their legal studies in university, directly out of high school.¹¹³ There is no admission test for students who intend to pursue law, and they can generally choose the law faculty they want to attend.¹¹⁴ During the course of their university studies, students take several exams in

¹⁰⁵ See, e.g., Bruce E. Aronson, *Elite Law Firm Mergers and Reputational Competition: Is Bigger Really Better? An International Comparison*, 40 VAND. J. TRANSNAT’L L. 763, 821 (2007) (discussing Japan).

¹⁰⁶ See Goldberg, *supra* note 49.

¹⁰⁷ The Korea Times is Korea’s first and oldest newspaper providing daily publications in English. See generally KOR. TIMES, <http://www.koreatimes.co.kr/www/index.asp> (last visited Mar. 16, 2012).

¹⁰⁸ Tong-hyung Kim, “U.S. Invasion” Not Likely in Korean Law Market, KOR. TIMES (Apr. 15, 2007 10:42 PM), http://www.koreatimes.co.kr/www/news/special/2009/05/206_837.html.

¹⁰⁹ Christoph Luschin, *Large Law Firms in Germany*, 14 TOURO INT’L L. REV. 26, 29 (2010).

¹¹⁰ See discussion *infra* Part IV.B.2.

¹¹¹ See discussion *infra* Part V.A.1.

¹¹² Because both the popular perception in Asia and reality of the German legal market reflect the success of large law firms from the U.K. and United States, this subpart focuses on the history of the legal profession from those two countries in Germany.

¹¹³ Stefan Koriath, *Legal Education in Germany Today*, 24 WIS. INT’L L.J. 85, 90 (2006).

¹¹⁴ *Id.*

various areas of the law, receiving certificates for passing each.¹¹⁵ These certificates are required for the next step, a state bar exam administered in two stages.¹¹⁶ The first exam covers the academic knowledge acquired during all of the previous years spent in university.¹¹⁷ Students are evaluated by a mix of professors and practitioners, and about 70% of testers pass.¹¹⁸ Between the first and second exam, students go through a compulsory two-year period of training through practical internships.¹¹⁹ Thereafter, the second exam aims at testing the practical skills acquired in training, and is evaluated only by practitioners; about 85% of students make it past this second exam annually.¹²⁰

Germany has generally not faced concerns regarding an under-supply of legal professionals.¹²¹ The recruitment pool for large law firms and in-house legal departments of very large corporations in Germany, however, is still quite small each year. While the German legal education journey consumes at least six years, large employers ultimately look primarily at high performance on the two bar exams alone, as opposed to grades, law school rankings, or relevant experience.¹²² Moreover, with a historical commitment to producing jurists, a legal education has been regarded “as the best general education available in Germany,” and many lawyers do not pursue specific legal professions.¹²³ Consequently, most law school graduates end up in small private legal partnerships, journalism, or politics.¹²⁴

2. Merger Mania

The recruitment pool for large law firms in Germany is also small because the market share of those firms within the domestic German legal

¹¹⁵ *Id.* at 94.

¹¹⁶ *Id.*

¹¹⁷ LARS GEROLD, OFFICE FOR DEMOCRATIC INSTITUTIONS AND HUMAN RIGHTS, THE LEGAL PROFESSION IN GERMANY 9 (2008), available at <http://www.osce.org/odihr/36304>.

¹¹⁸ Koriath, *supra* note 113, at 94.

¹¹⁹ *Id.* at 97.

¹²⁰ GEROLD, *supra* note 117, at 10.

¹²¹ Mayumi Saegusa, *Why the Japanese Law School System Was Established: Co-Optation as a Defensive Tactic in the Face of Global Pressures*, 34 LAW & SOC. INQUIRY 365, 366, 378 n.25 (2009).

¹²² *E.g.*, Carole Silver, *The Variable Value of U.S. Legal Education in the Global Legal Services Market*, 24 GEO. J. LEGAL ETHICS 1, 26–27 (quoting an LL.M. graduate working in a U.S.-based firm in Germany who explained that his placement in the top two percent of the German grade scale on the second state examination was the major reason for his job offers).

¹²³ Rainer Grote, *Comparative Law and Teaching Law Through the Case Method in the Civil Law Tradition—A German Perspective*, 82 U. DET. MERCY L. REV. 163, 170, 174 (2005).

¹²⁴ Silver, *supra* note 122.

services market remains small. The growth of large law firms in Germany began in 1989, when domestic and foreign large law firms alike were first “allowed” in Germany.¹²⁵ Historically, German law specifically limited German lawyers and law firms to practicing in only one German jurisdiction.¹²⁶ Consequently, the traditional German legal market was exclusively in the hands of sophisticated solo practitioners, small partnerships, in-house counsel, or civil servants, but not in any large law firm.¹²⁷ The biggest small partnerships had at most ten to twenty attorneys.¹²⁸ In fact, German lawyers today refer only to *Kanzlei*, literally meaning chambers or office, and *Großkanzlei*, which are simply larger *Kanzlei*; German lawyers have yet to adopt into their jargon, however, a term that directly translates to “law firm.”¹²⁹

Beginning in 1989, with the overturning of the law prohibiting legal professionals from operating in more than one jurisdiction,¹³⁰ the German legal market began to change rapidly.¹³¹ With the new ability to have a national presence, local offices began to grow.¹³² Simultaneously, the 1990s saw the dot-com boom,¹³³ the introduction of the Euro,¹³⁴ and a unified European market under the birth of the EU.¹³⁵ Nearby, law firms in

¹²⁵ See Susanne Lacey, *Mergers, Mergers Everywhere: Constructing the Global Law Firm in Germany*, in LEGAL PROFESSIONS: WORK, STRUCTURE AND ORGANIZATION 51, 54–55 (Jerry Van Hoy ed., 2001).

¹²⁶ Martin Henssler & Laurel S. Terry, *Lawyers Without Frontiers—A View From Germany*, 19 DICK. J. INT’L L. 269, 274 (2001) (citing Bundesrechtsanwaltsordnung [BRAO] [Federal Lawyers’ Act], Jan. 8, 1959, BGBL. I at 2515, as amended, § 59 (Ger.)).

¹²⁷ See *id.* at 275.

¹²⁸ Ulrike Schultz, *Germany. Regulated Deregulations: The Case of the German Legal Profession*, in REORGANISATION AND RESISTANCE: LEGAL PROFESSIONS CONFRONT A CHANGING WORLD 93, 120 (William L.F. Felstiner ed., 2005).

¹²⁹ Luschin, *supra* note 109, at 30 n.4. For the remainder of this Comment, however, I still use the word “firm” to signify a legal practice spanning one or more offices, including in the German context, unless clarity requires otherwise.

¹³⁰ Henssler & Terry, *supra* note 126.

¹³¹ See *Germany: Law Firms and Multinational Partnerships Easier Admission Procedures for Non-German Lawyers to the German Bar*, MONDAQ § 4 (Jan. 20, 2000), <http://www.mondaq.com/unitedstates/article.asp?articleid=8149>.

¹³² *Id.*

¹³³ Definition of *dot-com bubble*, THEFREEDICTIONARY.COM, <http://encyclopedia2.thefreedictionary.com/Dot+com+boom> (last visited Mar. 16, 2012) (“Refers to the late 1990s during which countless Internet companies were riding an enormous wave of enthusiasm that pushed their stock valuations into the stratosphere even though they never made a penny. Billions in venture capital were given to entrepreneurs with little or no experience to fund ideas that were ludicrous. It was a crazy time, and people were very excited.”).

¹³⁴ See generally *History of the Euro*, BBC NEWS, http://news.bbc.co.uk/1/hi/english/static/in_depth/business/2001/euro_cash/history/default.stm (last visited Mar. 16, 2012).

¹³⁵ See generally *The History of the European Union*, EUROPA.EU, <http://europa.eu/about->

the U.K. had been expanding concurrently with the rapid development of financial and capital markets.¹³⁶ With eyes looking to Germany as home to a new global financial hub, many U.K. firms established German offices, especially in the country's growing financial center of Frankfurt am Main.¹³⁷ The nascent national German firms quickly began to make plans to bulk up in competition with their foreign counterparts.¹³⁸ That these domestic firms had to compete globally with the major U.K.-based international firms became a common perception,¹³⁹ an outlook that survives and haunts members of Korean society today.¹⁴⁰ Many national German firms, formed just recently, previously had no global ambitions or strategy but found themselves vying for a foreign counterpart with which they could merge into a large, international firm in order to compete on a global or at least a supra-regional basis.¹⁴¹ Both U.K. and German firms feared that, with the limited number of desirable partners on each side, they "might be left empty-handed in a game of musical chairs once the music stopped."¹⁴² The ensuing merger mania—the herd mentality¹⁴³ stemming from the fear on both sides of being left behind at a time of rapidly changing market conditions¹⁴⁴—pushed German and foreign law firms to merge and form large partnerships.

After the U.K. firms entered the German market through large-scale mergers, U.S. firms looking to be competitive in a globally expanding legal services market¹⁴⁵ began to flock to Germany in the mid-1990s,¹⁴⁶ but with

eu/eu-history/index_en.htm (last visited Mar. 16, 2012).

¹³⁶ Flood, *supra* note 103, at 42–48.

¹³⁷ Henssler & Terry, *supra* note 126, at 272–79. Under a December 1989 amendment to the German federal law regulating attorneys, foreign firms and lawyers both from and outside the EU were also permitted to practice in Germany, subject to certain restrictions. SYDNEY M. CONE, III, INTERNATIONAL TRADE IN LEGAL SERVICES 11:6–11:17 (1996).

¹³⁸ See Eric L. Martin, Note, *Liberalization and Cravathism: How Liberalization Triggered the Reorganization of the Legal Profession in Germany and Japan*, 43 STAN. J. INT'L L. 169, 184–85 (2007).

¹³⁹ See Larry Smith, *Influx of American Firms Forces Radical Changes in German Legal Market*, OF COUNSEL, Nov. 7, 1994, at 12, 16–17.

¹⁴⁰ See *Domestic Law Firms Face Tough Competition*, *supra* note 15.

¹⁴¹ Aronson, *supra* note 105, at 804.

¹⁴² *Id.* at 803.

¹⁴³ Luschin, *supra* note 109, at 42.

¹⁴⁴ Analyzing the difference in attorney density between East and West Germany, one scholar has suggested a connection between lawyers in a geographical area and the area's level of maturity in finance and industry. He argues that West German firms in cities such as Frankfurt, Munich, and Dusseldorf, began to handle the larger, more profitable commercial work while East German attorneys gravitated towards areas such as family and labor law. See *id.* at 38–40.

¹⁴⁵ See Marc J. Bartel & Bradford W. Hildebrandt, *Memo to Managing Partners: Start Worrying About Europe*, AM. LAW., Nov. 1998, at 69 (warning U.S. firms that "European firms [would] soon be [their] direct competitor[s], or at least a potential partner," as well as

a different strategy. Because the U.S. firms landed in Germany years into the merger game, most of the largest German law firms had through their mergers already committed to U.K. firms.¹⁴⁷ Moreover, many remaining German firms resisted the merger wave and sought to be independent.¹⁴⁸ These resisting firms instead established their own international brand, formed informal alliances with foreign law firms, became focused boutiques, or concentrated on developing a regional presence—and they were successful.¹⁴⁹ Consequently, U.S. firms tended to merge with smaller partners or set up small offices of their own.¹⁵⁰ Many also strategized by simply recruiting key local attorneys.¹⁵¹

At the same time, U.S. firms also had less incentive than their U.K. counterparts to establish large practices in Germany. U.K. firms were much more likely to have a significant German practice, in line with a natural desire to dominate their regional Eurocentric market.¹⁵² U.K. firms also did not enjoy a similar substantial domestic legal market to that of the United States, and have historically been more internationally focused.¹⁵³ Freshfields Bruckhaus & Deringer (Freshfields), for example, the U.K. firm with the most foreign attorneys in Germany, employs its German practice with 25% of its overall global workforce.¹⁵⁴ Similarly, the U.K.'s two largest grossing law firms by revenue have stationed one-tenth of their entire global workforce in Germany.¹⁵⁵ Other Euro-friendly setups also made a German practice easier to attain for U.K.- than U.S.-trained attorneys. EU-licensed attorneys, for example, can practice German law as

advising that the time for firms in the United States and Europe to start getting serious with each other was “now” because the few European firms “[wouldn’t] be independent or unaligned forever,” and that the “[f]irms that [did] not understand what [was] happening overseas [would] see the European train pass them by”).

¹⁴⁶ See Smith, *supra* note 139, at 12–13.

¹⁴⁷ See Luschin, *supra* note 109, at 56.

¹⁴⁸ John Flood & Fabian Sosa, *Lawyers, Law Firms, and the Stabilization of Transnational Business*, 28 NW. J. INT’L L. & BUS. 489, 507–08 (2008).

¹⁴⁹ See discussion *infra* Part IV.A.3.

¹⁵⁰ See Henssler & Terry, *supra* note 126, at 276–79.

¹⁵¹ Silver, *supra* note 122.

¹⁵² See Henssler & Terry, *supra* note 126, at 277.

¹⁵³ Lace, *supra* note 125, at 53.

¹⁵⁴ Luschin, *supra* note 109, at 45–46; Brenda Sandburg, *They’ll Take “Meinhattan”*, AM. LAW., May 2006, at 196, 198. This is largely also a product of the merger mania, Freshfields itself being a merger between London-based Freshfields, and German-based Deringer Tessin Herrmann & Sedemund and Bruckhaus Westrick Heller Lober. Heather Smith, *Race to the Top*, AM. LAW., May 2005, at 118, 119. Bruckhaus Westrick Heller Lober, a product of a German firm absorbing an Austrian firm, was the largest German firm prior to its joining Freshfields. John E. Morris, *A World of Lawyers*, AM. LAW., Nov. 1998, at 50, 63.

¹⁵⁵ Luschin, *supra* note 109, at 47, 49.

long as they re-qualify by taking an exam.¹⁵⁶ U.S.-qualified attorneys, on the other hand, must either undertake a six-year German legal education¹⁵⁷ to enjoy the full benefits of bar admission, or skip such qualification and limit their practice to advising on U.S. or international law.¹⁵⁸ The latter route is more attractive to U.S. attorneys for various reasons, and most work by U.S. firms in Germany was and is U.S.-focused, concentrating on U.S. law either for U.S. businesses abroad or for foreign businesses with interests in the United States.¹⁵⁹

Presently, while both U.K. and U.S. law firms are highly regarded in Germany by clients and the legal community, U.K. firms have undoubtedly topped the ranks of large law firms in Germany both in business and prestige.¹⁶⁰

3. *The Current Legal Market: A Market Predominantly of Small Practices*

Notwithstanding the success of foreign firms, the number of German attorneys actually employed by *any* large law firm in Germany, whether German or foreign, is a small minority (less than 10%), and of that number, the number of attorneys working at the largest *U.K. and U.S.* law firms is yet another small fraction.¹⁶¹ This is true in spite of the fact that foreign law firms themselves are mostly staffed with German attorneys who earned their primary legal education in Germany.¹⁶² An overwhelming majority of German attorneys therefore work in the smaller settings of solo practices or in local partnerships.¹⁶³ Through strategies such as formal or informal

¹⁵⁶ The exam is, in practice, not as difficult as the regular German bar exam, and upon passing, an attorney is admitted to the German local bar association, becoming fully integrated as a German attorney without having to refer to his education abroad. See Ronald C. King, *Foreign Lawyers in Foreign Jurisdictions: Rights of Practice and Establishment*, 63 DEF. COUNS. J. 363, 369–71 (1996) for details on the statutory mechanisms, including the German Bar Admission Act and the Treaty of Rome, which govern cross-border legal services in Germany. The law governing the practice of nationals of EU member states is the Gesetz über die Tätigkeit europäischer Rechtsanwälte in Deutschland, or EuRAG. For an English version of the law, see Law Implementing the Directives of the European Community Pertaining to the Professional Law Regulating the Legal Profession, Mar. 9, 2000, Federal Law Gazette art. 1 (Ger.).

¹⁵⁷ See *infra* Part IV.A.1.

¹⁵⁸ See Henssler & Terry, *supra* note 126, at 285, 288.

¹⁵⁹ Carole Silver, *Local Matters: Internationalizing Strategies for U.S. Law Firms*, 14 IND. J. GLOBAL LEGAL STUD. 67, 75–76 (2007).

¹⁶⁰ JUVE, a German legal magazine, published a 2011 national review of the top fifty firms in Germany, for example, that were led by five U.K. firms, six U.S. firms, and four German firms. *Ranking*, JUVE, <http://www.juve.de/handbuch/en/2012/ranking/2> (last visited Mar. 26, 2012).

¹⁶¹ *Id.*

¹⁶² Silver, *supra* note 122, at 23–24.

¹⁶³ See GEROLD, *supra* note 117, at 3–5, 8 (reporting that middle size law firms and solo

referral networks or alliances,¹⁶⁴ firms in Frankfurt, for example, are led by lawyers educated in Germany, who offer advice on local law, and limit their business ties within borders.¹⁶⁵ Domestic German law firms, whose employees are mostly German and whose advice is mostly on German law, have not merely survived, but thrive and adapt in re-emerging old firms, new independent firms, and new international startups.¹⁶⁶

Furthermore, entry into Germany has not been rosy for all foreign law firms. A common scenario amidst the merger crazes involved internal splits within the German firm scheduled for merger.¹⁶⁷ Senior associates and partners fled to form their own new boutiques¹⁶⁸ based on the idea that attorneys wanted to work more closely with clients.¹⁶⁹ It also took fifteen years for one of today's leading U.S. law firms to make it to the top, landing the lead in Germany's biggest M&A deal of the year in 2006 after being replaced as lead counsel for a prominent merger eight years prior.¹⁷⁰ The same year, the editor of the German legal magazine *JUVE* spotlighted the market for *Mittelstand*, or family-owned midsize industrial companies in Germany, which were internationally active and preferred smaller firms.¹⁷¹ A large workforce plus a foreign headquarters thus did not necessarily equate to automatic victory for a law firm in the German legal market.

The continued success of German firms in Germany also lies in the fact that many foreign firms are much more concentrated in legal fields that have been deemed strategically important.¹⁷² Although U.K. firms in Germany maintain their full-service shops, U.S. firms continue to be more narrowly focused on specific areas of law, such as transactional work.¹⁷³

practitioners generate 61.6% of total revenue of the legal services sector, and employ 97.1% of the entire legal workforce in Germany, where "middle" is defined as a firm with ten to nineteen employees).

¹⁶⁴ Smith, *supra* note 139, at 18.

¹⁶⁵ Silver, *supra* note 159, at 88.

¹⁶⁶ See Ravinder Casley Gera, *Is Germany Turning Its Back on International Firms?*, CHAMBERS MAG., 2011, available at <http://www.chambersmagazine.co.uk/Article/Is-Germany-turning-its-back-on-international-firms>.

¹⁶⁷ *See id.*

¹⁶⁸ Schultz, *supra* note 128, at 122.

¹⁶⁹ *See* Sandburg, *supra* note 154.

¹⁷⁰ *Id.* at 196 (Cleary Gottlieb Steen & Hamilton LLP).

¹⁷¹ *Id.* at 197.

¹⁷² *See* Lace, *supra* note 125, at 65–66.

¹⁷³ *See, e.g., Frankfurt: Recruiting*, SKADDEN, ARPS SLATE, MEAGHER & FLOM LLP & AFFILIATES, <http://www.skadden.com/printFriendly.cfm?print=1&contentID=49&officeID=6> (last visited Oct. 7, 2012) (the office focuses "on advising in complex M&A, capital markets . . . and financing transactions"); *Germany*, JONES DAY, <http://www.jonesday.com/files/Publication/29602576-1fa8-4ad0-a880->

Moreover, in light of the recent recession, full-service firms have been considering whether to retain all their services or to slough some fat and focus on certain practice areas.¹⁷⁴ The need for a team of established German lawyers also was and still remains the key to success for these firms.¹⁷⁵

While large law firms in Germany may be overshadowed by a few mega foreign law firms, even the largest law firms are primarily staffed with German attorneys. Moreover, the vast majority of German attorneys maintain successful smaller practices, from solo practices to full-service firms. In contrast, the large, foreign international firms have increasingly preferred practicing in only certain specialized areas of international private law, continuing to leave much legal practice to local attorneys. The picture of the merger mania among large law firms is thus an extremely incomplete portrayal of the overall German legal market, which foreign firms have not and do not dominate.

B. Japan: Korea's Precursor

Shifting gears to a country that begs mention in an analysis of Korea's legal market liberalization, this Comment turns to Japan's legal market as a remarkable case study. Japan and Korea share a long, albeit not always friendly, history, and many similar cultural values and concerns.¹⁷⁶ The following analysis of Japan will seem in some, but not all, respects like a mirror image of that of Korea. This is true, in part, because Korea has modeled the current opening of its market after Japan's experiences with its legal market since the 1980s.¹⁷⁷ Its forerunner by nearly a decade and a half, Japan's past and current legal market is very relevant to making predictions about Korea's current liberalization, not only by analyzing similarities between the two, but also by noting where the two diverge. This subpart first provides a summary of Japan's historically closed legal services market, overviews its legal education reform, and ends with a look

e16295bf21d1/Presentation/PublicationAttachment/dcb3cae1-b888-42f7-bbe9-1fddd2b057d7/A4_Germany.pdf (last visited Mar. 24, 2012) (beginning the advertisement by highlighting the office's experience in "cross-border acquisitions and joint ventures, corporate finance and securities matters, as well as private equity and venture capital"); *Offices, KIRKLAND & ELLIS INTERNATIONAL LLP*, <http://www.kirkland.com/sitecontent.cfm?contentid=234&itemid=53§ion=0&displaymore=1> (last visited Mar. 24, 2012) (the firm's "practice in Munich focuses on private equity and M&A, banking and finance, international tax, and financial restructuring").

¹⁷⁴ See Luschin, *supra* note 109, at 90–91.

¹⁷⁵ See Sandburg, *supra* note 154, at 196.

¹⁷⁶ See Choi, *supra* note 65, at 173.

¹⁷⁷ See *Peter Kim Has Taken Up the Position as President of South Korea's Bar Association as the Country Becomes Increasingly Influential in a Fast Changing World*, 64 NO. 1 INT'L B. NEWS 50, 52 (2010) [hereinafter *Peter Kim*].

at the current symbiotic relationship between domestic and foreign law firms.

1. Historical Protectionism Followed by Internal Merger Mania

The roots of protectionism in Japan lay in a historical cultural stigma against the rule of law and lawyers in Japanese society.¹⁷⁸ The Japanese government, Japanese industries, and Japanese attorneys kept the legal community in Japan small, and liked it that way.¹⁷⁹ Japanese businesses feared the emergence of American-style litigation, legal expenses, and large damage awards; the Japanese legal community sought to restrict competition by limiting the number of attorneys in its domestic monopoly and keeping foreign attorneys out.¹⁸⁰

However, from the 1980s to the 1990s, Japan, like many East Asian countries, underwent massive liberalization of its economy,¹⁸¹ and an opening to its legal services market followed suit. In liberalizing its legal market, Japan took a number of baby steps over the course of about two decades. Over lingering concerns of professional autonomy and the proper social role of attorneys,¹⁸² Japan first formally allowed foreign attorneys to practice in Japan in 1986, under the Special Measures Law Concerning Handling of Legal Business by Foreign Attorneys, commonly known as Law 66.¹⁸³ Law 66, however, still prohibited foreign lawyers and firms from employing or forming partnerships with Japanese attorneys, or using official firm names.¹⁸⁴ In short, the law allowed foreign attorneys in Japan to “practice” the law of their home jurisdiction.¹⁸⁵

An amendment to Law 66 in 1994 subsequently allowed law firms to ally with Japanese firms in “specific joint enterprises” that could employ both foreign and Japanese attorneys.¹⁸⁶ Previously, foreign firms had been forced to engage in business under the name of an individual senior partner who registered under the law, but after the 1994 amendment, were also allowed to use their official firm names.¹⁸⁷ Foreign firms were still

¹⁷⁸ Benno Heussen, *Commentaries on Papers from the German Perspective, in* LAWYERS’ PRACTICE & IDEALS: A COMPARATIVE VIEW 241, 242 (Jane J. Barcelo III & Roger C. Cramton eds., 1999).

¹⁷⁹ See R. Daniel Kelemen & Eric C. Sibbitt, *The Americanization of Japanese Law*, 23 U. PA. J. INT’L ECON. L. 269, 294–95 (2002).

¹⁸⁰ *Id.*

¹⁸¹ Kelemen & Sibbitt, *supra* note 179, at 299.

¹⁸² CONE, *supra* note 137, at 13:1–13:2.

¹⁸³ Chapman & Tauber, *supra* note 58, at 960–61.

¹⁸⁴ CONE, *supra* note 137, at 13:13–13:14; Kelemen & Sibbitt, *supra* note 179, at 300.

¹⁸⁵ See Chapman & Tauber, *supra* note 58, at 960–61.

¹⁸⁶ Leonardo Ciano & Drew Martin, *The Foreign Lawyer Law of Japan: Legitimate Complaints or Red Herrings?*, 76 J. INQUIRY & RES. 121, 123 (2002).

¹⁸⁷ *Id.*

prohibited, however, from hiring Japanese attorneys directly or independently of a partnership with a Japanese law firm.¹⁸⁸ An amendment just two years later in 1996 further allowed foreign attorneys to represent clients in international arbitrations in Japan.¹⁸⁹

One impetus behind these increased openings in Japan involved financial deregulation and an increase in foreign direct investment over the 1990s.¹⁹⁰ The increase of complex corporate matters slowly heightened recognition of the importance of legal services in addressing new business risks and opportunities, leading business leaders to demand greater and better business attorneys.¹⁹¹ Increasing demand for corporate legal services, rising popularity of large corporate law firms, growing recognition of the importance of both law and lawyers, and increasing competition among firms to recruit highly qualified attorneys led Japanese law firms to grow and merge with each other.¹⁹² Before most foreign firms even entered the fray in the early 2000s, mid-size Japanese firms were first losing good associates to elite Japanese firms.¹⁹³ They then lost associates to the foreign joint enterprise firms that had been slowly growing since the passing of the 1994 amendment to Law 66.¹⁹⁴ The end of this period of mergers resulted in the elite “Big Four”¹⁹⁵ large corporate Japanese law firms.¹⁹⁶ Unlike the local firms in Germany that rapidly and almost contemporaneously bulked up with both each other and foreign law firms entering the open market in mass numbers,¹⁹⁷ Japanese firms grew slowly and mostly only amongst themselves.¹⁹⁸

The reasons given for the mergers were common ones, and included the need to meet client demands for greater expertise and the ability to provide sufficient resources to handle large complex matters.¹⁹⁹ There was little direct evidence, however, that clients ever truly made such demands,

¹⁸⁸ CONE, *supra* note 137, at 13:22.

¹⁸⁹ Ciano & Martin, *supra* note 186, at 123.

¹⁹⁰ See Martin, *supra* note 138, at 191 & n.200, 192.

¹⁹¹ See *id.* at 192.

¹⁹² See Aronson, *supra* note 105, at 817–18.

¹⁹³ *Id.* at 816.

¹⁹⁴ Bruce E. Aronson, *The Brave New World of Lawyers in Japan: Proceedings of a Panel Discussion on the Growth of Corporate Law Firms and the Role of Lawyers in Japan*, 21 COLUM. J. ASIAN L. 45, 68 (2007) (the panel included attorneys from small and large Japanese firms, as well as attorneys from Jones Day and Linklaters LLP).

¹⁹⁵ Nagashima Ohno & Tsunematsu; Nishimura & Asahi; Anderson Mori & Tomotsune; and Mori Hamada & Matsumoto. Anthony Lin, *Sidelined*, ASIAN LAW., Winter 2012, at 18, 22.

¹⁹⁶ Martin, *supra* note 138, at 193–94.

¹⁹⁷ See discussion *supra* Part IV.A.2.

¹⁹⁸ Martin, *supra* note 138, at 193–94 (describing internal Japanese mergers between 1985 and 2005).

¹⁹⁹ Aronson, *supra* note 194, at 61–63.

but there is at least anecdotal evidence that attorneys feared losing client business if they fell behind other local or joint enterprise firms.²⁰⁰ Consequently, one scholar has suggested a more robust explanation behind the internal merger mania in Japan that focuses on consideration of perceived reputational competition.²⁰¹

By 2003, Japanese parliament had passed a law that allowed for full integration between foreign and Japanese law firms beginning in 2005.²⁰² As a result, some took full advantage of the liberalization, and instituted immediate mergers, most notably, the Japanese firm Mitsui, Yasuda, Wani & Maeda, and the U.K.-originating firm Linklaters LLP.²⁰³ Others were happy with maintaining their joint enterprises²⁰⁴ or just changing their names.²⁰⁵ However, because the growing domestic legal services market had relatively few players by then, the elite Japanese firms that led it were happy to maintain their status and were reluctant to engage in international mergers with foreign firms.²⁰⁶ A survey done around the passing of this final 2003 legislation also showed that Japanese companies still desired Japanese lawyers.²⁰⁷ Overall, there seemed to be consensus that Japanese attorneys had skills that their foreign counterparts lacked, and that access to native attorneys was important.²⁰⁸

2. Legal Education Reform

In the spirit of increasing liberalization, Japan also implemented comprehensive legal education reform intended to produce more attorneys and help increase the rule of law in Japanese society.²⁰⁹ Prior to 2004, the Japanese system of legal education mirrored the German system from which it was deliberately adapted.²¹⁰ Students in Japan began their legal studies after high school in a university before taking two examinations.²¹¹ Practical training occurred between the two examinations, overseen by

²⁰⁰ Aronson, *supra* note 105, at 815 n.140.

²⁰¹ *Id.* at 823–24.

²⁰² Martin, *supra* note 138, at 193.

²⁰³ See Erich W. Struble, *Gaiben & Bengoshi LLP: Cross-Border Legal Practice in Japan*, J. PROF. LAW., 2011, at 111, 123–25.

²⁰⁴ These include ventures of White & Case LLP, Morrison & Foerster LLP, and Swiss Verein Baker & McKenzie International. *Id.* at 125–26.

²⁰⁵ Aronson, *supra* note 194, at 69.

²⁰⁶ Aronson, *supra* note 105, at 821, 825.

²⁰⁷ Ciano & Martin, *supra* note 186, at 129.

²⁰⁸ *Id.* at 129, 131.

²⁰⁹ Saegusa, *supra* note 121, at 365.

²¹⁰ James R. Maxeiner & Keiichi Yamanaka, *The New Japanese Law Schools: Putting the Professional into Legal Education*, 13 PAC. RIM L. & POL'Y J. 303, 307 (2004).

²¹¹ *Id.* at 307–08.

Japan's national Legal Training and Research Institute.²¹² Unlike German qualifying exams, however, the Institute's first exam was so difficult that the average *successful* applicant took it five times, which severely limited the number of candidates admitted to practical training.²¹³

In April 2004, Japan saw the opening of over sixty new law schools,²¹⁴ which now resemble the education system of the United States and implement a three-year graduate course.²¹⁵ The wholesale appearance of the law schools at one time was unprecedented, largely undertaken in the face of pressure to produce more and better qualified attorneys.²¹⁶ At least one scholar, however, was unimpressed by Japan's recent changes in the legal profession, and saw such reform as insufficient to change the direction of the study of law from being the historical preparation for a bar examination to a socially beneficial and practical profession.²¹⁷ Another scholar agrees that "the attempt to incorporate [the U.S.-style] Socratic system into Japan's heavily-embedded Confucian teaching structure has still not met all expectations. Namely, . . . students are narrow in breadth and depth in various fields, and the overall quality of legal professionals may not have significantly improved."²¹⁸ It has been admittedly difficult to evaluate whether Japan's comprehensive legal reform has led to real change, and whether the new law schools have actually made Japan's legal market more competitive.²¹⁹ Nevertheless, others acknowledge the obstacles in breaking through tradition and old educational habits, and still argue that Japan may realize significant benefits with continued patience and perseverance.²²⁰ While the effects of the new school system may not be concretely ascertained yet, the underlying ambition of the schools suggests movement in the right direction of cultivating competition in the international legal market,²²¹ and has, at the very least, influenced the legal education system of other countries, including Korea.²²²

²¹² *Id.* at 308–09.

²¹³ *Id.* at 308–10.

²¹⁴ *Id.* at 303; 66 *Law Schools Approved to Open Next Spring*, JAPAN ECON. NEWSWIRE, Nov. 21, 2003.

²¹⁵ See Maxeiner & Yamanaka, *supra* note 210, at 312.

²¹⁶ Saegusa, *supra* note 121, at 365.

²¹⁷ Bruce E. Aronson, *Changes in the Role of Lawyers and Corporate Governance in Japan—How Do We Measure Whether Legal Reform Leads to Real Change?*, 8 WASH. U. GLOBAL STUD. L. REV. 223, 228–29 (2009).

²¹⁸ Kim, *supra* note 63, at 334.

²¹⁹ See generally Aronson, *supra* note 217, at 223.

²²⁰ Wilson, *supra* note 63, at 357.

²²¹ *Id.* at 332–33 (arguing that an expanded lawyer population serves Japan's needs, notwithstanding recent criticisms of the quality and number of attorneys graduating from Japan's reformed legal education system).

²²² See discussion *infra* Part V.A.1.

3. *The Current Legal Market: A Symbiotic Relationship*

Legal practice in Japan has become increasingly specialized.²²³ Over the past decade, the bulk of work for large Japanese law firms has reverted from cross-border to domestic matters.²²⁴ This surge in domestic work has come from financial products, compliance and corporate governance, and domestic litigation.²²⁵ Over the gradual opening of the market in 1986, 1994, and 2003, foreign law firms simultaneously became increasingly successful at competing with domestic firms.²²⁶ Thus, Japanese law firms' renewed focus on domestic law has also been spurred by foreign law firms' greater share of work on cross-border legal transactions.²²⁷

As for predictions on future integrations or partnerships between foreign law firms and Japanese law firms, the perspectives vary. Some foreign firms with a Japan office have decided to stick to a particular practice focus and remain independent, expressing no interest in recruiting Japanese attorneys.²²⁸ Other firms with the same perspective indicate that foreign clients wishing to do business in Japan are still best served by a leading Japanese firm.²²⁹ A second perspective finds full integration indistinguishable from the former joint enterprises first allowed in 1994.²³⁰ Joint enterprises have also allowed the carving of special relationships, including partnerships between foreign firms and multiple Japanese firms.²³¹ Finally, as Linklaters did, others with a third perspective view the single partnership between foreign and Japanese legal professionals as the superior alternative to allow seamless advice to clients.²³² Evidence and sentiments suggest that the first two perspectives are preferred.

Currently, foreign involvement in Japan's legal market is overshadowed by one firm, Morrison & Foerster LLP (MoFo), which has the largest practice of any international law firm in Japan.²³³ With over 120 attorneys,²³⁴ MoFo's Tokyo office has grown forty-fold over the last two

²²³ Kelemen & Sibbitt, *supra* note 179, at 302.

²²⁴ See Aronson, *supra* note 217, at 229.

²²⁵ *Id.*

²²⁶ See *id.* at 230.

²²⁷ See *id.*; Aronson, *supra* note 194, at 65.

²²⁸ See Struble, *supra* note 203, at 126–27.

²²⁹ *Id.* at 126.

²³⁰ See *id.* at 127–28.

²³¹ See *id.* at 128.

²³² See *id.* at 129–30.

²³³ See generally *Tokyo*, MORRISON & FOERSTER LLP, <http://www.mofo.com/tokyo-japan/> (last visited Oct. 8, 2012). In fact, MoFo's office in Tokyo is one of the largest overseas offices of any U.S. firm abroad and staffs the firm's largest number of attorneys outside of America. Lin, *supra* note 195, at 20.

²³⁴ *Tokyo*, *supra* note 233.

decades.²³⁵ MoFo arrived early on the scene, immediately after Law 66 first allowed for foreign participation in the legal market in 1986.²³⁶ The firm became large after boldering the collapse of the bubble economy in 1991, continuing to send lawyers and draw clients.²³⁷ MoFo has held the crown as the largest foreign office in Japan since as early as 2003,²³⁸ even before the final legislation allowing for full integration between foreign and Japanese law firms went into effect.²³⁹ By signaling to the Japanese community that they came to Japan for the long haul, managing MoFo partners indicated that they did not worry about competition.²⁴⁰ Other foreign firms continue to struggle to win the loyalty of Japanese companies that have established connections to firms like MoFo, and experimenting international law firms will need greater ties to Japan to succeed, by securing relationships with Japanese clients or having experienced Japanese hands lead their practice.²⁴¹ The firm rooting of MoFo has carried the day, and MoFo's continuation of its joint enterprise with Ito & Mitomi for over a decade²⁴² suggests that the 1994 amendment was and remains the most influential step in Japan's completed liberalization.

V. A LOOK FORWARD: THE FUTURE OF KOREA'S LEGAL MARKET

A. The Continued Success of Korean Law Firms

The preservation of local law firms in Korea will likely resemble the developments seen in recent years in Japan, and not the history of firms in Germany. When Korea and Japan received international pressure to open their legal markets, Japan chose to succumb over the 1980s and 1990s while Korea chose to do nothing.²⁴³ Korea has consequently been able to not only observe the developments of the Japanese legal market as it opened to the world, but since Korea has modeled its own gradual market liberalization

²³⁵ The office opened with three individuals in the 1980s. Heather Smith, *Made in Japan*, AM. LAW., Nov. 2003, at 78, 78; *Tokyo*, *supra* note 233.

²³⁶ *See id.*; Brenda Sandburg, *Strategic Moves for MoFo in Century City and Tokyo*, RECORDER (Apr. 3, 2001), <http://www.law.com/regionals/ca/opinions/stories/edt0403d.shtml>.

²³⁷ *See* Smith, *supra* note 235, at 81.

²³⁸ *See id.*

²³⁹ *See* discussion *supra* Part IV.B.1.

²⁴⁰ *See* Heather Smith, *supra* note 235, at 81.

²⁴¹ *See* Emily Barker, *Editor's Note*, ASIAN LAW., Winter 2012, at 4, 4; Lin, *supra* note 195, at 20–22.

²⁴² *See Real Estate*, MORRISON & FOERSTER LLP, <http://www.mofo.com/real-estate-124-japan-services/> (last visited Mar. 15, 2012); Sandburg, *supra* note 236; *supra* note 204 and accompanying text.

²⁴³ Suzuki, *supra* note 48, at 404.

after Japan's, can also safely expect to see similar developments in the near future. This is true in spite of the fact that Korea's liberalization plans are expected to roll out over the course of five years, while the same course in Japan took nearly two decades, because Japan, taking a more cautious approach, had no predecessor to look to for guidance. Japanese attorneys have remained independent and continue to succeed, years through and after their market's liberalization,²⁴⁴ and their Korean counterparts will be able to do the same—probably even better.

Specifically, the Korean legal market will largely remain unchanged for five reasons—lessons drawn from Germany and Japan: (1) Korean law firms have heavy man- and brain- power in providing full-service legal counsel; (2) any foreign legal office or legal consultant expanding to Korea will likely practice in a specialized niche of services, leaving local firms to continue dominating domestic matters; (3) social appreciation for branding will keep the elite Korean firms well respected and, for the same reason, those few international firms with a history of handling Korean matters will continue to outshine the market of foreign participation; (4) the number of Korean corporations in need of foreign legal advice constitutes a very small demand pool for foreign firms and attorneys; and (5) operating in Korea by employing Korean-American attorneys will be a few steps more complicated for U.K. firms than U.S. firms, leaving the market in U.S. hands.

1. Lesson #1: Korea Has a Sophisticated Legal Market and Is Implementing Recent Legal Education Reform

Unlike Germany in the early 1990s, and more like Japan following its internal mergers, Korea is opening up a legal services market that is already developed,²⁴⁵ and whose large law firms already number in the triple digits of attorneys. The legal profession has grown rapidly in Korea,²⁴⁶ and the rule of law has been widely accepted.²⁴⁷ Decades after the first spurt of global expansion, firms largely remain conservative in their reach, and the Korean legal community should make outmoded the popular concern of being swallowed up in a similar merger mania as German firms saw in an entirely different era.

²⁴⁴ See discussion *supra* Part IV.B.3.

²⁴⁵ See Zusha Elinson, *South Korea Comin' Up Fast?*, RECORDER (Nov. 10, 2006), http://www.law.com/jsp/ca/PubArticleCA.jsp?id=900005467106&South_Korea_Comin_Up_Fast&slreturn=20121023025954 (quoting a Shearman & Sterling LLP partner who commented that “Korean firms do very well,” and that “[l]awyers [in Korea] are on one of the highest rungs in society”).

²⁴⁶ Korea has larger domestic firms than China or Japan, relative to the country's respective populations. *Spotlight on Korea*, *supra* note 27.

²⁴⁷ See Choi, *supra* note 65, at 192–93.

In particular, Korean attorneys handling corporate cases are highly qualified, having gained considerable transactional experience through corporate M&A matters during the Asian financial crisis of the late 1990s.²⁴⁸ A decade later, Korea was still experiencing soaring M&A activity.²⁴⁹ Korean attorneys have also been recently recognized around the world for their excellence in competition and trade matters, intellectual property, and dispute resolution, in addition to their strength in corporate matters.²⁵⁰ Korea's largest law firm, Kim & Chang, boasts prominent former judges and prosecutors, including former Korean Supreme Court Justices, a Minister of Justice, and a Prosecutor General.²⁵¹ In a late 2011 survey of the largest recent transactions involving targets or acquirers from Asian regions, Korea was the only country whose largest transaction, at \$1.75 billion, involved entirely domestic counsel.²⁵² In contrast, Japan's three largest transactions in late 2011 were counseled entirely by foreign firms; no Japanese firms took the lead in providing legal advice for such deals aggregately valued at over \$18 billion.²⁵³

Still, Korea, like Japan,²⁵⁴ has recently implemented a new law school system also modeled after U.S. graduate law schools with the aim of producing qualified lawyers on a large scale.²⁵⁵ The reforms have been targeted at addressing the same criticism Japan faced, namely that the current legal education system²⁵⁶ guided students in exam-taking methods rather than towards a legal and professional study to develop creative problem solving skills.²⁵⁷ The twenty-five new U.S.-style postgraduate

²⁴⁸ *Domestic Law Firms Face Tough Competition*, *supra* note 15. For a general overview of the Asian financial crisis, see Aseem Prakash, *The East Asian Crisis and the Globalization Discourse*, *REV. INT'L POL. ECON.*, Spring 2001, at 119. For a more specific analysis of the domestic political factors that contributed to Korea's difficulties during the crisis, see Stephan Haggard & Jongryn Mo, *The Political Economy of the Korean Financial Crisis*, *REV. INT'L POL. ECON.*, Summer 2000, at 197.

²⁴⁹ See, e.g., *Q&A Kim & Chang*, *supra* note 41; THOMSON REUTERS ONE, SOUTH KOREA M&A (2012) (ranking the legal advisors for M&A activity in Korea for the first half of 2012).

²⁵⁰ See, e.g., *Kim & Chang—The Who's Who Legal 100 2012*, WHO'S WHO LEGAL, <http://www.whoswholegal.com/firms/718/kim-chang/wwl100/> (last visited Sept. 3, 2012).

²⁵¹ *Q&A Kim & Chang*, *supra* note 41.

²⁵² See *Big Deals*, *ASIAN LAW.*, Winter 2012, at 15, 15–17 (reporting the largest recent transactions worth at least \$500 million announced between April 1, 2011, and September 1, 2011).

²⁵³ See *id.* at 15.

²⁵⁴ See discussion *supra* Part IV.B.2.

²⁵⁵ See Anthony Lin, *Shaking Up the Old Order; Korea*, *ASIAN LAW.* (July 1, 2011), <http://www.americanlawyer.com/PubArticleTAL.jsp?id=1202498044202>.

²⁵⁶ See description *supra* Part III.A.

²⁵⁷ Wilson, *supra* note 63, at 349; see also Kim, *supra* note 63, at 338–42 (summarizing the language of the statute creating the new law schools as helping to create Korean lawyers who can assist in specialty areas based on their undergraduate majors such as banking and

Korean law schools were launched in 2009, and the first class graduated in February 2012.²⁵⁸ By 2017, Korea's new law schools are supposed to completely supplant the JTRI, that infamous institute that has denied admission to thousands of trainees who have failed one of the world's most rigorous bar exams, although both systems of legal education operate side by side for now.²⁵⁹ Upon graduation from the new law schools, students are also taking a new, separate bar exam.²⁶⁰ Currently, while the total number of law school students is limited to 2,000 per year, that number is double the amount of attorneys who have been passing the original bar exam.²⁶¹

Naturally, apart from the potential influx of foreign attorneys in the Korean legal community, there is also some discomfort regarding the internal competition between recent law graduates of the former JTRI and the inaugural class of the new system.²⁶² Since at least 2010,²⁶³ newly graduated Korean attorneys under the earlier system have faced a tough local market, but the prospect of an open Korean legal services market has actually created more domestic jobs,²⁶⁴ and will likely continue, as firms

intellectual property, which is lacking in the supply of Korean attorneys of the former system, and emphasizing the need for professional training and practice). For a more skeptical analysis of the proposed benefits of the new law school system, see Nathan D. McMurray, *New Korean Law School and Bar Exam System. Fewer Dragons from Little Streams?*, KOR. L. TODAY (Dec. 26, 2011), <http://www.korealawtoday.com/2011/12/26/new-korean-law-school-and-bar-exam-system-fewer-dragons-from-streams/>, in which an adjunct professor at the JTRI suggests that the change will make the legal profession a club for the wealthy and connected.

²⁵⁸ *Soon-to-be Lawyers*, KOR. TIMES (Feb. 1, 2012 6:04 PM), http://www.koreatimes.co.kr/www/news/special/2012/08/173_103956.html; Nathan McMurray, *Not Enough Jobs for New Korean Lawyers. A Changing Landscape as Cold as Taebaek in January*, KOR. L. TODAY (Jan. 12, 2012), <http://www.korealawtoday.com/2012/01/12/not-enough-jobs-for-new-korean-lawyers-a-changing-landscape-as-cold-as-taebaek-in-january/>.

²⁵⁹ See Anthony Lin, *In Korea, Two Legal Education Systems Compete for Status—and Scarce Jobs*, ASIAN LAW. (Mar. 28, 2011), <http://www.americanlawyer.com/PubArticleAL.jsp?id=1202488320299>.

²⁶⁰ Lin, *supra* note 255; *1st Lawyer License Exam*, KOR. TIMES (Jan. 3, 2012 7:19 PM), http://www.koreatimes.co.kr/www/news/biz/2012/01/115_102186.html.

²⁶¹ See McMurray, *supra* note 257.

²⁶² See Kim, *supra* note 63, at 342–46 (summarizing the argued benefits and harms of the new Korean law school system).

²⁶³ See, e.g., *45% of Trainee Lawyers Unemployed*, KOR. TIMES (Jan. 14, 2010, 7:51 PM), http://www.koreatimes.co.kr/www/news/nation/2011/04/117_59043.html (reporting that 44.4% of the JTRI's trainees were yet to be hired by any company in Korea as of graduation in January 2010).

²⁶⁴ In 2008, the year after the KORUS FTA was signed, the number of new lawyer hires by the six major Korean law firms was expected to be a forty percent increase from the previous year. *Law Firms Strive for Survival, Lawyers Welcome Open Legal Market*, DONG-A ILBO (Jan. 8, 2008, 8:16 AM), <http://english.donga.com/srv/service.php3?bicode=040000&biid=2008010816858>.

bulk up brains in preparation for competition against foreign firms.²⁶⁵ Regardless of whether the influx of a new breed of attorneys is homegrown from a new legal education system or imported from abroad, a greater number of attorneys is a healthy ingredient to engendering competition, which is necessary to any successful services industry.²⁶⁶

While Korea may have yet to see what impact the adoption of its new legal education system will have on the competitiveness of its legal market, the complete transition to a system replacing the only process to practicing law that Korea has ever known will undoubtedly lead to interesting developments in decades to come. Hopefully, the more liberal education and a focus away from memorization skills to pass one difficult bar exam will allow Korean attorneys to better relate to and service their clients by acquiring the skills to handle complex issues and to adapt to a changing world earlier in their careers.²⁶⁷ Allowing students to pursue diverse backgrounds in their undergraduate studies is expected to create a breed of interdisciplinary future attorneys.²⁶⁸ On the other hand, evidence from Japan has not been able to positively support this.²⁶⁹ Japanese firms may still not be concretely reaping the benefits of legal education overhaul modeled after U.S. law schools,²⁷⁰ but its dissatisfaction with its prior duplication of a German-style legal education system²⁷¹ serves as a reminder that similar methods in different countries often cause varied results, and Korea may see success.

The silver lining of the previous education system's rigorous standards is that they encouraged many Korean students failing the difficult bar exam to resort to studies in the United States.²⁷² Since the early 2000s, there has been a substantial rise in the number of foreign law graduates in U.S. law schools.²⁷³ In jurisdictions all over the world, foreign and local firms alike have increasingly been relying on U.S.-educated and experienced local practitioners.²⁷⁴ The role of LL.M. graduates from the United States, who

²⁶⁵ See Don Southerton, *New Korean Lawyers Seek Employment in Tough Market*, KOREA LEGAL.ORG (Jan. 15, 2011, 7:12 AM), <http://www.koreaexpertwitness.com/blog/news/new-korean-lawyers-seek-employment-in-tough-market/>.

²⁶⁶ See generally *Spotlight on Korea*, *supra* note 27.

²⁶⁷ See Wilson, *supra* note 63, at 337, 349–50.

²⁶⁸ See Lin, *supra* note 259.

²⁶⁹ See discussion *supra* Part IV.B.2.

²⁷⁰ See discussion *supra* Part IV.B.2.

²⁷¹ See *supra* notes 209–16 and accompanying text.

²⁷² See Carole Silver, *The Case of the Foreign Lawyer: Internationalizing the U.S. Legal Profession*, 25 *FORDHAM INT'L L.J.* 1039, 1049–50 (2002).

²⁷³ Silver, *supra* note 159, at 82.

²⁷⁴ *Id.* at 79.

earned their primary legal education in another country, is growing.²⁷⁵ These LL.M. graduates may seem to be the perfect choice for U.S. firms at their branch offices abroad, but research indicates that the local firms are the firms in those countries that have a substantial presence of such graduates.²⁷⁶ In fact, in 2006, before the KORUS FTA was signed, at least 20% of the lawyers at top Korean law firms were Korean nationals with foreign legal educations serving as informal legal consultants.²⁷⁷ Korea also has a particularly strong tie to U.S. schools: in 2011, Korea sent about seventeen times more students to pursue U.S. educations than India, twelve times more than China, and about nine times more than Japan.²⁷⁸

Offering local expertise to international firms and a general familiarity with U.S. law, these dual-educated attorneys enable their Korean law firm-

²⁷⁵ See Silver, *supra* note 122, at 7–9 (discussing the shift of law firms from staffing their overseas offices by moving U.S.-licensed attorneys abroad to hiring attorneys licensed in the host countries of those offices, or attorneys with host country ties).

²⁷⁶ See Silver, *supra* note 159, at 83.

²⁷⁷ Anthony Lin, *Seoul Proprietors*, AM. LAW., Oct. 2007, at 127, 160.

²⁷⁸ These numbers are calculated based on ratios of students in the United States from each country relative to each country's total population. The students represent participation in undergraduate, graduate, and other forms of educational training. Admittedly, this ratio is not the most accurate calculation, considering that the demographic pool of likely individuals in each country that would travel at all to the United States, such as the group of individuals in the eighteen-to-forty age group, would present a better indication of the comparable rate of students entering the United States. The underlying point, however, is that behind the two countries that are home to over 1/3 of the world's population, Korea sends the most students to the United States annually in absolute numbers than any other country. The student figures are based on research from the Institute of International Education while the figures on population size are based on reports from the U.S. Department of State. See INST. INT'L EDUC., OPEN DOORS FACT SHEET: CHINA (2011), available at <http://www.iie.org/Research-and-Publications/Open-Doors/Data/Fact-Sheets-by-Country/~media/Files/Corporate/Open-Doors/Fact-Sheets-2011/Country/China%20Fact%20Sheet%20-%20Open%20Doors%202011.ashx>; INST. INT'L EDUC., OPEN DOORS FACT SHEET: INDIA (2011), available at <http://www.iie.org/Research-and-Publications/Open-Doors/Data/Fact-Sheets-by-Country/~media/Files/Corporate/Open-Doors/Fact-Sheets-2011/Country/India%20Fact%20Sheet%20-%20Open%20Doors%202011.ashx>; INST. INT'L EDUC., OPEN DOORS FACT SHEET: JAPAN (2011), available at <http://www.iie.org/Research-and-Publications/Open-Doors/Data/Fact-Sheets-by-Country/~media/Files/Corporate/Open-Doors/Fact-Sheets-2011/Country/Japan%20Fact%20Sheet%20-%20Open%20Doors%202011.ashx>; INST. INT'L EDUC., OPEN DOORS FACT SHEET: SOUTH KOREA (2011), available at <http://www.iie.org/Research-and-Publications/Open-Doors/Data/Fact-Sheets-by-Country/~media/Files/Corporate/Open-Doors/Fact-Sheets-2011/Country/South%20Korea%20Fact%20Sheet%20-%20Open%20Doors%202011.ashx>; China, U.S. DEP'T OF STATE (Sept. 6, 2011), <http://www.state.gov/outofdate/bgn/china/189475.htm>; *Background Note: India*, U.S. DEP'T OF STATE (Apr. 17, 2012), <http://www.state.gov/r/pa/ei/bgn/3454.htm>; *Japan*, U.S. DEP'T OF STATE (Mar. 5, 2012), <http://www.state.gov/outofdate/bgn/japan/197484.htm>; *Background Note: South Korea*, *supra* note 22.

employers to offer services without a U.S. law firm, translator, manager, or other intermediary.²⁷⁹ The large number of Korean LL.M. students, considered domestic legal consultants by trade, offers a competitive edge to local Korean law firms.

2. *Lesson #2: The Legal Profession Will Become Increasingly Specialized in Korea*

A few Korean firms, with their ears out for eventual foreign arrival, did grow through conservative mergers and lateral hires.²⁸⁰ However, while the president of the local bar association suggested that Korean law firms needed to expand through mergers and the recruitment of laterals to sharpen their competitiveness with the anticipated influx of foreign law firms and attorneys,²⁸¹ it is unlikely and infeasible that the already small handful of large Korean law firms need to further unite to fend their territory through numbers. The largest law firm in Korea staffs over 800 professionals,²⁸² and no foreign law firm aims to establish an equivalent presence in Korea in absolute numbers²⁸³ in the way Eurocentric U.K. firms aggressed in Germany.²⁸⁴ Although Korea's geographic position is attractive for business in Northern Asia, it is not currently nor imminently expected to be an Asian financial center like Germany was in the 1990s, when firms flocked to the area to maintain a competitive edge in a changing global financial market. There is simply no business reason for U.K. or U.S. firms to employ up to 25% of their global workforce²⁸⁵ in Korea or even to staff the same on Korea-related matters whether originating from Korea or elsewhere. If anything, when permitted, Korea may see the emergence of ventures between slightly lower-tiered Korean law firms and smaller foreign law firms who may see such partnerships as ways to bolster their own less recognized practices, perhaps the way U.S. firms viewed their late

²⁷⁹ Silver, *supra* note 159, at 82, 84.

²⁸⁰ See Lin, *supra* note 277, at 127–28, 160.

²⁸¹ See Park, *supra* note 5.

²⁸² See *About Us: Firm Profile*, KIM & CHANG, www.kingchang.com (last visited Oct. 7, 2012).

²⁸³ For example, the largest Korea practice of a foreign firm staffs about seventeen attorneys. *Long-Distance Practice*, AMERICANLAWYER.COM (Jan. 1, 2011), http://www.law.com/jsp/tal/PubArticleTAL.jsp?id=1202476223254&LongDistance_Practice. The second largest Korea practice staffs nine. *Id.* One of the first U.S. offices to open in Korea is beginning with three attorneys and one staff member, with plans to expand to ten to fifteen professionals over the next two years. Sara Randazzo, *Sheppard Mullin, Ropes & Gray Apparent Winners of Law Firm Race to South Korea*, THE AMLAW DAILY (Aug. 16, 2012),

http://www.americanlawyer.com/PubArticleALD.jsp?id=1202567768189&Sheppard_Mullin_Ropes_Gray_Apparent_Winners_of_Law_Firm_Race_to_South_Korea_.

²⁸⁴ See discussion *supra* Part IV.A.2–3.

²⁸⁵ See *supra* notes 154–59 and accompanying text.

presence in Europe in the 1990s and early 2000s.²⁸⁶

In addition, those Korean firms that have merged did so with the goal of bolstering their practice areas where foreign firms are unlikely to compete, such as regulatory practices and domestic litigation.²⁸⁷ The goal of Korean firms in expansion is also not focused on growth exclusively within Korea, but rather on establishing an international presence and boosting their own overseas involvement in neighboring Asian countries.²⁸⁸

A focus back to exclusively practicing domestic law may or may not be forthcoming in Korea, as has been the case in Japan, but niches will likely still be created in the Korean legal market, driven mostly by the incentives of the foreign firms. In some areas of the law, foreign firms with an international practice in fields such as cross-border M&A transactions and structured finance will likely dominate and should not be excluded from those markets. Some Korean firms may acquire a similar international presence and profile, enabling them to effectively compete with those foreign firms, whereas others may choose to focus on purely domestic matters of law, which usually do not attract competition from foreign firms anyway. The same is true for U.S. firms that may advise Korean clients on U.S. litigation, including intellectual property disputes, or U.S. government regulatory issues—areas of the law that are contrastingly outside of the scope of Korean legal practice.

Rather than compete for business, foreign attorneys and firms will find it more profitable to operate in different spheres than their Korean counterparts as they seek to facilitate business in the region, rather than practice Korean law.²⁸⁹ That foreign firms have been focusing on certain specialty areas that play to the firms' strengths and existing clients' needs is not so different from the ways in which industries engaged in the sale of *goods* have internationalized.²⁹⁰ Manufacturing and sale activities, taken overseas, must adapt to the local markets, whether in Germany, Japan, or Korea, and "selling internationally," whether goods or services, means redefining professional competence.²⁹¹ For foreign firms and attorneys in Korea, this means targeting major outbound deal work and limiting practices to advising on non-Korean law.

²⁸⁶ See *supra* notes 145–51 and accompanying text.

²⁸⁷ Lin, *supra* note 277, at 160.

²⁸⁸ See Park et al., *supra* note 11.

²⁸⁹ See *South Korea Comin' Up Fast?*, *supra* note 245 (quoting DLA Piper's Asia managing partner who commented on the strength of indigenous firms, and the role of the international firm being confined to international matters "where the cachet of a global brand may be desired or where matters of U.S. or U.K. law are involved," which is mostly in major finance transactions).

²⁹⁰ See Silver, *supra* note 159, at 81.

²⁹¹ Silver, *supra* note 122, at 9 (quoting Debora L. Spar, *Lawyers Abroad: The Internationalization of Legal Practice*, 39 CAL. MGMT. REV. 8, 10 (1997)).

3. *Lesson #3: The Heightened Value of Branding in Korea Will Keep Both Elite Korean Law Firms and Long-Established Foreign Korea Practices at the Top*

Depending on the varying perspectives in Korea, Korean law firms have the option to form fully integrated partnerships within five years of the implementation of the KORUS FTA or to maintain any joint ventures that may have been created within that time, or may simply continue independent practices. Because the competitive strength of Korean firms relies in part on their uniquely elite status in Korean society, the most successful Korean firms will likely opt to continue their well-regarded independent practices.²⁹² In the international market, trust comes with the brand of the firm,²⁹³ and this will prove to be even truer in a society like Korea, where consumers are known to be very brand-conscious.²⁹⁴ Korean firms as well as their gratified Korean clients will take pride in maintaining the status of the elite Korean law firm and its esteemed reputation, making the idea of an alliance with a foreign firm unattractive to some of the top Korean firms.²⁹⁵

In the same vein, the international firms that have built Korea-focused practices from Hong Kong or Tokyo are few,²⁹⁶ and their presence as the go-to foreign firms on Korean matters is likely to remain strong, whether they or others open offices in Korea. The U.S. firm, Cleary Gottlieb Steen & Hamilton LLP (Cleary), holds the title as Korea's leading foreign international practice.²⁹⁷ Its current lead has resulted from its delivery of sophisticated services that please its Korean clients, but its initial entry into the local market was more a result of timing and fortune.²⁹⁸

Cleary's Korea practice head, Jinduk Han, turned out to be the only Korean-speaking U.S. securities lawyer available to help out Korean

²⁹² Wilson, *supra* note 63, at 334.

²⁹³ Flood, *supra* note 103, at 63.

²⁹⁴ See, e.g., Brian Salsberg & Martine Jae-Eun Shin, *South Korea: Living It Up in Luxury* (Aug. 2010), http://csi.mckinsey.com/Knowledge_by_region/Asia/South_Korea/South_Korea_Living_it_up_in_luxury (discussing Korean's love of luxury goods, including high-end designer clothing and accessories, even from 2008 to 2010 when such sales stagnated or shrunk in other countries including Japan, the United States, and Europe, as well as their sentiments of feeling less guilty about how much they spend on luxury goods compared to others in developed countries).

²⁹⁵ See Lin, *supra* note 277, at 160.

²⁹⁶ These firms are U.S.-based Cleary, Davis Polk & Wardwell LLP, Paul Hastings LLP, Sidley Austin LLP, and Simpson Thacher & Bartlett LLP, and U.K.-based Allen & Overy LLP, Linklaters LLP, and Clifford Chance LLP. See *Long-Distance Practice*, *supra* note 283.

²⁹⁷ See Anthony Lin, *The Right People at the Right Time*, AMERICANLAWYER.COM (Jan. 1, 2011), <http://www.law.com/jsp/tal/PubArticleTAL.jsp?id=1202476223989>.

²⁹⁸ *Id.*

corporations in the late 1990s when they were just beginning to open themselves to foreign capital.²⁹⁹ Han personally approached major Korean companies to explain the processes of U.S. debt offerings, after Rule 144A of the U.S. Securities & Exchange Commission cleared the way for U.S. institutional investors to participate in foreign issues.³⁰⁰ The Korean government later turned to Cleary for help with the country's collapsing banking system during the Asian financial crisis.³⁰¹ Han referred to what then ensued as a snowballing effect for the firm, where "[o]ne deal led to another, and the same issuers started doing repeat deals."³⁰² Confident that Cleary will retain its lead in Korea even with the KORUS FTA, Cleary's attorneys point to their depth and expertise, the difficulty other firms would face to catch up with Cleary's longstanding track record in Korea, and the fact that others have already shown up and left.³⁰³

The example of MoFo in Japan may be Cleary's forerunner in Korea. In fact, Cleary closed a failing office in Tokyo in 2006, bringing eighteen years of practice to an end.³⁰⁴ The fate of these two firms in Korea and Japan demonstrates the value of relational ties and history in these legal services markets, and suggests that the few foreign firms with established names in Korea will remain strong, while newly venturing international firms will vie for clients who are already largely satisfied with what they have. In fact, these firms with strong Korea ties find the move into Seoul more a formality of perceived reputational competition and expectation than a necessity to continue business as usual.³⁰⁵ The importance of branding to Korean clientele will play a role in the success of foreign firms, and the handful of U.S. firms with an established presence in Korea can thus sit back and relax for the time being.

4. Lesson #4: Korean Clients with International Legal Concerns Are Too Few to Demand a Large Foreign Supply Pool

The impact of branding to Korean clients on narrowing the list of viable foreign law firm openings in Korea will further be compounded by the nature of Korean commercial infrastructure—Korea has only a very small band of very big companies. Not only will the handful of prestigious

²⁹⁹ *Id.*

³⁰⁰ *Id.*

³⁰¹ See *U.S. Law Firm to Open Office in Korea*, CHOSUN ILBO (Nov. 30, 2011 10:30AM), http://english.chosun.com/site/data/html_dir/2011/11/30/2011113001120.html.

³⁰² Lin, *supra* note 297.

³⁰³ *Id.*

³⁰⁴ See *Cleary Calls Time on Tokyo*, THELAWYER.COM (June 5, 2006), <http://www.thelawyer.com/cleary-calls-time-on-tokyo/120214.article>.

³⁰⁵ See discussion *infra* Part V.B; see also discussion *supra* Part IV.B.1 (explaining Japan's internal mergers).

Korean and established foreign firms continue to overshadow the Korean legal services market, but the sole consumers of that market, the large Korean clients seeking the advice of foreign attorneys, are themselves only a few.³⁰⁶

The presence of powerful domestic conglomerates in Korea is a result of the history of *chaebols*, or exclusive family-run business groups.³⁰⁷ Birted in the 1960s, Korean *chaebols* played a major role in getting the Korea's economy to where it is today and they continue to have great influence.³⁰⁸ Philippe Shin, a senior FLC at the major Korean firm of Shin & Kim, acknowledges the *chaebols* as a "fixture of Korean life at all levels of society."³⁰⁹ Indeed, the most familiar Korean names around the world are these *chaebols*, including Samsung, Hyundai, and LG.³¹⁰ The growth of *chaebols* was correspondingly accompanied by the historical underdevelopment of small and medium enterprises (SMEs),³¹¹ and even today, Korean companies "tail off dramatically in size after the big names are counted."³¹² The largest of companies with a significant amount of overseas work that trigger international legal concerns currently constitute

³⁰⁶ Anthony Lin, *Law Firms Crowding Into Korea*, ASIAN LAW. (July 13, 2012), <http://www.law.com/jsp/article.jsp?id=1202562821776>.

³⁰⁷ See *supra* note 55.

³⁰⁸ See *supra* note 55; Lionel Mok, *Does the Bell Toll for the Chaebols?*, ASIAN LAW. (Sept. 10, 2012), http://www.americanlawyer.com/PubArticleAL.jsp?id=1202570694758&Does_the_Bell_Toll_for_the_Chaebols (a Korea University Law School professor explaining that during the 1960s and 1970s, "the heads of *chaebols* were cast as heroes leading the Korean economy toward newfound prosperity").

³⁰⁹ Phil Taylor, *Chasing Tigers*, IBA GLOBAL INSIGHT, Aug. 2012, at 26, available at <http://www.ibanet.org/Article/Detail.aspx?ArticleUid=254946A1-E503-409F-AA6C-1AC035AD3AC8>.

³¹⁰ Amiya Kumar Bagchi, *East Asian Development and Financial Liberalization: A Case Study of South Korea*, SOC. SCIENTIST, Sept.–Oct. 2008, at 1, 9, 11–12.

³¹¹ Hun Joo Park, *Small Business in Korea, Japan, and Taiwan*, 41 ASIAN SURVEY 846, 846, 851–52, 855–59 (2001) ("One [Korea Federation of Small Business] official stated bluntly: 'We cannot compete with the financial resources, human networks, and political connections of the *chaebol*.'"). In a historical election, Korea voted for Park Geun-hye to be its first female President in December 2012. Ju-min Park, *Business As Usual for South Korea's Chaebol Under Park*, REUTERS (Dec. 20, 2012, 2:00 AM), <http://www.reuters.com/article/2012/12/20/us-korea-election-chaebol-idUSBRE8BJ07C20121220>. Park and her electoral opponent diverged in their approach to *chaebols*, with her opponent calling for economic democracy and aggressive measures to tame the major conglomerates. *Id.* Park, on the other hand, stated that her aim as President would not be to dismantle, alter, or bash the *chaebol*. *Id.* Whatever Park's stance on prospectively promoting Korean SMEs during her tenure, "the big businesses, or chaebol, that dominate the country's economy . . . [breathed] a sigh of relief that her left-wing challenger did not win . . . [the] presidential vote." *Id.* (noting also that five *chaebols* control assets worth fifty-seven percent of Korea's GDP).

³¹² Lin, *supra* note 306.

the entire demand for foreign firms operating in Korea and may be as few as fifteen.³¹³

In contrast, SMEs have flourished in Japan as major employers and exporters,³¹⁴ leading to the existence of a vast second tier of large Japanese companies, including many technology companies in need of advice on intellectual property disputes in different jurisdictions abroad.³¹⁵ Consequently, while litigation may generally be an area of growth for foreign firms practicing in Asia, the prospect in Korea involves “a limited company list and a large pool of lawyers trying to service it”³¹⁶ that will be much more challenging to break through³¹⁷ than might be the case for firms looking to markets with more diversified corporations, as in Germany, or with vibrant SMEs, such as Japan. This challenge will again be made more difficult by the allegiance some large companies already have to their desired Korean firms.³¹⁸

5. Lesson #5: U.K. Firms Facing Hurdles Will Be Further Reluctant to Enter Korea

Finally, while the buzz surrounding the earlier KOREU FTA suggested that U.K. firms might have an early mover advantage over U.S. firms who awaited Congress’ ratification of the KORUS FTA, no U.K. firm had made any announcements of opening a Korea office by the end of

³¹³ *Id.*

³¹⁴ Park, *supra* note 311, at 846.

³¹⁵ Lin, *supra* note 306.

³¹⁶ *Id.* (quoting attorney William Kim, head of Ropes & Gray LLP’s Korea office).

³¹⁷ See, e.g., Shin & Kim—Q&A: *The Opening of the Korean Market and the Arrival of International Firms*, ASIAN LAW., Summer 2012, at 40, 41 (partners of Korean firm Shin & Kim explaining that they don’t “believe there is really enough work to feed both Korean and foreign law firms, and [that] the influx of foreign firms may represent a threat to the legal market”); *but cf.* Randazzo, *supra* note 283 (“I don’t know that the market needs to increase for us to be very successful,’ [Sheppard Mullin Richter & Hampton LLP chairman Guy] Halgren says, noting that just being in close proximity to clients the firm already has relationships with will help Sheppard Mullin lawyers do existing work better. ‘We just want to take a bigger share of the market right now that is being performed by other U.S. firms.’”).

³¹⁸ In a survey of corporate Korea by the Chosun Ilbo in March 2007 around the FTA’s first signing, eighty percent of respondents stated they wanted to hire foreign counsel based on dissatisfaction with the services provided by Korean firms. Lin, *supra* note 277, at 127–28. In a later survey of fifty major Korean corporations, state-run companies, and financial institutions, only about seventy percent said they would hire foreign attorneys, at least for “certain matters.” Don Southerton, *Korean Companies Desire Foreign Law Firms Services*, KOREALEGAL.ORG (June 30, 2010, 9:25 AM), <http://www.koreaexpertwitness.com/blog/news/korean-companies-desire-foreign-law-firms-services/> (citing the Korean newspaper Dong-A Ilbo). Five companies, however, said that they would not turn to foreign law firms at all after the market’s opening. *Id.*

2011.³¹⁹ Halfway through 2012, only one U.K. firm had successfully applied to open a Seoul office while the roster of U.S. firms engaged in the approval process grew to over ten.³²⁰ In the background, Korea has always had stronger personal ties with the United States,³²¹ based on immigration and students studying abroad,³²² giving U.S. firms easier access to the large population of Korean-Americans and Korean nationals studying at top U.S. law schools to head their Korea practices.³²³ Furthermore, practical implications of the FLCA's language are also keeping U.K. firms a few more steps away than U.S. firms from setting up shops in Korea.

On a more technical level, the FLCA—the Korean statute that specifies the qualifications for entry into the legal services market—provides that FLCs in Korea must have at least three years of experience practicing³²⁴ and be limited to providing advice on the laws of the country in which they are licensed.³²⁵ Although the same registered FLCs may also provide legal advice on generally approved international customary law as well as international arbitration proceedings,³²⁶ many U.K.-employed, U.S.-trained attorneys will not be eligible to register as FLCs in Korea.

Many lawyers in U.K. firms' Korea practices, either Korean-American or Korean nationals with U.S. legal educations, are U.S.-qualified,³²⁷ and will automatically fail to meet one of the FLCA's prerequisites for practicing in Korea if they have never practiced in the United States or are not officially U.K.-qualified.³²⁸ There are very few Korean-speaking attorneys with U.K. qualifications at U.K. firms, and even less with three years of experience officially practicing in the U.K. that would give them eligibility to be an FLC, let alone to advise on U.K. law.³²⁹ U.K. firms with

³¹⁹ Ben Lewis, *Simpson Thacher to Set Up Korea Office*, ASIAN LAW. (Dec. 14, 2011), <http://www.law.com/jsp/article.jsp?id=1202535631659&slreturn=20120823134335>.

³²⁰ Isabella Steger, *Western Law Firms Open for Business in South Korea*, DEAL J. (July 17, 2012 6:40 AM), <http://blogs.wsj.com/deals/2012/07/17/western-law-firms-open-for-business-in-south-korea/>.

³²¹ Lin, *supra* note 297.

³²² See *supra* notes 272–78 and accompanying text.

³²³ Anthony Lin, *Letter from Asia: Is Korean Free Trade Agreement Better for UK or US Law Firms?*, THE AMLAW DAILY (Mar. 24, 2009, 11:27 AM), <http://amlawdaily.typepad.com/amlawdaily/2009/03/letter-from-asia-1.html>.

³²⁴ Waegukbeobjamunsahbeob [Foreign Legal Consultant Act], Act No. 9524, Mar. 25, 2009, art. 4(1) (S. Kor.).

³²⁵ *Id.* art. 24(1).

³²⁶ *Id.* art. 24(2)–(3).

³²⁷ See Anthony Lin, *British Firms Face Hurdles on the Road to Seoul*, THE AMLAW DAILY (Mar. 28, 2011, 5:01 PM), <http://amlawdaily.typepad.com/amlawdaily/2011/03/asianlawyerseoul.html>.

³²⁸ Ben Lewis, *Korea Ratifies U.S. Trade Deal Amid Chaotic Session*, ASIAN LAW. (Nov. 23, 2011), <http://www.law.com/jsp/tal/PubArticleAL.jsp?id=1202533383731>.

³²⁹ See Lin, *supra* note 327. U.K.-based Clifford Chance's top Korea lawyer, for

an eye on opening offices in Korea must hope to have in their employ Korean-speaking attorneys already admitted as U.K. solicitors, or ask them to go through the processes of first becoming U.K.-qualified and then waiting while practicing for three years to meet the experience requirement.³³⁰

U.S. law, however, and not U.K. law, has long been favored for cross-border deals in Korea,³³¹ and as such, there may not even be much of a market for counsel from U.K.-qualified, trained, and experienced attorneys in Korea. Consequently, such U.K. firms' U.S.-trained attorneys would have to switch to advising on U.S. law, in which they also may not have the requisite three years of experience. While a technical hurdle, these few extra steps will keep U.K. firms lacking attorneys with automatic FLC eligibility from making the move into Seoul, leaving the market to the U.S. firms that lead it anyway. U.K. firms are currently experiencing a Korea that is much like the Germany U.S. firms faced in the 1990s—one that is less attractive and less accessible.

B. Evidence in Action So Far

Legal media and international firm attorneys have been making forecasts about firms' moves for years. On the eve of Korea's ratification of the KORUS FTA, many leading Korea practice attorneys of foreign firms were expressing reservations about relocating to Seoul, citing children's commitments to international schools, preference for warmer weather, lower taxes, and the more expat-friendly environment of Hong Kong.³³² Cleary's own head Korea practice attorney, Han, was noncommittal about a move in the fall of 2011, stating that a launch in Korea would be less about filling any gaps in their practices, and more about addressing perceptions.³³³ Another Korea practice head expressed the

example, is U.S.-qualified, admitted to practice in the state of New York, and may not have the requisite licensing or years of experience officially practicing in the U.K. to advise on U.K. law. See *id.*; *Profile of Hyun Suk Kim*, CLIFFORD CHANCE, http://www.cliffordchance.com/about_us/find_people_and_offices/partners/cn/hyun_suk_kim.html (last visited Sept. 23, 2012). Not surprisingly, the new Korea office will be led by Brian Cassidy, a U.K.-qualified attorney. *Clifford Chance Approved to Open in Republic of Korea*, CLIFFORD CHANCE (July 16, 2012), http://www.cliffordchance.com/news/news/2012/07/clifford_chance_approvedtoopeninrepublicofkorea.html [hereinafter *Clifford Chance Approved*]; *Profile of Brian Cassidy*, CLIFFORD CHANCE, http://www.cliffordchance.com/about_us/find_people_and_offices/lawyers/cn/brian_cassidy.html (last visited Sept. 23, 2012).

³³⁰ See Lin, *supra* note 327.

³³¹ Lin, *supra* note 323.

³³² Ben Lewis, *First Into Seoul? No Thanks*, ASIAN LAW. (Nov. 10, 2011), <http://www.law.com/jsp/law/international/LawArticleIntl.jsp?id=1202531163858>.

³³³ *Id.*

same sentiments, saying that a physical presence in Korea would add little value to those firms with preexisting strong relationships with key Korean clients.³³⁴ At the same time, this attorney also believed that if some made the move, others would be bound to follow as a defensive measure,³³⁵ reminiscent of the pioneering U.K. firms in Germany³³⁶ and the internal mergers in Japan.³³⁷

However, those firms that would be at all susceptible to such a herd mentality are limited to the few international firms that already have a prominently established Korea practice. Unlike the frenzy of match-making that mega foreign and local firms faced in Germany, or the perceived reputational competition that may have prompted internal mergers in Japan, the foreigners with a viable Korea practice have already made their lead in that practice known to the legal community around the world. Consequently, Korea will still not likely see an invasion by every large international law firm with some business in East Asia, simply because a few start to make the move. In fact, 113 of the Am Law 200 firms³³⁸ have just one foreign office or none at all, but almost all are nonetheless finding their work to be increasingly global from within U.S. borders.³³⁹ Simply put, many firms are comfortable where they are, and are not looking forward to facing a new learning curve by physically relocating to Korea, an environment that will present different regulations and new cultural and social nuances,³⁴⁰ which they can continue to avoid in their current offices.

As of January 2013, a number of firms had officially opened, applied to open, or expressed interest in or plans to open a Korea office. These include U.K.-based Clifford Chance LLP,³⁴¹ Herbert Smith,³⁴² and

³³⁴ *Id.*

³³⁵ *Id.*

³³⁶ See discussion *supra* Part IV.A.2.

³³⁷ See discussion *supra* Part IV.B.1.

³³⁸ The Am Law 200 is an annually ranked list of firms in the United States analyzing firm financials over the year, including gross revenue, profits per partner, and value per lawyer compiled and published in the periodical, *The American Lawyer*. See generally *The Am Law 200 2011*, AM. LAW., June 2011, at 70; *The Am Law 100 2011*, AM. LAW., May 2011, at 77.

³³⁹ See Rachel Breitman, *Think Global, Stay Local*, AM. LAW., Oct. 2008, at 147, 147.

³⁴⁰ See Cullen Wheatley & Taejin Park, *U.S. Law Firms Plan to Follow Trade Deal With Korea Offices*, BLOOMBERG BUSINESSWEEK (Dec. 2, 2011, 5:42 AM), <http://www.businessweek.com/news/2011-12-02/u-s-law-firms-plan-to-follow-trade-deal-with-korea-offices.html>.

³⁴¹ See *Clifford Chance Approved*, *supra* note 329; Brian Baxter, *Clifford Chance, DLA Look to New Asian Locales*, THE AMLAW DAILY (Mar. 24, 2011, 2:38 PM), <http://amlawdaily.typepad.com/amlawdaily/2011/03/south-korea-mongolia.html>.

³⁴² Jessica Seah, *British Firms Ponder Korea Without Koreans*, ASIAN LAW. (Oct. 29, 2012), http://www.americanlawyer.com/PubArticleAL.jsp?id=1202576630640&British_Firms_Pon

Linklaters;³⁴³ Swiss Vereins Baker & McKenzie³⁴⁴ and DLA Piper;³⁴⁵ and eleven large U.S.-based firms: Ropes & Gray LLP,³⁴⁶ Sheppard Mullin Richter & Hampton LLP,³⁴⁷ Simpson Thacher & Bartlett LLP,³⁴⁸ Paul Hastings LLP,³⁴⁹ McDermott Will & Emery,³⁵⁰ Squire Sanders,³⁵¹

der_Korea_Without_Koreans=&et=editorial&bu=The%20American%20Lawyer&cn=Asian Lawyer_21021029&src=EMC-Email&pt=The%20Asian%20Lawyer&kw=British%20Firms%20Ponder%20Korea%20Wit hout%20Koreans&slreturn=20121023060738; Lin, *supra* note 306.

³⁴³ Seah, *supra* note 342.

³⁴⁴ Baker & McKenzie Has Applied to the Korean Authorities to Open Seoul Office, BAKER & MCKENZIE (Nov. 20, 2012), <http://www.bakermckenzie.com/news/BakerMcKenzieKoreanOpenSeoulOffice/>.

³⁴⁵ Alanna Byrne, *3 More Law Firms Hope to Open in South Korea*, INSIDECOUNSEL (June 25, 2012), <http://www.insidecounsel.com/2012/06/25/3-more-law-firms-hope-to-open-in-south-korea>; Jim Vassallo, *U.S. Law Firms Can Practice in South Korea in 2012*, JD J. (Nov. 28, 2011), <http://www.jdjournal.com/2011/11/28/u-s-law-firms-can-practice-in-south-korea-in-2012/> (legal blog discussing interest of DLA Piper in opening Korea office). By forming the Swiss Verein in 2008, DLA Piper emphasized that it was neither a U.K. nor U.S. firm. Margaret Taylor, *DLA Gets Green Light for Swiss Verein Conversion*, THELAWYER.COM (June 30, 2008), <http://www.thelawyer.com/dla-gets-green-light-for-swiss-verein-conversion/133593.article>.

³⁴⁶ Randazzo, *supra* note 283 (William Kim, Ropes & Gray's lead Korea attorney explaining that the firm "felt it was important to try to win the race" in order "to show Korean clients, the government, and everybody in Korea [the firm's] commitment and dedication"); *Ropes & Gray Opens Korea's First International Law Office*, ROPES & GRAY LLP, <http://www.ropesgray.com/20120720koreaannouncement/> [hereinafter *Ropes & Gray Opens*] (last visited Sept. 23, 2012).

³⁴⁷ *Sheppard Mullin Opens Seoul Office*, SHEPPARD MULLIN RICHTER & HAMPTON LLP (Aug. 15, 2012), <http://www.sheppardmullin.com/press-releases-346.html> (announcing its status as one of the first three U.S. and EU approved law firms to open in Korea).

³⁴⁸ Steger, *supra* note 320; *Simpson Thacher to Open Office in Seoul, Korea*, SIMPSON THACHER & BARTLETT LLP (Dec. 13, 2011), <http://www.stblaw.com/siteContent.cfm?contentID=3&itemID=74&focusID=3186>.

³⁴⁹ *Paul Hastings First U.S. Law Firm to Submit Preliminary Applications in Relation to Foreign Legal Consultant Office in Korea*, PAUL HASTINGS LLP (Mar. 6, 2012), <http://www.paulhastings.com/NewsDetail.aspx?NewsId=258559> [hereinafter *Paul Hastings First*]; Jessica Seah, *Paul Hastings, Ropes & Gray Announce Korea Offices*, ASIAN LAW. (Mar. 6, 2012), available at http://www.law.com/jsp/tal/PubArticleAL.jsp?id=1202544514045&Paul_Hastings_Ropes_Gray_Announce_Korea_Offices; Zusha Elinson, *Pact Would Open South Korean Law Market*, RECORDER (Apr. 6, 2007), <http://www.law.com/jsp/ca/PubArticleCA.jsp?id=900005478038> (expressing interest in 2007 of having an office in Seoul as soon as allowed).

³⁵⁰ *McDermott to Open in South Korea*, MCDERMOTT WILL & EMERY (Feb. 14, 2012), <http://www.mwe.com/McDermott-to-Open-in-South-Korea-02-14-2012/>.

³⁵¹ *Squire Sanders Korea Practice Leader Joon Yong Kim Registered as Foreign Legal Consultant by Korean Bar Association*, SQUIRE SANDERS (July 25, 2012), <http://www.squiresanders.com/squire-sanders-korea-practice-leader-joon-yong-kim-registered-as-foreign-legal-consultant-by-korean-bar-association/>; *Squire Sanders Plans to Open Korea Office*, SQUIRE SANDERS (Mar. 6, 2012),

Covington & Burling LLP,³⁵² O'Melveny & Myers LLP,³⁵³ K&L Gates LLP,³⁵⁴ McKenna Long & Aldridge LLP,³⁵⁵ and of course, Cleary.³⁵⁶ At least two U.S. firms of less than fifty attorneys have also applied to open offices in Korea.³⁵⁷ Others, such as U.K.-based Freshfields and Allen & Overy LLP, have indicated that they currently have no plans to open an office in Seoul, expecting to continue their Korea practices out of Hong Kong.³⁵⁸ The scorecard so far seems to suggest, therefore, that firms are making the expected moves, with the few U.S. firms having extensive Korea practices taking the lead, U.K. firms largely staying put, and Korean firms standing tall.

C. Other General Benefits of the Liberalization

Ending this analysis on the positive expectations of liberalization, this subpart summarizes its commonly cited benefits, which include better quality and accountability of legal services. For example, one immediate practical effect from the FLCA and FTAs will be a working registration system to recognize foreign attorneys as either individual proprietors or a member of an FLC office.³⁵⁹ It is no secret that a large number of foreign attorneys have already been working in Korea for over three decades as

<http://www.squiresanders.com/de/squire-sanders-plans-to-open-korea-office/>.

³⁵² Catherine Ho, *Covington Joins Wave of Law Firms Opening Offices in Korea*, CAPITAL BUS. BLOG (Mar. 13, 2012, 5:11 PM), http://www.washingtonpost.com/blogs/capital-business/post/covington-joins-wave-of-law-firms-opening-offices-in-korea/2012/03/13/gIQA9PHCAS_blog.html; *Covington to Open Seoul Office, Adds William H.Y. Park*, COVINGTON & BURLING LLP (Mar. 12, 2012), <http://www.cov.com/news/detail.aspx?news=1728>.

³⁵³ *O'Melveny to Open Office in South Korea*, O'MELVENY & MYERS LLP (June 19, 2012), <http://omm.com/newsroom/News.aspx?news=2693>.

³⁵⁴ Maria Chutchian, *K&L Gates, McKenna Long Set Sights on S. Korea*, LAW360 (June 22, 2012 9:56 PM), <http://www.law360.com/legalindustry/articles/353473/k-l-gates-mckenna-long-set-sights-on-s-korea>.

³⁵⁵ *Id.*

³⁵⁶ Steger, *supra* note 320; *Cleary Gottlieb to Open Office in Seoul*, CLEARY GOTTLIEB STEEN & HAMILTON LLP (Nov. 28, 2011), http://www.cgsh.com/cleary_gottlieb_to_open_office_in_seoul/ (announcing plans to open an office in the first half of 2012); Ben Lewis, *Cleary to Open Korea Office*, ASIAN LAW. (Nov. 28, 2011), http://www.law.com/jsp/article.jsp?id=1202533591551&Cleary_to_Open_Korea_Office (stating that the firm had no plans to enter into an alliance with a Korean firm).

³⁵⁷ See Lin, *supra* note 306 (Cohen & Gresser and H.C. Park & Associates, PLC); Tom Brennan, *New York Boutique Firm Joins Korea Rush*, ASIAN LAW. (Sept. 26, 2012), http://www.americanlawyer.com/PubArticleAL.jsp?id=1202572695276&New_York_Boutique_Firm_Joins_Korea_Rush (Cohen & Gresser).

³⁵⁸ Seah, *supra* note 342.

³⁵⁹ *Quarterly Updates*, *supra* note 46; see also *supra* notes 85, 87 and accompanying text.

legal consultants to Korean clients.³⁶⁰ They have essentially practiced law in Korea and required only the final approval signature on documents by a Korean attorney.³⁶¹ With the open and official acceptance of these foreign attorneys, the granting of licenses and registration through the Korean Bar Association and approval of the Ministry of Justice³⁶² will help Korea maintain professional and ethical standards.³⁶³

In addition, the FLCA's requirement that FLCs reside in Korea for at least 180 days per year³⁶⁴ may lead to quicker and better cultural understanding as well as the building of relationships. Similarly, limiting entry to attorneys with at least three years of work experience³⁶⁵ and to firms that have had at least five years of normal operation³⁶⁶ in their home countries ensures that both businesses and attorneys have an adequate level of expertise. Finally, requiring that the main office of foreign firms guarantee civil or commercial liabilities relating to the office's business³⁶⁷ deters potential legal misconduct or malpractice. Over the next years, the legal community hopes to see benefits to domestic consumers for legal services as well as improved efficiency and quality of the legal services market in Korea.³⁶⁸

VI. CONCLUSION

From a bird's-eye view, the Korean legal services market will probably not fundamentally change in the near future. A close-up view of only the top law firms in Korea may, however, demonstrate an expansion in the role and range of work activities of elite Korean attorneys. Comparisons in Korea to developments of foreign law firms in Germany are both faulty and obsolete, while the more relevant example of Japanese trends has been so far difficult to measure and evaluate. However, all interested parties—local law firms, international law firms, governments,

³⁶⁰ See, e.g., *Clifford Chance Approved*, *supra* note 329 (“Our office in Seoul is a natural extension of our over 30-year history of working with Korean clients.”); *Ropes & Gray Opens*, *supra* note 346 (“[T]he firm has established more than two decades of service to Korean clients . . .”); *Paul Hastings First*, *supra* note 349 (highlighting the firm’s twenty-five years of experience in Korea to include advising Samsung Electronics and Dong-A Pharmaceuticals).

³⁶¹ Suzuki, *supra* note 48, at 392.

³⁶² *Quarterly Updates*, *supra* note 46.

³⁶³ See Waegukbeobjamunshbeob [Foreign Legal Consultant Act], Act No. 9524, Mar. 25, 2009, arts. 28, 32, 36–53 (S. Kor.) (ethical standards, supervision by the Minister of Justice and Korean Bar Association, disciplinary actions, and penal provisions).

³⁶⁴ *Id.* art. 29(1).

³⁶⁵ *Id.* art. 4(1).

³⁶⁶ *Id.* art. 16(1).1.

³⁶⁷ *Id.* art. 16(1).4.

³⁶⁸ See Chapman & Tauber, *supra* note 58, at 954–56.

attorneys, and businesses both large and small—should continue to strive to find those collaborations that best serve progress and growth in the context of the time and specific places in which they exist.