During Foreign Investment Week (FIW) 2016, Korea’s largest national investment event, Foreign Investment Ombudsman Dr. Jeffrey I. Kim provided his professional insight into numerous issues and questions raised by foreign investors doing business in Korea. In particular, foreign embassies in Korea showed keen interest in the recent amendments to the Foreign Legal Consultant Act. In this regard, we offer you some of their key concerns in regards to the Act.

As a keynote speaker, the Ombudsman was invited to the ‘AustCham Seminar with Korea’s Foreign Investment Ombudsman’, which was held on Sept. 29 in conjunction with this year’s FIW. This seminar, organized by AustCham Korea and sponsored by the Ministry of Trade, Investment and Energy, provided an ideal platform for foreign investors to bring their concerns to our attention. On this occasion, participants also included government officials from the International Legal Affairs Division and the Ministry of Justice. It was encouraging to see that among many of our participants, government officials from the Ministry of Justice were in attendance to carefully listen to various issues related to foreign investment and the Ombudsman’s insight regarding these matters.

At the seminar, foreign chambers of commerce in Korea have expressed their regulatory concerns regarding the new provisions to the Act. Some of these concerns included the limiting of foreign equity in joint ventures to 49 percent, prescribing foreign firms to operate joint ventures only with South Korean entities in existence for three or more years, and limiting the scope of practice.

Foreign embassies raised some questions regarding the Act, including whether the recent amendments to the Act seem to run counter to the FTA spirit and the Korean government’s focus on deregulation. Regarding this issue, the Ombudsman stated that the amendments do not violate the FTA, as they have reflected various stakeholders’ opinions and the process of deliberation by the Amendments to the FLCA Committee. At the discretion of the Korean government, the amendments were passed pursuant to the provisions of the FTA.

Embassies also asked if the process of opening the Korean legal market will be sped up. The Ombudsman stated there are many things to consider when facilitating the legal liberalization: the position of foreign-invested companies, the changing trends of the legal services market and the market response, among others. In this regard, under the leadership of the Ombudsman, providing such an ideal platform for various stakeholders to better communicate with one another can lay the foundation for garnering mutual trust.

Our office believes that the implementation of the FTA and opening of the Korean legal services market must proceed at a steady pace to proceed without any issues. On this solid foundation of trust, regulatory improvements will continue to be made so that regulations can serve the interest of various stakeholders.

New Provisions in the Amendments to the Foreign Legal Consultant Act

Article 35-16 (Shares) (1) No foreign participant in a joint venture shall hold shares in the joint-venture law firm in excess of 49/100…

Article 35-8 (Joint Venture Participants) (1) A local joint-venture participant that establishes a joint-venture law firm, shall satisfy the following requirements:

1. It shall have been normally operated for at least three years since it was duly established under the Attorney-at-Law Act…

2. A foreign joint-venture participant that establishes a joint-venture law firm, shall satisfy each of the following requirements:

1. It has been operated normally for at least three years since it was duly established under the Act of a party country to a free trade agreement, etc...

Article 35-19 (Scope of Services) A joint-venture law firm may perform services, excluding all of the following, to the extent they do not conflict with this Act or other statues:

4. Representation of services for the sole purpose of acquiring, losing, or changing a right to real estate, intellectual property right, mining right, and other rights which shall be constituted or serve as requirement for prevailing against upon the registration with an administrative agency, and preparation of documents for such purposes…