

# THE NEXT WAVE OF FOREIGN DIRECT INVESTMENT

**T**HE *Joongang Daily* reported in January 2010 that the number of foreign or foreign-invested companies operating in Korea more than doubled over the last 10 years. There were 4317 foreign companies doing business in Korea in 1998 according to the Korea National Tax Service. By 2009, the number rose to 9612. Foreign companies are broadly engaged across diverse industry sectors. Most foreign companies are engaged in the wholesaling business (29%), manufacturing (21%), or service (21%) sectors.

As the number of foreign companies has grown, the Korean government has taken steps to make it easier for foreign companies to invest and do business in Korea. Following the Asian financial crisis of the late 1990s, Korea adopted the Foreign Investment Promotion Act. The FIPA eliminated most restrictions on foreign investment, and in principle guarantees that foreign-owned companies have the same rights and legal protections as domestic companies. There are still some industries where foreign ownership is prohibited or limited to a certain percentage, but for most industries the former restrictions have been repealed.

In recent years Korea has also actively negotiated bilateral free trade agreements with the United States, the European Union, the European Free Trade Area, the Association of Southeast Asian Nations

**The Korean government is sending the message that foreign companies are welcome in Korea. The message is not just rhetorical, it has been backed up.**

(ASEAN), Chile and Singapore. The free trade agreements with the US and the EU have not yet been implemented. The Korea-EU agreement was signed in 2009, and will likely be ratified in 2010.

The Korea-US agreement was signed, but has not yet received approval by Congress or the Korean National Assembly. Congressional Democrats have raised some labor-related objections. Industry groups in both countries are still lobbying for and against specific provisions in the treaty. President Obama threatened to oppose the treaty during the 2008 Presidential campaign, but since that time has not



Hee Chul Kang



Robert W. Wachter

indicated whether the United States will require that some provisions be renegotiated. Although the timeline for Congressional approval remains uncertain, the treaty will very likely come into effect, perhaps with further modifications. When it does come into effect, it will be the largest free trade agreement that the United States has concluded since NAFTA.

The free trade agreements not only reduce tariffs and other barriers to trade, but they reaffirm the principle of the Foreign Investment Promotion Act, which guarantees that foreign-invested companies have the same legal rights as Korean-owned companies. In addition to these formal protections, Korean governmental agencies are also making a conscious effort to become more user friendly to foreign companies and foreign investors. In recent years many other Korean governmental agencies have introduced English language websites to assist foreign investors and foreigners living in Korea. Now some agencies are going a step further. The Financial Supervisory Commission, which is charged with overseeing the financial industry, reported this month that it will start conducting weekly briefings in English on its website.

The Korean government is sending the message that foreign companies are welcome in Korea. The message is not just rhetorical, it has been backed up by real action. The World Bank's International Finance Corporation publishes annual statistics that quantify the relative ease or difficulty of doing business in 187 different countries. The IFC's methodology and detailed rankings are available online at [www.doingbusiness.org](http://www.doingbusiness.org).

In 2010 Korea ranked 19th in the world, four places higher than its 23rd ranking in 2009. Korea scored high in the ease of enforcing contracts (5th), the ease of trading across borders (8th), and the ease of obtaining credit (15th), but scored much lower for paying taxes (49th), the ease of starting a business (53rd), registering property (71st) and employing workers (150th).

The most difficult issues foreign companies usually face in Korea are labor and employment-related. Korean law does not recognize at-will employment. Most employer-employee relationships are contractual for the first two years. After two years, even if there



Attorneys at Law  
**YULCHON**

is an employment agreement that provides otherwise, the employee becomes a “regular employee” under Korean labor laws and qualifies for additional legal protections. The practical effect of these protections is that it is very difficult for companies to terminate employees, or even to lay off employees for economic reasons. In addition, employment laws treat companies differently depending on the number of employees at the company. Smaller companies are exempt from some requirements, but as a company

### **If and when the Korea-U.S. free trade agreement wins approval, there will likely be another new wave of foreign investment from the United States and a surge in the number of foreign and foreign-invested companies operating in Korea.**

grows it becomes subject to more stringent requirements. Companies that decide to start operations in Korea need to be aware of these issues and need to plan properly from the very beginning. Competent legal advice is critical to minimize the potential unexpected burden of complying with the labor laws.

The other areas where Korea ranked low in the IFC rankings – tax, business formation, and property registration – are also areas where competent professional advice can make a big difference. There are tax breaks available to foreign investors in certain industries where the government desires to attract foreign investment. While the procedural requirements to establish a joint stock company or branch office are more burdensome in Korea than in many countries, competent and efficient advice and proper planning can speed up the process. The property registration system in Korea is efficient and reliable, but is very unfamiliar to some foreign investors. Many of the difficulties foreign companies encounter can be overcome, streamlined or minimized with proper guidance and planning.

Korea already ranks as the 13th largest economy in the world, and continues to grow faster than any other major industrialized country. If and when the Korea-U.S. free trade agreement wins approval, there will likely be another new wave of foreign investment

from the United States and a surge in the number of foreign and foreign-invested companies operating in Korea. For many American companies, the question is not whether – but when – to open a branch office or subsidiary in Korea.

Because foreign companies frequently need legal advice on a wide range of issues, practicality requires that they find a single law firm with the breadth and depth of experience to efficiently and proficiently answer all of their questions. Yulchon is a full-service law firm with the capability to handle all of a foreign-invested company’s legal needs. In addition to the formation, labor, tax, intellectual property, customs and property registration services that most foreign and foreign-invested companies require, we also have the resources to provide industry-specific regulatory advice for many industries. Many former officials from the Korea Fair Trade Commission, the National Tax Service, the Financial Supervisory Service, and other agencies have joined Yulchon as senior advisors. ■

#### **Authors**

**Hee Chul Kang**  
Co-head of Corporate & Finance Team

**Robert W. Wachter**  
Inbound Foreign Investment Practice Group

**Yulchon, Attorneys at Law (Seoul)**  
Textile Center 12F, 944-31 Daechi 3-dong,  
Gangnam-gu 135-713 Korea  
Tel: +82-2-528-5200  
Fax: +82-2-528-5228  
E-mail: mail@yulchon.com

**Yulchon, Attorneys at Law (Vietnam)**  
Unit 03, 4th Floor, Kumho Asiana Plaza,  
39 Le Duan St., Ben Nghe Ward,  
Dist.1, Ho Chi Minh City, Vietnam.  
Tele: (84) +8-39110225  
Fax: (84) +8-39110230  
E-mail: eyang@yulchon.com

[www.yulchon.com](http://www.yulchon.com)