The Kim Young-Ran Act and the Employer's Legal Liabilities

I. Introduction

Even though Korea has reached the status of a developed country, many indices still show that the morality of public officials is perceived as being relatively low. According to a survey by the Anti-Corruption and Civil Rights Commission (ACRC), on the corruption perception index, 57% of the people who participated in the survey responded that civil servants are corrupt. Even in an international evaluation in 2015, Korea's Corruption Perceptions Index ranked 56; in 27th place out of 37 OECD countries.[1] Accordingly, it became necessary to legislate a comprehensive anti-corruption act in order to overcome the limitations of the existing anti-corruption laws (the Criminal Act, the Public Service Ethics Act, etc.) in preventing corruption, get rid of the corruption within the public services, and reach a transparent society. Thus, the "Improper Solicitation and Graft Act (hereinafter referred to as the "Kim Young-Ran Act" or the "Anti-corruption Act" was enacted on March 27, 2015 at the suggestion of Kim Young-Ran, the chief of the ACRC, and was implemented on September 28, 2016. This Kim Young-Ran Act includes in its scope of application employees engaged in media companies, private schools, and even the spouses of employees, and so affects the lives of ordinary people.[2] In particular, this Act contains joint penal provisions that can be used to punish a company when an employee violates this law regarding improper solicitation or provision of financial or other advantages, and so all companies should implement thorough precautions for the purpose of ensuring the avoidance of any joint punishment.

Hereunder, I will review the Kim Young-Ran Act in terms of its principals and the exceptions to what is considered improper solicitation and prohibited financial or other advantages, after which I will also carefully examine its joint penal provisions, their application, and the necessary efforts required of a company.

II. The Anti-corruption Act

1. Concept and scope of application

(1) Concept: The purpose of this Act is to ensure that civil servants and relevant persons fulfill their duties in an upright manner and to secure the public's confidence in public institutions by forbidding improper solicitation of civil servants or other relevant persons and by prohibiting them from accepting financial or other advantages. This Act is composed of two major parts: anti-solicitation measures and prohibited financial and other advantages.

(2) Scope of application

1) "Civil servants and relevant persons" refers to ① civil servants and employees working in ② public service-related organizations,[3] ③public institutions, ④ schools of various levels and educational corporations, and ⑤media companies.

2) Spouses of civil servants and relevant persons

3) Private persons performing public duties: ① members of various committees, ② persons

[1] Document issued by the Anti-Corruption and Civil Rights Commission in 2016.
[2] The scope of application is much wider, and so several petitions to the Constitution Court were submitted, but all were rejected. The Constitution Court ruling on July 28, 2016 (2015 Hunma 236, 412, 662, 273 combined cases)
[3] Public service-related organizations: The Bank of Korea, public companies (Korea Electric Power Corporation, etc.); local corporations (Seoul Metro, etc.); government-invested corporations/subsidiary organizations (Korean Red Cross, etc.); work assignment organizations (National Agricultural Cooperative Federation, etc.); institutes appointing directors (Korea Workers' Compensation and Welfare Service, etc.).

who have authority delegated by a public institution, ③ persons on assignment from the private sector to a public institution, ④ professionals who engage in deliberation or assessment in relation to public duties.

4) General people: persons who improperly solicit civil servants or who offer them financial or other advantages

2. Prohibition of improper solicitation[4]

(1) Details (14 types): ① Authorization, permission, and any other actions, ② mitigating or remitting various administrative dispositions or punishments, ③ intervening or exerting influence in the appointment, promotion, or any other personnel management of civil servants, ④ using influence so that a person is appointed to or rejected from a position which is involved in the decision-making of a public institution, ⑤ using influence so that a specific individual is chosen or rejected by a public institution, ⑥ using influence so that duty-related confidential information on tenders, auctions, etc., is disclosed, ⑦ using influence so that a specific person is selected or rejected as a party to a contract, ⑧ intervening or exerting influence so that subsidies, etc., are assigned to, provided to, invested in, or deposited with a specific person, ⑨ using influence so that a specific person buys, exchanges and/or uses goods and services that are produced, provided or managed by public institutions beyond the normal monetary value, ⑩ using influence so that admissions, grades, performance tests or other matters related to schools of various levels are handled and/or manipulated, ⑪ using influence so that physical examination for conscripts, assignment to a military unit, appointments or any other matters related to military service are handled in a specific way, ⑫ using influence so that, in various assessments and judgments performed by public institutions, specific assessments or judgments are made, ⑬ using influence so that a certain person is selected or rejected as the subject of administrative guidance, control, inspection or examination, or where the outcome thereof is manipulated or discovered violations are ignored, and ⑭ using influence so that the investigation, judgment, adjudication, decision, conciliation, arbitration, or settlement of a case or any other equivalent function is handled in a specific manner.

(2) Exceptions: In order not to discourage claiming legitimate rights, claiming, or demanding, the following 7 items are permitted under the Anti-corruption Act:

① Requesting certain actions, such as asking for remedy against or resolution of infringement of a right; suggesting or recommending the establishment, amendment or rescission of related Acts and/or subordinate statutes and standards; ② Publicly soliciting a civil servant or relevant person to take a certain action; ③ Where an elected public official, political party, civil society organization, etc., conveys a third party's complaints and grievances the public interest; ④ Requesting or demanding that a public institution complete a certain duty within a statutory deadline, or inquiring or asking verification about progress; ⑤ Applying or making a request for

[4] Punishment for improper solicitation (Articles 22, 23 of the Act)

Violation	Punishment
A stakeholder improperly solicits a civil servant directly	None
A stakeholder improperly solicits a civil servant through a third party	Fine for negligence not exceeding KRW 10 million
A person improperly solicits a civil servant on behalf of a third party (private person)	Fine for negligence not exceeding KRW 20 million
A civil servant improperly solicits another civil servant on behalf of a third party	Fine for negligence not exceeding KRW 30 million
A civil servant or relevant person who performs functions as directed by an improper solicitation	Imprisonment for not more than two years or a fine not exceeding KRW 20 million

verification or certification of a certain duty or juristic obligation; ⑥ Requesting an explanation or interpretation of systems, procedures or Acts and/or subordinate statutes related to a certain duty in the form of an inquiry or consultation; and ⑦ Any other conduct not deemed as contravening social norms.

3. Acceptance of financial or other advantages[5]

(1) Details: The previous Anti-Corruption Act required both a "work-related connection" and clear "benefits given in return for favors" in order for an action to be subject to punishment, but this new Act does not require directly-related "bribery in return for favors", and any civil servant who receives more than KRW 1 million will be punished without the need for any work-related connection. In cases where a civil servant or relevant person accepts, requests, or promises to receive any financial or other advantage with a value in excess of KRW 1 million at one time or a total of KRW 3 million within the same fiscal year from the same person, regardless of the relationship between such offer and his or her duties, he/she is subject to criminal punishment. However, in instances where less than KRW 1 million is accepted at one time, or less than a total of KRW 3 million within the same fiscal year, the civil servant is subject to criminal punishment only if there is a connection with his/her duty.

Financial and other advantage refers to money, goods, and other financial gain, as well as tangible or intangible gains which provide convenience or satisfy the person's needs or desires. Examples are 1) money, property, hotel vouchers, memberships, admission tickets, etc., 2) meal, alcohol or golf, provision of transportation, etc., 3) providing economic benefits such as relief of debt, provision of employment, offering of favors, etc.

"Work-related connection" refers to the "duties handled by one's position." Examples are: 1) duties authorized generally and abstractly under the law, 2) duties performed actually or habitually, 3) duties to support or influence decision makers, and 4) duties closely related to the job.

(2) Exceptions: There are 8 valid situations for accepting financial or other advantages:

① Financial or other advantages that a public institution offers to civil servants or relevant persons who belong to the institution or are on assignment thereto, or which a senior civil servant or relevant person offers to his or her subordinates to either raise their morale or console, encourage, or reward them;

② Food and drink, congratulatory or condolence money, gifts, or other items that are offered to facilitate performance of duties or for social relationships, rituals, or assistance to festivities and funerals, the value of which is within the limit provided by Presidential Decree:

- Meals are allowed to a value of not exceeding KRW 30,000;
- Gifts are allowed to a value of not exceeding KRW 50,000;

[5] Punishment for Graft (Articles 22, 23 of the Act)

Violation	Punishment
· A civil servant receives a financial or other advantage in excess of KRW 1 million at one time or a total of KRW 3 million within the same fiscal year from the same person, regardless of a connection to his or her duties · A civil servant does not report the fact that his or her spouse received a financial or other advantage · A person provides a financial or other advantage	Imprisonment for not more than three years or a fine not exceeding KRW 30 million
· A civil servant receives a financial or other advantage not exceeding KRW 1 million in connection with his or her duties, regardless of whether such offer is given in exchange for favors · A civil servant does not report such financial or other advantage received by his or her spouse · A person provides a financial or other advantage to a civil servant or his or her spouse.	Fine for negligence of two to five times the received amount
· A civil servant receives an honorarium exceeding the allowable limit for an outside lecture	Fine for negligence not exceeding KRW 5 million

- Congratulatory and condolence payments are allowed to a value of not exceedingKRW 100,000; ③ Financial or other advantages that are offered from a legitimate source due to a private transaction; ④ Financial or other advantages that relatives (under Article 777 of the Civil Act) of a civil servant or relevant person offer; ⑤ Financial or other advantages that employees' mutual aid societies, clubs, alumni associations, ethnic societies, friendship clubs, religious groups, social organizations, etc. related to a civil servant or relevant person offer to their members in accordance with the rules prescribed by the respective organizations, and financial or other advantages from those who have long-term and continuous relationships with a civil servant or relevant person; ⑥ Financial or other advantages that are uniformly provided by an organizer of an official event related to the duties of a civil servant or relevant person to all participants thereof, including transportation, accommodation, and food and drink; ⑦ Souvenirs or promotional goods distributed to many and unspecified persons, or awards or prizes that are given by a contest or lottery; and ⑧ Financial or other advantages that are permitted by any other Acts and/or subordinate statutes, standards or social norms.

III. Joint Penal Provisions and the Employer's Obligations

1. Concept

The joint penal provisions refer to a system of punishing the employee and the employer together for violations of the law by the employee in the course of his/her work. Article 24 of the Anti-corruption Act (Joint Penal Provisions) stipulates that "Where an employee commits a violation: improper solicitation and/or provision of financial or other advantage, the violator and his/her employer are punished together. Provided, that this shall not apply where the employer has not been negligent in giving due attention and supervision concerning the relevant duties so as to prevent such violation."

The Supreme Court ruled, concerning the reasons for the employer to be exempted from liability, that whether the employer has been negligent in giving due attention and supervision shall be determined by considering the following items collectively: ① the violation and its relevant situation, such as the purpose for enacting that law, the severity of damages coming from infringing rights due to violation of the relevant law, and the purpose for introducing the joint penal provisions in that law; ② the concrete details of the violation and actual damage caused by the violation of this law; and ③ the size of the business, along with the degree of command and supervision by the employer; and ④ the company's efforts to prevent violations.[6]

2. Related cases[7]

1) Improper solicitation

Case 1: In a case where employee X of a construction company solicited civil servant A of 00 District Administration Office for permission for a building project in violation of construction laws: In applying the joint penal provisions, the construction company will receive a fine not exceeding KRW 20 million.

Case 2: In a case where employee X of a construction company solicited civil servant A of 00 District Administration Office for permission for a building project, providing whiskey worth KRW 700,000: If "bribery" as defined in the Criminal Act, is applied, the construction company will not be punished by the joint penal provisions, but if the case is not admitted as "bribery" under the Criminal Act, the joint penal provision is applied and a fine will be given, not

[6] Supreme Court ruling on February 25, 2010 (2009do5824), on September 9, 2010 (2008do7834), etc.
[7] Document issued by the Anti-Corruption and Civil Rights Commission in 2016.

exceeding KRW 20 million.
2) Accepting financial or other advantages
Case 1: While a construction company was waiting to receive a construction permit from the District Administration Office, in a case where employee X provided whiskey worth KRW 700,000 to the civil servant in charge of construction permits, employee Y provided gift tickets worth KRW 500,000 to the same person, and employee Z provided a meal equivalent to KRW 200,000 to the same person, all in different work-related meetings: In applying the joint penal provisions, the construction company shall bear a fine of between KRW 2.8 million and KRW 7 million won.
Case 2: In a situation where employees X and Y of a construction company invited newspaper reporters A, B, C, D to a work-related dinner and spent KRW 120,000 for the dinner, and paid KRW 240,000 at the bar in a second location: As entertainment of the civil servants by employees X and Y is evaluated as one behavior, in applying the joint penal provision, one fine will be levied, which will be between KRW 120,000 and KRW 300,000 won: A fine for negligence of two to five times the received amount → (120,000/6 persons) + (240,000/6 persons) = KRW 60,000.

3. Cases in other countries

1) The United States' Anti-corruption Compliance: Whether the company established and normally operated effective anti-corruption compliance plays an important part in cases where the court decides to prosecute the company or determine a level of corporate punishment. A company simply preparing the compliance documents is not sufficient, but whether in actuality their preparations were effective or not. The US provides guidelines in its anti-corruption law and stipulates substantial obligations that the employer must strictly adhere to.
2) The United Kingdom's Anti-corruption Act: In cases where an employee of a company or other related person in its agency and/or subordinate company provides bribes to other people in order to acquire more business or expect favors, the company itself will be charged for criminal violation. Provided, the company will not be liable if the company can verify its efforts to implement appropriate measures to prevent persons from giving bribes.

IV. Conclusion

In relation to the Kim Young-Ran Act, a company's main concern is how it can avoid activities that may be punishable by the joint penal provisions. In order to avoid such liability, the company must prepare both preventative and disciplinary measures as well as rules for compliance, conduct ethics education, and actually take disciplinary action for offenders. In particular, with the introduction of the Kim Young-Ran Act, it is necessary to recognize that a company's existing entertainment practices could be detrimental not only to the employee him or herself, but to the company as well. The Anti-corruption Compliance program in the United States or its equivalent in the United Kingdom can be good reference points for adequate procedures to prevent corruption. The best way for a company to avoid this joint punishment is to exert real effort in terms of implementing considerable attention and supervision.

Employment Relations by VISA Type

I. Introduction

As of the end of July 2016, the number of foreigners residing in Korea stood at 2,034,878. This includes 1,141,803 registered as non-Korean foreign nationals, 347,836 people as Korean foreign nationals, and 543,239 people as foreign nationals on short-term stays. Four percent of the people living in Korea are foreign nationals, who are forecast to increase to 3 million in 5 years, or 6% of the total number of people in Korea. There are concerns about whether Koreans will suffer from a high unemployment rate due to the rapidly-increasing number of foreign nationals and whether foreigners will commit more violent crimes, thereby making Korea a more dangerous place. However, as we attract more high-quality human resources and continue to use greater numbers of cheap, skilled workers in work involving the "three Ds" (difficult, dirty, dangerous), there are many advantages.

Unfortunately, it is difficult to know where all the foreign nationals are placed and how many of them are working, what qualifications they have, what kinds of work they are engaged in, and what kinds of foreign workers are allowed to be employed. This is because there are so many types of visa under a very complicated immigration law. Herein, I would like to look at the classification of 36 visa types under different categories, and then look at the types of visa granted for employment and what relationship exists between the Immigration Control Act and labor laws.

II. Visa Types & Categories

1. Visa types & current status of stay for each visa type[8]

In order to understand more about the foreign nationals staying in Korea, it is necessary to know the types of visa available to them and the purpose and status of stay. A visa determines the economic activities (if any) that foreign nationals can conduct in their host country, and their status. The visa type makes it easy to recognize the purpose of their visit, whether or not they are allowed to engage in money-making activities, whether they have family relations in Korea, and whether they are overseas Koreans. The current Immigration Control Act places foreign nationals in one of eight categories (A to H) which are comprised of 36 visa types in total. Group A is related to official duties and includes those working in diplomacy and those conducting official government duties and the accompanying family of foreign nationals in this category. Group B refers to visitors for short-term stays such as tourists and those exempt from visa requirements due to bilateral conventions between countries. Group C includes those visiting for short-term activities such as broadcasting, short-term tourism, and short-term employment. Group D covers those staying long-term and professional personnel engaged in culture and the arts, those engaged in technical training, corporate investment, international trade, job-seekers, those studying abroad (including language studies), and media correspondents. Group E covers employment activities for professors, native language instructors/teachers, researchers, technology guidance supervisors, professionals (specific jobs with high salaries such as IT engineers, translators and lawyers etc.), non-professionals (such as simple factory jobs), and ship crewmen. Group F covers those staying long-term due to family relations. Group G does not cover any specific type of traveler, but is rather a temporary stay

[8] Lee Hee-Jeong, "Stay of Foreigners", 「Immigration Control Act 」, Parkyoung Sa, 2016, pp. 127-188; Ministry of Justice, "Guide Manual of VISA Issuance", 2016; Ministry of Justice, "Translation of the Immigration Control Act" 2011.

visa issued for emergency situations and others. Last, Group H includes those on working holidays and employment of Korean foreign nationals.

[Visa Types, Status of Sojourn & Maximum Length of Stay per Visit][9]

No	Category	Status of Sojourn	Currently in Korea	Length of Stay	No	Category	Status of Sojourn	Currently in Korea	Length of Stay
1	A: Official Duties	A-1 (Diplomacy)		Work period	19	E: Long-term Employment	*E-1 (Professor)*	*2,559*	5 years
2		A-2 (Official business)	(1,131)		20		*E-2 (Language teaching)*	*15,202 (273)*	2 years
3		A-3 (Conventions)			21		*E-3 (Research)*	*2,942*	5 years
4	B: Short-term Stays without	B-1 (Visa-exempt)	(103,507)	Agreed period	22		*E-4 (Technology instruction)*	*190*	
5		B-2 (Tour & transit)	(115,450)		23		*E-5 (Professionals)*	*619*	
6	C: Short-term Stays	C-1 (Temporary broadcasting)		90 days	24		*E-6 (Artistic work)*	*4,485 (352)*	2 years
7		C-3 (Short-term visit)	(224,879) (71,680)		25		*E-7 (Particular activities)*	*19,930 (710)*	3 years
8		*C-4 (Short-term employment)*	*(1,200)*		26		*E-9 (Non-professional)*	*268,103 (7,399)*	
9	D: Non-professional	D-1 (Culture & art)	66	2 years	27		*E-10 (Ship crewmen)*	*14,436*	1 year
10		D-2 (Studying abroad)	67,939 (527)		28	F: Long-term Stays & Family Relations	F-1 (Family visitation)	92,238 (2,526)	2 years
11		D-3 (Technical training)			29		*F-2 (Residence)*	*38,909*	5 years
12		D-4 (General training)	32,039 (1,574)		30		F-3 (Dependent family)	22,126 (532)	Same as spouse
13		D-5 (News gathering)	88		31		*F-4 (Overseas Korean)*	*354,801 6,965)*	3 years
14		D-6 (Religious activities)	1,587		32		*F-5 (Permanent resident)*	*127,377*	No
15		D-7 (Overseas assignment)	1,751		33		F-6 (Marriage immigrant)	119,455	3 years
16		D-8 (Investment)	5,956		34	G: Others	G-1 (Miscellaneous)	**31,877**	1 year
17		D-9 (Trade)	5,936		35	H: Working Holiday/ Working	*H-1 (Working holiday)*		Agreed period
18		D-10 (Job-seeking)		6 months	36		*H-2 (Working visit)*	*263,999 (6,533)*	3 years

[9] Monthly Report by the Immigration Office (July 2016); Number inside parentheses '( )' refers to those who stay for temporary periods; Underlined italics refer to permitted to engage in money-making activities.

2. Visa Categories[10]

(1) Group A: Official work related to relations with other countries

1) Diplomacy (A-1): Diplomats and consular post members, and their families.

2) Official business (A-2): Civil servants working for other countries or international organizations, and their families.

3) Conventions (A-3): People without alien registration according to various Conventions, and their families. A typical example is those staying in Korea under the SOFA (the US-ROK Status of Forces Agreement).

(2) Group B: Short-term stays without visa

1) Visa-exempted (B-1): Activities related to bilateral visa-exempt agreements between countries. Korea has entered into such agreements with 102 countries as of June 2015.

2) Tour & transit (B-2): Entering for the purpose of travel or transit.

(3) Group C: Short-term stays (90 days or less)

1) Temporary broadcasting (C-1): Temporary news gathering and broadcasting activities

2) Short-term visit (C-3): Business activities like market surveys, business networking, consultation, and contract-making, as well as travelling, transit, medical treatment, visiting relatives, goodwill sports matches, and participating in event or conferences, etc.

3) Short-term employment (C-4): Earning money by means of circus shows, advertisements or fashion shows, lectures, research, technical instruction, etc. for a short period of time.

(**4) Group D: Non-employment professional and long-term stays**

1) Culture & art (D-1): Activities related to academic and artistic studies without pursuing profit.

2) Study abroad (D-2): Studying as part of a regular curriculum at a junior college or higher education institute.

3) Technical training (D-3): Training at Korean companies.

4) General training (D-4): Studying the Korean language at a language institute; technology or skill training in a public research center; and interns with foreign companies.

5) News gathering (D-5): Journalist activities assigned or contracted by a newspaper or other broadcasting company.

6) Religious activities (D-6): Missionary activities at branch offices or related religious organizations in Korea after assignment from a foreign religious or welfare group.

7) Overseas assignment (D-7): Assigned to associated or subsidiary companies after working at the head office of a foreign company for at least one year.

8) Investment (D-8): Foreign managers or engineers engaged in management and operation of foreign-invested companies according to the Foreign Investment Promotion Act; foreign entrepreneurs holding intellectual rights.

9) Trade (D-9): Foreign entrepreneurs involved in a trade business established in Korea.

10) Job-seeking (D-10): Those looking for jobs and holding qualifications sufficient for E-1 to E-7 visas.

(5) Group E: Long-term employment engaged in economic activities

1) Professor (E-1): Those engaged in education or research and instruction activities in technical colleges or higher, or equivalent institutions.

2) Language teaching (E-2): Those engaged in teaching foreign languages at foreign language

[10] Enforcement Decree of the Immigration Control Act, Attached Table #1 of Article 12

institutes, elementary level or higher schools, etc.

3) Research (E-3): Those engaged in research and development of the natural sciences or industrial cutting-edge technology at various laboratories.

4) Technology instruction (E-4): Those engaged in providing professional knowledge regarding the natural sciences or technologies.

5) Professionals (E-5): Those with certification and engaged in fields recognized as professional by Korean law.

6) Artistic work (E-6): Those engaged in art activities such as music, painting, and literature, or in entertainment, performances, plays, sports, advertising or fashion modeling, etc., for the purpose of earning money.

7) Particular activities (E-7): Those engaged in professional activities specifically designated by the Minister of Justice.

8) Non-professional (E-9): Those eligible for employment in Korea according to the Act on Foreign Workers' Employment, with non-professional skills.

9) Ship crewmen (E-10): Those with crew employment contracts on the condition of providing labor for 6 months or longer in companies that do business in accordance with the Maritime Transport Act or the Fishing Industry Act.

(6) Group F: Long-term stays due to family relations; investment immigrant

1) Family visitation (F-1): Those visiting relatives, family living together, dependent(s), or others; domestic workers hired by foreigners.

2) Resident (F-2): ① A foreign national spouse of a Korean national or their underage child, or the underage child of a foreign national with a permanent resident visa (F-5); ② Child born after marriage to a Korean national; ③ A recognized refugee; ④ A resident who has stayed for three years or longer with a D-8 visa.

3) Dependent family (F-3): Spouse or underage child of a D-1 to E-7 visa holder.

4) Overseas Koreans (F-4): 'Overseas Koreans' and 'Koreans with foreign nationalities'. Overseas Koreans are Korean nationals with foreign resident rights, while Koreans with foreign nationalities are those who once had Korean nationality, or their children or grandchildren.

5) Permanent resident (F-5): ① Those with D-7 to E-7 visas or F-2 visas who have lived in Korea for more than five years; ② Spouses of Koreans or the permanent residents with F-5 visas who have lived in Korea for more than two years; 12 other cases as recognized by the Minister of Justice.

6) Marriage immigrant (F-6): ① Spouses of Korean nationals; ② Parents-in-law of a Korean who are raising a child of their daughter; ③ In cases where a foreign spouse has lost their Korean spouse through death, disappearance, or was divorced due to other reason not attributable to the foreign spouse.

(7) Group G: Miscellaneous (G-1). Unrelated to any of the above groups, this visa is generally used to deal with emergency situations.

(8) Group H: Working holidays & working visits

1) Working holiday (H-1): Visitors can travel and work in accordance with agreements or memoranda of understanding between Korea and other countries regarding 'working holidays'.

2) Working visit (H-2): Overseas Koreans of at least 25 years of age engaged in permitted jobs.

III. Relationship between the Immigration Control Act & Labor Laws

The types of visa which allow employment are C-4 (Short-term employment), all visa types in Group E, F-2 (Resident), F-4 (Overseas Koreans, F-5 (Permanent resident), H-1 (Working holiday) and H-2 (Working visit). Foreigners are treated as equal to Korean nationals according to Article 6 (Equal Treatment), which works to prevent discrimination, but here it is difficult to judge whether illegal foreign workers are protected by Korean labor law. There are three types of illegal foreign worker: ① a foreign national working without the proper visa; ② a foreign national whose visa has expired; and ③ a foreign national engaged in a job besides those allowed by his or her visa. Illegal workers are subject to punishment and are deported for violating the Immigration Control Act, but labor laws permit all rights given due to labor services provided by illegal workers, contrary to the Immigration Control Act. For example, even though an illegal worker had a work-related accident, he/she is protected by Industrial Accident Compensation Insurance, and entitled to severance pay and has the right to claim annual paid leave for work provided in advance.

In relation to this, the Supreme Court ruled the relationship between the Immigration Control Act and labor laws as follows: "The Immigration Control Act regulates that a foreign national intending to be employed in Korea shall attain a status of sojourn required for employment activities, and also regulates that no foreign national having the relevant status of sojourn shall work at any place other than the designated working place. Therefore, the purpose of this legislation was not simply to prohibit illegal stays by foreign nationals, but also to regulate the qualifications of eligibility for employment and block foreign nationals ineligible for employment to protect the domestic employment market from competition from ineligible foreign workers, manage the foreign workforce effectively, and protect domestic workers. This means that this law was enacted to directly prohibit employment of ineligible foreign workers in fact. The regulation restricting employment of foreigners is a control act to prohibit foreign nationals who are ineligible for employment from being employed. This is not a regulation to restrict the legal effect of labor rights that an illegal foreign worker without eligibility for employment has obtained by providing labor service, and the legal effect of labor laws concerning employment status."[11]

IV. Conclusion

Korea has grouped its 36 visa types into 8 categories (A to H). This classification is quite unwieldy for the average employer to understand. So, for the sake of employers who use foreign workers, it is necessary to reorganize these visa types according to new criteria such as the purpose for entry, whether or not the foreign nationals are engaged in economic activities, have family relations in Korea, and whether they are overseas Koreans or not. In particular, groups D and E, which include so many types, need to be simplified, so as to better manage so many similar jobs more easily. In addition, in the process of employing foreign nationals, the Immigration Office has too much discretionary authority while the procedures for hiring are very complicated. Accordingly, I would like to suggest a method for managing foreign nationals where foreign professionals are classified according to their salary level, and that their employment should not be managed by the Immigration Office, but rather by the free market by means of levying a tax against Korean employers hiring foreign professionals.

[11] Supreme Court ruling of September 15, 1995, 94nu12067: Occupational accident case.

Human Rights of Foreign Workers and Labor Law Applications

I. Introduction

As of June 2016, there were more than 2 million foreigners staying in Korea for more than 3 months. This comprises 4% of all Koreans. If this increasing trend continues, long-term-staying foreigners will amount to 3 million people in 5 years, which will be 6% of the total population.

The reason for the increase in foreigners is because the Korean market requires more cheap foreign workers and foreign-trained professionals. This rapid increase in foreign workers has caused various social problems, such as illegal foreign workers, an increase in crimes by foreigners, rising unemployment for domestic Koreans, etc. However, as there are more economic benefits through the use of foreign workers than there are disadvantages caused by such problems, the number of foreign workers will continue to increase. Since a considerable number of foreign workers live side-by-side with domestic Koreans, it is necessary to seriously consider their human rights in terms of the various labor laws.

Foreign workers have moved to Korea for economic reasons, and even though they are not directly subject to the rights of citizens as guaranteed by the Constitution of the Republic of Korea, they are granted the right to pursue happiness and human rights. Hereunder I would like to review the international standards of foreign workers' human rights, and then determine their labor law applications as shown in related decisions of the Constitutional Court and the rulings of the Supreme Court.

II. International Standards for the Human Rights of Foreign Workers

Article 6 of the Constitution stipulates, "Treaties duly concluded and promulgated under the Constitution and generally recognized rules of international law shall have the same force and effect of law as domestic laws of the Republic of Korea. Status of aliens shall be guaranteed in accordance with international laws and treaties." Korea joined the United Nations (UN)[12] on September 17, 1991, and on the following day joined the International Labor Organization (ILO).[13] Details regarding human rights are substantialized through declarations (constitutions) and agreements (covenants) of international organizations, and Korea, as a member country, is obligated to observe rules as regulated by these organizations.

The UN adopted the 'Universal Declaration of Human Rights' in the General Assembly in 1948, and established common standards of human rights that all people and all nations should adhere to, regardless of differences in politics, economy, culture and religion. The UN later adopted two covenants on human rights in 1966, which are the 'International Covenant

[12] The United Nations (UN) was established in 1945 and its head office is in New York City, USA. The purpose of the UN is to maintain international peace by means of international laws, international cooperation for security, cooperation for economic development, and improvement of human rights, The UN has recognized the international duty to respect human rights and introduced written rules to protect them.

[13] The International Labour Organization (ILO) is the UN's specialized organization dealing with labor issues, and its head office is located in Geneva, Switzerland.

on Economic, Social and Cultural Rights (A Covenant or Social Rights Covenant)' and the 'International Covenant on Civil and Political Rights (B Covenant or Human Rights Covenant).[14] Additionally, the UN confirmed the international standards of human rights for second-class citizens such as women, infants, ethnic minorities, foreign workers, etc. The ILO includes the 'ILO Constitution' and the 'Declaration Concerning the Aims and Purposes of the ILO (Declaration of Philadelphia).'[15]

These declarations and Constitutions are "generally recognized rules of international law" as regulated by Article 6 of the Constitution of Korea, which promote the general standards of human rights that all nations should satisfy.[16] However, it is necessary for it to be ratified in the National Assembly and substantialized in order to become valid under present law. Korea ratified 6 human rights covenants: ①the Social Rights Covenant and ②Universal Declaration of Human Rights (1990); ③the International Convention on the Elimination of All Forms of Racial Discrimination (1978); ④the Convention to Eliminate of All Forms of Discrimination against Women (1981); ⑤the Convention on the Rights of the Child (1990); and ⑥the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1987). In addition, Korean ratified ⑦the Covenant Relating to the Status of Refugees (1992), and in the ILO covenants, ⑧the Covenant Concerning Discrimination in respect of Employment and Occupation (111st) (1998) and ⑨the Covenant Concerning Equality of Treatment for National and Foreign Workers as regards Workmen's Compensation for Accidents (19th) (2001). However, Korea has not yet ratified some rules of international law regarding human rights such as the UN's 'International Convention on the Protection of the Rights of All Migrant Workers and the Members of Their Families', enacted in and effective in 1990); the ILO's 'Migration for Employment Convention (97th), which became effective in 1952; the 'Convention Concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers (97th), which became effective in 1978).

III. The Constitutional Court's Decisions and the Supreme Court's Rulings Regarding Foreign Workers

1. The Constitutional Court's Decisions

(1) Legal status of foreign workers and the restrictions on their freedom of choice in the workplace

Foreign workers filed a constitutional complaint that Article 25 of the Act on Foreign Workers' Employment, etc., violates freedom of choice in the workplace, as a change of workplace is permitted only three times in a three-year period.

As for the validity of this claim, the Constitutional Court admitted that foreign workers are

[14] The division into two covenants in the course of enacting an international human rights covenant was due to the effect of the cold war. Capitalist countries claimed that human rights were related to civil and political rights, while socialist and third-world countries claimed that human rights were related to economic, social and cultural rights.
[15] The 26th General Assembly of the ILO was held in Philadelphia on May 10, 1944, where the ILO Declaration concerning its aims and purpose, with follow-up duties of member nations were adopted. It is especially renowned that the first chapter stipulated, "Labor is not a commodity".
[16] Dong-hoon Sul, "Foreign Workers and Human Rights", 「Democracy and Human Rights 5(2)」, Oct. 2005, 5.18 Research Center of ChunNam University, page 46.

entitled to the right to pursue happiness and the right to take legal action, as are all men, despite not being Korean citizens. However, the restrictions under the Employee Permit System are not a violation of their freedom to choose a workplace.[17]

The Constitutional Court stipulated: "The freedom to choose a workplace under the freedom of occupation is not directly related to the rights of a citizen, but rather the rights of men, because the freedom to choose a workplace is closely related to human dignity and worth and the right to purse happiness. Therefore, it is justifiable that foreign workers should have the freedom to choose a workplace even though permission is limited. As long as the applicants received the work permit legitimately, entered Korea and maintained regular lives according to the justifiably permitted status, these applicants are entitled to basic human rights regarding the freedom to choose a workplace…..This article was designed to restrict foreign workers from changing their workplace frequently, in order to protect the opportunity for Korean employees to keep their employment, promote the effective management of foreign workers, and also to make sure of providing manpower, which will contribute to the balanced development of the national economy. Furthermore, this article guarantees the freedom of foreign workers to choose a workplace up to three times within three years in case of necessity for changing workplaces, and additionally gives them the opportunity to change their workplace for unavoidable circumstances stipulated in the presidential decree. Therefore, this article does not give unreasonable disadvantages that exceed the lawmakers' discretion."

(2) The industrial trainee system violates the Constitution

The Constitutional Court concluded that the industrial trainee system is unconstitutional because it violates equal rights, as trainees were excluded from the application of some parts of the Labor Standards Act due to their trainee status, even though trainees provide labor service in place of earning wages.[18] This decision abolished the industrial trainee system.

The Constitutional Court stipulated, "Even though industrial trainees with a trainee's contract provided labor service under the employer's direction and supervision, they then received wages. In the actual relations, as only foreign industrial trainees were excluded from the application of major labor laws without justifiable reason, we found it unreasonable….. The fact that industrial trainees are excluded from some parts of the Labor Standards Act, unlike ordinary employees, is arbitrary discrimination. Under Article 5 of the Labor Standards Act and Article 4 of the 'International Covenant on Economic, Social and Cultural Rights', a stipulated law is required in order to restrict the 'right to have equivalent working conditions for an equal value of work'. As this discriminating provision is regulated in the Administrative Rule, this is also a violation of the principle of statutory reservation."

[17] Constitutional Court (Restriction on the freedom of occupation): September 29, 2011, 2007Hunma1083.
[18] Constitutional Court (Industrial trainee system): August 30, 2007 2004hunma670.

2. The Supreme Court's Rulings

(1) Legal status of illegal foreign workers

The Employee Welfare Corporation rejected an application for industrial accident compensation as follows: "Foreign worker A from Thailand, who came to Korea with a trainee working visa and had stayed beyond the permitted period, was seriously injured while working. Foreign worker A applied for compensation for medical treatment to the Employee Welfare Corporation, but the Corporation rejected the application, explaining that foreign worker A is an illegal migrant worker with illegal employment, and that the employment contract the employer made with him was illegal as well. Therefore, foreign worker A was not applicable under the Labor Standards Act, or IAC Insurance." However, the Supreme Court ruled that even though illegal employment is clearly an act to be punished, the work already provided is the actual performance done, which is subject to the protection of the labor laws. Accordingly, illegal foreign workers may apply to IAC Insurance. This ruling was the first case ever made for an illegal foreign worker's work-related injury to be accepted as an occupational accident under the IAC Insurance Act.[19]

The Supreme Court made the following judgment: "Article 15 (1) of the former Immigration Act regulated the activities that foreigners could conduct while staying in Korea, the scope of status of stay and the period of stay, and subparagraph (2) regulated restrictions on the employment of foreigners. The purpose of this law was not just to crack down on illegal foreign workers, but to protect the domestic employment market from incoming illegal foreign workers, and to control foreign workers effectively so as to maintain the working conditions of domestic workers."

However, the Supreme Court admitted the illegal migrant worker's injury as an occupational accident with the following ruling: "The Immigration Act is to prohibit the actual practice of using illegal foreign workers, not denying the validity of work already provided or employee status already determined by the employment relations."

(2) Three labor rights of illegal foreign workers

It has generally been considered unacceptable for illegal foreign workers to be applicable to three labor rights according to current labor law. However, recently there has been a very important judicial ruling that illegal foreign workers are not only accepted as to employee status in individual employment relations, but also re-confirmed as to employee status in collective labor relations. The illegal foreign workers living in Seoul and Kyunggi province submitted a report of the establishment of a labor union to the Seoul Regional Labor Office on May 3, 2005, but their application was rejected due to their illegal worker status. Even in the courts there have been disputes on whether a labor union of illegal foreign workers can be

[19] Supreme Court ruling: September 15, 1995. 94nu12067 (Rejection for application of occupational injury)

admitted or not, but the Supreme Court admitted the establishment of a labor union consisting of illegal foreign workers on June 25, 2015.[20]

The Supreme Court ruled as follows: "An employee in the Labor Union Act refers to a person who provides work under supervisory relations with another person and earns wages in return for that. This is not limited to a person engaged in employment with a particular employer, but also applies to a person who is unemployed and who is looking for a job. Also, anyone who is entitled to the protection of three rights shall belong to this category. The Immigration Act prohibits the actual practice of using illegal foreign workers, but does not deny the right of work already provided or an employee status already determined by the employment relations. Accordingly, if a person provides work under supervisory relations with another person and earns wages in return for that, that person is an employee under the Labor Union Act, and as long as the person is admitted as an employee under the Labor Union Act, regardless of whether the employee is an illegal foreigner or not, or whether the employee was employed or not, such person has employee status under the Labor Union Act."

IV. Conclusion

In the course of globalization, many advanced countries have had a lot of social issues due to an increasing number of immigrants. However, they have also taken advantage of these cheap foreign workers by supplementing insufficient manpower in their countries while also protecting their domestic labor market, and in this process they have used an immigration system that properly utilizes foreign workers under restricted control to maximize their national profits. However, Korea has not yet introduced a well-organized immigration system in terms of using foreign workers, and therefore needs more improvement. While protecting the human rights of foreign workers and controlling immigration, a mutually complementary relationship between foreign workers and domestic workers will be continuously required. Furthermore, through studying the successes and failures of advanced countries regarding foreign workers, we need to prepare a secure, long-term based management system for foreign workers.

[20] Supreme Court ruling on June 25, 2015 2007do4995 (Rejection of Labor Union's establishment report)

Promoting Employment of Foreign Migrant Workers
- Foreign Domestic Workers in Singapore -

Bongsoo Jung[21]

Contents

Ⅰ. Introduction

The most well-known social problems in Korea are its low birthrate and aging society. Towards mitigation of these issues, the government has spent a massive amount on subsidies through its multi-child family policy, and has made every effort to increase the birthrate through government work and family support policy.[22] However, there has not been any significant improvement.[23] There are several reasons for the lower birthrate, but I'd like to look at two in particular: 1) women are delaying marriage and childbirth to develop their careers; and 2) raising children in Korea is very expensive. Hiring babysitters is one of the highest costs, amounting to approximately KRW 1.5 to 2.5 million per month. In particular, due to the considerable expenses involved in childcare for working couples, women usually quit their jobs when they are pregnant with their second baby. However, as Singapore, Hong Kong, and Taiwan pay only between KRW 400,000 and 600,000 per month for domestic workers, they can afford live-in help[24].

Singaporean women rarely quit their jobs after marriage, childbirth, or while raising their children.[25] This is possible because people in the middle class are able to employ low-cost foreign domestic workers to assist them. Singaporean domestic workers number 227,100 people, or 4% of Singapore's total 2016 population of 5.54 million.[26] The Singaporean

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21.The author completed his Doctorate course work on labor laws at Ajou University's Graduate School of Law and is a labor attorney at KangNam Labor Law Firm

22 Maeil Business News, "Birthrate remains at 1.12 to 1.19 despite investing KRW 150 trillion over the past 10 years", February 4, 2015

23 Maeil Business News, "40% of unmarried women do not intend to have a baby. Survey by the Federation of Korean Industries" August 12, 2016

24 The term 'domestic worker' is used to refer to domestic maids, including house helpers, housekeepers, babysitters, nannies, and house maids. Article 11 of the Labor Standards Act describes such workers as 'housekeepers', while the International Labour Organization uses the term, 'domestic worker'. Hereby I follow the term used by the ILO. (Reference: Youngsoon Kim, "The number and meaning of Korean domestic workers", 「Social Science Thesis Journal」 Vol. 45, Social Science Research Center, 2015, p. 64)

25 Statistics from the Korean Ministry of Employment and Labor and the Singaporean Ministry of Manpower as of December 2014: The Singaporean female employment rate stood at 60%, while the Korean female employment rate stood at 49.5%.

26 Hyejoon Kim, "People disappearing inside my city", 「Cogito」, Institute of Humanities at Busan University, 2011, p. 120; Hong Kong's domestic workers number 266,778 people (or 3.64%) out of a total city population of 7,020,400, as of the end of 2009 (Indonesians = 48.7%; Filipinos = 48.5%).

government directly manages foreign domestic workers under a systematic and thorough management system that ensures it can continuously provide good-quality personnel.[27]

This study introduces Singapore's Foreign Domestic Servant Scheme and evaluates the related immigration policy. Based upon this Scheme, I would like to review whether this success in Singapore can be reproduced in Korea, and if so, what existing labor laws need to consider at the time of introduction of a similar program.

Ⅱ. The Foreign Domestic Servant Scheme in Singapore

The Foreign Domestic Servant Scheme in Singapore is managed under systematic government supervision. Namely, the government provides a stable supply of foreign domestic workers through its Work Permit system and also through a high employment tax. The government takes special measures to protect these foreign domestic workers through direct management of their health and safety. In the manufacturing industry, one foreign worker per two Singaporean workers is permitted for each company within the maximum quota available under the employment permit system as of 2015,[28] while foreign domestic workers can be hired under the Work Permit system without a maximum.[29]

Hereafter, I would like to look in detail at the employment procedure scheme for foreign domestic workers in Singapore and expenses that the employer should bear.

1. Background to the Foreign Domestic Servant Scheme

On June 5, 2016, the Singaporean newspaper, "The Straits Times" featured an article entitled "Can Singaporeans do without maids?" This news article was related to the announcement by the Indonesian government that it would limit the number of domestic workers going to Singapore if their domestic workers could not stay in dormitories outside the employers' houses. The following excerpt from the feature article explains why and how the Singaporean government introduced and utilized foreign domestic workers[30].

"From the 1930s to 1960s, employing live-in help was the domain of expatriates and wealthy local employers. This was the time of the legendary amahs, women hailing mostly from Guangdong province in China and distinctive due to their plaited hair and "uniforms" comprising white blouses and black pants. Regarded as part of the family, they were figures of respect. Most families gave their amahs the leeway to discipline the children, allowing them to function as another "parent". But when Singapore industrialized from the late 1960s, more Singaporean women took up jobs in factories and offices, sparking a need for paid domestic help to look after the home. So the Government introduced the Foreign Domestic Servant Scheme in 1978, enabling women from neighboring countries, including the Philippines, Sri Lanka and Thailand, to be employed as paid domestic help. From a base of about 5,000 in the

[27] Source: National Statistical Office – Korea's Domestic Workers (2010-2013)

Year	2010	2011	2012	2013
Total Population	49,410,366	49,779,440	50,004,441	50,219,669
Domestic Workers	194,801	202,394	264,665	279,103
Domestic Workers as % of Total Population	0.39%	0.41%	0.53%	0.56%

[28] Channel News Asia, "Not viable to relax foreign worker quota: Lim Swee Say", an interview with the Minister of Manpower, June 3, 2015.
[29] The Straits Times, "Hiring maids becoming more costly with tighter regulations", January 19, 2015.
[30] The Straits Times, "Can Singaporeans do without maids?" June 5, 2016

late 1970s, the number has grown, and there are about 227,100 foreign domestic workers here today. The labor force participation rate of married Singaporean women comprising citizens and permanent residents, meanwhile, has increased from 14.7 per cent in 1970 to 63.2 per cent last year. Unlike the much-loved amahs, maids today are treated by many families as an employee who happens to live in their home, say representatives of migrant workers' groups."

"[…]The skills required of a maid are also higher today. Some are expected to help children with ever-demanding homework and to have the computer skills to assist them; care for the elderly, which has become more complex in terms of nursing skills; and run the home, which involves operating sophisticated appliances and being able to cook according to dietary demands. And Singaporeans get all these comparatively cheaply. The services of a live-in Indonesian maid start from $815,[31] taking into account her salary and the monthly $265 levy, but excluding costs of insurance, food and medical care. There are levy concessions for families with young children and elderly parents. In contrast, a bundle of specialized services - for home cooked catered meals, weekly cleaning and caregiving for the elderly or children - could easily add up to more than $2,000[32] a month."

2. The Work Permit system for foreign domestic workers[33] and employment procedures[34]

When intending to employ a foreign domestic worker in Singapore, the employer shall prepare the necessary prerequisites and request the Ministry of Manpower for employment. If approved, a work permit will be issued within two weeks. However, as this process can be complicated, employers usually use a private employment agency and pay its service fees.

(1) Work permit details[35]

A work permit is generally issued to foreign-unskilled or semi-skilled workers for a period of two years, but can be renewed. Eligibility to maintain the work permit is as follows:

1) The employer shall comply with the following conditions:

① The employer shall hire a qualified foreign worker for the relevant work;

② The employer shall pay the fixed salary that was previously reported to the Ministry of Manpower;

③ The employer shall bear the costs of upkeep and medical treatment of the foreign employee;

④ The employer shall provide the foreign employee with acceptable accommodation;

⑤ The employer shall provide medical insurance to cover the costs of hospitalization and surgery;

⑥ The employer shall allow the foreign worker to be examined and treated by a doctor registered in Singapore. In cases where the foreign worker is not deemed suitable for work after medical evaluation, the Work Permit for the foreign employee shall be cancelled;

⑦ The employer shall pay the employment tax for each foreign worker;

⑧ The employer shall purchase a security bond for foreign workers (Malaysian workers

[31] Singaporean currency: KRW 822 per Singapore dollar as of September 2016; SGD 815 = KRW 669,930. In the event of eligibility for the concession rate, the employment tax of SGD 265 is reduced to SGD 60. In this case, the monthly cost becomes SGD 610, or KRW 501,420.
[32] SGD 2,000 = KRW 1,844,000
[33] Singaporean Ministry of Manpower, http://www.mom.gov.sg/passes-and-permits/work-permit-for-foreign-domestic-worker
[34] Reference at Singaporean employment agency: http://www.homekeepermaidagency.com.
[35] Singaporean law, 「Employment Of Foreign Manpower Act」

excepted);

⑨ The employer shall not demand or receive any costs or benefits from the employment agency in relation to the employment of a foreign worker.

2) The foreign worker shall comply with the following conditions:

① The foreign worker shall be engaged in the job stipulated in the Work Permit, and work only for the employer;

② The foreign worker shall not be engaged in other business (including personal money-making business);

③ The foreign worker shall reside in the place designated by the employer;

④ The foreign worker shall consistently perform the job allowed under the Work Permit, and agree to a relevant civil servant requesting confirmation through inspection;

⑤ The foreign worker shall not marry a Singaporean or a permanent resident of Singapore inside or outside Singapore without prior report to the Ministry of Manpower;

⑥ The foreign worker shall not be pregnant or give birth in Singapore during the Work Permit unless that foreign worker has married a Singaporean or a permanent resident of Singapore after obtaining permission from the Ministry of Manpower. This regulation also applies to expired, cancelled, or revised periods on the Work Permit.

(2) The hiring process[36]

Hiring procedures can be classified into three stages.

Stage 1: Getting ready & selection

① Employer attends orientation program

② Look for a candidate. Employer should come to an agreement with domestic worker on employment terms (e.g. salary, rest days).

Stage 2: Before the foreign domestic worker's arrival in Singapore

③ Employer shall apply for a Work Permit from MOM (Ministry of Manpower). If the application is approved, MOM will send employer an in-principle approval letter.

④ Employer shall place a security bond with MOM.

⑤ Employer shall purchase personal accident and medical insurance for the foreign domestic worker.

⑥ Employer shall mail the in-principle approval letter (or notification letter) and an air ticket note to the foreign domestic worker.

⑦ If the foreign domestic worker will be working in Singapore for the 1st time, book online for the settling-in program (SIP) training course. Employer will need copies of the foreign domestic worker's passport and education certificate.

Stage 3: Upon the foreign domestic worker's arrival in Singapore

⑧ Within 3 days of the foreign domestic worker's arrival, employer shall send her for the 1-day SIP course (if foreign domestic worker is working in Singapore for the 1st time).

⑨Within 14 days after arrival, employer shall send the foreign domestic worker for a medical examination.

⑩Employer shall request online for MOM to issue the Work Permit. MOM will inform employer of when to collect the Work Permit.

⑪Within 1 month of the foreign domestic worker's arrival in Singapore, employer shall make the 1st monthly levy payment.

[36] Adapted from the Singaporean government website: E-service, http://www.ecitizen.gov.sg/Topics/Pages/Foreign-domestic-helpers-How-to-hire.aspx

3. Details of the Foreign Domestic Worker Scheme[37]

(1) Foreign domestic worker requirements

The hired foreign domestic worker needs to meet the following requirements: Female; From 23 to 50 years of age at the time of application; From an approved source country or territory, including Indonesia, Philippines, Myanmar, Sri Lanka, etc.; Minimum 8 years of formal education. According to comments by Singaporean citizens, foreign domestic workers are very popular and a majority of them have bachelor degrees from universities.

(2) Employer requirements and obligations

The employer shall be 20 years or older in age, own an appropriate house and have financial capability. The Singaporean government supervises the employer's responsibilities strictly. The employer shall not assign the foreign domestic worker to work other than housekeeping and shall not let her work part-time either. In the event an employer is caught assigning a foreign domestic worker illegally, a fine of up to SGD 10,000[38] will be levied. For the first violation, the employer will be barred from using foreign domestic workers permanently. In cases where the employer uses a foreign domestic worker without a qualified Work Permit, the employer shall be fined a minimum of SGD 5,000 to a maximum of SGD 10,000 or imprisoned for up to one year.

(3) Documents necessary for work permits

1) Security bond, medical insurance and personal accident insurance

When applying for a work permit for a foreign domestic worker, the employer shall submit a security bond and evidence of medical insurance and personal accident insurance. These three items can be purchased as one package.

A security bond is a binding pledge to pay the government up to SGD 5,000 if the employer breaks the law or the conditions governing the employment of a foreign domestic worker (Malaysians excepted). This security bond will be returned if the employer does not use the foreign domestic worker or once she returns back to her home country. However, if the employer or the domestic worker is found to be in violation of any of the conditions of the work permit, if the employer does not pay her salary on time, or if the employer fails to send her back if she goes missing, the security bond may be forfeited. Provided, if the foreign domestic worker goes missing and the employer has made reasonable efforts to locate her and has filed a police report, half of the security bond (SGD 2,500) will be forfeited.

2) Medical insurance and personal accident insurance

The employer needs to buy medical insurance with coverage of at least SGD 15,000 per year for inpatient care and day surgery during the foreign domestic worker's stay in Singapore. The employer also needs to buy personal accident insurance with a minimum coverage of SGD 40,000 for the foreign domestic worker. This compensation should be made payable to her and her beneficiaries. The employer shall submit the information of insurance details when the foreign domestic worker's work permit is issued or renewed.

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[37] Adapted from the Singaporean Ministry of Manpower website, http://www.mom.gov.sg, tp://www.mom.gov.sgw.mom

[38] Singaporean currency SGD 1 = KRW 822, therefore SGD 10,000 = KRW 8,220,000

(4) Pre-employment medical examination for the foreign domestic worker

The employer needs to submit the documents of the foreign domestic worker's pre-employment examination before her work permit is issued. The employer must send the foreign domestic worker for a medical examination by a Singapore-registered doctor within 2 weeks of her arrival in Singapore. Her work permit will only be issued if she passes the medical examination. Otherwise, she will have to be sent home. The medical examination screens the foreign domestic worker for 4 types of infectious disease (tuberculosis, HIV, syphilis and malaria).

(5) Employers' orientation program

The employer needs to attend the Employers' Orientation Program (EOP) if the employer is hiring a foreign domestic worker for the first time or has changed workers frequently. First-time employers must complete the EOP at least 2 working days before submitting a work permit application. The EOP is a 3-hour program that will help employers understand their role and responsibilities as employers of foreign domestic workers.

(6) Settling-in Program

Employers must send first-time foreign domestic workers for the Settling-in Program (SIP) within 3 days after their arrival in Singapore (excluding Sundays and public holidays). The SIP is a 1-day orientation program to educate foreign domestic workers on safety precautions and life in Singapore. The employer shall pay for the costs and time spent for the foreign domestic worker to attend the SIP. The topics covered include introduction to Singapore, employment conditions, safety at home, and management of relationships and stress.

(7) Semi-annual medical examinations

During the foreign domestic worker's employment, the employer must send her for a medical screening every six months. This medical examination screens for pregnancy and infectious diseases such as syphilis, HIV and tuberculosis. If the foreign domestic worker fails the required results of this semi-annual medical examination, the employer must send her home immediately.

(8) Repatriation

The employer shall perform all the necessary duties to repatriate her to her home country once the foreign domestic worker's employment period is expired. The employer shall inform the foreign domestic worker of the expiration of her employment contract 2 weeks in advance, pay all outstanding wages, and cover costs of the flight and all others necessary for repatriation.

4. Working conditions[39]

(1) Salary

Employers shall report the monthly salary of their foreign domestic workers on the work permit application. The employer shall pay the foreign domestic worker the monthly salary as reported on the work permit application given to the Ministry of Manpower. The employer shall pay the salary within 7 days of the end of the month.

The employer shall pay the foreign domestic worker her salary each month, and the salary

[39] Singaporean Ministry of Manpower website, http://www.mom.gov.sg, tForeign domestic worker.

period must not exceed one month. The employer shall not force the foreign domestic worker to deposit her money in a savings account.

The employer can transfer the salary directly to the foreign domestic worker's bank account in Singapore. If the salary is paid in cash, the employer must keep a record of the salary and the foreign domestic worker shall sign the record to confirm that payment has been made.

(2) Rest days and well-being

The employer is responsible for the health and well-being of the foreign domestic worker, and shall provide for rest days, proper accommodation, adequate medical care and safe working conditions.

To ensure that the foreign domestic worker gets enough mental and physical rest, the employer shall allow her to have a regular rest day. A paid rest day shall be given once a week, or an additional day's wage shall be paid or a replacement rest day given within the same month.

The employer shall provide the foreign domestic worker with proper accommodation. The accommodation shall be equipped with basic amenities, and the foreign domestic worker shall not sleep in the same room with a male adult or teenager. The employer shall also provide the foreign domestic worker with three meals a day.

(3) Employment contract and safety agreement

Employers are encouraged to sign employment contracts with their foreign domestic workers and are required to sign a safety agreement with the employees. Employment contracts are necessary to avoid disputes.

(4) Prevention of abuse and ill-treatment

Employers will face severe penalties if they are convicted of abusing a foreign domestic worker. The Ministry of Manpower takes allegations of abuse and ill-treatment of a foreign domestic worker seriously, especially if employers commit physical or sexual abuse. If the Ministry suspects that a foreign domestic worker is being abused or ill-treated, the police will investigate. If convicted, employers will face severe penalties under the law. Employers and their spouses will also be permanently banned from employing any other foreign domestic workers.

5. Expenses related to the use of foreign domestic workers[40,41]

The reason Singaporeans employ so many foreign domestic workers is due to compatibility between the necessities for life and the costs. Couples who both work outside and have children need help in raising their children. A particular need is when caring for elderly parents at home, someone like a nursing care housekeeper is absolutely essential. There is also significant demand for someone to prepare dinner for the family when the couple comes home exhausted after work. These aspects of two-income households are similar in Korea. However, in Singapore a family with young children can hire a domestic worker for about KRW 500,000 per month, which is a reasonable burden. [42]

[40] Singaporean government website, E-service, http://www.ecitizen.gov.sg , ncy.com.stic-worker" 2015.ury) dutiesrvi
[41] Singaporean Ministry of Manpower website, http://www.mom.gov.sg, tp://www.momestic worker.
[42] Korean per-capita income is USD 28,739, while Singaporean per-capita income is USD 56,319: nearly twice that of

The details of expenses can be described as follows:

(1) Expected costs besides salary

1) Employment agency fee: between SGD 100 and SGD 2,000 (differs by agency)
2) Settling-in program: SGD 75 (if the foreign domestic worker is working in Singapore for the first time)
3) Applying for the Work Permit: SGD 30
4) Work Permit document: SGD 30
5) Employment tax for hiring a foreign domestic worker: SGD 265 per month (When a "concession rate" applies: SGD 60 per month. For the concession rate to apply, one of the following needs to be true: ① the family has a child or grandchild living with them who is a Singapore citizen and a maximum 16 years of age; ② the family has an elderly family member living with them who is a Singapore citizen and at least 65 years old; ③ the family has a person with disabilities living with them who needs assistance.
6) Security bond: SGD 5,000 (Can be substituted by a bank's security bond or guarantee)
7) Medical insurance: coverage of SGD 15,000
8) Personal accident insurance: coverage of SGD 40,000

Accordingly, expenses to be paid immediately, including employment agency fees and government employment tax will likely be between SGD 500 to SGD 2,600.

(2) Salary levels

There are many factors to consider when determining salary. Experience and relevant training are the main ones. However, a domestic worker's nationality may also play a part. Minimum salaries for Indonesians and Filipinas start at SGD 500 in Singapore, at SGD 450 for Myanmar workers, and SGD 400 for Sri Lankan workers. Recently, the Philippine government is looking to reduce the number of domestic workers entering Singapore, which will cause the salaries to increase accordingly.[43] Employment expenses together with government tax (SGD 265 per month, or SGD 60 at the concession rate) can be expected to equal between SGD 500 to SGD 800. This means foreign domestic workers can be hired for a total cost of between KRW 410,000 and KRW 650,000 per month. This represents expenses for using foreign domestic workers in Singapore equaling only 20-32% of what would need to be paid to Korean domestic workers (an average of KRW 2 million).

Ⅲ. Evaluation of the Use of Foreign Domestic Workers in Singapore

1. Management through Immigration Control

Immigration control in Singapore is well managed through regulated immigration policy. Singapore has taken advantage of the abundant supply of low-wage workers from neighboring countries. Since its introduction, the government has focused on three major categories in the course of managing the Foreign Domestic Servant Scheme.

Korea.

[43] Money Smart blog, http://blog.moneysmart.sg/, "How much does it really cost to hire a domestic help in Singapore", July 9, 2015.

(1) Continuous management of foreign workers

A foreign domestic worker running away from her place of employment is considered the employer's responsibility, and will result in the employer's security bond of SGD 5,000 (4 million Korean won) being forfeited, which forces the employer to make efforts to ensure his/her foreign domestic worker does not break her employment contract or terms of her entry visa. The government also supervises to ensure that the foreign domestic worker receives a health examination every six months to check whether she has any infectious diseases or has become pregnant. In cases where the employer uses the foreign domestic worker for other duties besides housekeeping work, the employer will certainly be punished. So, the foreign domestic worker is strictly monitored to retain her resident status, and is not allowed to work other jobs, but shall go back to her country upon expiry of her employment contract.

(2) Protections for foreign domestic workers

The employer shall bear all expenses necessary in hiring the foreign domestic worker. These include air tickets, the settling-in program, medical examinations, medical insurance and personal accident insurance, which shall not be transferred to the foreign domestic worker. The employer shall also provide accommodation and relevant items for daily life. In particular, the government listens to reports of abuse (whether verbal, physical or sexual) against the foreign domestic worker, and strictly punishes employers who engage in abuse.

(3) Employment levy and tax return

The employer shall pay the foreign domestic worker levy of SGD 264 per person every month, which is an employment tax equivalent to KRW 220,000. However, employers living with a child or grandchild of 16 years of age or younger, living with parents aged 65 years or older or with a family member with disabilities, shall pay a concession rate of SGD 60 (KRW 49,000) instead. The government levies a higher employment tax on people outside of these situations, to protect the affordability of the foreign domestic workers system for those who need it.

Besides the employment tax program for foreign domestic workers, Singapore also maintains an incentive tax program. In cases where a married woman continues to work, she will be reimbursed the total employment taxes she paid in return for employing the foreign domestic worker through the year-end income tax adjustment. This serves as an income tax incentive towards encouraging women to continue working, and does not apply to unmarried women or men (whether married or not).[44]

2. Management through Labor Laws

(1) Salary

Since Singapore labor law does not apply to foreign domestic workers, her salary can remain lower than the minimum wage, while still remaining remarkably higher than what she would earn in her home country. This makes it advantageous to continue the Foreign Domestic Worker Scheme, but the large gap between what they earn and what their Singaporean counterparts can earn can leave the foreign domestic workers with a sense of comparative deprivation. [45]

[44] Singaporean Tax Office, "Tax return regarding the Foreign Domestic Worker", https://www.iras.gov.sg
[45] Money Smart blog, "HYPERLINK "http://blog.moneysmart.sg" ic Workeric he, http://blog.moneysmart.sg, June 14, 2016

(2) Working hours and holidays

As there are no restrictions on working hours, the foreign domestic worker can be requested to work long hours, and may be subject to exploitation. Days off are required by law to be provided once a week, but these can be substituted with additional pay instead.

(3) Other working conditions

Physical, sexual, and verbal abuse and mistreatment are prohibited. If committed, the employer will be charged with a crime and banned from using foreign domestic workers again.

3. Evaluation

There are two ways to take advantage of the benefits of foreign personnel: one is to use highly-qualified professionals, and the other is to use cheap non-professional personnel to supplement manpower. The foreign domestic workers used in Singapore are to supplement the available non-professional manpower. This program to make the most of the foreign domestic workers positively affects female social activities and guarantees a comfortable home life. Currently, Singaporeans use the foreign domestic workers very commonly, and their numbers make up 4% of the total population, while in Korea, the proportion of domestic workers is less than 1% due to the high costs. [46]

The two key elements for Singapore's successful foreign domestic workers program are its favorable internal/external environment and thorough management. The internal/external environment refers to the lack of sufficient manpower within Singapore and the abundance of that manpower in the neighboring countries. The countries sending domestic workers have supported their nationals going abroad to make money due to the low salaries and high unemployment rates in their countries. Domestic workers can earn several times more in a housekeeping job than working in their countries, and furthermore can directly experience an advanced culture, and so domestic work has been a considerably favorable job. The appropriate labor costs have been well-controlled due to the balance between personnel supply and customer demand. Internally, the Singaporean government has a strict and thorough management system for foreign domestic workers. This system includes employment taxes for each domestic worker, mandatory physical examinations, and strict enforcement of regulations, which have made it almost impossible for domestic workers to run away from their workplaces and stay in Singapore illegally. These factors have made the Foreign Domestic Worker Scheme possible and effective while remaining secure and manageable.

[46] Asia Economy Daily, art.sg, June 14, 2016 heir Maidelp in Singapore", July 9, 2015. worker" 2015.ury) dutiesduction of standard employment contractaporeeir Maidelp in Si

Ⅳ. Legal Protections for Domestic Workers & Introduction to Korea of Singapore's Foreign Domestic Servant Scheme

1. Legal Protections for Domestic Workers

(1) Global standards

In 2011, the 100th General Assembly of the International Labour Organization (ILO) adopted the Convention Concerning Decent Work for Domestic Workers and a Recommendation. The major content of the Convention includes applicable regulation of domestic workers under labor laws just like other ordinary workers, such as reasonable working hours, one day off a week of 24 consecutive hours, restrictions against payment in kind rather than cash, clear statements of working conditions, and freedom of association.[47] As of May 20, 2014, the Convention has been ratified by 14 ILO member countries, most of whom are supplying domestic workers to other countries. Korea has not yet ratified the Convention, but legal enactment has been proposed by some lawmakers to conform to the standards of the ILO, but no legislative action has been taken.[48]

According to an ILO report on the status of domestic workers around the world, only 10% are protected by the host nation's labor laws that apply to ordinary workers, while 30% are completely excluded from all application of labor laws. This report also points out that about 70% are partly protected by related regulations in the host nation, although these regulations are not labor laws. Of particular note is that the two advanced nations of Korea and Japan exclude domestic workers completely from application of labor law.[49]

(2) Korean domestic workers and application of labor law

1) Reasons why domestic workers are excluded from labor law

Here, 'domestic worker' refers to persons employed for the purpose of assisting with housekeeping duties (cooking, cleaning, nursing, childcare, etc.).[50] We will now look at the reasons why domestic workers are excluded from labor law.

First, according to Article 11 of the Labor Standards Act, "This Labor Standards Act shall apply to all businesses or workplaces in which five or more workers are ordinarily employed. This Act, however, shall not apply to any business or workplace which employs only relatives living together, and to workers hired for domestic work." The Labor Standards Act stipulates in this article that domestic workers are excluded from application of labor law.

Second, relations between an employer and a domestic worker are considered private relations that do not fall under governmental authority.[51] The caregiver is usually engaged with a particular patient and provides exclusive nursing care, but if the caregiver works for a care-providing company and receives a wage in return for giving nursing care, the person is considered someone to whom the labor law applies.[52]

Third, a domestic employer is not considered a business or workplace, because he/she does not employ a domestic worker to seek profit or accomplish a business purpose, but simply for convenience.

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[47] Meeyoung Goo, moneyl Protection for Domestic Workerselp「Labor Law」No. 50, The Korean Labor Law Association, June 2014, p. 260.
[48] No. 50, The Korean Labor Law Association, June 2014, p. 260.ngapore", July 9, 2015. worker" 2015.ury) dutiesrvion an 鎰幀 ciation, June 2014, p. 260.n
[49] Kyunghyang Daily report, Law Asn domestic workers are excluded from limits on working hours and minimum wageerviases)鎰幀 9, 2013.
[50] Jongyooul Lim, 「Labor Law」, 14th edition, Park Young Sa, 2016. p. 337.
[51] Kaprae Ha, rk Young Sa, 2016, p. 337. tic workers are excluded「Labor Law」No. 37, The Korean Labor Law Association, March 2011, p. 216.
[52] Labor Ministry Guidelines: Labor Standards team - 5557, Oct 10, 2006.

2) Necessity for protection

Domestic workers, as pointed out in the ILO report, do not receive protection against low salaries, abusively-long working hours, and the loss of rest hours, suffer from mental, physical and sexual abuse, and have restrictions on their freedom of movement. Accordingly, considering the length of working hours while exclusively engaged with a particular family, it is necessary to protect the basic rights such as a minimum level of salary, maximum working hours, and guaranteed off-days.[53]

2. Introduction of the Singaporean Model to Korea

(1) Preparation of relevant laws

Currently, foreign domestic workers cannot legally be employed inside Korea, except for overseas Koreans (H-2 visa holders).[54] The Act on Foreign Workers' Employment, etc. deals with non-professional workers (E-9) and overseas Koreans (H-2) who are fully protected by Korean labor law. However, domestic workers are regarded as a special type of workers excluded from direct application of labor law, and so it is necessary to prepare special regulations or guidelines when considering introduction of foreign domestic workers in Korea.

(2) Security bond

In reviewing Singapore's Foreign Domestic Worker Scheme, the most impressive item to be reflected on is the security bond. In Korea, if a foreign worker disappears from the workplace, the employer is not responsible for it, but if this happens in Singapore, the employer's deposited security bond of SGD 5,000 is forfeited in most cases. As this represents a serious financial hit for most employers, they take extra care to ensure their foreign workers do not disappear.

(3) Protection programs for foreign domestic workers

Even though Korea has not yet ratified the ILO's Convention Concerning Decent Work for Domestic Workers, we need to thoroughly train and manage employers who will employ foreign domestic workers to ensure compliance with the measures suggested for foreign domestic workers such as reasonable working hours, provision of a weekly holiday, and written statements of actual working conditions. Just as in Singapore, Korea needs to introduce a systematic management system such as pre-employment and semi-annual medical examinations, secure accommodations, medical insurance, and provision of round-trip air tickets. In particular, it is necessary to create regulations against and remedy procedures for sexual/physical violence by the employer, long working hours, and violations of other human rights, and establish a system to protect foreign domestic workers.[55]

3. Items to Consider before Introducing Foreign Domestic Workers to Korea

(1) Balancing supply of and demand for domestic workers

Singapore has used foreign domestic workers for the past 40 years, able to keep costs down because Singapore does not use an Employment Permit system to control employment, but a Work Permit system that allows it to maintain balance between supply and demand. In Korea, it is only possible to hire a limited number of foreign domestic workers and they must be overseas Koreans (H-2 visa holders) from China or Russia. As there is more demand than supply, the cost difference between hiring overseas Koreans as domestic workers and hiring

[53] Kaprae Ha, 「Labor Law」, 27th edition, Joongang Economy, 2015, p. 98.
[54] Hyekyung Lee, y, 2015, p. 98. Employment of Foreign Domestic Workers in Korea", 「Korean Demography」 Vol. 27, No. 2 (2004), The Korean Demography Association, p. 146.
[55] Meeyoung Goo, thesis quoted above, p. 289.

native Korean domestic workers is insignificant.[56] Here, the basic reason to introduce foreign domestic workers in Korea is due to the lower costs.[57] In terms of this basic intent, keeping a balance between supply and demand in employing foreign domestic workers, Korea can also take advantage of the resulting cost-effectiveness over a long period of time just as Singapore has done through its Foreign Domestic Worker Scheme.

In the course of introducing such a foreign domestic worker scheme, it is desirable to take advantage of civilian employment agencies licensed by the government. Through competition between these employment agencies, it would be possible to maintain a sizable manpower pool so that employers can choose the most suitable workers for employment and keep costs down.[58]

(2) Language and accommodation issues

In Singapore where the official language is English, there is no great difficulty in communicating with foreign domestic workers in English. Countries like the Philippines, Myanmar, Indonesia, and Sri Lanka that send foreign domestic workers can communicate in English, and many applicants from those countries have college degrees as well. However, in Korea, as English is hardly used in ordinary homes, there would be communication issues due to language. Foreign domestic workers would need to be able to speak some Korean to maintain basic communication. Therefore, more incentives would be needed to attract those who can speak Korean. On the other hand, there would be a number of Korean families who intend to hire Filipinas who speak English fluently in the interest of teaching their children how to speak English. Highly educated couples, especially, would prefer to hire foreign domestic workers who can speak English well.

Regarding residence, most domestic workers in Singapore stay in the employer's home. This reduces the cost of keeping a domestic worker, and also makes it possible for the employer to have domestic maid service whenever needed. The average Korean home is a 30 pyeong apartment with three rooms, and giving the domestic worker one exclusive room would be best, but if the family is too large for this, the domestic worker can share a room with the employer's young child.

(3) Preparations to prevent illegal status

Along with the increased number of foreigners staying in Korea, which has surpassed 2 million people, or 4% of the entire population, the number of foreigners staying illegally has increased to 200,000. The most important point in employing foreign domestic workers is to keep costs down. Cases where foreign domestic workers run away from their place of employment and move to a better-paying job will render a foreign domestic worker scheme ineffective in this regard. Accordingly, before introducing any foreign domestic worker scheme, prior system measures need to be in place to make it difficult for foreign domestic workers to stay illegally. As explained above, one method is to hold the employer responsible through the threat of losing a significant security bond, but this would not be enough to prevent some foreign domestic workers from leaving to work better paying jobs. A more fundamental solution would be to punish people found to be employing illegal foreigners harshly enough that they would find it impossible to continue their business.[59] In addition to this, foreigners who are working illegally should be treated as law-breakers and punished as severely as possible under the Immigration Control Act.

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[56] Leesoo Kang, thesis quoted above, p. 289. Association, p. 146. estic Workers t" Society and History」Vol. 82 (2009), Korean Sociological Association, p. 236.
[57] Hyekyung Lee, thesis quoted above, p. 144.
[58] Sunmee Kim, e, thesis quoted above, p. 144. p. 236. Workers and Related Case Studybov「Korean Family and Human Resources Management Association」Vol. 12, No. 4, November 2008, p. 29.
[59] The Immigration Control Act: Article 94 (Penal Provisions): Any person to whom any of the following subparagraphs apply shall be sentenced to imprisonment with or without labor not exceeding 3 years, or to a fine not exceeding 20 million won: A person who has engaged in employment activities without a valid status of stay for employment in violation of Article 18.

Ⅴ. Conclusion

People and products cross borders freely in this era of globalization, integrating all nations into one great market. Singaporeans have taken advantage of the supply of cheap foreign domestic workers. Through this, the city state has increased its competitiveness by making the most of its female manpower by keeping child-rearing expenses low while improving quality of life. Koreans also need to take advantage of the supply of foreign domestic workers, as is done in Singapore, towards increasing the low birth rate and assisting highly-trained women to continue their careers while they raise their families.

Singapore introduced its Foreign Domestic Servant Scheme (FDSC) in 1978 to bring in foreign domestic workers. There are three factors behind the FDSC's success. First, there has been a greater supply of domestic workers from neighboring countries than demand for their services in Singapore. Second, it has been possible to maintain a secure supply for many years through strict immigration regulations that make it difficult for foreign domestic workers to work illegally. Third, Singapore's indirect supervisory administration makes efforts to protect the human rights of these domestic workers and improve their working conditions.

In order to take advantage of low-cost foreign domestic workers as Singapore has done, action must be taken to ensure three main points for success: ① maintaining the low cost of labor; ② preventing foreign domestic workers from working illegally; and ③ preparing protections for employment of current domestic workers while taking advantage of the lower cost foreign domestic workers.

First, how can we maintain a low cost of labor over a long period of time? If the costs end up being the same as hiring Korean workers, there is no benefit to hiring foreign ones. So, in cases where employers can hire domestic workers all the time without a maximum as is done in Singapore, the cost of the supply can be sustained due to price adjustments inherent in a balanced supply and demand. Second, how can we prevent foreign domestic workers from working illegally while other migrant workers are earning three times more money? Above all, the employer hiring a foreign domestic worker should be held directly responsible for that worker disappearing by means of forfeiting the employer's security bond. However, the only way to resolve this issue is through strict enforcement of immigration law for both Korean employers illegally hiring migrant workers, and the illegal migrant workers themselves. Company employers who have hired illegal foreign domestic workers should be punished harshly enough that it will be impossible to continue their business. At the same time, when such illegal foreign domestic workers are caught working illegally, they should be deported immediately after suffering legal and financial consequences serious enough to deter others. Third, how can we protect the employment of the current Korean domestic workers while taking advantage of the low cost of foreign domestic workers? One method is to levy an employment tax from domestic employers who benefit from hiring low-cost foreign domestic workers as occurs in the Singaporean taxation system. This employment tax can be used to support re-employment training for Korean domestic workers and create more suitable jobs for them.

Understanding Cultural Differences at Work between Korea and the West

I. Introduction

While Korea has been making free trade agreements (FTAs) with the United States and the European Union, more and more foreign companies have been establishing branches in Korea. Companies here are hiring more foreign professionals in an effort to enhance their competitiveness in the markets of advanced nations. While working in the same company or workplace, it is very common for disagreements or misunderstanding to arise between Koreans and Westerners due to differences in culture, occupational habits and language. It is very difficult to understand our counterparts if we do not understand the cultural characteristics that have formed over long periods of time, which of course can lead to an atmosphere that is not conducive to business. There are many differences in the way we think and behave at work, such as the kind of hierarchy we are familiar with, the way we relate to each other through linguistic expression, the way we address each other, and the way we express our opinions. I would like to deal with this issue through one tragic case involving culture, and the opinions of some foreigners living and working in Korea.

II. Culture: the Secret Behind a Plane Crash

At about 1:42 am on August 6, 1997, a Korean Air passenger plane approached Guam Airport and attempted to land, but because of the low visibility due to stormy weather and pilots' accumulated tiredness, the plane went off the runaway and crashed into a small hill nearby the airport. This accident resulted in the deaths of 228 of the 254 passengers onboard. As the pilots were trying to land, they could not see the runway due to the poor weather. When the ground proximity alarm sounded at 500 feet (152 meters), the co-pilot suggested gently "Let's give up the landing." When the pilot did not do so, the co-pilot said again, strongly this time "No visibility, give up the landing!" The pilot then gave up trying to land, but it was too late: the plane continued to descend and crashed. If the co-pilot had spoken in a commanding voice instead of a suggestion, the pilot would have understood the emergency situation they were in, and prevented the crash.[60]

After David Greenburg from Delta Air was hired by Korean Air to be a flight safety manager, he discovered the fundamental causes for this tragedy: the complicated ways of expressing oneself in the Korean language and Korea's vertical hierarchy. His approach was to create a rule for Korean Air pilots: they must speak English. "The official language in Korean Air is English. If you want to continue to work as a Korean Air pilot, you must be able to speak English fluently." English does not have such strict rules regarding politeness, and emotional authority between positions and ages is not as high as in Korea. In the 'Power Distance Index,' which indicates the degree of authority people in higher social positions have over those in lower positions, Korea places among the highest, while the US places among the lowest. Although a pilot and co-pilot work in a situation which requires them to operate a plane

[60] Malcolm Gladwell, "Outliers" Chapter 7, page 252, (The Ethnic Theory of Plane Crashes)

together in cooperation, Korean pilots have a very clear vertical hierarchy of superior and subordinate, putting the co-pilot in a position of obedience to the pilot. The pilot can discipline his co-pilot by hitting his hand for minor mistakes, something taken for granted. In addition, this vertical hierarchy includes complicated expressions of language. The superior talks down to the subordinate while the subordinate talks in high forms to the superior. For example, using the lowest form of language includes orders "you will do this"; talking in low form would be "do this"; talking in high form would be "please do this"; talking in the highest form would be "would you please do this?" Under such a strict vertical hierarchy and the required forms of expression, a subordinate cannot simply point out his superior's mistakes, but must speak indirectly in a way that does not offend the superior.

Since Korean Air began employing Mr. Greenburg, accidents have almost ceased and the company was able to restore confidence, both internally and in terms of how other entities view Korean Air. Mr. Greenburg changed the cultural atmosphere inside the cockpit by insisting on the use of English, hiring more civilian pilots to join an organization made up mostly of former military pilots, and standardizing technical terms and conversational methods. By making adjustments to these organizational cultures, Korean Air has been able to prevent similar plane crashes, and has become an example of air safety for other airlines. On April 10, 2010, a plane with the Polish president, Lech Kaczynski, aboard, crashed while trying to land at a Russian airport in very foggy conditions, killing 97 passengers. One of Poland's major daily papers, Gazeta Wyborcza, introduced Korean Air and its recent safety history. "During the late 1990s, Korean Air faced a crisis: Air France and Delta Air were requesting the airline leave their alliance, and the American Federal Aviation Agency (FAA) had given it a very poor safety rating. However, Korean Air was able to get through the crisis with the help of safety consultants. The answer was to 'speak English.' Korean culture demands such a high form of respect for superiors or seniors that a co-pilot could not address directly the fact that a pilot was making a mistake. But through English communication, the airline was able to work around this strong hierarchical structure rooted in the Korean language 'trap'."

III. Cultural Differences Related to Position and Age

1. Cultural differences: position

In Korea, addressing someone by their title or position is important. People at work call each other by their job positions, while westerners use first names, or Mr., Mrs., or Ms., plus family names for respect. In western culture, position titles only indicate persons-in-charge, and are not used when addressing that person. Mr. or Mrs. is acceptable regardless of someone's position, with first names used once two people are on friendly terms. In Korea, title indicates status, so if someone is addressed in a way that is not suitable for his age or position, he or she may be offended and feel they are being talked to as an inferior. Sales employees introduce themselves using a title that is higher than their own, to give themselves authority in the eyes of customers.

Following are some titles used in Korean companies when addressing other persons or describing their positions.

Korean Titles	Chinese Titles	Pronunciation	English Title
회장	會長	Hway jang	Chairman
대표이사	代表理事	Dae pyo isa	Representative Director
사장	社長	Sa jang	President
부사장	副社長	Bu sa jang	Vice President
전무이사	專務理事	Jun moo isa	Executive Managing Director
상무이사	常務理事	Sang moo isa	Managing Director
이사	理事	Isa	Director
부장	部長	Bu jang	General (Senior) Manager
차장	次長	Cha jang	Manager
과장	課長	Gwa jang	Section Chief (Manager)
대리	代理	Dae ri	Assistant Manager
사원	社員	Sa won	Employee

2. Cultural differences: age

In Western culture, people can be friends with whomever they want, while in Korea you can only call someone your friend if he or she is the same age as you. In Western culture, people keep in mind the age difference and give respect where it is due, but nevertheless they are free to befriend anyone they please.

In the Korean work environment, to be in a higher position than someone older than you is difficult because age is very important. To be young and in a higher position than someone older puts you in a predicament because you are not able to conduct yourself as that person's senior as they may think there's nothing to learn from you or you have no authority to lead them because you are younger. In western cultures, positions in the workplace are more respected than here.

IV. Cultural Differences Related to Behavior

Here are examples of cultural differences related to behavior that I collected from expatriates living and working in Korea. [61]

1. "In Korea it is polite to decline something that is offered to you and maybe on the 2nd or 3rd time it is offered you accept it. In western culture if something is offered to you and you want it you can gladly accept it the first time it is offered."

2. "Also in Western culture, the use of "thank you" is much more common than in Korean culture. It is quite common for friends, spouses, and family members in Korea not to say thank you to each other for little gifts, for giving someone something they requested etc., whereas

[61] Opinions of cultural differences are provided by expatriates who have lived more than two years in Korea. They are: an Italian PhD candidate at Sookmyung Women's University, a Canadian employee of Daewoo Ship Building Co., an Italian embassy staff member, a South African native English teacher at SDA, and a Polish employee of SBNTECH.

this would be quite rude in Western culture. We even say “thank you” to the salesperson at a store when we buy something, for giving us our change.”

3. “In Korea when people eat they have to wait for the oldest member to eat first (in family) or the teacher (in school/institute) before they can start eating. In Western culture it doesn’t really matter.”

4. “If a Korean knows you then they’re extremely kind and helpful but if they don’t know you they ignore you like you don’t exist. In Western culture people are relatively friendly even if they don’t know each other: e.g. they’ll greet and start a conversation, etc.”

5. “Saying ‘OK OK OK’ or ‘Yeah yeah yeah’ in English can be ***extremely*** rude. In Korea, it just means ‘I really understand or ‘Yes, right away.’ In English it means ‘OK, shut up. I don’t want to hear what you are saying.’”

6. “Koreans cannot confront their superiors directly (for example, when they feel they have been treated unfairly, or the superior is doing something in the wrong way). Westerners usually can, and do.”

7. “In Western culture, a graduate school student can discuss freely, ask questions, and provide opposing opinions about his/her major subjects to his/her academic advisors (professors), but in Korea his/her professors are so authoritarian that the student cannot oppose their opinions, and so generally accepts their opinions unequivocally.”

8. “A common mistake for Koreans is to say ‘Mr. Shawn’ or ‘Miss Jennifer.’ In English, we don’t use the first name with ‘Mr.’ or ‘Miss etc. We use the family name instead. So, Shawn Stenson would be ‘Mr. Stenson,’ and Jennifer Beal would be ‘Miss Beal’ or ‘Mrs. Beal’ (if she’s married).”

V. Conclusion

The cultural differences between Korea and the West are very wide, go very deep, and reach into a huge variety of situations. If employees are unable to come to a cultural understanding of these differences, even in this Global Era, then Koreans and expatriates working together will have to settle for a relationship of ‘close in proximity, but distant in relationship’. When cultural differences are allowed, accepted, and understood, employees can work better, more constructively, and in greater cooperation. With a partnership based on this acceptance, Korean employees can work well with foreign expatriates, improve their own work efficiency and help the company increase its competitiveness with leading companies from around the world.

Professional Foreign Personnel Employment (E-7 Visa)

I. Necessity of employing professional foreign personnel

What companies need as they prepare for global competition is to provide world-class cutting-edge products and services at competitive prices. For this purpose, most Korean companies have used highly qualified Korean personnel, but in a world becoming one integrated market, maintaining world-class competitiveness is proving more and more difficult with such a limited supply of personnel. Accordingly, companies feel the need to hire from overseas those professional personnel that they cannot employ easily inside Korea. In addition, small and medium sized companies need to hire those highly qualified personnel at a reasonable cost. Employing such professional foreign personnel requires an E-7 visa.

Korean use of foreign personnel has been mostly focused on using them to solve a shortage of labor for small and medium-sized companies. As of the end of December, 2012, the number of foreigners staying in Korea is 1.44 million people, and is increasing every year. Of this number, 529,690 are eligible for employment, with at least 90% working manual jobs. The visas involved include E-9 (non-professional employment), H-2 (working visit for overseas Koreans), and E-10 (seafarer employment). Most of the remaining 10% hold E-1 through E-7 visas for professional employment: university professors (E-1), native speakers for foreign language studies (E-2), researchers (E-3), technicians for technology transfer (E-4), certified profession holders (E-5), art workers (E-6), and other professional job holders (E-7).

Generally, the E-7 visa is granted to personnel employed for professional positions, which covers various fields. In their plans to hire these overseas personnel, companies need to confirm whether visa issuance is possible, and then obtain eligibility from the Immigration Office for those personnel to stay in Korea, before initiating the hiring process. In this article, I would like to look into this employment process for hiring professional personnel, and government support systems for such hiring.

<Types of Visa Available & Employment Status>

[Source: Ministry of Law, as of December 31, 2012]

Division		Scope of Eligible Activities
Professional personnel (50,264)	**Professor (E-1) (2,631)**	As foreigners qualified in accordance with the Higher Education Act, those who are engaged in education or research and instruction activities in technical colleges or higher, or equivalent institutions.
	Language teaching (E-2) (21,603)	As foreigners qualified for conditions stipulated by the Minister of Justice, those who are engaged in teaching foreign languages at foreign language institutes, elementary level or higher schools, their language institutes, or equivalent institutions.
	Research (E-3) (2,820)	Those who are engaged in research and development of natural sciences or industrial cutting-edge technology at various laboratories, due to invitations from public or private institutions.
	Technology instruction (E-4) (160)	Those who are engaged in providing professional knowledge regarding the natural sciences or technologies regarding specialized industrial fields due to invitations from public or private institutions.
	Professionals (E-5) (694)	As foreigners with certification as foreign lawyers, public accountants, doctors, and other nationally recognized professionals, those who are engaged in such professional fields in accordance with Korean law.
	Artistic work (E-6) (4,528)	Those who are engaged in arts activities such as music, painting, and literature, or in entertainment, performances, plays, sports, advertising or fashion modeling, etc. for the purpose of earning money.
	Particular activities (E-7) (17,451)	Those engaged in activities specifically designated by the Minister of Justice, in accordance with contracts with public or private institutions.

Simple manual working personnel (479,426)	**Non-professional (E-9)(230,237)**	Those eligible for employment in Korea according to the Act on Foreign Workers' Employment.
	Seafarer employment (E-10)(10,424)	Those who have seafarer employment contracts on the condition of providing labor for 6 months or longer in companies that do business in accordance with the Maritime Transport Act or the Fishing Industry Act.
	Working visit (H-2) (238,765)	Those of foreign nationality in accordance with the Act on the Immigration and Legal Status of Overseas Koreans and who are 25 years or older.

II. Process for Hiring Professional Foreign Personnel (E-7 Visa)

1. E-7 Visa holders (for specific activities)

Professional foreigners eligible for E-7 visas need to have the following characteristics in general. Firstly, the specialty, qualifications, technological and other skills of the corresponding foreigners shall be directly related to the companies where they are to work. Secondly, those foreigners shall not become engaged in simple labor, but professionally skilled or technical jobs. Thirdly, it shall be necessary to hire those foreigners because of the difficulty involved in finding Korean citizens to fill those positions. The E-7 visa encompasses 79 jobs, broken into two categories: 1) job activities determined by contract with public or private institutions and 2) cutting-edge technology jobs such as information technology.

Fields	Eligible Applicants for E-7 Visa
Job fields based on contract with public or private institutions	- Foreign school teacher, foreign language editor at a public or private institution - Those who provide technology, skills and professional knowledge necessary for positions at a public or private institution - Those who are expected to contribute to the reinforcement of national competition in special positions at a public or private institution - Directors or coaches expected to contribute to the promotion of sports by instructing athletes at sports organizations - Foreign staff hired at embassies or foreign-government organizations - Professional foreign personnel hired by foreign-invested companies, domestic branches of foreign companies and foreign individual companies - Crew members hired by domestic ferry companies such as passenger liners and Mountain Diamond tourist boats
Cutting-edge technology jobs like IT	- Those who will be engaged in e-business such as information technology and electronic transactions, biotechnology, nanotechnology, advanced materials (metal, ceramic, and chemical), transportation machinery, digital electronics and environmental and energy fields, and have obtained recommendations from relevant ministers · E-business for online commerce, and six other fields: Ministry of Trade, Industry & Energy · Information technology: Ministry of Information & Commerce

2. Issuance of the E-7 Visa

In order to hire professional foreign personnel in Korea, the company shall need to have issued an E-7 visa from the Immigration Office of the Ministry of Justice. Generally, the company can hire professional foreign personnel from abroad after receiving the Certificate of Eligibility for Visa Issuance for those personnel, and in some cases, it is possible to hire professional foreigners already staying in Korea by changing their visa status to E-7. The typical occurrence in cases like this is for foreign students graduating from Korean colleges with D-2

visas to have their visa status changed to E-7 after employment. The necessary documents for an E-7 visa are described in the following table.

Company	Foreign Employees
1. Application for the Certificate of Eligibility for Visa Issuance 2. Documents to verify the necessity for hiring foreigners 3. Documents related to establishment of business entity (A copy of business registration certificate, or a certificate of foreign invested company registration, etc.) 4. Employment Contract (Copy) 5. Documents to prove total sales of the previous year (Certificate of Withholding Tax or corporate financial statement) 6. List of insured employees by Employment Insurance 7. A letter of employment recommendation from the related administrator or organization director 8. Letter of guarantee (only for jobs that are restricted to changing or adding workplaces by notification of the Ministry of Justice) 9. Other documents stipulated additionally according to job requirements	1. A copy of passport 2. A copy of Resident Identification Card (only for Chinese) 3. Verification documents (Degree, Record of Employment, Resume, Certificate of Qualification / Awards or media report for related fields ※ Depending on the type of job application, it is necessary to submit Apostille or confirmation from the consular chief of their foreign mission for the career certificate.

III. Government Support Systems to Promote Employment of Professional Foreign Personnel (E-7)

Various government systems have been set up to promote the employment of foreign professionals, and in relation to E-7 Visa. There are three main systems, which are 1) the IT Card system of the Ministry of Information & Communication; 2) the Gold Card System of the Ministry of Trade, Industry & Energy; and 3) the Employment of Foreign Professionals Support system of the Small & Medium Business Administration.

1. IT Card System (Ministry of Information & Communication)

The IT card system is an institutional system designed to attract to Korea leading foreign personnel and plays an important role in 1) helping to meet the shortage of IT professionals and acquiring advanced technology, issuing the relevant Minister's recommendations in the course of hiring them, and 2) in mitigating the rising cost of domestic IT professionals while globalizing the Korean IT industry. Corporate entities intending to hire overseas IT engineers are eligible for employment recommendation by applying to the Korea IT Ventures Association (KOIVA). KOIVA will review the prospective employee's qualifications and evaluate the cutting-edge technology he or she possesses, and then issue a Letter of Employment Recommendation from the Minister of Information & Communication.

Qualifi-cations	○ Those who have worked in the field of information technology, online commerce, or electronic business for five years or more; ○ Those who have been engaged in the corresponding field for two years or longer, with a bachelor's degree; and ○ Those who have obtained a bachelor's degree or a Master's degree from domestic colleges, and received an employment recommendation from the Minister of Information & Communication

2. Gold Card System (Ministry of Trade, Industry & Energy)

The Gold Card System is designed to attract overseas technical personnel by providing them preferential treatment under the Immigration Control Act through employment recommendations issued by the general secretary of the Industrial Technology Foundation on behalf of the Minister of Trade, Industry & Energy to companies intending to hire overseas technical personnel, and subsidizing the issuance of E-7 visas. The relevant fields are information technology and e-business like online commerce, biotechnology, nanotechnology, advanced materials (metal, ceramic, chemical), transportation material, digital home appliances, environment and energy, etc.

Qualifi-cations	○ Those who have worked in the relevant field for 5 years or longer; ○ Those who have been engaged in the corresponding field for two years or longer, with a bachelor's degree; and ○ Those who have obtained a bachelor's degree or a Master's degree of relevant majors from domestic colleges, with or without experience in the relevant fields

3. Employment of Foreign Professionals Support system (Small & Medium Business Corporation: SBC)

This system was introduced to support small and medium enterprises (SMEs) in obtaining access to advanced technology through employment of the necessary overseas personnel from Russia, India, and other nations to eliminate the shortages SMEs face in the relevant fields and contribute to the promotion of international competitiveness through the development of new technologies.

Fields		○ Manufacturing (SMEs in accordance with the SME Basic Law) ○ Knowledge-based service industries (24 fields such as information processing and other computer-related businesses, research & development, engineering services, etc.)
Qualifications		○ Graduates in the fields of technology or marketing: -- PhD holders; - MA degree holders + 2 years' experience (no experience required for graduates of Korean universities); - Bachelor's degree holder + 5 years' experience ○ Those with 10 yearsee holder experience
Subsidy	**Living expenses & airfare**	○ 10 - 30 million won per person per year * Amount of subsidy depends on academic degree, experience, previous annual salary, etc. ○ Airfare (One-way economy ticket): paid along with living expenses
	Talent hunt	○ Searches by applying companies or through headhunting agencies registered with the SBC * Subsidy per person: 2 million won for employment in the capital area and 3 million won for other areas
	Period	○ Employment shall be maintained for at least three years, during which the subsidy is available.
	Number	○ Up to 4 persons per company will be subsidized.

IV. Conclusion

Nowadays, hiring foreign professionals is no longer an option, but is becoming essential. In a global market with worldwide competition, those with better technology and able to provide more competitive products survive. This requires companies to work hard to acquire world-class, highly-trained personnel from many fields at a reasonable labor cost. The E-7 visa is designed to facilitate such acquisitions in an effort to support companies in maintaining and improving their competitiveness.

The Employment Permit System (H-2, E-9 Visa)

I. Introduction

There are two main types of foreign workers being brought into Korea. The first type is foreign migrant workers (E-9 visa) under the Employment Permit System (EPS) for such industries as manufacturing, construction, farming, and fishing ("3D", or "dirty, dangerous, difficult" industries), and the other is foreign professional employees (E1~E7 visas) with specialized knowledge, such as college professors, experts in a specific field, researchers, and English teachers. These foreigners not only supplement our insufficient work force, but also provide professional knowledge and technology necessary to our industries.

Korea had been bringing foreign workers in under the Industrial Trainee System since 1993 to deal with the labor shortage in small and medium sized companies, but since August 2004, this System has been replaced with the Employment Permit System of the "Act on Foreign Worker Employment, etc." (Foreign Workers Act). The Employment Permit System consists of the non-professional employment visa (E-9) for foreign workers engaged in simple skilled jobs and the visiting employment visa (H-2) for overseas Koreans. The Employment Permit System was introduced to provide workforce stability in industries suffering from severe labor shortages while protecting the Korean labor market. The following explains the process of hiring foreign workers, application of labor law, and items requiring attention under the Foreign Workers Act.

II. Employment through the Employment Permit System

1. Industries permitted to hire foreign workers and related quotas

(1) Manufacturing: Small and medium-sized manufacturing companies ordinarily hiring fewer than 300 workers or with a market capital of ₩8 billion are allowed to hire foreign workers. Provided that, if a manufacturing company surpasses the aforementioned conditions, it can still hire foreign workers if it receives a "Certificate of Small & Medium Enterprise Confirmation" from the regional Small & Medium Enterprise Administration. The quota of foreign workers depends on the size of the company, but is 10 to 20% of the domestic workforce.

(2) Construction: Most construction companies can use the Employment Permit System. Construction companies are allowed to hire up to 5 workers if the company's average annual gross is less than ₩1.5 billion, with an additional 0.4 foreign workers allowed for every ₩100 million in gross exceeding the ₩1.5 billion.

(3) Services: Service companies can use overseas Korean job-seekers (H-2 visa) visiting through the Special Employment Permit System. Service companies with 5 workers or fewer can hire up to 2 overseas Korean workers even if there are no other Koreans working for the company, while service companies with 6 or more workers can hire the number of overseas Koreans equivalent to 30 to 40% of the domestic workforce.

(4) Agriculture, livestock and fishing: Agriculture and livestock companies with 10 workers or fewer can hire up to 5 foreign workers even if this means that there are no Korean workers in the company. Larger companies can have up to approximately 20% of their workforce as foreign workers. For the fishing industry, fishing boats of 20 tons or less and aquaculture do

not fall under the Seamen's Law. They can use foreign workers, and non-Korean workers can make up 40% of the personnel onboard each boat.

2. Employment Methods through the Employment Permit System

(1) General Employment Permit System

1) Issuance of a letter of employment permission: Employers intending to hire foreign workers shall first apply to the Employment Security Center (ESC) for recruitment of Korean nationals. The ESC will issue a document confirming a workforce shortage for employers unable to find enough Korean workers despite their hiring efforts (the recruiting period must be at least 3-7 days). The employer shall choose the workers he/she needs from a list of foreign workers that the ESC recommends (which will be three times larger than the number needed). Once the employer has done so, the ESC will issue employment permits for those foreign workers. Before issuing these permits, the ESC shall confirm that the following qualifications exist: the company applying to recruit foreign workers fits the eligibility criteria; the employer had tried to hire Korean workers; there shall be no employment adjustment within two months, and there should not be any delay in payment of wages for 5 months.

2) Signing an employment contract: The employer will sign the standard employment contract provided by the Ministry of Employment & Labor with the chosen foreign workers. The contract will specify working conditions such as wages, working hours, holidays, work places, and working period etc. The effective date of the employment contract is when the foreign worker enters Korea. Therefore, the employment relationship begins with this date of arrival to Korea, and shall be the date used to calculate severance pay, etc.

3) Essential duties to be handled: The employer must register the foreign workers at the Immigration Office and apply for work visas. That is, the employer will receive certificates of alien registration regarding the E-9 visas and have the foreign employees enter Korea. Foreign workers shall receive pre-employment training at a designated training institute within 15 days of their arrival into Korea. During this training period, the training institute will have them receive a medical checkup against epidemic diseases defined under law. Employers and foreign workers shall have the essential insurances. The employer shall provide a departure guarantee insurance to secure severance pay and guarantee insurance to prevent delayed payment of wages, while the foreign workers shall ensure they have personal injury insurance and sufficient funds for return airfare.

(2) Employment Permit System for Overseas Koreans

1) Introduction: Special Employment for Overseas Koreans is a system where employers can hire overseas Koreans already in Korea, for the construction, service, manufacturing, and other industries. Those who have a visiting employment visa (H-2) shall attend the employment training designated and get a job after registration with the Employment Security Center.

2) Applicable overseas workers: ① Overseas Koreans with relatives in Korea: Overseas Koreans aged 25 years or older who have resided in China or one of the former Soviet republics, those who have received an invitation from a family member registered in the family registration or his/her descendants, or from a blood relative (third cousin or closer) or a relative through marriage (first cousin or closer) as a registered Korean resident. ② Overseas Koreans with no relatives in Korea: such persons shall be selected through a Korean language test, random selection, etc.

3) Issuance of visiting employment visa (H-2) and entry to Korea: Overseas Koreans with relatives in Korea may enter Korea with an H-2 visa issued by a Korean embassy in a foreign

country, while Overseas Koreans without relatives in Korea may enter with a visa issued after passing a Korean language test or through random selection.

4) Employment training, physical check-up, application for employment: Persons entering Korea for the purpose of visiting employment shall take employment training (20 hours or more) for domestic activities at an employment training institute (the Korea HRD Service), have a check-up to confirm his/her physical eligibility, and apply for employment during the training period.

5) Issuance of a certificate for special employment: Similar to the procedures under the Employment Permit System, the employer shall make an effort to hire Korean citizens first, before applying for and receiving a certificate for special employment from the Employment Security Center.

6) Signing an employment contract: The employer will sign the standard employment contract with the selected job-seekers who are also from a list three times larger than needed, and recommended by the Employment Security Center. The effective date of the employment contract is when the overseas Korean actually begins providing labor service. The employer shall submit the report of employment to the regional ESC, within 10 days after the overseas Korean begins to work for the employer.

(3) Comparison of the Employment Permit System (EPS) and the Special EPS

	Employment Permit System (EPS)	Special EPS
① Employment period	3 years (employment possible for maximum additional 2 years) ※ Non-professional employment visa (E-9)	3 years (employment possible for maximum additional 2 years) ※ Visiting employment visa (H-2)
② Eligibility	Those registered for employment after the Korean language test and health checkup	-Overseas Koreans with relatives in Korea (no maximum) -Overseas Koreans without relatives in Korea (limitations on numbers)
③ Permitted businesses	Manufacturing, construction, service, and other businesses stipulated by the Foreign Workforce Policy Committee	The EPS's allowed businesses plus additional service businesses
④ Job placement process	Korean language test → employment contract → enter Korea with E-9 visa → pre-employment training → assignment to workplace ※ Limitations on workplace changes	Entry with H-2 visa → Employment training → Recommended by the Employment Security Center or begin own job search → employment after signing an employment contract ※ No limitations on workplace changes
⑤ Hiring procedures	Effort to hire Korean workers → application for employment permission → Issuance of employment permission → employment after signing an employment contract	Effort to hire Korean workers → issuance of special employment permission from the ESC → employment after signing an employment contract ※ The employer shall report the employment to the ESC.
⑥ Quota for employment	Maximum number of foreign workers set per workplace	Employers can fill their foreign worker quota with overseas Koreans (excluding construction and service industries).

III. Employment Permit System and Working Conditions

1. Employment contract

When hiring a foreign worker, the employment contract shall be based on the standard employment contract (from the ESC). This is to help prevent labor disputes regarding working conditions between the two parties and to protect the worker, who is in a weaker position than the employer. The employment contract shall address matters regarding contract period, workplace, duties, working hours and breaks, holidays, wages, etc. The contract period shall be stipulated as 3 years or less from the date the foreign worker enters Korea. However, if the employer receives permission from the ESC for employment extension, the employer may retain a foreign worker for up to an additional two years (for a maximum of 5 years). The workplace can change up to 3 times during the contract period, and permitted reasons for such changes are: ① Expiration of the contract period, mutual agreement for termination of employment, or cancellation of the employment contract due to reasons attributable to the worker; ② Suspension or cessation of business, or other reasons not attributable to the foreign worker (such instances shall not be counted as a workplace change); ③ Cancellation of the company's employment permission or receipt of an administrative order for restriction of employment of foreign workers; ④ Cases where a foreign worker cannot continue the employment due to unfair treatment from the employer, such as difference in working conditions or violation of contracted working conditions, etc.

2. Prohibition of discrimination on foreign workers

(1) Application of labor laws: General working conditions in labor law are applicable to foreign workers in the same way they are applicable to Korean nationals, including the prohibition against discrimination, prohibition against forced labor, and restrictions on dismissal. Overtime hours exceeding regular work hours, night work, and holiday work shall be paid with basic wages and additional allowances. Annul paid leave shall also be applied identically and unused annual leave days shall be compensated. In addition, statutory severance pay shall be given to foreign workers who have worked for at least one year upon termination of employment. However, the prohibition against discrimination in working conditions is not applicable because Korean citizens cannot be the target of comparison. The two year maximum term for workers to remain "temporary" also does not apply, as foreign workers fall under the Immigration Act first.

(2) Application of 4 social security insurances: ① The Industrial Accident Compensation Insurance Act applies to employers ordinarily hiring at least one worker, but this does not apply to agricultural and fishing companies that hire 5 persons or fewer, and it does not apply to construction projects not exceeding ₩20 million. In cases where a worker suffers an occupational injury or disease which is recognized as an occupational accident from the Employee Welfare Corporation, he/she can receive all expenses required for medical treatment, suspension compensation of 70% of average wages during the suspended period, disability compensation if he/she is handicapped after recovery, and survivor's pension and funeral service assistance for his/her family in the event of an employee's death. ②

Employment insurance applies to workplaces which ordinarily hire at least one employee, but for foreign workers, this insurance becomes voluntary upon consultation between the employee and employer. ③ National Health Insurance is mandatory for foreign workers as well as overseas Koreans working in the workplace (effective January 1, 2006). ④ Payment into the National Pension scheme is mandatory for any workplace where a worker between the age of 18 and 60 is hired. This also applies to workplaces hiring foreign workers.

IV. Conclusion

It has been 20 years since Korea introduced the migrant foreign worker system. Foreign workers are not rare or strange anymore, but have played a very pivotal role in vitalizing small and medium-sized companies. This use of foreign workers has brought many advantages and profit, but at the same time has included some negative aspects. First, for low-skilled Korean citizens, it has become more and more difficult to remain employed. It is a harsh reality that low-skilled Koreans seem likely to continue receiving low wages. Second, the Employment Permit System is not a perfect system, in that the number of employable personnel is assigned equally according to the size of the company, as some small and medium-sized companies with superior technology or who are more competitive use this system simply to save on labor costs. As a result, some less-competitive small and medium companies that desperately need foreign workers cannot hire the necessary number of foreign workers due to a limited quota assigned to them based on company size. Quota flexibility would be a useful way to ensure more personnel are assigned to less-competitive small and medium-sized companies engaged in 3D jobs (dirty, dangerous, difficult). Third, since the Ministry of Employment & Labor has focused on labor policy related to the use of low-skilled foreign workers, many companies have difficulty hiring professional expatriates. As industrial competition between nations has become reality, it is becoming necessary to ensure the employment system in Korea is more open to hiring professional foreign personnel.

Changes of the Employment Permit System for Migrant Workers

I. Introduction[62]

According to the '2015 Immigration Statistics of the Ministry of Justice', the number of foreign residents increased to 1,899,519 people in 2015, from 747,467 ten years ago. It is certain that there will be more than 2 million in 2016, and 10 years after that we can expect 3 million. The percentage of foreigners in comparison with the total population was 1.5% in 2005, increased to 3.7% in 2015, and is expected to be more than 6% by 2025.

The system for bringing in migrant workers has changed very much. In order to resolve the severe labor shortage of small- and medium-sized companies, Korea introduced the Industrial Trainee System[63] in 1993 to bring in foreign migrant workers, but it caused many problems such as corruption within the various countries in the sending of migrant workers, and violations of human rights within Korea. Therefore, Korea introduced the Employment Permit System (EPS) under the Act on Foreign Workers Employment, etc. (hereinafter referred to as the "Foreign Workers Act") in August of 2004 so that it could correct these problems and secure a long-term supply of migrant workers. The Employment Permit System consists of the non-professional employment visa (E-9) for foreign workers engaged in simple unskilled jobs and the visiting employment visa (H-2) for overseas Koreans. For the past ten years, as we have invited more and more foreign migrant workers, our industries in small- and middle-sized manufacturing, construction and related businesses have become dependent upon them. This has resulted in many changes to the Employment Permit System, and has resulted in an extension of the maximum stay period, expanded job descriptions, and even an improvement in protection of the human rights of the migrant workers themselves. Along with these changes, the number of overseas Koreans who come to Korea for work has increased, due to Korea's engagement policy towards these individuals.

I would like to review these changes below.

II. Changes to the Employment Permit System

1. Increase in the number of countries sending migrant workers

There were 6 countries sending migrant workers to Korea in 2004; 4 more were added in 2006, and 5 more in 2007, for a total of 15 countries today.

- Countries sending migrant workers in 2004 (6): the Philippines, Mongolia, Sri Lanka, Vietnam, Thailand, Indonesia
- Countries added in 2006 (4): Uzbekistan, Pakistan, China, Cambodia.
- Countries added in 2007 (5): Bangladesh, Nepal, Kyrgyzstan, Myanmar, East Timor.

[62] Ministry of Justice, 「Manual for Visa Issuance」, Immigration Office, April 1, 2016; Choi, Hong-Yup, 「A Study on Foreign Workers' Status in Terms of Labor Law」, Doctoral thesis, February 1997; Nho, Myung-Jong, 「Effects and Improvements of the Employment Permit System 」, Master's thesis, July 2015; Lee, Ke-Ho, 「A Study on Critical Reviews for the Korean Immigration Policies 」, Master's thesis February 2013

[63] The Industrial Trainee System operated along with the Employment Permission System until 2006, but was abolished on January 1, 2007.

2. Extended jobs

Jobs allowed for migrant workers were in manufacturing, construction and agriculture & livestock in 2004, and were gradually extended to fishing and some service industries (cold storage warehousing, etc.) in 2014. Special EPS jobs were allowed in construction and some service industries (6) in 2004, and then widely extended to the manufacturing, agricultural & livestock, and fishing and service industries (29 jobs such as food service work, housework and nursing services, wholesale and retail services, etc.) in 2014.

<Job Status for Migrant Workers >

Year		2011	2012	2013	2014
Total		102,356	115,251	122,727	147,090
EPS (E-9)	Total	49,130	53,638	58,511	51,557
	Manuf.	40,396	45,632	48,967	40,875
	Const.	2,207	1,269	1,606	2,299
	Agri.	4,557	4,931	5,641	6,047
	Serv.	124	107	70	91
	Fish.	1,846	1,699	2,227	2,245
SEPS (H-2)	Total	53,226	61,613	64,216	95,533
	Manuf.	26,542	36,730	42,342	58,835
	Const.	7,343	1,700	187	3,270
	Agri.	641	394	432	463
	Serv.	18,329	22,476	21,061	32,739
	Fish.	188	124	120	149
	Other	183	189	74	77

<Status of Migrant Workers in the EPS >

Year		2011	2012	2013	2014
Total		102,356	115,251	122,727	147,090
EPS (E-2)	New entry	40,130	50,288	44,395	43,276
	Re-entry (Long*)	-	1,853	5,169	1,602
	Re-entry (Spe**)	-	1,494	6,553	4,101
	Re-entry (Ar***)	-	8	2,394	1,948
SEPS (H-2)		53,226	61,613	64,216	95,533

* Long-term service without changing workplace

** Specially-equipped skill holders

*** Arbitrarily-equipped skill holders

3. Extended period of stay

At the beginning of the EPS, the maximum sojourn for migrant workers was strictly adhered to according to the principle of the short-term replacement cycle, but due to the continuous demands for more skilled migrant workers, the period of sojourn has gradually been extended to a special system for re-entry of skilled migrant workers who have never changed workplaces (Article 18-4). As for those who are qualified and are completing their sojourn (3 years plus 1 year and 10 months), if they apply for a re-entry employment visa, they can re-enter and work at their workplace for another 4 years and 10 months. This means that the employee can work for up to almost 10 years (specifically, 9 years and 8 months).

Aug. 2004	May 2005	Dec. 2009	July 2012
3 years	3 years + 3 years (1 month interval)	4 years and 10 months (3 years + 1 year 10 months)	4 years and 10 months (if conditions are met[64], 4 years and 10 months can be added after leaving the country for 3 months). In total: 9 years and 8 months (10 years)

4. Shortening the period to require efforts to hire Koreans first

Companies wanting to hire migrant workers are required to first spend 30 days seeking to hire Koreans through the job center, something that was strictly observed in 2004. However, this effort was reduced to 14 days in 2010, and if the employer placed an advertisement in a newspaper or broadcasting media for 3 days or more, the required length of effort to hire Koreans first is reduced to 7 days.

August 2004	April 2010
30 days or more spent seeking to hire Koreans first through the Job Center (If the company rejects suggestions from the Job Center two times, the permit to employ is cancelled.)	14 days or more spent seeking to hire Koreans first through the Job Center. Provided, if the company places an ad in a newspaper or broadcasting media for 3 days or more, the required period is shortened to 7 days. (If the company rejects suggestions from the Job Center two times, the permit to employ is cancelled.)

5. Compulsory duty to leave the country omitted

When the migrant workers completed their employment for three years and expected to have an extension, it was required that they leave the country for one month or longer. However, under the new revision, migrant workers can renew their contract period for an additional two years without leaving the country (Article 18-2).

6. Adjustment of contract period

The employer and migrant workers can, in principle, have an employment contract for one year, which can be renewed within a maximum of three years. However, under the new revision, the fixed contract period of one year has been abolished, and migrant workers can now have an employment period of up to three years upon mutual agreement of both the employee and employer (Article 12).

[64] If the following three conditions are satisfied: ① No change of workplace; ② Workplace deemed to have difficulty hiring Koreans in consideration of the available jobs or the size of the workplace as determined by the Foreign Workforce Policy Committee (manufacturing with 30 workers or less, agricultural and stock breeding, and the fishing industry); ③ After re-entry, the migrant worker must work for the same employers.

7. Extension of the job-seeking period

In the past, when migrant workers left their workplaces, they were required to find a job within two months, but under the new revision, the job-seeking period has been extended to three months (Article 25). However, this does not apply to overseas Koreans with H-2 status.

III. Expanded Use of the Special EPS for Overseas Koreans

1. Background of the special Employment Permit System

There is a general opinion among the various civil groups and all classes of society that Korea should maintain a warm engagement policy towards overseas Koreans from China and the former Soviet Union, and that there was some necessity to correct discrimination between them and overseas Koreans in advanced countries like the U.S.A. and Japan who freely engaged in employment activities with their employment permit visa (F-4). With this in mind, the Regulation Regarding Employment Management of Visiting Overseas Koreans (Labor Ministry Notice 2002-29) was announced on December 6, 2002, which allowed overseas Koreans aged 40 years or older, and who had relatives in Korea, to obtain employment in 8 service-related jobs.

Later this Employment Management System was integrated into the special EPS, and construction jobs were immediately added. The improved status for overseas Koreans was extended to China and the former Soviet Union, and the applicable jobs were also gradually extended. Eligibility was widened to overseas Koreans aged 25 years or older who had a relative or someone on their family register who resided in Korea. Then, starting in March of 2007, the Visiting Employment System was initiated, which allowed overseas Koreans who did not have any relatives in Korea to get a job. In 2016, allowed jobs increased to include more manufacturing and construction positions, plus 41 kinds of service industry positions. Overseas Koreans can now be employed for the available period (5 years) of a Visiting Employment Visa (H-2) and leave and/or come back to Korea with no limit to the number of visits.

2. Difference between the general EPS and the special EPS

(1) Employment through the general EPS

An employer who intends to hire migrant workers should make an effort to hire Koreans for at least 14 days, and after these efforts, the employer should apply for migrant workers at the Labor Ministry's Job Center. The Job Center will review the qualification of the employment request first, and then recommend a list of migrant workers. Once the employer has chosen migrant workers from the list, a permit certificate will be issued. After this, the employer will fill out the standard Employment Contracts and submit them to the Job Center. The Job Center will submit the list of those workers to be hired to the Human Resources Development Service of Korea (HRD Korea), and HRD Korea will send those standard Employment Contracts to the relevant migrant workers. The migrant workers will sign the Employment Contracts and send them to the employer. The employer will then apply for a certificate of visa issuance to the Ministry of Justice. HRD Korea will invite those migrant workers to Korea, and will implement

employment training and health examinations, and have them registered for migrant workers' insurance and then send them to their employers.

(2) Employment through the special EPS

Overseas Koreans who have acquired a Visiting Employment (H-2) Visa from their Oversea Embassy enter Korea and attend the employment training provided by HRD Korea. After this, they register for employment at HRD Korea or the Job Center, and can then get a job through the Job Center or find a job on their own. Provided, it is possible to get a job in the construction industry only after they have received an Employment Approval Certificate after attending construction employment training. An employer who intends to hire overseas Koreans should get a confirmation letter from the Job Center allowing them to hire overseas Koreans, after making the required effort to hire resident Koreans first, and then hire overseas Koreans through the Job Center or their own channels. For a special EPS, the standard Employment Contract should be signed. The contract period is determined by mutual agreement within the available employment period, and the employment contract becomes valid as of the day when the overseas Korean actually begins to provide his or her labor service. Changing jobs is permissible, with no limitations, unlike general migrant workers.

IV. Conclusion

When looking back on the Employee Permit System that was introduced in 2004, 12 years ago, its system has undergone many changes. First, the short-term period of sojourn has been extended from 3 years to 9 years and 8 months. Second, permitted jobs were also extended not only to non-professional manufacturing, but also to the construction and service industries. Third, regarding the duty to hire Koreans first, existing efforts have become a formal procedure that does not assist Korean job seekers in practical terms. As evidence of this, this duty has been reduced from 30 days to only 7 days. Fourth, the number of illegal migrant workers has increased and now numbers more than 208,778 people as of December 2014. This has resulted in social problems, human rights violations and other issues.

In reviewing these four issues, while Korean immigration policy aims to prevent permanent settlement of migrant workers and to assist Korean nationals in gaining employment, the effectiveness of these policies is threatened. New government policy is needed to implement more desirable immigration policies and resolve the problems that arise from the differences between current government policies and practical applications.