
Kluwer Arbitration Blog

Bae, Kim & Lee publishes Arbitration Law of Korea: Practice and Procedure (Juris 2012)

Kap-You (Kevin) Kim (Peter & Kim) · Friday, April 27th, 2012 · Bae, Kim & Lee LLC

In recent years, Korea has become an object of some attention in the international arbitration field. But less than 15 years ago, there was no “arbitration field” in Korea to speak of. I, myself, was a maritime lawyer and it was only a twist of fate – the request of a client – that put me in my first international commercial arbitration. With only my background in Korean litigation to draw on, I stumbled through the unfamiliar and unfixed procedural world of international arbitration.

We obtained a good result for the client in that case, but for me, the real impact of the case came in the form of an epiphany. I became convinced that Korea had a big future in international arbitration. The reason was as much an accident of history as my taking that first case. The Asian Financial Crisis of the late 1990s had ravaged Korea’s economy. Businesses were failing or on the verge of it, and the major conglomerates that had not collapsed were desperately selling off non-core assets in an effort to stay afloat. This was a buying opportunity for foreign companies willing to accept the risk of the unstable economy. In short: due to hard economic times, there were a lot of M&A deals in a very short period, typically with ICC arbitration clauses. A wave of disputes was, in my opinion, almost inevitable.

However, I found the Korean community at large did not yet share my expectation. Even my own firm management was reluctant when I proposed establishing Korea’s first international arbitration practice group. Fortunately, they decided to support me in my ambition, and I was also able to persuade a younger colleague from the US, John Bang, to join me in founding a practice group. That was 10 years ago.

Today, the landscape has changed. Korea is now a significant user of arbitration, and those at the forefront of the field here are increasingly receiving global recognition and appointments to posts in the major institutions and organizations around the world. I feel grateful that history has born out my instincts. I am grateful to my colleague John for joining me in this venture. And I am grateful for the dedication and support of a fantastically talented team of 16 lawyers (and growing) that have joined our team since its formation.

I am thus immeasurably pleased to present yet another first: Korea’s first comprehensive overview of commercial arbitration in Korea, titled “Arbitration Law of

Korea: Practice and Procedure,” and published by Juris Publishing in February 2012. It is the collective work of all the lawyers that comprise BKL’s practice group, and I give due credit to all the hard work that went into its research and drafting.

Although the story of Korea’s rise to prominence in international commercial arbitration over the last decade is known in broad outline to many industry insiders and followers, we nonetheless felt it important to include a fuller picture. Thus, the opening chapter of the book offers an inside view into Korea’s rise to prominence in this field and may contain a number of surprises for readers. For instance, it may not be common knowledge that year after year Korea rivals and even exceeds in even-numbers both of its much larger neighbors, Japan and China, in ICC arbitrations – an important measure of activity in this field. Readers may also be surprised at the many ways in which Seoul is a good alternative to more standard rivals Singapore and Hong Kong as a place for conducting arbitrations. In fact, this may become the reality, as Korea has shifted from an inbound investment locale to outbound, and has seized a top global position in a number of sectors, including shipbuilding and technology. With stronger bargaining power, Korean parties may insist on holding more arbitrations in Korea.

The remaining chapters of the book cover all the areas one would expect: arbitration agreements, arbitral tribunals, arbitration procedures under the rules of the local arbitration institution, enforcement of arbitral awards, and the supportive role of the courts. For those unfamiliar with Korea’s legal system there is even an overview of Korean civil court procedures.

With regard to arbitration practice and procedure, readers will be comforted to find few surprises. Korea (1) is a signatory to the New York Convention, (2) in 1999, was the first Asian country to adopt the UNCITRAL Model Law and (3) has a judiciary that has been consistently supportive of the arbitral process.

Our book also points out a few practices and procedures where Korea stands apart, though there are not many. For instance, requests for provisional attachments can be made *ex parte* and may be subject to a more lenient standard than some jurisdictions.

Publishing this book has been a satisfying cap to our team’s first decade. It reflects not only our knowledge of the laws and rules, but our practical experience as well. And that experience has been substantial, even in just one decade, for several reasons which may be particular to Korea. First, there is no cultural reluctance to litigate business disputes as you may find in Japan. Second, Koreans are quick to adapt to new trends and once they take hold, they are often widely adopted. And third, there is a business culture that is comfortable with turning things over to the ‘dispute experts’ once things reach a breaking point on the business level. Thus, arbitration has taken hold quickly in Korea and become a standard and accepted part of international business practice. As a result, our team has accrued a wealth of experience in the last decade, and we have tried to reflect that practical experience in the book.

For anyone who is interested in arbitration in Korea – or who finds themselves engaged in one as a party – we hope this book will be a valuable resource.


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