

Korean Government's Vigorous Move to Nurture Arbitration "Industry"

Kluwer Arbitration Blog

December 17, 2017

Hongjoong (Paul) Kim, Sejin Kim (Bae, Kim & Lee LLC)

Please refer to this post as: Hongjoong (Paul) Kim, Sejin Kim, 'Korean Government's Vigorous Move to Nurture Arbitration "Industry"', Kluwer Arbitration Blog, December 17 2017, <http://arbitrationblog.kluwerarbitration.com/2017/12/17/korean-governments-vigorous-move-nurture-arbitration-industry/>

Arbitration Industry Promotion Act of Korea

In South Korea, the Arbitration Industry Promotion Act ("Promotion Act"), which was enacted on 27 December 2016, finally took effect on 28 August 2017. The purpose of this legislation is to promote arbitral procedures within Korea by expanding required infrastructures such as dispute resolution facilities, arbitration professionals, arbitration system, etc. and to ultimately develop Korea as the "hub" of international arbitration. (Promotion Act, Article 1) To this end, the Promotion Act focuses on "arbitration industry" rather than "arbitration" itself. The Promotion Act defines the arbitration industry as "various industries related to dispute resolution facilities, services, etc. required to attract arbitration cases and conduct arbitral proceedings." (Promotion Act, Article 2(2)) A similar language is found in the International Conference Industry Promotion Act, which defines the international conference industry to mean "industry related to international conference facilities, services, etc. necessary to attract and hold international conferences." Stated otherwise, the Promotion Act intends to maximize certain economic benefits to be collaterally derived from arbitral proceedings conducted within Korea.

Policy Consideration behind the Promotion Act

The industrial aspect of arbitration is well illustrated by Hong Kong's experience. Recognizing international arbitration as a service sector generating national wealth, Hong Kong has actively provided legislative and financial supports to nurture arbitration "industry" in the past decade. As a result, for the first time in Asia, it succeeded in hosting the Regional Office of ICC Arbitration Court in September 2009. Such efforts did lead to the revitalization of other industry sectors such as aviation and tourism.

Indeed, if a certain city or country is designated as an arbitration seat or venue, many practitioners, law firms, and parties to international disputes (including various interested parties) from all around the world travel to that place and often stay for a long period of time for hearings. This in-bound flow of resources has also prompted an increasing number of law firms to newly open or expand their local branches in cities that are frequently designated as arbitration venues like Hong Kong and Singapore. Such large-scale residence of foreign talent has proven to greatly contribute to the growth of related service industry. The Promotion Act envisions similar collateral benefits experienced by these countries.

Activities Envisioned in the Promotion Act

In this connection, the Promotion Act gives the Korean Ministry of Justice (a competent authority that principally enforces the Act) the authority and responsibility to play an active role in promoting the arbitration industry. Specifically, the Promotion Act requires the Minister of Justice to establish and implement a basic plan for promoting the arbitration industry every five years. (Promotion Act, Article 3) Furthermore, the Minister should establish a plan for the overall development of the arbitration industry by nurturing arbitration practice and culture in Korea, and training professionals with relevant expertise, etc. (Promotion Act, Article 3) The Minister may also request cooperation from the head of a local government for the purpose of achieving the basic plan. However, arbitration institutions, including the Korean Commercial Arbitration Board (“KCAB”), would not be included in the plan, because the Ministry of Justice would serve only as a control tower in preparing the plan; these institutions, therefore, would independently operate outside the government’s influence. Notably, the Korean Arbitration Act (“Arbitration Act”) has already allowed the government to financially support all or part of the expenses required by arbitration institutions in Korea. [fn]Arbitration Act, Article 40: “In order to ensure impartial and rapid settlement of domestic or international commercial disputes and to establish the order in international transactions pursuant to this Act, the Government may fully or partially subsidize an incorporated association designated by the Minister of Trade, Industry and Energy as one that conducts commercial arbitration for necessary expenses”. [fn] This, in fact, has enabled the KCAB, which is the only institution in Korea that autonomously publishes its own domestic/international arbitration rules, to receive government funding. However, such financial support for arbitration institutions is different from various supports for the overall arbitration industry as set out in the Promotion Act. Accordingly, the Promotion Act is a new step taken by the Korean government to nurture arbitration practice as a main driving force to collaterally vitalize the markets of various industry sectors in Korea.

Further, the Minister of Justice may establish and operate dispute resolution facilities, and conduct related research and international cooperation to create a basis for promoting the arbitration industry; (Promotion Act, Article 4) and financially support the establishment, operation and promotion of “dispute resolution facilities”. (Promotion Act, Article 5) In addition, the Minister should also prepare certain measures to effectively train manpower with relevant expertise and skills (Promotion Act, Article 6) and to promote Korea as arbitration seats of many international arbitration cases. (Promotion Act, Article 7) These requirements appear to be based on the understanding that Korea should expand arbitration-related infrastructures and cultivate professional manpower to gain high recognition as an attractive venue for international arbitration. Indeed, a large-scale investment is essential to create such an arbitration-friendly environment. For example, in Singapore, Maxwell Chambers, which the government provided to arbitration institutions free of charge, played a key role in a rapid increase of arbitration cases conducted in Singapore.

Anticipated Expansion and Direction of Arbitration Practice Market in Korea

The most important factors that arbitration practitioners often consider when choosing arbitration places are known to be a pro-arbitration legal regime and arbitration-friendly courts. In Korea, The Arbitration Act, which closely modeled the UNCITRAL Model Law, has already provided a stable legal framework for fair resolution of international disputes through arbitration. Also, given that Korea is a signatory to the New York Convention, Korean courts have been well known to recognize and enforce foreign arbitral awards without any difficulty. Furthermore, the Korean peninsula, located between the land power (China, Russia, other European countries, etc.) and the sea power (the U.S., Japan, etc.), is in the middle of the geopolitical equilibrium that can provide parties from both regions with equal access to independent legal services free of any legal/political/economic influences.

Given these unwavering merits as an arbitration seat, Korea is likely further improve legal

infrastructure to attract arbitration cases to Seoul as required by the Promotion Act, particularly, in certain industry sectors that currently enjoy relative advantages. For example, there has been outstanding expansion of Korea's entertainment industry as illustrated by the recent phenomenon of the "Korean Waves" in dramas, movies, music, concerts, and games with high recognition at a global level. Thus, it is very likely that various players in this business sector will be encouraged by the government to resolve their cross-border disputes through international arbitration in Korea. This will also lead to a demand on more arbitration practitioners with relevant expertise and experience in the Korean legal market. Similar promotional effects are anticipated in other sectors as well, including information technology and medical industry.

Based on the above, the Promotion Act would likely prompt the Korean government to fully gear up in preparation for promoting arbitration in various industry sectors, anticipating certain "spillover effect" for economic benefits. This would demand further and consistent attention of arbitration practitioners from all around the globe.