

# What's "Next" for Arbitration in Korea

## **Kluwer Arbitration Blog**

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David MacArthur (Bae, Kim & Lee LLC)

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Sometimes described as “a shrimp among whales,” Korea is situated between China to the west and Japan to the east. Historically, the ambitions of the two large, neighboring countries—and, in more recent times, other larger powers—have sometimes threatened to overwhelm or subsume Korea. Indeed, during the Cold War, the political maneuverings of global powers divided the country in half, reducing South Korea’s population and geographical footprint even further, not to mention the devastation inflicted on the country in economic and other terms. But while its northern sibling may grab more headlines, South Korea has not only persisted in maintaining its independence of sovereignty, culture and spirit, it has thrived. The upshot of this history is that, out of sheer necessity, Koreans have developed a powerful resilience and capacity to seize and magnify opportunities when they arise.

This is no less true in the field of international arbitration. South Korea has seen a dramatic rise in international arbitrations involving Korean parties (as well as Korean counsel) over the past two decades, with a quantity and quality of cases comparable to—or even the envy of—many more established or much larger jurisdictions.

### **Growth of Arbitration in Korea**

Serendipitously, this came about by historical accident, through the catalyst of the Asian Financial Crisis in the late 1990s. As the Korean economy teetered on collapse, the IMF infused the largest bailout in its history, on terms that required many corporations and conglomerates to achieve fiscal stability by dispensing of non-core assets, resulting in rapid and large-scale FDI in Korea, with international arbitration clauses inserted in most of the resulting deals. This crucible of forced corporate divestments predictably resulted in many hotly contested disputes arising in the ensuing years, mostly resolved in international arbitrations. Moreover, these cases tended to be relatively high value, complex, and often culminated in a final award (rather than settlement at an earlier stage).

Korean parties soon grew to be among the most frequent users of international arbitration under various institutional rules. In the case of ICC arbitrations, for instance, Korean parties became overall more active than Chinese and Japanese parties in objective numbers despite the country being significantly smaller in nearly every relevant measure, whether land mass, population, size of economy, or volume of international trade.[fn] With an estimated 1.4 billion people (as of 2018 data), China is the world’s most populous country, with Japan at 126 million and Korea 51 million. In landmass, China has 9,326,410 sq km, Japan 364,485 sq km and South Korea a mere 96,920 sq km. Likewise, looking at recent data for comparative purposes, China has the world’s highest national GDP at 23.21 trillion in USD (as of 2017 data), with Japan at 4<sup>th</sup> with 5.443 trillion in USD, and Korea at 14<sup>th</sup>,

with 2.035 trillion in USD. In trade volume, China had import/export volumes of USD 2.216 trillion/1.74 trillion respectively (as of 2017 data), while Japan had USD 688.9 billion/644.7 billion, and Korea USD 577.4 billion/457.5 billion. Data drawn from <https://www.cia.gov/library/publications/the-world-factbook/>.<sup>[fn]</sup> For example, over the two-decade period from 1998 to 2008, there were 665 Korean parties in ICC arbitrations, 422 Japanese parties and 499 mainland Chinese parties.<sup>[fn]</sup> Data for 1999 to 2009 has been drawn from [ICC International Court of Arbitration Bulletin](#), Vol. 19, No. 1 (2008), Vol. 20, No. 1 (2009), and Vol. 21, No. 1 (2010); data for 2009 to 2018 was directly provided to the author by ICC staff.<sup>[fn]</sup> In addition, over the same time period, over 1,100 international cases were filed with the KCAB, typically involving one or more Korean parties.

As this wave of arbitrations began sweeping over Korea, several young, ambitious partners at major Korean firms saw an opportunity. Initially through co-counseling with more experienced international firms in significant cases, they formed teams of young practitioners who soon became deeply familiar with global ‘best practices’ in international arbitration while also advancing in advocacy skills. Since then, through the rapid growth in the field, several of those early arbitration teams have grown exponentially, with the top practices reaching upwards of 25 active practitioners. And, as the market has matured, other local firms have also established dedicated international arbitration practices while a number of international firms have set up offices in Seoul as well.

### **Growth of International Arbitration Community in Korea**

One of the notable ways that the first generation of arbitration leaders in Korea—who have since joined the ranks of the global and regional leaders in the field—was able to capitalize on this burgeoning practice area was through deliberate efforts to share know-how, forming organizations expressly for this purpose, including the [Korean Council for International Arbitration](#) (“KOCIA”), the ICC Korea and the Federation of Korean Arbitrators, working to enhance the arbitration chops of the local bar.

In addition, they began to directly recruit talent from outside of Korea, including from the Americas, Europe and across Asia. In this way, they were able to add a variety of capabilities in language, law and advocacy to their already skilled local teams. I was one of the lucky ones to stumble into this small but very active arbitration scene in the mid-aughts, as was my co-chair, [Robert Wachter of Lee & Ko](#), along with Sue Lim—who is now Secretary General of [KCAB International](#)—and several other members of the [KCAB Next Steering Committee](#). Notably, three or more Korean firms have ranked in the GAR 100 global rankings every year since its inception in 2008, with the top firms occasionally breaking into the GAR 30.

In tandem with the rise of arbitration among parties and counsel in Korea, the country also took proactive steps to establish and enhance its reputation as a reliable and attractive seat for arbitrations. Among them:

- Korea was the first East Asian country to adopt the UNCITRAL Model Law in 1999, which has since been updated from time to time, including most recently to reflect certain aspects of the 2006 revisions to the Model Law.
- The Korean judiciary, with a high rating for independence and lack of bias or corruption, regularly provides focused training on matters particular to international arbitration. The courts tend to be supportive of the arbitral process, not intrusive.
- In 2012, following the example set by Singapore’s Maxwell Chambers, Korean authorities established the [Seoul International Dispute Resolution Center](#) (SIDRC) with attractive and

convenient hearing rooms utilizing the latest multi-media screen technology from Samsung and Apple. In 2018, the SIDRC was moved to even more spacious facilities.

- In addition, Seoul offers travel infrastructure on par with any modern international city as well as, increasingly, transcription, translation and other essential services for arbitral hearings and a location that might be considered convenient and neutral in cross-border deals involving parties in the Asia-Pacific region.

### **KCAB and KCAB International**

Over this same time period, Korean Commercial Arbitration Board (KCAB), as the official arbitral institution of Korea, steadily developed into a globally recognized and reliable institution. It did this in a number of ways including the establishment of a separate set of rules for international disputes in 2008, which have since been updated several times.

In recent years, it has received substantial governmental funding for purposes of promotion and development of international arbitration services in Korea. In 2018, KCAB International was established as an independent division of the KCAB to meet the growing demand for cross-border commercial dispute resolution, with leadership drawn from the ranks of the most experienced practitioners and arbitrators in Korea, demonstrating a commitment to world class case handling for international disputes. This commitment is manifest in the appointment of Ms. Lim, who as mentioned above, is its first Secretary General and previously practiced for over a decade at one of the premier arbitration practices in Seoul; as well as the appointment of Prof. Hi-Taek Shin, a highly respected and experienced international arbitration hand based in Seoul, as the Chairman of the organization. In addition, an International Arbitration Committee comprised of many well-known figures in the field worldwide, has been established to consult on issues relating to the appointment, challenge, replacement, and removal of arbitrators by KCAB International. The organization now also has offices in Los Angeles and Shanghai.

### **KCAB Next**

It is with this historical and institutional backdrop that KCAB International led the creation of **KCAB Next**. It is tasked with aiding the *next generation* of arbitrators, leaders and practitioners with a nexus to Korea in developing their career and skills. Unlike various “young” groups formed under the auspices of various arbitral organizations, this group has no specific age limitation and invites the involvement of anyone falling within those categories who believes they can contribute to or gain something from the group.

KCAB Next aims to aid in the professional development of its members through various initiatives, including workshops and training events, social networking events, and encouraging and providing opportunities to publish on various topics in international arbitration, including in partnership with the Kluwer Arbitration Blog, as well as other innovations currently under discussion. The Steering Committee is optimistic that the organization will be able to offer unique and valuable opportunities to its members in the development of their careers in the field of international arbitration, at various levels. Like the organizations set up by the early practice leaders in Korea, its primary aim is to facilitate the sharing of know-how and build-up of skills through collaboration among its members. In this way, we hope that the KCAB Next will facilitate the growth of Seoul’s arbitration services cluster, boosting its creative and intellectual capital even further. One key difference from the first decade of arbitration growth in Korea, reflecting the more mature and established position of Korea in the global

field of international arbitration, is that the KCAB Next has an expressly more international mission, which is to connect those practicing in Korea with their peers abroad who have a nexus with or interest in Korea, and vice-versa.

In this regard, KCAB Next aims to collaborate with various organizations, institutions and individual practitioners in other jurisdictions around the globe. Readers of this blog with an interest in the Korean arbitration market are invited to register with the organization by emailing [knext@kcab.or.kr](mailto:knext@kcab.or.kr).