

Kluwer Arbitration Blog

Interviews with Our Editors: Professor Hi-Taek Shin, Chairman of KCAB INTERNATIONAL

Arie C. Eernisse (Associate Editor) (Shin & Kim) · Wednesday, May 18th, 2022 · KCAB Next



Professor Hi-Taek Shin is the Chairman of KCAB INTERNATIONAL, which is the international division of the Korean Commercial Arbitration Board (“KCAB”), Korea’s sole commercial arbitral institution. In addition to his duties as Chairman of KCAB INTERNATIONAL, he sits regularly as an arbitrator affiliated with Twenty Essex, both in international commercial arbitrations and investment treaty arbitrations. He is on the panel of arbitrators for the major international arbitral institutions, such as HKIAC, ICDR, ICSID, KCAB and SIAC. He recently retired from Seoul National University School of Law, where he had taught international business transactions and dispute resolution arising therefrom since 2007. Prior to moving to academia in 2007, he was a partner at a leading Korean law firm, where he specialized in mergers and acquisitions, cross-border investments and the resolution of disputes arising from cross-border investment projects.

*Professor Shin, thank you for joining us on the Kluwer Arbitration Blog! We are grateful to hear your perspective on Korea as an arbitration hub, the dynamic rise of **KCAB INTERNATIONAL** and your experience as an arbitrator.*

1. You have witnessed most, if not all, of the major milestones of Korea's rise to prominence on the modern international arbitration scene. Can you please describe what you consider to be the watershed moments? Also, why is it that Koreans seem to love international arbitration so much?

The KCAB was established in 1966 and celebrates a rich history, with its 56th anniversary this year. I think it is probably one of the most enduring arbitral institutions in Asia. Since its establishment, we have seen the number of arbitration cases grow substantially with each passing year. In fact, last year we received a total of 500 new arbitration cases.

KCAB was initially established at the initiative of the Korean government as a dispute resolution center largely focused on disputes arising from export and import business transactions. In more recent years, KCAB has been keenly aware of the growing expectation of local and global companies for high-quality international arbitration case management, and accordingly KCAB has invested in its capacity for international arbitration services. Such efforts have progressed significantly since 2010 when Korea started to reflect on the main contents of the 2006 amendments to the UNCITRAL Model Law on International Commercial Arbitration ("Model Law").

Korea's Arbitration Act was amended in 2016, and the KCAB International Arbitration Rules were revised in 2016 as well. To establish arbitration infrastructure that satisfies the existing demand for arbitration in Seoul, we also constructed a facility for hearings in 2013 called the Seoul International Dispute Resolution Center ("Seoul IDRC" or "SIDRC"). Subsequently, in 2018, recognizing the importance of our growing international case load we established KCAB INTERNATIONAL, an institution exclusively dedicated to our international arbitration cases. In the same year, SIDRC and KCAB were also merged as one of the finishing touches of our effort to adapt.

I would say Korea's attitude toward wanting to be ahead of the curve and its adaptability are the reasons why Korean companies are willing to adopt new systems to manage and resolve their legal risks. This has contributed to the success of international arbitration in Korea.

2. In the time you have been closely involved with the Seoul IDRC and KCAB INTERNATIONAL, what are some of your proudest achievements?

As mentioned above, the SIDRC was established in 2013 as part of an effort to make Seoul a more arbitration-friendly place and provide professional services with a reasonable fee system for the hearings of major arbitral institutions around the world, including KCAB. Since its establishment, the SIDRC has received positive feedback for its advanced IT services and has also supported various institutions such as ICC, SIAC, and HKIAC who have held their hearings at SIDRC. We are pleased to have served all those who have visited Korea and also to have repeatedly hosted relevant arbitral events through this platform.

The fact that the SIDRC has risen to all of the challenges posed by COVID-19 and that it has enabled arbitral tribunals, legal counsel, and parties to utilize our sophisticated virtual hearing facilities where in person hearings were not feasible, has helped us garner appreciation and respect from the arbitration community.

It has personally been extremely rewarding for me to have been involved with the expansion of the SIDRC and KCAB INTERNATIONAL.

- 3. I understand that you took part in the task force to revise [Korea's Arbitration Act](#) in 2016 to incorporate the 2006 amendments to the Model Law. What were some of the key amendments to the Arbitration Act and are you aware of any notable cases that have interpreted such amendments or other ways in which the amendments have had a practical impact on the arbitration environment?**

I believe the reason for continuous amendments to the Act was to expand the versatility of arbitration. By broadening the scope of arbitration, the amendments have sought to achieve arbitrability of disputes across several fields, in turn facilitating greater party autonomy and improving the overall framework for arbitration of disputes.

The amended Arbitration Act reflects relaxation of several former formal requirements of arbitration, which is in line with the 2006 amendments to the Model Law. Particularly, the inclusion of non-property rights within the scope of arbitrability has made it easier for more people to get their disputes resolved by arbitration.

Also, extensively adopting the interim measure provisions from the 2006 amendments to the Model Law is another crucial improvement. As is well known, the court's active cooperation and support are essential to make arbitration effective. It was essential, therefore, to set strong timelines for the court to assist with interim measures by strengthening the court's cooperation in the examination of evidence.

Furthermore, the recognition and enforcement procedure of arbitral awards, for which improvements were constantly requested, was simplified.

- 4. As you have mentioned, the KCAB International Arbitration Rules ("KCAB Rules") were revised significantly in 2016 to include, among other things, an emergency arbitration procedure, joinder and consolidation provisions and a higher monetary threshold for the expedited procedure. Have users taken advantage of these provisions?**

As you are likely aware, the rules of the major arbitral institutions worldwide are increasingly converging in a positive way. Each institution has been closely looking at the other institutions' rules, and they are constantly benchmarking each other.

Accordingly, KCAB also revised its rules in 2016 based on the then-current needs of the industry. The rules adopted back then, such as the emergency arbitrator and the joinder of additional parties, have been actively in use ever since. I have noticed that several arbitral institutions have recently revised their rules or are working on revisions. Having been closely monitoring these details and considering the needs and expectations of users, we are going to launch a task force for the amendment of our rules based on the suggested improvements that have been discussed during the proceedings with our rules.

For parties who use the KCAB International Arbitration Rules, we work hard to constantly assess

what KCAB can provide to cater specifically for user convenience while tackling any specific issues or requirements that parties might think of, and we think that this flexibility in our approach sets us apart from other major arbitral institutions.

5. Sue-Hyun Lim, who served as Secretary General of KCAB INTERNATIONAL from June 2018 to the end of 2021, accomplished a lot for the organization and helped raise its profile internationally. What are your overall impressions of her tenure as KCAB INTERNATIONAL's first secretary general? Can you tell us about her successor?

With the appointment of our first Secretary-General for KCAB INTERNATIONAL, we wanted to convey a strong message within both the international arbitration and business communities that we had finally arrived. Internally, we had to work towards solidifying the position of KCAB INTERNATIONAL as the sole international arbitral institution based in Seoul and, externally, we had to constantly demonstrate that we are comparable to other international arbitral institutions in line with global standards. There were high expectations for Ms. Lim from the start of her term.

Following her appointment, KCAB INTERNATIONAL reviewed every aspect of its case management process and upgraded it to international standards. In particular, under her leadership, the Secretariat revised its overall process for appointing arbitrators, including through nuanced considerations for the nationality of the parties as well as the diversity of arbitrators, in order to ensure neutral and impartial proceedings.

Ms. Lim worked with our case managers and ensured the best training for them through each stage of the arbitration process so that parties approaching KCAB INTERNATIONAL would find a dedicated, efficient case-management team. Ms. Lim was particularly instrumental in conveying to the international arbitration community that KCAB INTERNATIONAL is evolving and strongly committed to providing sophisticated international arbitration services. We truly laud her for her achievements.

Also, I am delighted to welcome Mr. Steve Kim as our new Secretary General. He has served as the Director of the International Centre for Dispute Resolution (ICDR) of the American Arbitration Association (New York). During his tenure as Director at ICDR, he facilitated an increase in the ICDR's annual caseload and growth at ICDR. I have great confidence that he will successfully lead KCAB INTERNATIONAL so that it continues to meet the sophisticated and diverse demands of its ADR users, enhancing the reputation of KCAB INTERNATIONAL as a trusted arbitral institution.

6. Institutions such as the HKIAC and SIAC maintain a presence in Seoul, but KCAB has also opened its own offices in Los Angeles, Shanghai and Hanoi. Can you tell us about the role of these offices, their progress up to now, and how they function as part of KCAB INTERNATIONAL's larger strategy?

The common feature of all three of these overseas offices is that Korean companies and Koreans are actively investing and conducting business in those locations. Along with this fact, even statistically, among the international arbitration cases filed with the KCAB, those from the United States, China, and Vietnam occupy the top three ranks.

Thus, it is practical from a business development point of view to retain these offices. Besides providing consultancy services for parties involving Korea-related disputes within these respective regions, I can tell you that we have also had requests for some cases from Vietnamese or Chinese parties which have been handed over from our overseas offices, after their consultations.

As you might be aware, in Vietnam, Korea is the number one investor in terms of Foreign Direct Investment. Some of these investors will inevitably face cross-border disputes. Setting up overseas offices in these three locations thus helps us to closely support Korean companies and their counter-parts in such regions by providing an efficient dispute resolution system.

7. Besides serving as the chairman of KCAB INTERNATIONAL, you lead an active practice sitting as arbitrator. What type of cases do you gravitate toward the most?

My cases are equally split between commercial arbitration and investment arbitration cases. I strongly feel that my transactional background has proved a valuable asset for my work today as a sitting arbitrator. For most of my practice, 27 years at Kim & Chang, I was a transaction counsel working on international agency agreements, joint-ventures, M&A transactions and also some financial derivatives work. As time progressed, my corporate clients wanted me to also manage their disputes work, as if I had been their in-house counsel, serving as an intermediary between them and their arbitration lawyers. These experiences were very valuable to me.

8. As one of the leading Korean and Asian arbitrators, do you have any tips for the younger generation on how to distinguish yourself and gradually build a personal brand as an arbitrator?

I think the main challenges for young lawyers who aspire to be arbitrators is about how to get their first appointment. Motivation and persistence are essential ingredients for a successful career in international arbitration.

I would say that working with a reputable law firm is a definite indicator of strong capacity and could be one of the building blocks that leads you toward your first appointment. But, even if you are not involved with a leading firm or institution, there are several ways of building your own brand. The primary method is making yourself visible and letting your interest be known to the relevant community.

Attending seminars, arbitrator related courses offered by institutions, and writing articles could also offer a good start. Authoring or co-authoring small pieces and gradually shifting toward writing articles on more serious issues could be a great way to ease into academic writing. Serving as an editor of an arbitration publication could also help to make great connections with members of the community. It is the tiny steps that ultimately lead to gradual recognition and consideration for appointments. Therefore, as I said earlier, there is no substitution for motivation and persistence.

There are many aspiring arbitrators who want to be featured on institutional lists/rosters to sit as arbitrators. I think contacting and making a great impression on case managers/counsels at institutions is helpful in this regard. Regular contact with case managers/counsel while working on

cases with an institution assists one with getting introduced to the institution. Gradually, the institutional staff will take notice of your credentials and you may be considered for subsequent appointments. At KCAB INTERNATIONAL I always encourage the team to look for fresh candidates for appointments. You may start with small cases and humble appointments, but these will build your record and help you expand your opportunities. Moreover, your efforts to efficiently manage the flow of the case such as attention to details and judicious compliance with deadlines will let the case managers or case counsel know that you are a dependable arbitrator.

Lastly, as a parting note, I would also advise aspiring arbitrators to familiarize themselves with the art of patience. It is great to have a vision for one's future prospects. However, one should not shift all focus away from their current responsibilities. Thus, if you are currently working as counsel, focus on establishing yourself as reputable counsel first. This will help you establish credibility before both arbitrators and the parties involved. Your future nomination will then come from both parties as well as arbitrators who may be listed with several institutions and this will follow as natural result of your reputation as a counsel.

Thank you for your time, Professor Shin. We wish you and KCAB INTERNATIONAL continuing success.

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