

The Rise of Arbitration in South Korea

Arbitration has clearly emerged in Korea as the most favored method for resolving international commercial disputes. Statistics from the ICC show that Korean parties were involved as claimants or respondents in 30 ICC arbitrations in 2008 and 31 in 2009, trailing only the much larger countries of India and China. Korean parties have also been increasingly active in arbitrations under the rules of the Singapore International Arbitration Centre and other regional arbitral institutions. Notably, the Korean Commercial Arbitration Board ("KCAB") has seen tremendous growth in the number of international arbitrations administered under its rules in Korea. In 2009, for example, the KCAB administered 318 arbitration cases, of which 78 cases were international arbitrations, an increase of almost two thirds in the number of international cases over the prior year.

What accounts for the remarkable spike in the use of international arbitration by Korean parties? It is more than just the fact that arbitration is perceived to be more expedient and cost efficient, and less risky, than litigation in the courts. We believe the following factors have contributed to the rise of arbitration in South Korea.

1. The global presence of Korean companies has led to more international transactions and projects, and hence more disputes, involving Korean parties in markets around the world. This trend will continue as Korean companies expand their global footprint with investments and commercial ventures in Asia, Latin America, Eastern Europe and Africa. In addition, the opening of Korea's markets through free trade agreements with the European Union and the United States will lead to even more commercial agreements with arbitration clauses between Korean and foreign parties.
2. The increased size and sophistication of in-house legal departments at Korean companies has also contributed greatly to this trend. In the past, Korean companies tended to have small in-house legal departments made up of personnel who were not legally trained. Today, however, many legal departments employ both Korean and foreign licensed attorneys, many with experience in litigation and arbitration, and with a very sophisticated understanding of the importance of drafting and negotiating
3. The demonstrated fairness and effectiveness of international arbitration in several high profile cases in the past has also encouraged Korean companies to select arbitration as the preferred method of dispute resolution. In the past, arbitration was seen as something run by and for foreigners. However, Korean companies achieved fair and favorable results in their arbitration cases, despite the fact that the arbitrations were conducted in English and in a foreign country and governed by foreign law. This had a very positive impact on the perception of international arbitration in Korea, and led to an increased willingness on the part of Korean companies to submit disputes to resolution by arbitration.
4. The proactive development of the KCAB has also played an important role in increasing both the awareness and attractiveness of international arbitration for the resolution of international commercial disputes. In addition to providing a "home-court" venue for international arbitrations, the KCAB has provided educational programs for Korean attorneys and businesspersons in Korea (and in the Korean language) regarding the advantages of international arbitration, and has engaged with other regional arbitral institutions to foster the growth of arbitration in Korea and the region. In addition, the KCAB has recently proposed some welcome changes to its International Rules in order to address the needs of foreign parties in international arbitrations in Korea. These changes include the automatic application of the International Rules to all international arbitrations (currently the domestic rules apply by default unless otherwise specified), increases in arbitrator compensation, and the introduction of expedited procedures. The proposals have been submitted for review and approval by the Supreme Court after careful study by the KCAB, and approval is expected in early 2011.
5. The development of international dispute resolution practice groups in South Korean law firms has been both a reaction to and a catalyst for the increased use of international arbitration by Korean

dispute resolution clauses which provide for international arbitration rather than litigation in a foreign jurisdiction.



Benjamin Hughes

parties. Bae, Kim & Lee was the first large Korean law firm to recognize the potential for such a specialized practice in Korea, and other large firms such as Kim & Chang and Shin & Kim (where this author is a partner) have enthusiastically joined the fray. The international dispute resolution teams at Korean firms include experienced Korean and foreign-licensed attorneys with experience in various legal systems and fluency in English and other languages. Korean firms now have partners sitting on the boards of several major regional and international arbitral institutions, and playing an important role in promoting the growth and development of international arbitration in Korea and the region.

The trend of increasing utilization of arbitration for the resolution of international commercial disputes by Korean parties is expected to continue, as Korean companies continue to expand and to develop commercial relationships with companies all over the world. In addition, as Korean companies gain more leverage in their contract negotiations, we can expect to see more and more arbitrations seated in Korea, governed by Korean law, and under the revised International Rules of the KCAB.

SHIN & KIM

Benjamin Hughes
(Senior Foreign Legal Consultant), SHIN & KIM

For more information, please contact:
Benjamin Hughes
(Tel: +82-2-316-4211, E-mail: bhughes@shinkim.com)