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Arbitration Law of Korea: Practice and Procedure¹

There has been an explosion of interest in the Korean legal market as it finally opens its doors to foreign law firms, pursuant to Korea's free trade agreements with the United States and the European Union. One of the few areas in which foreign law firms will be able to compete directly and without significant restriction with Korean law firms is international commercial arbitration. The publication of this book in English on the practice and procedure of arbitration in Korea is therefore timely indeed.

One of the problems foreign in-house counsel, arbitration counsel and arbitrators face when dealing with arbitration in Korea is access to information. Korean is a very difficult language to learn, and very little information about the jurisprudence regarding arbitration or related civil procedure has been published in English. Kevin Kim and his team have stepped in to fill this gap with an ambitious book which will be much appreciated by anyone in need of a thorough education about arbitration in Korea.

The book is divided into nine chapters and includes three helpful appendices: the Korean Arbitration Act, the International Rules of the Korean Commercial Arbitration Board (KCAB), and the KCAB's Domestic Rules. All three are provided in both Korean and English.

Chapter 1 provides a brief history of arbitration in Korea, as well as an introduction to the rest of the book. Chapter 2 provides a helpful overview of civil litigation in Korea.

Chapter 3 deals with the arbitration agreement and includes a comprehensive discussion of the applicable provisions of the Arbitration Act and relevant court decisions. Its coverage includes such issues as determining the validity of an arbitration agreement, the proper

parties to the agreement and the scope of the agreement to arbitrate.

Chapter 4 discusses arbitral tribunals, including advice on how to choose an arbitrator. It also includes detailed discussion of the duties and powers of arbitrators, as well as the challenge, removal and replacement of arbitrators and challenges to the jurisdiction of the tribunal.

Chapter 5 is dedicated to arbitration procedure and includes detailed summaries of the KCAB's two sets of rules. The KCAB adopted its International Rules in 2007 in order to encourage foreign parties to arbitrate their disputes in Seoul under the auspices of the KCAB. These Rules were not, however, used due to a provision which caused the Domestic Rules to apply by default unless specifically agreed by the parties. This problem was remedied by the amendments to the International Rules which took effect on 1 September 2011. A handful of cases are now proceeding under the International Rules, so this chapter's introduction to the Rules is most welcome.

Chapter 6 deals with arbitral awards, including the decision-making process of the tribunal, the different kinds of awards made by an arbitral tribunal and, in particular, awards on costs. This is an often overlooked area, so it is nice to see attention paid to the subject here. As one commentator has put it: "While costs are the last thing to be dealt with in any arbitration, they are usually the first thing on the client's mind."²

Chapter 7 explains the role and involvement of the courts in the arbitral process. Korean courts are supportive of arbitration and do not interfere with the tribunal's authority. The court does, however, have a role to play in supporting and maintaining the effectiveness of the arbitral process. This chapter discusses the court's role in ordering interim relief,

assisting with the taking of evidence, hearing appeals

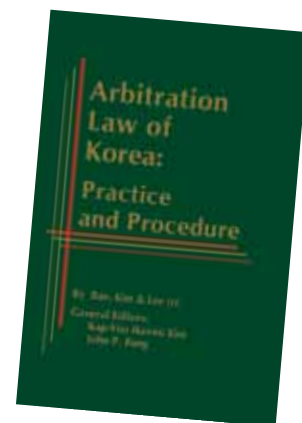
to challenges on jurisdiction and challenges to arbitrators, experts and the formation of the arbitral tribunal.

Chapter 8 is a stand-alone chapter dedicated entirely to interim measures.

Chapter 9 addresses the challenge, recognition and enforcement of arbitral awards. It takes the reader through the procedures for setting aside a domestic arbitral award and the grounds for refusing to recognise or enforce foreign arbitral awards. Numerous court cases are cited in support of the well-founded proposition that Korea is an extremely friendly jurisdiction to arbitration. Parties seeking to enforce an arbitral award in Korea may rest assured that the Korean courts will enforce the award in accordance with the New York Convention and accepted international standards.

The book is a welcome resource for anyone practising in Korea or involved in Korea-related arbitrations. It will also be eagerly read by students and others interested in arbitration in Korea. The book is the product of contributions by no fewer than 18 authors. The General Editors are to be congratulated for publishing this useful and timely volume.

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¹ Kap-You (Kevin) Kim & John P Bang (General Editors) (2011, Juris Publishing, ISBN 978-1-933833-77-4, 528 pp, casebound.

² Michael P O'Reilly, *The Problem of Costs in International Arbitration*, a paper given to the Regional Arbitral Institutes Forum (RAIF) Conference on International Arbitration 2012 (Bali, Indonesia, 5-6 May 2012) – http://www.baliraif2012.com/assets/pdf/session5/Michael%20O'Reilly_The%20problem%20of%20costs%20in%20international%20arbitration.pdf.