How to Develop an International Arbitration Industry in South Korea

Jongsok Choi*

I. INTRODUCTION ................................................................. 1

II. FEATURES OF INTERNATIONAL ARBITRATION ................... 2

III. ARBITRATION INDUSTRY IN THE ASIA .................................. 4

   A. International Preferred Seats of Arbitration ....................... 4
   B. Arbitration Industry in Singapore ................................... 5
   C. Arbitration Industry in Hong Kong ................................. 8
   D. Arbitration Industry in South Korea ............................... 12
      1. Current Status of International Arbitration in South Korea 12
      2. South Korean Government’s Efforts to Date .................... 14

IV. FUTURE IMPROVEMENT OF THE INTERNATIONAL ARBITRATION INDUSTRY IN SOUTH KOREA ................................................... 17

   A. Marketing KCAB as an Arbitration Institution and Seoul IDRC as an Arbitration Venue ..................................................... 18
   B. Nurturing Competitiveness of International Arbitration in the Specialized Fields ......................................................... 20
      1. Construction .................................................................. 20
      2. Shipbuilding ................................................................ 20
      3. Information and Communication Technology .................. 21
      4. Entertainment ................................................................ 25
   C. Third-Party Funders in International Arbitration ............... 27
   D. Benefits to International Arbitrators and Legal Practitioners ... 28
   E. Enhancing the KCAB’s Arbitrator Pool and Developing Certified Educational Systems .................................................. 29
   F. Simplifying and Unifying Arbitration Representatives’ Quality. 31
   G. Promoting Investor State Dispute Settlement (ISDS) Arbitration for International Environmental Disputes ............ 33

V. CONCLUSION ......................................................................... 35

I. INTRODUCTION

Can South Korea become a leader in the international arbitration industry in Asia Pacific region? South Korean companies are among the

---

* Senior Manager of global legal team at GS E&C, the Korean based company. The author has received a Juris Doctor degree at William Richardson School of Law-University of Hawaii in 2019. The author thanks APLPJ editors for their excellent editorial support.
world’s biggest users of international arbitration. The 2017 statistics of International Chamber of Commerce (ICC) show that South Korea ranked 9th in the list of nationalities of the parties participating in ICC arbitration, and 10th in the list of nationalities filing new ICC arbitration cases in 2017.\(^1\) The rapid expansion of international business, trade, commercial relations and transactions among nations has led to inevitable disputes involving Korean companies. Accordingly, the South Korean government has recognized the increasing demand for international arbitration and the economic effects it has. Primarily for that reason, South Korea’s National Assembly enacted the Arbitration Industry Promotion Act (Promotion Act) on December 27, 2016. Based on the Promotion Act, the government attempted to improve arbitration infrastructures, encourage the use of arbitration, and attract more international arbitration to South Korea. Yet the government's efforts are not enough and there are still barriers that South Korea must overcome to become a major international arbitration player. This paper describes the current status of international arbitration in South Korea, and also presents how the Korean government should make efforts to foster the arbitration industry in the future.

II. Features of International Arbitration

Disputes inevitably occur in many international commercial transactions. The disputes sometimes are compounded by different commercial and legal expectations, cultural approaches, political ramifications and geography situations.\(^2\) As these disputes arise and cannot be resolved by direct negotiation, they will need to be resolved in accord with the legal process.\(^3\) This process should have the confidence of the disputing parties or at least take place in a forum acceptable to the parties.\(^4\) The general perception is that parties to international commercial contracts look to arbitration as having the advantage of being private and independent.\(^5\) Based on the feature that fewer than 5% of all arbitration awards are published, one can assume that there are more than 15,000 arbitration cases every year.\(^6\) In addition to confidentiality, international


\(^3\) Id. at 376.

\(^4\) Id.

\(^5\) Id.

\(^6\) Id. The parties who do not want public disclosure of facts or pensive information or litigation result prefer arbitration to traditional litigation. In some cases, however, public companies may be required to disclose the proceedings.
arbitration allows parties to choose a neutral forum removed from both parties and from their home governments. Selecting a neutral forum is a significant advantage in international arbitration because parties from different countries are frequently loath to submit to foreign courts in unfamiliar proceedings involving strange lawyers, foreign languages, different substantive laws and procedures, and real or perceived xenophobic social and judicial bias.\(^7\)

International arbitration resolves the disputes and the decision is final and binding on the parties\(^8\) under the New York Convention. The New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, signed in 1958, now has 159 contracting parties.\(^9\)

Despite the various advantages of international arbitration described above, there are drawbacks. First, the parties to an arbitration must pay the arbitrators’ fees and expenses. They also must pay for the arbitral institution’s administrative costs. Therefore, in some cases, arbitration may be more expensive than traditional litigation, although arbitration typically takes less time than traditional litigation and thus may save money by avoiding appeals. Attorneys’ fees are the most significant costs in either litigation or arbitration. Arbitration costs may vary depending on the form and place of arbitration and the procedure adopted.\(^10\) Second, for the loser, the inability to appeal can be seen as a severe disadvantage in arbitration. An arbitrator generally has more discretion and decision-making power than a judge or jury. Third, international arbitration does not allow mandatory discovery process. Therefore, the parties may have difficulty in obtaining the information they need to evaluate the case. In spite of the disadvantages mentioned above, international arbitration has become increasingly popular and the arbitration industry is expected to continue to grow in the future because the advantages outweigh its drawbacks.

---


III. ARBITRATION INDUSTRY IN THE ASIA

A. International Preferred Seats of Arbitration

International arbitration in Asia has exploded in recent years.\(^{11}\) The main reasons that the arbitration industry in Asia continues to grow rapidly are because of the increased volume of cross-border investment and a large increase in international commercial transactions. Asia is the world’s fastest growing economic region, measured both in the growth of domestic product (GDP) and purchasing power parity (PPP) in 2018.\(^{12}\) According to the World Investment Report, Developing Asia became the largest global foreign direct investment (FDI) recipient in 2017, whereas Japan became the second largest investing country followed by the United States in 2017.\(^{13}\)

Every investment faces the risk of non-enforcement. However, effective enforcement often depends on an effective dispute resolution mechanism.\(^{14}\) As Asia begins to dominate the global economy in the recent decade, major arbitral venues in Asia are competing over the increasing number of disputes.\(^{15}\) International arbitration is firmly established in Asia, especially in Singapore and Hong Kong in the vanguard of continued development.\(^{16}\) Singapore and Hong Kong have maintained aggressive approaches to promote their respective jurisdictions as pro-arbitration. Their arbitration status was reflected in the 2015 White & Case survey which put these two seats in the spotlight for taking the first and second place in a ranking that sought to identify the most improved seats over the preceding five years.\(^{17}\)

---


14 Piyush Prasad, Arbitration in Singapore and Hong Kong, 57 INT’L IMMERSION PROGRAM PAPERS 1, 3 (2017).

15 Id.

16 Id.

17 See WHITE & CASE LLP, 2015 INTERNATIONAL ARBITRATION SURVEY: IMPROVEMENTS AND INNOVATIONS IN INTERNATIONAL ARBITRATION 15 (2015), available at http://www.arbitration.qmul.ac.uk/media/arbitration/docs/2015_International_Arbitration_Survey.pdf. Based on the Queen Mary University of London International Arbitration Survey, Singapore ranked as the most preferred seat of arbitration in Asia, and the third
B. Arbitration Industry in Singapore

Singapore has developed into a leading arbitration hub over the past two decades. Courts in Singapore are very supportive of arbitration, as is evident in several cases that have supported the finality of the arbitral award.\textsuperscript{18} Situated at the crossroads of South East Asia and located in the middle of the international sea routes between China and India, Singapore’s geography and trade links put it in a unique position to market itself as the premier arbitration hub.\textsuperscript{19} Among the ASEAN countries, approximately 91% of the participants consider the Singapore courts to be highly or very effective in enforcing international arbitral awards, and almost all the participants responded that they would be very likely to recommend enforcement in Singapore.\textsuperscript{20} Singapore’s success in its international arbitration industry initiative is largely due to strong governmental and institutional support for implementing laws and regulations that adopt and promote international best practices, as well as installing arbitration infrastructure.\textsuperscript{21}

Singapore is now challenging the traditionally recognized centers for arbitration such as London, Paris, and Stockholm.\textsuperscript{22} Singapore established the Singapore International Arbitration Centre (SIAC) in 1991, the only arbitration institution in Singapore, and also adopted the United Nations Commission on International Trade Law (UNCITRAL) Model Law in 1994. Since these early developments, Singapore has established a strong track record, not merely as a global arbitration hub, but also increasingly as an international center for promoting all forms of dispute resolution,

\textsuperscript{18} Paula Hodges et al., 60 Years of the New York Convention: A Triumph of Transnational Legal Co-operation, or a Product of Its Time and in Need of Revision?, 6 INSIDE ARB. 2, 7 (2018).

\textsuperscript{19} Prasad, supra note 15, at 5.

\textsuperscript{20} Hodges, supra note 19 (“Among the ASEAN countries, 91.02% of the participants consider the Singapore courts to be highly or very effective in enforcing international arbitral awards... This is followed by Malaysia where close to 69% of the participants consider the courts to be effective generally in enforcing international arbitral awards.”).

\textsuperscript{21} Alastair Henderson et al., Recent Regional Developments in South East Asia, 6 INSIDE ARB. 15, 15 (2018).

\textsuperscript{22} Prasad, supra note 15, at 5.
including litigation and mediation. 23 Case filings at the SIAC have increased by more than 300% in the past 15 years. 24 In 2000, Singapore handled only 58 cases but the numbers rose dramatically after the 2008 financial crisis. In 2017, SIAC received 452 new cases from parties in 58 countries on 6 continents and administered 421 cases. This was a 32% increase from the 343 cases filed in 2016 and a 67% increase from the 271 cases filed in 2015. 25 The significant improvement in the arbitration industry in Singapore was coincident with the Singapore’s investment in facilities for arbitration. Singapore has boosted its arbitration industry by installing world-class arbitration infrastructure in its Maxwell Chambers, a purpose-built facility that houses a number of internationally acknowledged arbitral institutions. 26

In December 2017, the SIAC announced a proposal concerning cross-institution cooperation for the consolidation of international arbitral proceedings. 27 The proposal was set out in letters sent to other international arbitral institutions including a memorandum outlining a protocol, the adoption of which by arbitral institutions would permit the cross-institution consolidation of arbitral proceedings subject to different institutional arbitration rules. 28 The proposal also suggested a revision of the current arbitral rules for the different participating arbitral institutions to adopt the consolidation protocol. 29 Parties that incorporate the revised institutional

---

23 Henderson, supra note 22, at 23.

24 Prasad, supra note 15, at 5.


26 Prasad, supra note 14, at 5. Maxwell Chambers is a purpose-built facility that houses a number of world-class arbitral institutions. In 2005, the Ministry of Law of Singapore started planning the development of an integrated dispute resolution complex. Upon the completion of refurbishment works in July 2009, the building opened to hear arbitration cases. The Maxwell Chambers has 10 custom-designed and fully equipped hearings rooms and 12 preparation rooms, a business center, and a lounge for arbitrators, utilizing audio-visual and video conferencing facilities and simultaneous translation and transcription. The establishment of Maxwell Chambers was nominated by Global Arbitration Review (GAR) as one of the ‘Best Developments’ in the arbitration industry in 2010. In GAR's Hearing Centers Survey for 2016, the Maxwell Chambers was ranked second for most of the key factors respondents look for in choosing a hearing center, such as location, IT services, and helpfulness of staff, https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=1056&context=international_immersion_program_papers


28 See id.

29 See id.
arbitration rules in their arbitration agreements would be deemed to have consented to application of the consolidated protocol. 30

Third-party funding is another factor enhancing arbitration in Singapore. On March 1, 2017, Singapore passed an amendment to its Civil Law Act, 31 including associated regulations, to allow third-party funding of international arbitration. 32 Singapore has formed a framework under which third party funding contracts with eligible investors are not illegal if they relate to dispute resolution procedures and do not violate the public policy. 33 However, this new third party funding framework is only applied to international arbitration and the related court or mediation proceedings but not to domestic arbitrations in Singapore. 34 The first Singapore arbitration financed through third-party funding occurred in July 2017, and numerous third-party funders have set up operations in Singapore since then. 35

30 See id. Rules on consolidation, joinder and intervention in international arbitration play an important role in the international arbitral process. By allowing related issues to be resolved in a single proceeding, consolidation permits more efficient and cost-effective dispute resolution, whilst minimizing the risk of inconsistent decisions in related disputes. However, the consolidation provisions of existing institutional rules of leading arbitral institutions do not permit the consolidation of arbitrations that are subject to different sets of institutional arbitration rules (for example, SIAC and ICC arbitrations), even if they satisfy the other criteria for consolidation. Instead, existing institutional rules provide for the consolidation of arbitral proceedings only where the parties’ various arbitration agreements are compatible, including by incorporating the same institutional arbitration rules. Thus, a SIAC arbitration can be consolidated with another SIAC arbitration, but not with an ICC arbitration.

31 Civ. L. Act sec. 5B(2) (Sing.), available at https://sso.agc.gov.sg/Act/CLA1909/pr5B- (“A contract under which a qualifying Third-Party Funder provides funds to any party for the purpose of funding all or part of the costs of that party in prescribed dispute resolution proceedings is not contrary to public policy or otherwise illegal by reason that it is a contract for maintenance or champerty.”).


33 Id.

34 Id. The Singapore government still prohibits third-party funding from domestic arbitration. The major concern of third-party funding is that the relationship between the funded party, the funder, and the funded party’s counsel raises certain ethical problems unique to third-party funding such as conflicts of interest, failure of confidentiality and privilege, and improper influence over proceedings. As a preliminary point, there is the perception that ethical issues are best dealt with by competent bar associations rather than by the arbitrators themselves. See S. Perry, Third-party Funding: An Arbitrator’s Perspective, GLOBAL ARBITRATION REVIEW (Nov. 23, 2011), http://globalarbitrationreview.com/article/1030794/third-party-funding-an-arbitrators-perspective.

C. Arbitration Industry in Hong Kong

Hong Kong is one of the premier venues for international arbitration in the world. Hong Kong, called a “barren rock” 150 years ago, is now a global commercial and business hub and an Asian financial center. Hong Kong tries to retain a separate legal system from the People’s Republic of China (PRC) while maintaining autonomy from PRC as a Special Administrative Region (SAR). However, as shown in the 2019 Hong Kong anti-extradition bill protests, there are growing concerns about the autonomy of Hong Kong’s legal system, which is believed to be totally independent from PRC. Hong Kong’s legal system is based on the English common law and is guaranteed in Hong Kong’s constitutional instrument, the Basic Law. As the first Asian jurisdiction to adopt the latest version of the UNCITRAL Model Law in 1990, Hong Kong has long been at the forefront of international arbitration. Hong Kong has recognized international arbitration as a profitable service industry and, thus, has actively provided legislative and financial support for the last decade to promote arbitration into a national industry. Then, Hong Kong finally succeeded by hosting the regional office of ICC arbitration court in 2009.

Hong Kong was the most preferred seat of arbitration outside Europe in 2015, but now Hong Kong is the second most preferred seat of arbitration outside Europe and the fourth most preferred arbitral seat


37 Id.


39 See id. Basic Law of the Hong Kong Special Administrative Region of the People’s Republic of China enacted in 1990 by the National People’s Congress (Basic Law).


The switch of the arbitration preference ranking in the past three years between Hong Kong and Singapore was mainly attributable to Singapore’s active investment in improving its arbitration environment, as well as concerns about the undue political influence of the PRC in Hong Kong since 1997. Legal practitioners, arbitral institutions, judges, and members of the government have worked together to clear the air around the PRC’s influence over Hong Kong. Hong Kong emphasized that the Basic Law implements the idea of ‘One Country, Two Systems’ and expressly stated that the national laws of the PRC shall not be applied to Hong Kong. However, pro-Beijing lawmakers have weakened Hong Kong’s legal autonomy; Hongkongers worry that their legal system would be influenced by PRC, as seen in the anti-extradition bill protests in 2019.

Despite current concerns about Hong Kong as a neutral seat of international arbitration, Hong Kong has continued to strive to develop its international arbitration industry. Several amendments to the Arbitration Ordinance have been made by the Legislative Council of Hong Kong to

---


44 See Venus Wu, Hong Kong Lawyers March to Condemn China’s Legal ‘Interference’, REUTERS (Nov. 8, 2016, 12:47 AM), https://www.reuters.com/article/us-hongkong-china-lawyers-idUSKBN13315Q (“More than 1,000 Hong Kong lawyers dressed in black marched through the heart of the city in silence on Tuesday to condemn a move by China that effectively bars two elected pro-independence lawmakers from taking their seats in the legislature.”).


46 See Rimsky Yuen, SC Secretary for Justice of the Hong Kong SAR, Keynote Speech at 2nd ICC Asia Conference on International Arbitration (Jun. 29, 2016) (transcript available at https://www.doj.gov.hk/eng/public/pdf/2016/sj20160629e.pdf) (“Let me move on to Hong Kong’s legal system. As the only common law jurisdiction in China, Hong Kong is a robust manifestation of how we implement the principle of ‘One Country, Two Systems’. We continue the traditions of the common law and an independent judiciary, which are part of the key features constitutionally entrenched in the Basic Law.”).

47 See Joseph R Crowley, One Country, Two Legal Systems, 23 FORDHAM INT’L L. J. 1, 5 (1999) (“the Basic Principles prohibit any inappropriate or unwarranted interference with the judicial process .... nor shall judicial decision by the courts be subject to revision. In these ways, the Basic Principles make clear that legal controversies must be settled by authorities that are not beholden to policymakers who might ordinarily have a vested or biased interest in the outcome.” (internal citations omitted)).

48 See The Hong Kong protests explained in 100 and 500 words, BBC, https://www.bbc.com/news/world-asia-china-49317695 (Sep. 28, 2019), (“Opponents said this risked exposing Hongkongers to unfair trials and violent treatment. They also argued the bill would give China greater influence over Hong Kong and could be used to target activists and journalists.”)
address issues related to the context of arbitration and arbitrability in Hong Kong.\textsuperscript{49} Global Arbitration Review explains that “these amendments seek to ensure that Hong Kong’s arbitration laws are up-to-date, to enhance its status as a preferred seat of arbitration.”\textsuperscript{50} The Arbitration Ordinance, amended in 2017, includes express permission for third-party funding in arbitration\textsuperscript{51} and provides jurisdiction to hear intellectual property rights (IPR) disputes.\textsuperscript{52} Trademark and branding activities may be the foundation for entities that plan to expand their businesses to the Belt and Road Initiative (BRI)\textsuperscript{53} counties.\textsuperscript{54} As commercial and investment activities grew, international arbitration has been developing along the BRI.\textsuperscript{55} South China Moring Post reported that “the proximity to the PRC that previously may have led to uncertainty about the judicial system in Hong Kong now has the potential to help, with the BRI offering Hong Kong a historic opportunity to leverage its status as a modern financial hub that combines efficient infrastructure, well-regulated markets, and Western-styled legal institutions with a deep understanding of Chinese culture and business practices.”\textsuperscript{56}

Hong Kong expects its recent third-party funding provisions to help parties who are short on litigation fees but who are more likely to win with

\begin{footnotesize}
\textsuperscript{49} See Pramod, \textit{supra} note 45.

\textsuperscript{50} Id.

\textsuperscript{51} Arbitration Ordinance, (2011) Cap. 609, § 98E (H.K.) (“The purposes of this Part are to—(a) ensure that third-party funding of arbitration is not prohibited by particular common law doctrines; and (b) provide for measures and safeguards in relation to third-party funding of arbitration.”).

\textsuperscript{52} See id. at Part 11A.

\textsuperscript{53} See \textsc{World Bank, Belt and Road Initiative Brief} (Apr. 14, 2019, 21:09 PM), https://www.worldbank.org/en/topic/regional-integration/brief/belt-and-road-initiative (“The Belt and Road Initiative (BRI) is an ambitious effort to improve regional cooperation and connectivity on a trans-continental scale. The initiative aims to strengthen infrastructure, trade, and investment links between China and some 65 other countries that account collectively for over 30% of global GDP, 62% of population, and 75% of known energy reserves. The BRI consists primarily of the Silk Road Economic Belt, linking China to Central and South Asia and onward to Europe, and the New Maritime Silk Road, linking China to the nations of South East Asia, the Gulf Countries, North Africa, and on to Europe. Six other economic corridors have been identified to link other countries to the Belt and the Road. The scope of the initiative is still taking shape—more recently the initiative has been interpreted to be open to all countries as well as international and regional organizations.”).


\textsuperscript{55} See Pramod, \textit{supra} note 45.

\textsuperscript{56} Kevin Sneader, \textit{China’s ‘One Belt, One Road’ is the Perfect Stage for Hong Kong to Showcase Its Strengths}, \textsc{South China Morning Post} (May 17, 2016), https://www.scmp.com/comment/insight-opinion/article/1946161/chinas-one-belt-one-road-perfect-stage-hong-kong-showcase.
\end{footnotesize}
a strong case. Under the Arbitration Ordinance amended in 2017, like the amendments in Singapore, the common law tort of champerty and maintenance no longer apply to third party funding of arbitration or related court or mediation proceedings. The Arbitration Ordinance of Hong Kong, unlike the Amendment Act of Singapore, permits third-party funding to both domestic and international arbitrations without any distinction. In accordance with the Arbitration Ordinance, the funded party must give written notice to the arbitration body and each party to the arbitration of the fact that a funding agreement has been made and must name the third-party funder. If a funding agreement ends (other than because of the end of the arbitration), the funded party must give written notice of that fact and the funding agreement end date. The Arbitration Ordinance also requires a third party to pay all debts when the debts are due and payable, and to cover aggregate funding liabilities. Under the Arbitration Ordinance, the third party funders must maintain access to a minimum of HK $20 million of capital (approximately US $2.5 million).

The Hong Kong International Arbitration Centre (HKIAC) is an arbitration institution based in Hong Kong. The HKIAC was established in 1985 to provide an independent arbitration forum in Asia for settling international commercial disputes of all kinds. The HKIAC is currently run by an Executive Committee that serves as the principal body directing

---

57 See Pramod, *supra* note 45.


59 Id.

60 Arbitration Ordinance, (2011) Cap. 609, §§ 98U, 98V (H.K.) (“(1) If a funding agreement is made, the funded party must give written notice of (a) the fact that a funding agreement has been made; and (b) the name of the third party funder; 98V. Disclosure about end of third party funding of arbitration (1) If a funding agreement ends (other than because of the end of the arbitration), the funded party must give written notice of (a) the fact that the funding agreement has ended; and (b) the date the funding agreement ended.”).

61 See Pramod, *supra* note 45, at 53.

62 Id.

the activities of HKIAC.\textsuperscript{64} The HKIAC announced its ‘Belt and Road Programme’ on April 26, 2018.\textsuperscript{65} The Belt and Road Programme strives to place HKIAC at the highest position among other arbitration institutions for BRI disputes, including a Belt and Road Advisory Committee and an online resource platform.\textsuperscript{66}

Hong Kong has been trying to host investor-state arbitration and has made several agreements with the purpose of facilitating investor-state arbitration in Hong Kong.\textsuperscript{67} Hong Kong and the Permanent Court of Arbitration (PCA) entered a Host Country Agreement.\textsuperscript{68} Based on the Host Country Agreement, PCA provides dispute resolution services including arbitration, mediation, conciliation and fact-finding commissions of inquiry at the HKIAC.\textsuperscript{69} The Asia-Pacific Arbitration Review 2019 reported that “Hong Kong and the HKIAC continue to strengthen their respective positions in becoming a preeminent arbitral seat and institution, not only for commercial arbitration but also for investor–state arbitration.”\textsuperscript{70}

D. Arbitration Industry in South Korea

1. Current Status of International Arbitration in South Korea

South Korea enacted the Korean Arbitration Act and established the Korean Commercial Arbitration Board (KCAB) in 1966. Fifty years ago, the concept of arbitration was totally new to South Korea. Until 1997, when the Asian financial crisis occurred, the KCAB had just one set of arbitration rules tailored to handle domestic cases. Although some arbitrations covered by the KCAB were international cases, they were treated very similar to domestic cases and the default mediation language was Korean.\textsuperscript{71} Thus, foreign parties sometimes complained about KCAB procedures that fail to meet internationally recognized standards for arbitration proceedings.\textsuperscript{72} Right after the Asian financial crisis, numerous Korean companies entered into international contracts, many of which contained international


\textsuperscript{66} See Pramod, supra note 45, at 53.

\textsuperscript{67} See id.

\textsuperscript{68} Id. at 53-54.

\textsuperscript{69} Id. at 54.

\textsuperscript{70} Id.

\textsuperscript{71} Young Seok Lee, 50 Years of Arbitration in Korea and Recent Trends, 7 KOREAN ARB. REV. 4, 5 (2017).

\textsuperscript{72} Id.
Later, these contracts resulted in many disputes, and as a result, Korean companies gained experience as the number of international arbitration proceedings increased, many of which were post-mergers and acquisitions (M&A) disputes involving very significant sums. The familiarity with the arbitral process encouraged South Korean companies and governmental organizations to adopt arbitration as their preferred method for resolving international disputes. The KCAB’s total number of domestic and international arbitration cases is approximately 400 cases. This number is lower than that of arbitration cases in the U.S. or PRC, but it is similar to or greater than those in the U.K., Singapore, and Hong Kong. When considering the mere number of KCAB’s arbitration cases, the arbitration industry in South Korea appears to have a strong growth potential. However, arbitration in Korea is currently concentrated in domestic litigation, and international arbitration cases constitute only 20% of the total arbitration cases held in KCAB (Table 1). Compared to Hong Kong, where more than 70% of arbitrations are international cases, and Singapore, where most arbitrations are international cases, the proportion of international arbitration in Korea is too small.

Table 1. The Numbers of Arbitration Cases in Asian Arbitration Institutions

<table>
<thead>
<tr>
<th>Case Type</th>
<th>2013</th>
<th>2014</th>
<th>2015</th>
<th>2016</th>
<th>2017</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>KCAB</strong> (Korea)</td>
<td>Total</td>
<td>338</td>
<td>382</td>
<td>413</td>
<td>381</td>
</tr>
<tr>
<td></td>
<td>International</td>
<td>77</td>
<td>87</td>
<td>74</td>
<td>62</td>
</tr>
<tr>
<td><strong>HKIAC</strong> (Hong Kong)</td>
<td>Total</td>
<td>260</td>
<td>252</td>
<td>271</td>
<td>262</td>
</tr>
<tr>
<td></td>
<td>International</td>
<td>195</td>
<td>234</td>
<td>257</td>
<td>204</td>
</tr>
<tr>
<td><strong>SIAC</strong> (Singapore)</td>
<td>Total</td>
<td>259</td>
<td>222</td>
<td>271</td>
<td>343</td>
</tr>
</tbody>
</table>

73 *Id.* at 6.

74 See *id.*

75 KCAB INTERNATIONAL, *2018 KCAB ANNUAL REPORT* 14 (2019), http://www.kcabinternational.or.kr/user/Board/comm_notice.do?BD_NO=174&CURRENT_MENU_CODE=MENU0017&TOP_MENU_CODE=MENU0014 (In 2018, KCAB handled a total of 393 arbitration cases among which 331 were domestic and 62 were international cases. The numbers constitute trend of steady increase in arbitration cases over the last 6 years).


77 See *Id.*

78 See *Id.*
Domestic arbitration cases are defined as arbitration between parties that have their places of business in South Korea.\(^79\) South Korea has traditionally encouraged to settle the disputes by using arbitration between the parties especially for construction disputes.\(^80\) Despite South Korea’s strong legal framework and active interest in international arbitration, the majority of international arbitrations involving South Korean parties currently are still located outside the country.\(^81\) South Korea has not hosted enough international arbitration cases, considering the size of its economy that ranked as the 12\(^{th}\) largest global economy \(^82\) and the 5\(^{th}\) largest international exporter in 2018.\(^83\) To compete with Singapore and Hong Kong in international arbitration, South Korea ought to host more than 50\% of international arbitrations in proportion to the total number of arbitrations.

2. South Korean Government’s Efforts to Date
   a. Enactment

Beginning with the enactment of the Korean Arbitration Act in 1966, South Korea substantially incorporated the 1985 UNCITRAL Model Law on International Commercial Arbitration, including the latest amendment adopted in 2006. The Korean Arbitration Act also incorporated the 1958 New York Convention on the recognition and enforcement of awards and Korean arbitration awards are enforceable in over 150 jurisdictions under the New York Convention.\(^84\) In September 2016, South Korea substantially amended its Arbitration Act. The Korean Arbitration Act expanded its scope of arbitral disputes to include non-monetary disputes such as intellectual property disputes, and modified the interim measures regime to

\(^79\) KCAB INTERNATIONAL, *KCAB International Arbitration Rules 2016* art. 1, http://www.kcabinternational.or.kr/common/index.do?jpath=/contents/sub020101 ("‘Domestic Arbitration’ refers to arbitration between parties whose place of business is located within Korea, and does not fall within the scope of international arbitration as defined in the International Arbitration Rules of the KCAB.").


\(^84\) McClure & Young, *supra* note 8281, at 30.
allow enforcement by Korean courts. The KCAB introduced its International Arbitration Rules (KCAB Rules) in 2007 and amended its Rules twice in 2011 and in 2016 to widen their application. In the past five years, the South Korean government changed its own perception of international arbitration as it recognized the potential of its arbitration industry to generate significant economic effects including legal services, hotel services, and conference facility services. South Korea recognized that Singapore and Hong Kong have actively provided legislative and financial support over the past decade and that their efforts have led to the revitalization of not only their legal industry itself but also other industry sectors such as aviation and tourism.

Even though the change in the South Korean government’s view of the arbitration industry was late compared to Singapore and Hong Kong, it is fortunate that the government has now acknowledged the necessity of establishing a mid and long-term arbitration development plan to promote the arbitration industry. South Korea enacted the Promotion Act on December 27, 2016, which took effect on August 28, 2017. The major propositions of the Promotion Act are:

- Establishing and implementing a master plan for promotion of the arbitration industry every five years.
- Creating a firm foundation for promoting the arbitration industry.
- Promoting installation of dispute resolution facilities.
- Developing professional manpower for arbitration.
- Promoting international arbitration in particular.

In accordance with the Promotion Act, South Korea has set out its 5-year Master Plan for Promoting Arbitration Industry (Master Plan), to be executed from 2019 through 2023. The 2019~2023 Master Plan includes

---

85 Id. at 31.
86 Young Seok Lee, supra note 72, at 4-8.
87 Kim & Kim, supra note 4241.
88 “The purpose of the Promotion Act is to invigorate arbitration for the resolution of both domestic and international disputes, and to contribute to developing the national economy by laying foundations for promoting the arbitration industry in South Korea so as to be developed into the global hub of arbitration.” Arbitration Industry Promotion Act, Act No.14471, Dec. 7, 2016., art. 1 (S. Kor.). The policy behind the Promotion Act is that if a certain city or country is designated as an arbitration venue, numerous practitioners, law firms, and parties to international disputes (including various interest parties) from all around the world would travel to that place and often stay for a long period of time. This is in-bound flow of resource also prompted an increasing number of law firms to open or expand their local branches in cities that are frequently designed as arbitration venues such as Hong Kong and Singapore. The Promotion Act envisions similar collateral benefits.
89 2019~2023 Master Plan, supra note 7777, at 1.
wide-ranging projects aiming to attract more international arbitration to South Korea, to enhance the education and development of arbitration practitioners, to invest in arbitration infrastructure, and to improve marketing efforts and public relations.\textsuperscript{90} By introducing four major strategies and nine tasks for promoting the arbitration industry within the 2019–2023 Master Plan, South Korea expressed its vision to become one of the world’s top five arbitration venues (Table 2).\textsuperscript{91}

Table 2. Major Strategies and Tasks for Promoting Arbitration Industry

<table>
<thead>
<tr>
<th>4 Major Strategies</th>
<th>9 Tasks</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Enforcing Foundation of Arbitration Industry</strong></td>
<td>• Educating arbitration professionals</td>
</tr>
<tr>
<td></td>
<td>• Strengthen legal and systemic foundation</td>
</tr>
<tr>
<td><strong>Enhancing Domestic Arbitration</strong></td>
<td>• Improving perception of the arbitration system</td>
</tr>
<tr>
<td></td>
<td>• Increasing the usage rate of the arbitration system</td>
</tr>
<tr>
<td><strong>Increasing Competitiveness of Industrial Arbitration</strong></td>
<td>• Managing the world class dispute resolution facilities</td>
</tr>
<tr>
<td></td>
<td>• Enhancing the ability of arbitration institutions</td>
</tr>
<tr>
<td></td>
<td>• Developing new arbitration fields</td>
</tr>
<tr>
<td><strong>Hosting More International Arbitration</strong></td>
<td>• Strategic Plans for Attracting to International Arbitration in Korea</td>
</tr>
<tr>
<td></td>
<td>• Supporting International Arbitration</td>
</tr>
</tbody>
</table>

*Source: Ministry of Justice, South Korea*

b. Installation of International Dispute Resolution Center

South Korea used to have two arbitration centers in Seoul – the KCAB Center and the Seoul International Dispute Resolution Center (Seoul IDRC). The KCAB Center had one large hearing room and three small hearing rooms.\textsuperscript{92} In 2013, South Korea established the Seoul IDRC as an arbitration hearing facility, separate from the KCAB Center.\textsuperscript{93} The South

\textsuperscript{90} Id.

\textsuperscript{91} Id. at 7.

\textsuperscript{92} HONGSIK JUNG, A STUDY ON ESTABLISHMENT OF BASIC PLAN FOR PROMOTION OF INTERVENTION INDUSTRY 6-9 (June 2018) (S. Kor.), http://www.prism.go.kr/homepage/researchCommon/downloadResearchAttachFile.do?sessionid=23F574109926DD9B06C1A804FC4ECE7E.node02?work_key=001&file_type=CPR&seq_no=001&pdf_conv_yn=Y&research_id=1270000-201700072. The total size of the KCAB Center was approximately 8,170 square feet (759 square meter).

\textsuperscript{93} See id. The Seoul IDRC was equipped with one large room and one small room
Korean government recognized that Singapore hosted increasing numbers of international arbitrations after the Maxwell Chambers (37,700 square feet) was launched in 2009. South Korea understood that this well-designed, highly functional arbitration center played a key role in the rapid increase in arbitration cases in Singapore. Therefore, the Ministry of Justice of Korea conducted a study about the establishment and operation of a multiple arbitration center. Based on the study, the South Korean government decided in 2018 to merge the KCAB Center and Seoul IDRC, and rebuilt a new arbitration facility where KCAB was located. The new arbitration center’s name remained the Seoul IDRC.\textsuperscript{94} The Seoul IDRC is now home not only to the KCAB but also to nine Korean international arbitration institutions including ICC, LCIA, ICDR, SIAC, and HIKAC.

IV. FUTURE IMPROVEMENT OF THE INTERNATIONAL ARBITRATION INDUSTRY IN SOUTH KOREA

Over the past five years, there has been major progress in developing the arbitration industry in South Korea. In 2016, South Korea amended its Arbitration Law and enacted the Promotion Act, which became effective since 2017.\textsuperscript{95} In the same year, the KCAB, sponsored by the South Korean government, amended its arbitration rules. Enacting the Promotion Act means that the South Korean government has acknowledged the value created through arbitration and indicates that it will support arbitration as an industry. In accordance with the Promotion Act, Seoul IDRC was renovated in 2018. Yet, amending the relevant laws and upgrading facilities are not enough to attract foreign legal clients to arbitration in South Korea. Singapore emerged as the third most globally preferred arbitration venue in a short period largely because of its geographical location, human resources, and arbitration environment, which combine to tempt foreign legal professionals. Compared with the leading arbitration countries, South Korea still needs to put in more effort to build a reputation as an arbitration-friendly country. For the promotion of the arbitration industry in South Korea, future necessary conditions include:

- Absorbing the potential arbitration clients who try to avoid arbitration in Hong Kong due to the concern about the PRC’s influence on the Hong Kong’s legal system

\textsuperscript{94} Id. at 8. The new Seoul IDRC has a total area of 20,565 square feet, which is smaller than Maxwell Chambers (37,700 square feet) in Singapore but larger than HKIAC arbitration facility (14,000 square feet) in Hong Kong. The new Seoul IDRC includes an extra-large hearing room and one large hearing room, and six small hearing rooms equipped with video conference systems and modern technology.

\textsuperscript{95} Young Seok Lee, supra note 72, at 8
Marketing KCAB as an arbitration institution and Seoul IDRC as an arbitration venue
Enhancing competitiveness of international arbitration in specialized fields – construction, shipbuilding, information and communication technology (ICT), entertainment
Third-party funders permitted and developed in international arbitration
Benefits to foreign arbitration participants (tax benefits)
Enhancing the KCAB’s arbitrator pool and developing a certified educational system
Simplifying qualifications for eligibility to be arbitration representatives

Among the necessary conditions described above, allowing third-party funders, exempting taxes on international arbitrators, and simplifying qualifications for eligibility to serve as arbitration representatives can be accomplished in a relatively short time by amending the relevant law. The other conditions will take longer as the South Korean government, as well as the private sectors, need to put in steady efforts and commitment.

A. Marketing KCAB as an Arbitration Institution and Seoul IDRC as an Arbitration Venue

There was an international arbitration case held in New York between two South Korean companies.96 Two companies, headquartered in Seoul, made a contract setting out the arbitration venue in New York because the contract involved mergers and acquisitions through international bidding and the bidding condition required to arbitrate in New York for any disputes. In this situation, the South Korean companies were able to amend the arbitration venue to South Korea if they mutually agreed, but they did not.97 To proceed with that arbitration, the companies had to translate all documents written in Korean to English, dispatch their staffs to New York, and hire U.S. law firms. This case reflected the preference of many Korean companies for overseas arbitration. The 2019~2023 Master Plan notes that the average annual legal trade deficit for the past five years exceeds 600 billion Korean won (approximately US $550 million).98 South Korean companies often conducting international arbitration abroad has a significant impact on the legal trade deficit. If South Korean companies more frequently choose the KCAB as the arbitration institution or at least

97 Id.
98 2019~2023 Master Plan, supra note 7, at 2.
choose South Korea as the arbitration venue, legal professionals and law firms in South Korea will have more opportunities to be involved in arbitration, which will benefit the South Korean economy. Additionally, more foreign lawyers will visit South Korea to participate in arbitrations. If a Korean company enters into a contract that limits its option to select an arbitration institution or arbitration venue, it would be difficult to satisfy the above-mentioned conditions. On the other hand, if a Korean company retains the power to control the contractual provisions, the company may select the KCAB as an arbitration institution and the Seoul IDRC as an arbitration venue. Nonetheless, South Korean companies tend not to pay attention to dispute settlement clauses as they are reaching an agreement with foreign parties on contractual conditions or when a foreign party sends them a draft contract. Even if South Korean companies have a superior position and can set out the contractual provisions, they still frequently follow the draft contract originated by the foreign parties.

There is another opportunity to compel foreign parties to choose South Korea as an arbitration venue: the Korean government established the Economic Development Cooperation Fund (EDCF) to assist partner countries. The EDCF provides these countries with financial support for their industrial development and economic stability through South Korean government-owned banks. Total funding was approximately 1.4 billion Euro for 24 projects in 14 countries in 2016, and 900 million Euro for 12 projects in 10 countries in 2017. For international projects assisting in developing Third World countries, the lender country typically requests contractual conditions that favor the lender country. However, South Korea has not actively used its contractual power within EDCF’s funding projects. For instance, the Korea Rail Network Authority and the Bangladesh Railway entered into the ‘Contract for Korea Rail consortium with Bangladesh’ that provided consultation services to the Bangladesh government on railway project management with the EDCF fund, but the arbitration clause did not favor South Korea. The dispute resolution clause in this contract stipulates that ‘in case of a dispute, the arbitration applies the Bangladesh Arbitration Act 2001, and the place of arbitration is Dhaka, Bangladesh.’ As presented in the previous example, South Korea may have increasing opportunities to attract more international arbitration, but thus far, have not used its contractual power wisely. For this reason, the

---

99 Jung, supra note 93, at 67.


South Korean government should educate the legal staff, government officers, and contract managers in charge of contracting with foreign parties. Educational seminars hosted by the KCAB will be helpful for the aforementioned people to select the KCAB as the arbitration institution or an arbitration venue in South Korea, although it will take time for the effects of such an educational program to appear.

B. Nurturing Competitiveness of International Arbitration in the Specialized Fields

1. Construction

The Korean government can improve its legal infrastructure to attract more arbitration cases to South Korea in certain industries. Construction is one of the industries that frequently utilizes international arbitration. There were eight South Korean construction firms ranked within the world’s 70 largest builders in 2018, and these firms accounted for 5 to 10% of the entire global construction market over the past five years. Thus, South Korea could promote international arbitration in the construction sector in a relatively short period of time. South Korea has traditionally encouraged the use of arbitration to resolve disputes between domestic parties, particularly for construction. Even though many of the KCAB’s arbitration cases in the construction field are between domestic parties, the KCAB has accumulated a relevant database and case files. Also, arbitrators and legal representatives have had solid experiences in resolving disputes over construction claims. Their practical experience, knowledge, and skills in construction arbitration already has reached the international level. Their familiarity with the domestic arbitral process will further assist South Korea to rapidly adopt arbitration to resolve international construction disputes.

2. Shipbuilding

Disputes in the shipbuilding industry have characteristics similar to those in the construction industry in that the final product involves specific performance tailored to the specifications established by the original design. Traditionally, a large number of shipyard contract disputes are decided by London Maritime Arbitrators Association (LMAA) under English law. Nowadays, however, Singapore is looking to leverage the concentration of

---


East Asian shipbuilding activities by promoting the use of arbitration in Singapore. Recent reports that ‘LMAA arbitrators are registering as arbitrators in Singapore’ underscore the threat that Singapore represents to London’s current domination in shipbuilding arbitration. Singapore has attracted arbitration in shipbuilding over a brief period through its own government promotion, making Singapore a maritime arbitration hub.

South Korea also has high potential to be a maritime arbitration hub. According to the Clarkson Research Services, a British shipbuilding and marine industry tracker, South Korean shipbuilders issued combined orders of 10.26 million compensated gross tonnage (CGT) from January to October 2018, accounting for the largest percentage (45%) of all global orders (23 million CGT). Combining the shipbuilding efforts of South Korea, PRC, and Japan, these three countries accounted for over 80% of all global orders. South Korea is located in the center of the three countries and therefore is geographically convenient. There is a concern, however, that shipbuilding disputes traditionally tend to be resolved under the common law, which is mostly English law, and arbitration over shipbuilding disputes is usually held in common law countries. Therefore, the key question is how South Korea, a civil law country, can boost its credibility and instill confidence in potential litigators from common law countries. Between owners and shipbuilding contractors, it is anticipated that the owners would like to continue its preference for the arbitration venue to be in common law countries such as England, Hong Kong, and Singapore. When entering into the contract, however, a shipbuilding contractor has more power to choose the arbitration venue than do vendors and subcontractors. Thus, South Korea could encourage shipbuilders in East Asian countries to choose South Korea as an arbitration venue. Once South Korea achieves a reputation for arbitration in the shipbuilding sector, even if the arbitration is mostly between main contractors and vendors/subcontractors, the owner side may become accustomed to preferring that the arbitration take place in South Korea.

3. Information and Communication Technology

South Korea has a well-earned reputation as a global information and communication technology (ICT) leader. In the past ten years, South

104 Id.
105 Id.
107 See ITU News, How to the Republic of Korea became a world ICT leader (Feb. 12, 2018), (“These are some of the reasons why the Republic of Korea has ranked in the top three of ITU’s Global Information and Communication Technology (ICT) Development Index (IDI) in each of the past five years.”), https://news.itu.int/republic-korea-leader-information-communication-technologies/.
Korea’s economic growth is largely digitally delivered by the world’s leading electronics and ICT companies such as Samsung, LG, and SK. South Korea is leading the way in the development of an ICT society and this industry is one of the country’s key growth engines, accounting for 11.9% of its GDP in 2014. The ICT industry in South Korea can boost the arbitration industry in two main ways: first, South Korea has more disputes over the ICT issues than do other countries because there is more trading of ICT products and services in South Korea, which results in an increasing number of arbitrations. The 2017 KCAB statistics show that Information Technology (IT) ranked 4th in the list of arbitration cases (domestic and international) sorted by industry, following construction, trade, and commercial transactions. The total portion of the cases related to information technology and intellectual property is approximately 13%. The ICT industry is among the most dynamic and innovative segments of modern economies, which involve intellectual property (IP) rights intensively. The companies in ICT manufacturing industry are above most companies in their use of trademarks and copyrights. For this reason, a large portion of disputes over ICT are connected to IP rights claims. As a consequence of the huge increase in the importance of intangible assets in contemporary economies, both the number and the value of IP disputes have increased substantially in recent years. However, some people

108 See MIRAECANGJO-gWAHAKBU [MINISTRY OF SCIENCE, ICT & FUTURE PLANNING], JEONGBOTONGSINSAN-eOP-ui JINHEUNG-e GWANHAN 2015 YEONCHAPOSEO [2015 ANNUAL REPORT ON THE PROMOTION OF THE KOREAN ICT INDUSTRY] 42, (2016) (S. Kor.), https://www.nipa.kr/main/selectBbsNttView.do?key=113&bbsNo=9&nttNo=5133&bbsT ype=&searchCtry=&searchCnd=all&searchKrwd=&pageIndex=3 (Over the past five years (2009-2014), the ICT industry's GDP (real) continued to grow at an annual average of 5.1%, surpassing the overall GDP (real) growth rate (3.7%). According to the Bank of Korea’s 2010 National Accounts, the proportion of GDP in ICT industry in Korea was 10.1%, and the contribution rate of GDP growth to 11.9% in 2014. In 2014 (provisional), ICT industry GDP growth was 3.9%, while non-ICT industry GDP growth was 3.1%).


111 Id.

112 See International Chamber of Commerce, Adjudicating Intellectual Property Disputes: An ICC Report on Specialised IP Jurisdictions Worldwide 4 (2016) (“[In China alone, the number of new first instance IP-related lawsuits in 2015 came to 116,528, marking a 15.6% increase over the previous year.”).
claim that the increase has only been gradual. In addition, the recently signed (but yet to be ratified) Trans-Pacific Partnership (TPP) further increases the prospect of allowing companies to pursue investor-state-dispute settlement (ISDS) arbitral arbitration against foreign nations to resolve IP disputes. In March 2013, in preparation for a leadership role within the international arbitration industry concerning IP disputes, the SIAC introduced its ‘IP Hub Master Plan,’ designed to help develop Singapore into a global IP hub. The SIAC established a IP panel of arbitrations specifically for IP disputes. In recognition of the increasing volume of disputes relating to IP rights, Hong Kong also introduced new amendments to the Arbitration Ordinance, which were adopted in 2017. The amended Arbitration Ordinance confirmed that IP rights disputes may be resolved by arbitration, and that it is not contrary to Hong Kong policy to enforce arbitral awards involving IP rights.

For many years, South Korea has been operating a patent court separately from its general civil courts. Cases related to IP rights are litigated either in general civil courts or in the Patent Court. The Patent Court deals with all appealed cases related to IP rights. In 2016, the Arbitration Act of South Korea was amended to be able to resolve disputes related to IP rights. The amendment of the Arbitration Act has made it possible to litigate over license contracts as well as settlement fees by

---


114 Investor state dispute settlement (ISDS) is a mechanism contained in investment and trade agreements that allows an investor of a state party to bring a claim against another state party that is hosting the investment, if that state has allegedly breached a standard in the agreement. (Apr. 30, 2020) See Business & Human Rights Resource Centre, https://www.business-humanrights.org/en/investor-state-dispute-settlement-isds


117 In 2019, the IP panel is comprised of 23 arbitrators with knowledge and expertise in IP matters across a diverse range of jurisdictions. See SIAC Panel, SINGAPORE INTERNATIONAL ARBITRATION CENTRE, http://www.siac.org.sg/our-arbitrators/siac-panel#ip.


119 Arbitration Act, Act. No. 14176, May 29, 2014, art. 3 (S. Kor.) (“The term ‘arbitration’ means a procedure to resolve a dispute over a property right or a dispute over a non-property right, which can be settled by compromise between parties, by an award of arbitrators under an agreement between parties, not by judgment of a court.”).
arbitration. Furthermore, the amended Arbitration Act may also bring the parties, who do not want to reveal their core technology through litigation, into the arbitration.\(^{120}\) Yet there remains a concern about the KCAB’s ability to deal with IP disputes because until now it was the Patent Court in South Korea that had the resources and the expertise regarding IP rights. The KCAB faces the burden to establish expertise in resolving IP right disputes and to look for world-renowned IP experts as well as the former Patent Court judges as arbitrator candidates. Before it is too late, the Korean government and/or the KCAB should establish an arbitration panel of IP experts as the first step.

Second, South Korea should consider online arbitration as a growth engine for the arbitration industry, utilizing ICT. Online arbitration is defined as an arbitration in which all aspects of the proceedings are conducted online including: hearing through the use of video conferencing, uploading evidentiary documents, responding to questions from the arbitrator online, and receiving the final judgment.\(^{121}\) The advantage of online arbitration is its comparatively low costs and its greater flexibility and convenience due to its asynchronous nature. Moreover, the need for non-face-to-face arbitration has grown, as experiencing the pandemic incidents such as COVID-19. On the other hand, Kluwer Arbitration Blog pointed out the key disadvantage of online arbitration, explaining that “arbitration, which is not having face-to-face interactions, becomes less significant as arbitrations rely less on the parties’ interactions and more on written submissions.”\(^{122}\) Online arbitration is generally used for internet domain name disputes, which can be legally binding or not.\(^{123}\)

---

\(^{120}\) Soonwoong Choi, *Enforcement of the arbitration promotion law ... “The establishment of a complex arbitration center is the key”*, CHOSUNBIZ (June 23, 2017), http://news.chosun.com/site/data/html_dir/2017/06/22/2017062201606.html (“Until the amendment of the Arbitration Act, the standard was ambiguous as to whether fair trade or IP disputes could be subject to arbitration. The controversy arose over the question of to whether IP rights can be treated like rights under the premise of transaction, while IP rights are within public law areas governed in South Korea by the Monopoly Regulation and Fair-Trade Act, the Patent Act, and the Trademark Act.”).


\(^{122}\) Id.

\(^{123}\) Id. (“Internet domain name disputes are usually governed by the Internet Corporation for Assigned Names and Numbers’ (ICANN) Uniform Domain Name Dispute Resolution Policy (UDRP). The World Intellectual Property Organization (WIPO) is one of the UDRP dispute resolution service providers administering the UDRP Administrative Procedure for domain name disputes and is responsible for appointing panelists to determine the dispute. The decisions made under the UDRP Administrative Procedure are non-binding but they are nevertheless highly effective. This is because while these
has already set out to promote online arbitration in its Promotion Act Enforcement Decree. However, the KCAB has not yet installed an online arbitration system. As a global ICT leader, South Korea should equip and operate a well-organized online arbitration system quickly, which could become a worldwide online arbitration leader.

4. Entertainment

There has been outstanding expansion of South Korea’s entertainment industry as illustrated by the recent phenomenon of the ‘Korean Wave’ in dramas, movies, music, concerts, and games, that has received great worldwide recognition. The Korean Wave’s total exports in 2015 were approximately US $7 billion and has been growing steadily (Table 3).

decisions are not binding on parties, it is binding on the domain name provider, who will then effect the changes as determined by the panelists. While the parties have recourse to litigation if they are unsatisfied with the decision, this is rarely done as the expensive and time-consuming cross-border litigation is unlikely to be justified by the value of the domain name.

124 Promotion Act Enforcement Decree. Arbitration Act, Presidential Decree No. 28148, Dec. 27, 2016, art. 3, sec. 4 (S. Kor.) (“[N]ecessary project for forming foundation for promotion of the arbitration industry includes establishment and operation of online dispute settlement system using information and communication technology such as computer and video communication”).

125 “The Korean Wave (Hallyu) refers to the global popularity of South Korea’s cultural economy exporting pop culture, entertainment, music, TV dramas and movies. Hallyu is a Chinese term which, when translated, literally means “Korean Wave”. It is a collective term used to refer to the phenomenal growth of Korean culture and popular culture encompassing everything from music, movies, drama to online games and Korean cuisine just to name a few. During former president Barack Obama’s state visit to Korea in March 2012, he made reference to the Korean Wave, which was made the country’s top priority by the government. Martin Roll, Korean Wave (Hallyu) - The Rise of Korea’s Cultural Economy & Pop Culture. (Apr. 30, 2020), https://martinroll.com/resources/articles/asia/korean-wave-hallyu-the-rise-of-koreas-cultural-economy-pop-culture/

126 Jongkun Jun et al., 2015 A Study on Economic Effect of Korean Wave, KOREAN FOUNDATION FOR INTERNATIONAL CULTURAL EXCHANGE (KOFICE) 9 (2016), http://kofice.or.kr/g200_online/g200_online_01_view.asp?seq=12279.
Table 3. Korea’s Total Exporting Amount Related to Korean Wave

(Unit: U.S. million dollar)

<table>
<thead>
<tr>
<th></th>
<th>2012</th>
<th>2013</th>
<th>2014</th>
<th>2015</th>
<th>Growth Rate in 2015 (per cent)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Content</strong></td>
<td>2,129</td>
<td>2,324</td>
<td>2,491</td>
<td>2,823</td>
<td>13.4</td>
</tr>
<tr>
<td>TV</td>
<td>218</td>
<td>289</td>
<td>309</td>
<td>403</td>
<td>30.7</td>
</tr>
<tr>
<td>Music</td>
<td>214</td>
<td>253</td>
<td>271</td>
<td>354</td>
<td>30.7</td>
</tr>
<tr>
<td>Movies</td>
<td>16</td>
<td>29</td>
<td>25</td>
<td>79</td>
<td>222.0</td>
</tr>
<tr>
<td>Animations</td>
<td>226</td>
<td>238</td>
<td>268</td>
<td>283</td>
<td>5.7</td>
</tr>
<tr>
<td>Games</td>
<td>1,388</td>
<td>1,428</td>
<td>1,546</td>
<td>1,640</td>
<td>6.1</td>
</tr>
<tr>
<td>Books</td>
<td>67</td>
<td>87</td>
<td>72</td>
<td>64</td>
<td>-12.2</td>
</tr>
<tr>
<td>Consumer Goods &amp;</td>
<td>3,742</td>
<td>4,074</td>
<td>4,394</td>
<td>4,210</td>
<td>-4.2</td>
</tr>
<tr>
<td>Tours</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>5,871</td>
<td>6,398</td>
<td>6,885</td>
<td>7,033</td>
<td>2.2</td>
</tr>
</tbody>
</table>

Source: Korean Foundation for International Cultural Exchange

The ‘Korean Wave’ has been particularly popular in Indonesia, Thailand, Philippines, PRC, Vietnam, Singapore, Myanmar, and Japan and it is currently spreading to Kazakhstan, Malaysia, Argentina, U.S., United Arab Emirates, Ukraine, India, U.K., Canada, Turkey, Russia, Uzbekistan, France, Australia, South Africa, and Taiwan. Many international contracts dealing with the sale of entertainment products, property, copyrights, and show-performance prefer international arbitration as a dispute resolution method. It is very likely that various players in the entertainment industry could be encouraged by the South Korean government to resolve their cross-border disputes through international arbitration at Seoul IDRC. The more frequently international arbitration related to the entertainment industry take place in South Korea, the more arbitration practitioners who have expertise and experience in this industry will use the Korean arbitration system. Also, IP disputes within the entertainment industry are likely to increase

127 Samil PWC, Bokhapijungjae-senteo Seolchi mit Unyeong Tadangseong Geomto Bogoseo [A Feasibility Study Report on the Establishment and Operation of a Multiple Arbitration Center] 60 (2016) (S. Kor.), http://www.prism.go.kr/homepage/researchCommon/downloadResearchAttachFile.do;jsessionid=E259DC0E6E36B0AE02C807BEF3E999B.node02?work_key=001&file_type=CPR&seq_no=001&pdf_conv_yen=Y&research_id=1270000-201600029 (Samil PWC carried out the feasibility study as of July 2016 and reported the results according to the services contracted with the Ministry of Justice of South Korea on March 31, 2016).

128 Kim, supra note 412.
because the cultural content is mostly protected by IP rights. Consequently, South Korea needs to enhance its arbitration capability in the field of IP rights.

C. Third-Party Funders in International Arbitration

Third-party funding in international arbitration is a relatively new phenomenon, but one that is developing quickly.\textsuperscript{129} The U.K. is famous for the most developed markets for third-party funding with the least regulatory interference.\textsuperscript{130} Empirically, existing juridical supervisory powers and the long-term interest of self-regulating funders are sufficient in these countries to prevent abuses of the arbitration, even if third-party funding is allowed.\textsuperscript{131}

As described in Section III, Singapore and Hong Kong have periodically made refinements to their legal frameworks for arbitration to ensure that they remain ahead of latest developments in the field. Most recently, in 2017, both Singapore and Hong Kong took legislative steps to permit third-party funding.\textsuperscript{132} As the litigating parties begin to use third-party funding increasingly, the parties to commercial disputes may obtain partial or full funding or may seek to reduce their risks of failure.\textsuperscript{133} This funding is usually provided on a ‘non-recourse’ basis, which means the funder only recovers its costs and a return from the benefit obtained if the case is successful—which often is assignment of a share in monetary damage.\textsuperscript{134} If the case fails or if no recovery is made, the funded party has no liability and the funder has no claim against the funded party.\textsuperscript{135}

South Korea does not have an express public policy that would prevent a South Korean court from allowing or enforcing a third-party funding agreement. Instead, it is generally accepted that attorneys certified by the South Korean government may act on a contingency fee basis under the Attorney-at-Law Act.\textsuperscript{136} Yet these attorneys are forbidden to share the

\begin{itemize}
\item \textsuperscript{130} Tom Glasgow et al., \textit{Dispute Resolution Finance in Korea: An Introduction to Basic Concepts of Third Part Litigation and Arbitration Funding, the Development of the Global Industry and Its Application to Korea}, 9 KOR. ARB. REV. 39, 41 (2018).
\item \textsuperscript{131} \textit{Id.}
\item \textsuperscript{132} Andrew Pullen and Jae Hee Suh, \textit{Opening the gates for third party funding}, 7 KOREAN ARB. REV. 28, 28 (2017).
\item \textsuperscript{133} \textit{Id.} at 39.
\item \textsuperscript{134} \textit{Id.}
\item \textsuperscript{135} \textit{Id.}
\item \textsuperscript{136} See Jung, \textit{supra} note 9299, at 75.
\end{itemize}
contingency fee with any third party. This prohibition is limited to lawyers and does not preclude a client from sharing a portion of its own recovery with a third party.

Complex international arbitration disputes involve large amounts of money as well as high legal costs; therefore, the ability to bring a claim and to carry it through often depends heavily on the availability of funds. If South Korea bans third-party funding for international arbitration cases, the potential arbitration clients, especially those who lack sufficient funding to proceed to arbitration, will look for other arbitration venues rather than South Korea. Furthermore, this will mean missing out on many international arbitration cases in which the amounts in dispute are large because it is large scale cases that are frequently funded by third parties.

Allowing third-party funding only for international arbitration may be an option for South Korea, akin to the third-party funding policy in Singapore where third party funding framework is only applied to international arbitration and the related court or mediation proceedings but not to domestic arbitrations in Singapore. Given the widespread use of third-party funding in most of the top ranked arbitration countries, potential arbitration users from outside South Korea may avoid South Korea as an arbitration venue unless South Korea allows third-party funding for international arbitration. South Korea definitely ought to allow third-party funding at the level similar to that in Singapore or Hong Kong.

D. Benefits to International Arbitrators and Legal Practitioners

One of the important factors in selecting an arbitration venue is how comfortably arbitrators and representatives can work. It is a government responsibility to provide an attractive working environment for them. In Singapore, for instance, non-residents are required to hold a valid work pass before they can work. However, the provision of arbitration and mediation services in Singapore is categorized as a Work Pass Exempt Activity, which allows non-residents to serve in arbitrations or mediations up to a maximum of 60 days in Singapore. This exemption applies to arbitrators, mediators, legal counsel, and other professional advisors such as translators and transcribers. Additionally, Singapore offers a tax exemption to

137 Attorney-at-Law Act, Act No. 12887, Dec. 30, 2014, art. 34 sec. 5 (S. Kor.) (“No fees and other profits earned through services that may be provided only by attorneys-at-law shall be shared with any person who is not an attorney-at-law”).

138 Marla Decker, supra note 35.

139 Tom Glasgow et al., supra note 131, at 39, “Over the past 20 years, sophisticated third-party funding markets have developed in Australia, the UK, Europe and the USA. Several international businesses now operate exclusively in this market, with reports of combined funds in excess of US$4 billion.”

international arbitrators\textsuperscript{141} as well as offering tax support to the law firm that provides legal services related to international arbitration up to 50\% of its expenses.\textsuperscript{142}

South Korea also allows foreign lawyers to stay in South Korea for up to 90 days a year for their representation duties in international arbitration cases.\textsuperscript{143} However, South Korea provides neither tax exemption to international arbitrators nor tax support to the law firms practicing arbitration. As a latecomer to international arbitration, South Korea should consider adding various benefits to attract international arbitrators and foreign lawyers who participate in arbitration because their benefits will return to South Korea in several ways as economic benefits through the arbitration industry.

E. Enhancing the KCAB’s Arbitrator Pool and Developing Certified Educational Systems

It is important and necessary for the KCAB to secure highly qualified and talented arbitrators as members of the KCAB’s panel. In 2017, the KCAB’s panel of arbitrators consisted of 413 international arbitrators, among whom there were 262 arbitrators from 22 different jurisdictions who conducted only international arbitration proceedings.\textsuperscript{144} On the other hand, SIAC consisted of 551 arbitrators in its panel, which is 138 more arbitrators than the KCAB panel of arbitrators, and the arbitrators were from 43
to-work-in-singapore/.

\textsuperscript{141} Singapore Income Tax Act, sec. 13(1)(r) (Sing.) (“the income derived during the period from 3 May 2002 to 31 March 2020 (both dates inclusive) by an individual not resident in Singapore from acting as an arbitrator, and for this purpose, ‘arbitrator’ means an individual appointed for any arbitration which is governed by the Arbitration Act (Cap. 10) or the International Arbitration Act (Cap. 143A) or would have been governed by either of those Acts had the place of arbitration been Singapore”).

\textsuperscript{142} Singapore Income Tax Act, sec. 13V (Sing.) (“Where an approved law practice has in any year of assessment during the tax relief period incurred any loss from providing legal services in connection with any qualifying international arbitration or any allowances attributable to the qualifying income remaining unabsorbed, 50\% of the loss or allowances, in each case, shall be deducted as provided for in section 23 or 37, as the case may be, and the balance shall be disregarded.”).

\textsuperscript{143} Foreign Legal Consultant Act, Act No. 14056, March 02, 2016, art 24-2 (S. Kor.) (“No foreign-licensed lawyer…shall reside in the Republic of Korea for more than 90 days a year in connection with performing any of the services set forth in subparagraph 3 of Article 24: Provided, That any period of residence in the Republic of Korea due to his/her own injury or illness, medical treatment or visiting an injured or diseased relative, or any other extenuating circumstance, shall be excluded from the calculation of such period of residence”).

different jurisdictions. One particular feature of the SIAC is offering a separate IP panel, consisting of 23 IP experts.\textsuperscript{145} The HKIAC had 677 arbitrators on its panel of arbitrators in February 2019.\textsuperscript{146} The HKIAC also classified panels of arbitrators for a financial services sector and an IP sector, as well as emergency arbitrators.\textsuperscript{147} Compared to SIAC and HKIAC, the composition of the KCAB’s panel of arbitrators is somewhat rigid, with 92% of its international arbitrators being legal professionals or academic professionals.\textsuperscript{148} Based on 2017 statistics, the KCAB’s panel of arbitrators had no certified public accountants (CPA) nor any patent attorneys.\textsuperscript{149}

Considering that international arbitration deals with increasingly complex cases in areas such as engineering, technology, IP, and ICT, it is critically important to add arbitrators who have practical experience in these fields. All in all, the KCAB must diversify its pool of arbitrators by appointing talented arbitrators who are not only legal professionals but also experts from various fields as well as from various jurisdictions.

Developing arbitrators’ skills through training courses can be one solution that enhances an arbitrator’s expertise. The KCAB operates well-organized training programs for domestic arbitrators (using Korean language), but there are no unified and consolidated training courses for international arbitration practitioners through certified institutions using only the English language. Even if the KCAB now hosts one-to-five-day training courses for arbitration experts, these courses are designed as short-term training events and they do not systemically educate arbitration practitioners in English. The leading countries in arbitration such as the U.K., Hong Kong, and Singapore are seeking to strengthen and maintain the professionalism of arbitration practitioners by setting up certified arbitrator systems. The CIArb, the UK based institution, is globally famous for its educational and certification system for arbitration experts, for example. As a professional Chartered Institute, the CIArb offers a range of education and vocational training courses from introductory to advanced levels by classifying the trainees (Table 4).\textsuperscript{150}


\textsuperscript{146} Arbitrators, HONG KONG INTERNATIONAL ARBITRATION CENTRE, https://www.hkiac.org/templates/globalpage/Arb_poalistRst.php?tit=0&fn=&ln=&rsd=&te=&fa=&em=&jdf[]=0&ep[]=0&nt[]=0&lg[]=0&kw= (last visited April 18, 2019).

\textsuperscript{147} Id.


\textsuperscript{149} Id.

Table 4. CIArb’s international arbitration training modules

<table>
<thead>
<tr>
<th>Level</th>
<th>Module</th>
<th>Training Subject</th>
</tr>
</thead>
<tbody>
<tr>
<td>Beginner</td>
<td></td>
<td>Introduction to International Arbitration</td>
</tr>
<tr>
<td>Associate</td>
<td>Module 1</td>
<td>Law Practice and Procedure</td>
</tr>
<tr>
<td>CIArb Member</td>
<td>Module 2</td>
<td>Law of Obligation</td>
</tr>
<tr>
<td></td>
<td>Module 3</td>
<td>The Process, Drafting, Evidence and Award Writing</td>
</tr>
<tr>
<td>Fellowship</td>
<td></td>
<td>Peer Interview</td>
</tr>
</tbody>
</table>

Source: CIArb Training Brochure 2018

The CIArb’s training system is an excellent reference for the KCAB. The SIAC also has created a Singapore Institute of Arbitrators (SIArb) system based on the CIArb certification process. Nearly 1,000 members, based in Singapore and abroad who are from a diverse range of professional backgrounds, are associated with the SIArb, and their membership types are divided into Associate, Member, and Fellow. The KCAB needs to operate its own assessment standard to certify officially the qualifications of the arbitration experts. It is suggested that the KCAB consider developing a new educational certification system using only English language to support career progressions for arbitration experts in cooperation with the CIArb, benchmarking the SIArb.

F. Simplifying and Unifying Arbitration Representatives’ Quality

The qualification of the person who represents any party in arbitration proceedings in South Korea is regulated by three separate laws: the Attorney-at-Law Act, the Foreign Legal Consultant Act, and the Arbitration Act. The aforementioned laws are in conflict with each other if a person representing a party in arbitration is not an attorney certified to practice in South Korea.

First, the Attorney-at-Law Act prohibits people who are not an attorney-at-law of South Korea from receiving compensation for their legal services in arbitration.151 In accordance with the Act, any foreign attorneys

151 Attorney-at-Law Act, Act. No. 12887, Dec. 30, 2014, art. 109 (S. Kor.) (“Each person falling under any of the following subparagraphs shall be punished by imprisonment with labor for not longer than seven years or by a fine not exceeding 50 million won. In such cases, such person may be punished by a fine and imprisonment with labor concurrently: 1. A person, not an attorney-at-law, who receives or promises to receive money, valuables, entertainment or other benefits or who provides or promises to provide such things to a third party, in compensation for providing or arranging legal services, such as examination, representation, arbitration, settlement, solicitation, legal consultation….“”).
or professionals are unable to commercially practice international arbitration in South Korea, although they can do without receiving compensation. Under the Attorney-at-Law Act, all foreign legal counsel’s and/or expert’s commercial legal services for international arbitration are illegal in South Korea.

Second, the Foreign Legal Consultant Act allows foreign legal counsels (both foreign legal consultants certified by the Ministry of Justice of South Korea and foreign licensed lawyers) to perform representation in international arbitration cases.\(^{152}\) However, there is a limitation on the scope of their work. The service of foreign legal counsels should exclude the legal matters related to statutes of South Korea.\(^ {153}\) That limitation seems unreasonable because numerous disputes litigated in international arbitration are frequently governed by laws from multiple countries. As a hypothesis, let us assume that an equipment procurement contract governed by English law is made between a South Korean contractor and a foreign vendor and the two parties enter into an international arbitration proceeding in South Korea over the vendor’s cost increase. Overtime payment for the South Korean laborers supplied by the foreign vendor is a part of the claims. In this case, a foreign legal counsel cannot represent any party, even though the governing law of the contract is English law, for South Korean Labor Law is involved in this realistic hypothetical case regarding the overtime payment of South Korean laborers. Any international arbitration in which a South Korean party is involved and/or a dispute takes account of activities in South Korea will likely involve legal matters related to statutes of South Korea regardless of the governing law for the contract. For this reason, Article 24 of Foreign Legal Consultant Act should be amended to allow foreign legal counsels to practice in international arbitration in South Korea without any limits of their legal services. Compared to the Attorney-at-Law Act and the Foreign Legal Consultant Act of South Korea, the Singapore’s Legal Profession Act, which was amended in 2009, allows a foreign licensed lawyer to practice in any international arbitration cases regardless of the governing law and the Act does not even require a foreign lawyer’s license to represent any party in arbitration proceedings.\(^ {154}\)

\(^{152}\) Foreign Legal Consultant Act, Act No. 14056, March 02, 2016, art 24-2 (S. Kor.).

\(^{153}\) Foreign Legal Consultant Act, Act No. 14056, March 02, 2016, art 24 (S. Kor.) (“A foreign legal consultant may perform any of the following services - 3. Representation in international arbitration cases: Provided, That the services concerning the statutes of the Republic of Korea shall be excluded therefrom”).

\(^{154}\) Legal Profession Act, sec. 35 (Sing.) (“Sections 32 and 33 shall not extend (a) any arbitrator or umpire lawfully acting in any arbitration proceedings; (b) any person representing any party in arbitration proceedings; or (c) the giving of advice, preparation of documents and any other assistance in relation to or arising out of arbitration proceedings except for the right of audience in court Proceedings”).
policy is considered to have played a significant role in attracting excellent overseas arbitration personnel.

Third, the Korean Arbitration Act has no provisions regarding the qualifications of a party’s representative for arbitration proceedings, but it stipulates that an arbitration institution, approved by the Chief Justice of the Korean Supreme Court, enacts an arbitration rule.\textsuperscript{155} The KCAB Rules allow any person to represent a party in arbitration proceedings.\textsuperscript{156} However, the KCAB Rules are ranked lower than the statutes of South Korea, therefore the Rules cannot defeat the Attorney-at-Law Act nor the Foreign Legal Consultant Act. Even if the KCAB rules allow representation, therefore, it remains illegal for any person, except for the Korean attorney, to represent a party in arbitration proceedings under the Attorney-at-Law Act. It is also illegal under the Foreign Legal Consultant Act if a foreign counsel provides services related to the legal matter of a Korean statute in international arbitration.\textsuperscript{157} Even though there are conflicts of laws regarding the qualification of a person who can represent a party in international arbitration, the South Korean government has not yet showed any willingness to resolve this conflict despite the repeated advice of legal scholars and professionals.

G. Promoting Investor State Dispute Settlement (ISDS) Arbitration for International Environmental Disputes

As many states suffer from environmental harmful effects through the industrialization, the states have strengthened their environmental law and regulation to protect the public health and sanitation. In this circumstance, states cannot guarantee regulatory stability, which is the key factor to attract investments in any sectors.\textsuperscript{158} Consequently, the foreign

\textsuperscript{155} Arbitration Act, Act. No. 14176, May 29, 2014, art. 41 (S. Kor.) (“If an incorporated association designated as a commercial arbitration institution under Article 40 enacts or amends its arbitration rules, it shall obtain approval by the Chief Justice of the Supreme Court”).

\textsuperscript{156} KCAB INTERNATIONAL, \textit{KCAB International Arbitration Rules 2016} art. 7, http://www.kcabinternational.or.kr/common/index.do?jpath=/contents/sub020101 (“A party may be represented by any person of its choice in proceedings under the Rules, subject to such proof of authority as the Arbitral Tribunal may require”).

\textsuperscript{157} Attorney-at-Law Act, Act. No. 12887, Dec. 30, 2014, art. 109 (S. Kor.) (“A person, not an attorney-at-law, who receives or promises to receive money, valuables, entertainment or other benefits or who provides or promises to provide such things to a third party, in compensation for providing or arranging legal services, such as examination, representation, arbitration, settlement, solicitation, legal consultation….”).

investor’s interest conflicts with the states’ regulatory sovereignty and it creates the disputes often between the foreign investors and the states.\textsuperscript{159} Kluwer Arbitration Blog reported that more than 60 investment disputes filed since 2012 have had some environmental component.\textsuperscript{160} Considering the emerging number of international arbitrations over environmental disputes, South Korea may seek to host ISDS arbitrations that deal with international environmental issues. South Korea has optimum conditions to attract ISDS arbitral litigators over the environmental disputes.

First, the Green Climate Fund (GCF) may create synergy for South Korea to host ISDS. GCF, an operating entity of the UNFCCC, is located in Incheon, South Korea and it assists developing countries in limiting or reducing their greenhouse gas emissions and adapting to climate change.\textsuperscript{161} In GCF, there are a number of talented personnel, who are professionals in the field of global environmental policy and climate changes. The critical point of the ISDS arbitration over environmental matters is an assessment of how a government’s change of its environment policy and regulations may affect the investment of foreign investors. If the ISDS arbitration is held in South Korea, the ISDS can easily utilize the professional pool of GCF. On the other hand, any disputes arising from the GCF’s projects can be resolved through the international arbitration held in South Korea. For this, the South Korean government may need to advertise the convenience and preparedness of ISDS arbitration to GCF, encouraging it to choose an arbitration venue in South Korea.

Second, South Korea, as an arbitration venue, geographically is an attraction for Asian and East European countries. The International Center for Settlement of Investment Disputes (ICSID)’s hearing is typically held at its headquarter office in Washington, D.C., where people from North and South America and Western Europe find it convenient to travel, compared to other areas. Based on the ICSID’s data regarding the geographic distribution of new cases registered in 2019, the states from Eastern Europe


and Central Asia account for 26%, and South and East Asia together account for 7%, for a total of 33% among all states in the new ICSID cases.\textsuperscript{162} Because an Investor-State dispute usually involves large numbers of claims, ICSID arbitration tends to generate more economic effects to the hosting county. For this reason, South Korea is recommended to strongly appeal for the need to have a branch office of ICSID in Asia and should seek to obtain it. ICSID advertises that “ICSID has also assisted with the organization of hearings in arbitration proceedings conducted under the auspices of the ICC, LCIA, PCA, SCC, and other institutions.”\textsuperscript{163} The KCAB has created a close relationship with ICSID. In October 2018, ‘KCAB-ICSID Seminar’ was jointly hosted by the KCAB and the ICSID in South Korea. Yet there is no official cooperating relationship in regard to practical work between the ICSID and the KCAB. Establishing a partnership with the ICSID could be a practical starting point for the KCAB to host ICSID arbitrations.

\textbf{V. CONCLUSION}

Over the last three years, South Korea has shown a commitment to nurture the international arbitration environment and has developed an international arbitral framework. In 2016, the Arbitration Act and the KCAB Rules were amended. In 2017, the Promotion Act took effect and various research efforts funded by the South Korean government began to prepare for the 2019~2023 Master Plan. In the same year, the KCAB expanded its influence by opening international branch offices in Shanghai and Los Angeles. In 2018, Seoul IDRC, a remodeled arbitration center, reopened, equipped with modern technologies. The 2019~2023 Master Plan presented a vision for South Korea to become one of the world’s top 5 arbitration countries and its proposed 5-year plan seeks to attract potential clients of international arbitration. It is highly positive that the South Korean government has acknowledged the economic effects of international arbitration and recognized arbitration as an industry. However, South Korea is still behind other Asian arbitration competitors such as Singapore and Hong Kong, and it needs to put in much more effort to catch up with them. In detail, South Korea needs to work out amending relevant laws and adopting new systems. South Korea should adopt third-party funding for international arbitration so as not to lose potential arbitration clients to Singapore or Hong Kong, which have already allowed this approach. Third-party funding is no longer a stranger to arbitration and adopting it is a recent trend. Also establishing certified training courses for the different levels of arbitral professionals is quite urgently required. Various benefits for foreign


\textsuperscript{163} Id. at 9.
arbitration participants including tax exemptions and tax support as well as deregulation regarding the qualifications of a person representing a party should be established to tempt foreign professionals to participate in arbitration in South Korea.

Legal practitioners opine that South Korea, unlike Singapore or Hong Kong, has an advantage as a civil law jurisdiction, which attracts parties with a civil law preference, and as a neutral country for dispute settlement in international transactions involving PRC and Japan. The KCAB is currently the only arbitral institution in the Asia Pacific region vying for international arbitration that is governed by a civil law system. With this advantage, if South Korea creates a more arbitration-friendly environment, the goal of becoming an international arbitration hub in the Asia Pacific region will be achieved in the near future.