

International arbitration in Korea – award enforcement

By Lance B Lee



International arbitration is on the rise in the Republic of Korea. As more and more global companies with business in Korea are resolving their disputes through international arbitration, Korean courts have become frequently visited by parties for enforcement of arbitral awards. This article discusses the factors affecting successful enforcement of an international arbitration award in Korea, as well as two key considerations involved in such enforcement.

Factors affecting enforcement

The successful enforcement of arbitration awards in Korea will largely depend on whether the country in which the arbitral award was rendered is a signatory to the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the 'New York Convention'). As Korea is a party to the New York Convention, if an international arbitral award is rendered in a country that is also a party to the New York Convention, then Article 39 of the Arbitration Act of Korea stipulates that the New York Convention will apply and thus enforcement of the award may take place in Korean courts. If an arbitral award is rendered in a country that is not a party to the New York Convention, then the Korean Civil Procedure Act will apply. In such case, reciprocity must exist with the country in which the arbitral award is rendered, meaning that the award must be rendered in a country that has previously enforced and continues to enforce Korean arbitral awards in its courts.

Court review

When reviewing international arbitral awards subject to the New York Convention, the court may view the award only within the scope necessary to determine whether there are grounds to refuse recognition of that award under Article 5 of the New York Convention. Among other reasons for refusal, two major reasons are set forth below.

Reasons for non-enforcement

Lack of Due Process – Under Article V(1)(b) of the New York

Convention, the lack of due process is a ground for a court to refuse to enforce an arbitral award under the New York Convention. Due process under this Article includes the lack of proper notice to a party, and also includes the lack of a fair opportunity to present a case. In applying Article V(1)(b), the Korean Supreme Court held that a refusal of enforcement would require a serious violation of a party's due process rights and ability to defend itself (Korean Supreme Court 89Dka20252, Decided on 1990.4.10). In this case, a party was deemed to be given proper notice where its wholly-owned subsidiary received notice of the arbitration and the principal for the party was aware of such notice.

Public Policy - A second major grounds for refusal of enforcement of an arbitral award is based on public policy grounds. According

to Article V(2)(b) of the New York Convention, an arbitral award may be set aside if recognition or enforcement of the award would be contrary to the public policy of that country. In applying this Article, the Korean Supreme Court ruled that "Recognition or enforcement may be refused on public policy grounds only if the consequences would be against the good moral and social order of the country." In this same case, the Court ruled that the existence of fraud in the arbitration would be valid grounds to refuse enforcement under Article V(2)(b) of the New York Convention (Korean Supreme Court, 2006Da20290, Decided on 2009. 5. 28).

Conclusion

The successful enforcement of an international arbitral award in Korea will be largely affected by

whether the country in which the award was rendered is a signatory to the New York Convention. If this is not the case, courts in Korea will review whether such country exercises reciprocity with Korea in recognising arbitral awards rendered in Korea. Further, due process considerations and public policy grounds are two major factors under the New York Convention which may affect the process of enforcement of an arbitral award in Korea.

The successful enforcement of an international arbitral award in Korea will be largely affected by whether the country in which the award was rendered is a signatory to the New York Convention

Lee International IP & Law Group

Poongsan Bldg. 23, Chungjeongro
Seodaemun-gu, Seoul 120-837, Korea

Tel: (02) 2262 6013

Fax: (02) 2279 5020

Email: blee@leeinternational.com

www.leeinternational.com