ANTI-SUIT INJUNCTIONS CONCERNING BREACH OF AN ARBITRATION AGREEMENT:
A KOREAN LAW PERSPECTIVE

Min Kyung Kim*

ABSTRACT

The continued growth of international trade has correspondingly led to remarkable growth in the use of international arbitration as a dispute resolution mechanism. Unfortunately, there are still many instances in which a party breaches an arbitration agreement and brings a claim in another forum, causing a significant time and cost burden to the other party. One of the possible deterrents to such behavior is the ability in some jurisdictions to issue an anti-suite injunction against the party that breaches the arbitration agreement. However, civil and common law jurisdictions have had different approaches to whether such an injunction was possible.

Korea, as a civil law country, has very limited jurisprudence concerning this issue despite Korean companies being one of the leading users of international arbitration and Korean law frequently

* Judge Min Kyung Kim has been sitting as a judge since 2010 in the judiciary of Korea. During her career in the judiciary, she has presided over civil, commercial, and criminal cases. Her main expertise and passion are in international commercial contracts and she has dealt with such cases while sitting in the special division for international commercial cases at the Seoul Central District Court. Judge Kim was a committee member and participated in the recent amendment of the Korean Arbitration Act and contributed to enacting new court procedure rules in relation to international arbitration. She is a co-author of the Korean judiciary’s Practice Guide on International Arbitration Issues published by the Supreme Court of Korea.

Judge Kim holds a BA from Seoul National University in Business Administration and Law, an MA from Seoul National University (Master’s dissertation: Annulment of Arbitral Awards-a Comparison of English and Korean Law and Practice), LL.M. from University of Cambridge (Queens’ College) and a Ph.D. degree from Seoul National University (Ph.D. dissertation: Overriding Mandatory Rules in International Commercial Contracts).
applied in arbitrations. This article examines how an anti-suit injunction for breach of an arbitration agreement could fit into the prohibitory injunction regime under Article 300(2) of the Korean Civil Execution Act. There is a view that arbitration agreements are purely procedural in nature and have no substantive rights and obligations arising from them. However, the author believes this view does not properly take into account the realities of international commercial transactions and the parties’ intentions. The article concludes that an anti-suit injunction for a breach of an arbitration agreement is possible in Korea.

**KEYWORDS:** international commercial arbitration, breach of an arbitration agreement, anti-suit injunction, Korean law, civil law jurisdiction