

The thing about ...

Recently in Seoul, ASIAN-MENA COUNSEL's Patrick Dransfield photographed Kap-You (Kevin) Kim, head and founder of Bae, Kim & Lee's Arbitration Group and also put to him a series of questions on behalf of the *In-House Community*.

ASIAN-MENA COUNSEL: Bae, Kim & Lee's international arbitration practice was the first dedicated practice group in the field in South Korea. Would you share with us some of the highs and lows of forging such a practice?

Kevin Kim: As is often the case, the impetus for making a dedicated practice group for international arbitration came from our desire to better serve our clients. In international arbitration, effectively representing a client involves a number of factors that are often taken for granted in domestic practice; in international dispute resolution, it is important for counsel to engage with the client and be aware of their culture, language and commercial practice. I believed that Korean companies would benefit from having counsel who were experienced in international arbitration, and at the same time also understand Korean culture, commercial practice, and, of course, language.

Fortunately, we got the formula right from the very start by putting together a very diverse team comprised not only of Korean lawyers, but of lawyers from a range of different jurisdictions, both civil and common law. So, while on one side we were able to better communicate with and understand Korean businesses – our main clients – on the other, we were better able to communicate with multi-jurisdictional tribunals operating under different governing laws.

From the very outset, we were retained on a number of high-value, complex cases, most of which proceeded to final awards (as opposed to being settled at an earlier stage). This allowed the Bae, Kim & Lee (BKL) international arbitration team to further improve its capacity as we got to deal with all aspects of these cases and were able to thoroughly understand the various processes involved.

That is not to say that we have not had any difficulties. In the beginning, when the BKL arbitration team had not yet built up its formidable track record, clients were reluctant to refer high-value disputes to a Korean international arbitration practice. They were concerned that a Korean firm would not have the linguistic ability or the understanding of foreign laws required for international arbitrations. Korean businesses selected firms to represent them based on the seat of the arbitration and the governing law of the contract. So, when we first started the international arbitration

team, it was our job to convey to our clients that it was very important that their counsel understood the corporations, commercial practice and individuals involved in the dispute. Especially in cases involving parties from Korea, Japan or China, for a lawyer to be able to present a true picture of the dispute to a tribunal, it is very important that he or she understands the parties' culture and commercial norms.

Over time, many Korean companies have come to realise this. Of course, this has been helped by the results we have achieved for our clients in the past.

AMC: Given the market developments in South Korea in recent years, how has the role of in-house counsel changed? Does South Korea present particular challenges for in-house lawyers?

KK: The role of in-house counsel has changed profoundly over recent years. Compared to the past, more Korean businesses now have in-house legal teams. Also, these in-house teams are becoming ever more diverse as Korean businesses expand their activities internationally. Previously, most in-house legal teams were comprised primarily of Korean lawyers, but businesses are now recruiting more US-qualified lawyers, and lawyers from other jurisdictions as well.

A more profound shift has been the ever-broadening role of in-house counsel within these Korean businesses. These days, it is not uncommon to see in-house counsel occupying senior, executive-level positions in Korean businesses. These executive in-house lawyers are expected to have a thorough understanding of both the commercial and the legal aspects of their company's activities, and are expected to provide advice that takes both these aspects into account. To give you an example of the commercial acumen demanded of in-house lawyers, I am aware of two Korean businesses that have recently appointed in-house counsel as their respective CEOs.

However, concurrent with this demand for greater commercial acumen and business skills, other positions for in-house lawyers now require greater specialisation. Certain industries require in-house lawyers that are experts in, say, disputes, contracts or patent law.



Photo: Patrick Dransfield

So, while the role of in-house lawyers is becoming ever more critical, these competing demands also mean that being an in-house lawyer is becoming ever more demanding.

AMC: What is the secret sauce that BKL has to attract in-house lawyers in handling their cases?

KK: BKL, while based primarily in Seoul, is a firm with a global reach. Our team members are trained in different jurisdictions and belong to different cultural backgrounds, allowing us to better represent our clients in multi-jurisdictional disputes. At the same time, as I said in response to an earlier question, it is very important that counsel who are dealing with Asian clients should have an understanding of the client's language, culture, and commercial practice. BKL is able to provide both a very international outlook and an Asian perspective to its clients.

It is also very important in international arbitration that in-house counsel approach firms that have experience in arbitration, and are familiar with the international arbitration community. This experience helps counsel in understanding the attitudes of different arbitrators, and also helps them better present their case to the arbitrators. BKL's extensive case experience, and its team members' extensive involvement in the international arbitration community, ensures that the client is represented by a team that is locally situated but globally active.

AMC: What made BKL open offices in Dubai, Hanoi and Ho Chi Minh?

KK: BKL opened offices in these cities to better serve the needs of its clients. For us, these offices are not limited to serving clients in a particular city or country, but are meant to cover regions where our clients are active.

Our Dubai office is intended to cover the Middle East and North Africa region, where Korean companies are very active, and so there is a lot of outbound activity from our perspective. At the same time, businesses from the Middle East and Africa are increasingly investing in Korea, and so there is also a lot of inbound activity as well. It therefore made sense for BKL to have a presence in the region, to make it more convenient for our clients to rely on us.

Similarly, Hanoi and Ho Chi Minh City represent BKL's presence in South East Asia. South East Asia has been a major destination for Korean outbound investment and Korean businesses are very active in the region. It therefore made sense for BKL to have a presence in Vietnam (probably one of the most active destinations for Korean investment in South East Asia) in order to cater to our clients' needs in the region.

AMC: Richard Susskind urges external counsel to be the fence at the top of the cliff rather than the ambulance at the bottom. How can your firm help in-house counsel mitigate litigation risk, especially in a cross-border context?

KK: BKL firmly subscribes to the view that involving counsel at an early stage – ideally prior to a dispute, but in any case, in the very initial stages of a dispute – helps to reduce costs for clients and keep business running smoothly. It is no secret that when there

is a dispute on the horizon, even commercial negotiations are conducted, as it were, 'in the shadow of the law', with legal issues being crucial to the outcome of the negotiations. The involvement of counsel at this stage helps the negotiations proceed in the right direction, and increases the chances of an amicable settlement.

I believe that external counsel experienced in dispute resolution can assist in-house counsel in pre-dispute negotiations, helping them reduce costs and, frequently, avoid litigation altogether. Particularly in cross-border disputes, the various jurisdictions and laws involved can lead to in-house counsel approaching lawyers in a number of different jurisdictions to obtain legal advice, resulting in significant cost and varying opinions. I think it is much more effective for in-house counsel to approach and retain one firm that has experience in cross-border disputes, and work through and with such external counsel. Counsel experienced in transnational dispute resolution can then assist in-house counsel in spotting the pivotal issues and then seeking jurisdiction-specific advice only on those pivotal issues.

In my experience, this greatly reduces the parties' costs, while also ensuring that negotiations are conducted in a manner that takes critical dispute resolution issues into account.

AMC: On Fees and Service: what are the various ways that BKL engages with clients regarding compensation for services rendered? Have you seen a shift in preferred billing arrangements in recent years? Can you provide a real example of where the firm has gone 'the extra mile' for a client?

KK: BKL recognises that clients' needs in terms of legal services, and their expected outlays, differ from one case to another. We have therefore made it a practice to assess suitable fee arrangements on a case-to-case basis. BKL uses a combination of hourly billing, success fee arrangements and fee caps to provide its clients with fee arrangements that will suit the needs of each client. We believe that this flexible approach allows clients to pursue their claims and to seek legal advice in line with their commercial targets.

In terms of a real example, I am aware of several cases where BKL has capped its fees at amounts that are comfortable to our client, and has proceeded on a success fee basis beyond the capped amount. I feel that this represents our confidence in our own abilities, and also reassures the client.

AMC: On Training: our belief is the aim of training is to produce lawyers who can be at the top of their game, where knowledge of the law and a profound grasp of professional ethics and integrity, as well as the necessary commercial acumen to be your own boss, are embedded in the DNA. Do you subscribe to the above and how does BKL attempt to accomplish the above?

KK: The aim of training should indeed be to produce lawyers who perform consistently, have a sound knowledge of the law, are cognisant of their ethical responsibilities and are commercially astute. From my experience, the best way to inculcate these abilities is by allowing lawyers to work actively on cases, gradually increasing their area of responsibility on each successive case. In this way,



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lawyers are able to learn from the actual hands-on experience provided by each case, and also by watching their senior colleagues in action. For me, there can be no substitute for such hands-on training and instruction.

It also helps when this is accompanied by other training activities that allow lawyers to organise their experiences, reflect upon them and share them with their colleagues. BKL has a well-established practice of holding internal seminars and training sessions. I think this helps immensely in consolidating and sharing the experience that our lawyers gain from their cases.

To further increase our lawyers' exposure and allow them to specialise, BKL has a practice of sending its experienced lawyers to training programmes and degree courses in foreign jurisdictions. This helps lawyers to undertake advanced study in certain areas, with the benefit of the practical experience that they have gained working on actual cases.

AMC: What keeps you awake at night?

KK: The legal market is becoming increasingly more demanding, as commercial transactions become more sophisticated and disputes become more intricate. Larger and more sophisticated transactions and cases require larger teams and more manpower.

At the same time, there is a need to remain cost-effective and to ensure that dispute resolution remains efficient and affordable. These competing demands mean that lawyers are now expected to be proactive and entrepreneurial in meeting their clients' needs. New products and efficient case management are the order of the day. BKL is a market leader in providing creative solutions and efficient services to its clients. It is important to me that BKL maintains its client-centred approach and does not become complacent.

Particularly in the area of dispute resolution and pre-dispute advisory, it is important to me that we constantly strive to come up with more sophisticated and effective services, at lower and more-affordable costs. My colleagues and I are therefore constantly engaged in finding means of making dispute resolution and pre-dispute advisory more efficient, more effective and less costly, so as to provide products that make commercial sense to our clients.

AMC: What is your hinterland (i.e. what are your interests outside of the firm)? How do you control your time so that you can pursue them? How do you counsel your professional staff to balance work and outside interests?

KK: I think it is very important for lawyers to have interests other than work. I advise my junior colleagues and students to keep certain days in their schedules vacant to pursue their interests outside of work, and to consider it an obligation to avoid work on these vacant days (of course, that does not always work out in practice). Pursuing interests other than work is essential for lawyers to remain healthy and avoid fatigue. I think it was Sir Arthur Conan Doyle's Sherlock Holmes who said that "a change of work is the best rest".

I have a number of interests outside of my work at the firm. My two main interests are teaching and drawing. I believe I am attracted to both teaching and drawing because there is a common theme between these interests and arbitration advocacy.

It is always very enjoyable to work with law students and share ideas with them. Teaching students and young lawyers also provides a very valuable learning experience for me in terms of my work as an advocate. For me, being an advocate is not very different from being a lecturer, as the basic skill remains the same: the ability to convey information to other people in a manner that helps the listener grasp your point. In fact, I have always thought that it is a much more challenging exercise to convince students to listen to a lecture and engage them in class than it is to persuade a tribunal of my client's case.

Similarly, I suspect that my interest in drawing – I draw scenery and portraits most often – is because it involves the same element of conveying ideas to other people; in this way, it is just another form of human interaction. How does one capture (and in capturing, convey) the essence of a landscape in a drawing? I am always fascinated by the thought process that goes into making a drawing faithfully convey an idea or emotion to the viewer. Like advocacy, drawing is an attempt by the artist to strike a balance between details and basic concept in order to express him- or herself. Finding the essence of a landscape and expressing it to the viewer is not very different from finding the crux of a case and conveying it to a judge in the simplest way possible.

Kap-You (Kevin) Kim has acted as counsel, presiding arbitrator, co-arbitrator or sole arbitrator in dozens of international arbitrations under various rules including ICC, LCIA, AAA (ICDR), SIAC, HKIAC, LMAA, JCAA, UNCITRAL and KCAB.

Kim is a Vice President of the ICC Court and Governing Board Member and Chair of Audit Committee of the International Council for Commercial Arbitration (ICCA). He also serves in a number of other prominent positions, including as a Board Member of the AAA, a member of the Panel of Arbitrators of ICSID and an Editorial Board Member of the Global Arbitration Review. Kim served as Secretary General of the ICCA from 2010 to 2014, a Court Member at the LCIA Court from 2007 to 2012 and Vice Chair of the IBA Arbitration Committee from 2008 to 2010.

Domestically, he is a Senior Advisor and arbitrator of the Korea Commercial Arbitration Board (KCAB), Chair of the International Arbitration Committee of ICC Korea, Secretary General of the Seoul International Dispute Resolution Center (Seoul IDRC) and Vice President of the Korea Arbitrators Association. Kim also served as President of the Korean Council for International Arbitration (KOCIA) from 2012 to 2013 and Chair of the International Committee of the Korean Bar Association from 2000 to 2002.


Kim holds degrees from the Seoul National University College of Law (LLB, LLM) and Harvard Law School (LLM). He is licensed to practice in Korea and New York. He teaches part-time at the Judicial Research and Training Institute of the Supreme Court of Korea, the Yonsei Law School.

Kim has authored a number of publications on international arbitration and litigation practice, and was general editor of Arbitration Law of Korea: Practice & Procedure (Juris Publishing, 2012), the first hornbook on arbitration in Korea written in English. He also authored Arbitration Law & Practice (Bakyoungsa, 2012), a hornbook on arbitration in Korean.

In our next issue...

In the next edition of ASIAN-MENA COUNSEL, our M&A Special Report for 2015 will shed light on Thailand, India and North America. We'll also, as always, give you the latest jobs, moves and deals along the New Silk Road, plus jurisdiction updates from China, India, Vietnam, Malaysia, the UAE, South Korea, Indonesia and our newest addition: the Philippines.

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