

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

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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-suit 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

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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*