

INSIDE ARBITRATION: SPOTLIGHT INTERVIEW: MIKE MCCLURE

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Legal Briefings

Mike is a Herbert Smith Freehills world traveller, having spent time in our London, Dubai, Hong Kong and Moscow offices. Now based in Seoul, he heads the office and leads a thriving international arbitration practice in one of Asia's most up-and-coming arbitral seats. Mike's practice covers commercial and investment treaty disputes.

EVEN FOR A LAWYER IN AN INTERNATIONAL FIRM, YOU ARE VERY WELL TRAVELLED! WHAT HAVE BEEN THE BEST AND WORST THINGS ABOUT MOVING AROUND SO MUCH? DO YOU HAVE A FAVOURITE COUNTRY?

The best thing professionally has been practising in all these different jurisdictions and learning how different clients and cultures work. Outside work, I have had so many fantastic experiences I would never have had if I hadn't moved around so much. Everything from snowmobiling in the Arctic Circle, to desert camping in Dubai, to exploring remote parts of Korea that you wouldn't usually visit as a tourist.

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The worst thing is missing friends and family back home. Also, my children are being brought up without the close family nearby that I had as a child. These are definitely things that play on your mind as a long-term expat parent.

Do I have a favourite country? They've all been great. I loved my time in Russia; it was perfect for me at that age and stage. There were lots of English law, foreign-related disputes in Russia at the time, and lots of international arbitrations. I was married but without children, which meant my wife and I could travel widely, and we actually found the long winters fun and novel.

Now that I have children and am at a different stage of life, it's been good to move on. I love Korea: the food, the culture, the entertainment have all been great to experience and be involved in. I feel very much like a foreigner in Korea, but that brings with it a sense of adventure and excitement that I really enjoy. Every day I feel that I am living completely differently to the way I would be living back home – and that gives me a real buzz.

SEOUL IS VIEWED AS A RISING STAR OF ASIAN ARBITRATION, WITH AMBITIONS TO COMPETE WITH HONG KONG AND SINGAPORE. IN YOUR VIEW, CAN IT ACHIEVE THOSE AMBITIONS?

Seoul is extremely well placed to become a major arbitration centre in Asia. Like Singapore and Hong Kong, it enjoys a good level of government support for arbitration and a very pro-arbitration judiciary, which are key to any seat's success.

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A significant milestone in recent years was the merger of the Seoul International Dispute Resolution Centre and Korea Commercial Arbitration Board (KCAB), plus the formation of KCAB International. That has been a real driver in developing Seoul as a seat. From the outset, KCAB International has benefited from superb leadership from Professor Hi-Taek Shin and Ms Sue Hyun Lim. It is staffed by people from all over the world, who bring to the centre a genuinely international perspective and approach. This makes KCAB International a truly international arbitration centre that happens to be based in Korea, rather than a Korea-centric arbitral centre. It has evolved into a first-class institution that acts as a focal point for the Korean arbitral community, and attracts cases from in and outside Korea. It also has excellent hearing facilities.

Also, the arbitration talent in Korean law firms is very good. These firms have lawyers who are knowledgeable about international arbitration, with experience representing clients in difficult and complex cases. These same lawyers also sit as arbitrators and are rendering high quality decisions, which all adds to the attractiveness of Seoul as a seat for arbitration.

On this basis, I see Seoul as well positioned to compete on an even playing field not only with Hong Kong and Singapore, but also other leading seats.

WHAT KIND OF DISPUTES ARE YOU SEEING IN KOREA AND THE WIDER REGION? HAS THIS CHANGED DURING THE TIME YOU HAVE BEEN IN SEOUL?

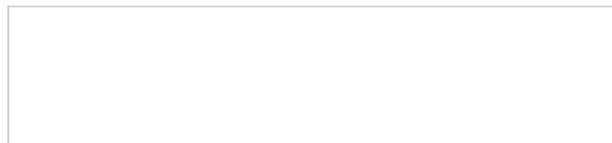
It's a real mix. We see a lot of disputes in the construction sector; many Korean EPC contractors are doing big and difficult projects all over the world, which inevitably generate disputes. There are also lots of intellectual property and licensing disputes, which is to be expected given Korea's prominence in the technology sector.

In recent months, we're starting to see more post M&A disputes, including a number of breach of warranty claims. This looks like it will be a real growth area for arbitration work in the coming months and years.

YOU ACTED FOR THE GOVERNMENT OF KOREA IN THE FIRST INVESTMENT TREATY ARBITRATION UNDER THE US-KOREA FREE TRADE AGREEMENT. WILL WE BE SEEING MORE ASIAN INVESTOR-STATE CASES IN COMING YEARS?

Yes, I think so. We successfully defended Korea in the first case under the US-Korea FTA to come to hearing, which of course is a real source of pride for me and the whole Herbert Smith Freehills team.

"Investors are increasingly savvy about their rights under bilateral investment treaties."



More generally, investors are increasingly savvy about their rights under bilateral investment treaties and their access to investor-state dispute settlement, and more confident in pursuing these remedies. The scale of the projects - and of the potential losses - may be prompting investors to pursue these avenues. Also, as investors see more of their fellow investors calling on ISDS mechanisms, the process is de-mystified and clients start to see it as a viable option. This is playing out in practice; there has been a spate of cases against Korea in the last couple of years, and I expect to see more.

WHAT HAS BEEN THE BIGGEST IMPACT ON YOUR PRACTICE AS A RESULT OF THIS YEAR'S PANDEMIC?

We've been relatively lucky in Korea. There hasn't been such a major impact on our practices or our lives as in other countries where Herbert Smith Freehills has offices, and we have never been fully locked down. Our office has been open the entire time, albeit with more flexibility around home working, and of course social distancing measures in place.

The biggest impact has probably been not flying to hearings. As a result, we've now done four virtual hearings this year. They've all worked smoothly and well, to the extent that I wonder whether we will ever go back to fully in-person hearings even after the pandemic.

HOW DO YOU SEE THE FUTURE OF HERBERT SMITH FREEHILLS' DISPUTES PRACTICE IN KOREA?

It is very positive. There is a great community here, and more and more arbitration practitioners and clients are being attracted to Korea. In particular, we have a really strong next generation of arbitration lawyers in Seoul, including Dana Kim and Philip Kim in my own team, who both have excellent reputations both in Korea and internationally as true arbitration specialists. Seoul is in great hands for the future.

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KEY CONTACTS

If you have any questions, or would like to know how this might affect your business, phone, or email these key contacts.



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