

UNCITRAL Colloquium

**Session 2. Dispute Resolution  
in the Digital Economy  
- Virtual Hearing**

28 March 2022

**Seokchun Yun**

# Legal Framework of Virtual Hearing

## **UNCITRAL Model Law on International Commercial Arbitration**

### **Article 34. Application for setting aside as exclusive recourse against arbitral award**

(2) An arbitral award may be set aside by the court specified in article 6 only if:

(b) the court finds that:

(ii) the award is in conflict with the *public policy* of this State.

### **Article 36. Grounds for refusing recognition or enforcement**

(1) Recognition or enforcement of an arbitral award, irrespective of the country in which it was made, may be refused only:

(b) if the court finds that:

(ii) the recognition or enforcement of the award would be contrary to the *public policy* of this State.

## **United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention)**

### **Article V**

2. Recognition and enforcement of an arbitral award may also be refused if the competent authority in the country where recognition and enforcement is sought finds that:

(b) The recognition or enforcement of the award would be contrary to the *public policy* of that country.

# Legal Framework of Virtual Hearing



**REPUBLIC OF KOREA**

Junu Kim  
David MacArthur  
Hyesung Jeong

The image shows a poster for an ICCA project. On the left, a dark blue square contains the text "ICCA PROJECTS" in white, followed by the question "Does a Right to a Physical Hearing Exist in International Arbitration?" in a smaller white font. To the right of this square, the text "REPUBLIC OF KOREA" is displayed in a large, bold, blue serif font. Below that, the names "Junu Kim", "David MacArthur", and "Hyesung Jeong" are listed in a smaller, blue serif font.

**Whether**

Opening Statement

Cross-examination

Closing Statement

**How**

# Elements to Consider

- Deadline for application and/or decision to conduct a virtual hearing
  - Virtual hearing as default v. contingency option
- Different time zones and duration of the hearing
- Limitation on participants (list of attendees, sequestration)
  - Turning-off of cameras and microphones for non-speaking participants
  - Concealed channel of communications
  - Comparison with witness/expert cross-examinations

# Elements to Consider

- Communication among the tribunal members and among the parties
  - Breakout rooms for intra-tribunal deliberations (e.g. ruling on objections during cross-examinations)
- Recording of the hearing (role of transcription)
  - Necessity of court reporters? Real-time transcriptions
- Display of documentary/demonstrative exhibits
- Other technical elements

## Seoul Protocol on Video Conferencing in International Arbitration<sup>1</sup>

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### Annex 1 Technical Specifications

Video conferencing equipment used should meet minimum industry standards in order to ensure the efficient and smooth operation of each hearing. The common industry standards recommended by the International Telecommunications Union - the United Nations specialized agency in the field of telecommunications, are listed below, and is intended to serve as a guideline as to the technical specifications that each Venue adopting video conferencing should entail.

#### Video

- For ISDN-based networks:
  - H.320 Standard (umbrella recommendation for narrow-band video conferencing over circuit-switched networks i.e. N-ISDN, SW56, dedicated networks); and
  - H.310 Standard (wide-band (MPEG-2) video conferencing over ATM and B-ISDN)
- For video over Internet/LAN-conferencing:
  - H.323 Standard (narrow-band video conferencing over non-guaranteed quality-of-service packet networks (Internet, LAN, etc.))





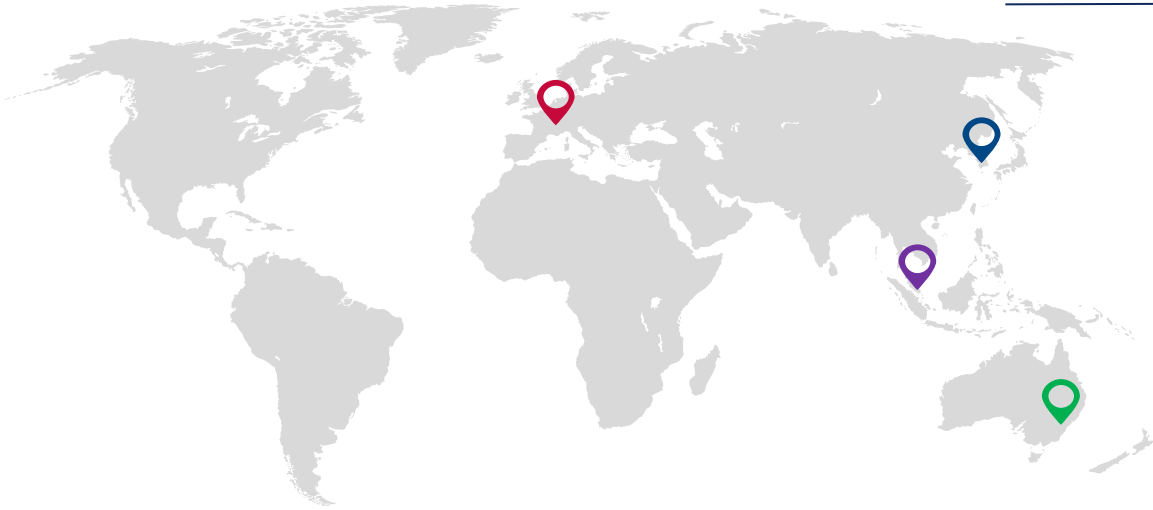
THANK YOU

# Speaker

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Peter & Kim Ranks Among The World's  
Leading Arbitration Firms in GAR 30

**PETER & KIM**  
ATTORNEYS AT LAW



**GENEVA BERN SEOUL SYDNEY SINGAPORE**

- Partner, Peter & Kim (2022—Present)
- Kobre & Kim LLP, New York (2017—2018)
- Bae, Kim & Lee LLC / Kim & Chang
- Military Judge and Military Prosecutor, The Republic of Korea Navy
- Director of Research, Korea International Trade Law Association (2021-Present)
- Director, Korea Private International Law Association (2021-Present)
- Director of Academic Affairs, Korean Society of International Economic Law (2019-Present)
- Lecturer, College of Law, Seoul National University (2015)
- Harvard Law School (LL.M., 2017)
- Seoul National University, Graduate School (Completed Ph.D. Coursework, 2013)
- Seoul National University, Graduate School (LL.M., 2011)
- Seoul National University (LL.B., Valedictorian, 2006)