COMPARATIVE INSIGHT INTO INTERNATIONAL COMMERCIAL ARBITRATION LAWS OF THE DPR KOREA, CHINA AND RUSSIA: FOCUSING ON ARBITRATION AGREEMENTS

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Abstract *– In the present time, commercial exchange and cooperation among the DPR Korea, China and Russia are constantly expanding, which in turn leads to increase in commercial disputes among legal and natural persons of these three countries. Such disputes, in large part, are resolved through arbitral procedures rather than civil litigation, and arbitral procedures are preconditioned by arbitration agreements. The entire process ranging from its inception to the award originates in the agreement of the parties. The rules regarding arbitration agreements specified in international commercial arbitration laws of the DPR Korea, China and Russia share much in common, but differ in certain aspects.*

The present paper aims at offering correct understanding of the arbitration agreement rules provided in international commercial arbitration laws of the countries so that the legal or natural persons of the DPR Korea, China and Russia can resolve commercial disputes in an informed and more rational way. The paper provides a comparative analysis of the arbitration agreement rules of the international commercial arbitration laws of the three countries and explores the common features and differences of the rules on the basis of outlining the development of the national legislation on arbitration agreements in the DPR Korea, China and Russia.

Keywords: *arbitration agreement; the Law of the Democratic People's Republic of Korea on External Economic Arbitration; the Law of the People's Republic of China on Arbitration, Civil Procedure Law of the People's Republic of China, Russian Federation Law on International Commercial Arbitration*

INTRODUCTION

In general, arbitration is a way of resolving disputes by which parties to a dispute commission a third party other than a judicial organ to hear the dispute and obey its arbitral award through voluntary agreement.

In comparison with civil litigation, arbitration is a simpler and speedier way of dispute resolution. When a dispute is brought to a civil court in a certain state, relevant parties must follow the legal system, language and procedures of the forum state, whereas in arbitration, parties can freely select the place, language and applicable laws of arbitral procedures through mutual agreement. In particular, since parties can freely designate arbitrators, it is recognized that dispute resolution by arbitration is relatively fair in comparison with civil litigation. Hence, the absolute majority of the parties taking part in international commercial arbitration normally tend to have recourse to arbitration rather than civil litigation. The same is the case for legal and natural persons of the DPR Korea, China and Russia.

In fact, the method of resolving international commercial disputes by arbitration has long been employed in the Western states, but in the DPR Korea, China and Russia, the history of such dispute

resolution method is not so long, and the history of national legislation on international commercial arbitration is also rather short.

The DPR Korean government established and has developed arbitration system for dispute resolution on the basis of several rules since 1950s. In October 1955, it established the Korea Committee for the Promotion of International Trade (KCPIT)[1] and as an affiliated organization organized the Korea International Trade Arbitration Committee (KITAC), on the basis of which it began to establish the legal regime governing trade arbitration.

The DPR Korea's first national legislation regarding arbitration is the Statute of Trade Arbitration Committee Directly Affiliated to the KCPIT and the Regulation on Hearing Cases of Arbitration Committee Directly Affiliated to the KCPIT, both of which were adopted in 1956.[2] The provision on arbitration agreements was first spelt out in the Regulation on Hearing Cases of Arbitration Committee Directly Affiliated to the KCPIT. According to this, parties' agreement as to resolving disputes through arbitration should be incorporated into the terms of a contract or other written agreements.[3] Thus, the Regulation did not define specific requirements or contents of arbitration agreements, but merely envisaged the possibility of dispute resolution through arbitral procedures in case there is a written arbitration agreement. This indicates that the legal regulation on arbitration agreements was comparatively simple in the early stage of the establishment of arbitration system in the DPR Korea. Nevertheless, the Regulation was actively invoked in the settlement of disputes that arose during economic exchange with socialist states for nearly two decades after its enactment.

National legislation on arbitration agreements became more elaborated in the mid-1970s, when economic transactions with other countries became more activated in this country. Although Article 2 of the Rules of Examining Cases of the Trade Arbitration Committee of the DPR Korea Committee for the Promotion of International Trade[4] adopted in July 1975 reiterated the provision on arbitration agreement of the past by specifying that disputes can be resolved through arbitration only when there is a written agreement, the Rules of Applying for Trade Arbitration and Pleading Procedures adopted in December 1975[5] elaborated the rules on arbitration agreements reflecting the realities of the then developed external economic relations in the DPR Korea. Article 2 (1) of this Rules specified the detailed requirements of arbitration agreement clause that must be included in the sales contracts with foreign parties. According to this provision, arbitration agreement clause in a sales contract with foreign parties must designate the arbitral institution, place of arbitration, applicable law and binding force of an arbitral award. This article regarding arbitration agreement continued to be enforced without modification until the late 1990s, when the External Economic Arbitration Law was enacted as a branch law.

The comprehensive legislation on arbitration including arbitration agreements was materialized by the adoption of the External Economic Arbitration Law of the DPR Korea adopted on 21 July 1999. The fact that it wasn't until 1999 that the legal relations related to arbitration came to be regulated in a specific branch law is concerned with the circumstances where the external economic climate of the DPR Korea was fundamentally changed in the wake of the collapse of the socialist market.[6]

Since the adoption of the External Economic Arbitration Law, the absolute majority of international commercial disputes have been settled by arbitration in the country, and reflecting

[1] The Korea Committee for the Promotion of International Trade was organized by Cabinet Decision No. 682 on 20 October 1955.

[2] These Rules were adopted by Cabinet Decision No. 1233 on 24 December 1956.

[3] Article 4 of Rules of Hearing Cases of Trade Arbitration Committee Directly Affiliated to the Korea Committee for the Promotion of International Trade.

[4] Adopted by the Cabinet Decision No. 26 on 2 July 1975.

[5] Adopted by the Trade Department Directive No. 6 on 11 December 1975.

[6] 김성호 등, 《법학전서(국제경제법부문)》 [Song Ho Kim, Compendium of Laws: Economic International Law] 327 (Pyongyang, Science Encyclopedia Publishing House, 2014).

the experience and lessons learnt during the process, the DPR Korean government amended the Law four times in 2008, 2014, 2016 and 2020. The DPR Korea is now planning to make major revisions to the Law to suit to the ever-expanding economic transactions with friendly nations such as Russia.

For the proper implementation of the Law, the KITAC Arbitration Regulation was adopted in December 1999[7], the Korea Marine Arbitration Rules in January 2000[8] and the Korea Computer Software Arbitration Rules[9] in February 2004. These regulations elaborated the procedures and methods of arbitration defined in the External Economic Arbitration Law to suit to the characteristics of the relevant fields. The provisions of these rules regarding arbitration agreements are similar.

From the foregoing, it can be said that the DPR Korea's history of integrated legal framework governing arbitration agreements including branch laws and regulations is no longer than 25 years.

Since the KITAC holds the vital position in hearing and settling disputes related to trade, investment, and service in the DPR Korea, the present paper discusses the topic of arbitration agreement with the main emphasis on the DPR Korea External Economic Arbitration Law and the KITAC Arbitration Regulation.

In China, there were barely any specialized laws and regulations regarding international trade arbitration before 1979, when the nation adopted an open door policy. The first national legislation on international commercial arbitration after the foundation of the People's Republic of China was a decision released on 6 May 1954 by the Government in relation to the establishment of the Foreign Trade Arbitration Commission (FTAC).[10] The then China Council for the Promotion of International Trade (CCPIT) adopted the Provisional Rules of Procedure of the Foreign Trade Arbitration Commission of the CCPIT on 31 March 1956 based on the twelve Sections of the 1954 Decision. This provisional rules called 1956 Arbitration Rules contained thirty-eight Articles, most of which mirrored the arbitration rules of the Soviet Union because the PRC lacked practical experience in international commercial arbitration at that time.[11] This 1956 Arbitration Rules, although it was argued as adopting standards and criteria widely employed in the then international practice, the provisions including arbitration agreement clauses were quite simple. Nevertheless the 1956 Arbitration Rules remained in effect for thirty-two years until a new arbitration rule was enacted in 1988.

On 26 February 1980, China renamed the FTAC to FETAC (Foreign Economic and Trade Arbitration Commission)[12] and on 21 June 1988, the State Council again changed the arbitration commission's name to the China International Economic and Trade Arbitration Commission (CIETAC), as the organization is now known, and further broadened its jurisdiction to cover all disputes arising from international economic and trade transactions.[13]

[7] Adopted by the Cabinet Decision No.89 on 13 December 1999, amended by the Cabinet Decision No. 102 on 7 December 2015 and amended by the Cabinet Decision No. 67 on 11 July 2021.

[8] Approved by the Cabinet Decision No. 2 on 15 January 2000, and adopted by the Cabinet Decision No. 109 on 21 December 2015.

[9] Adopted by the Cabinet Decision No. 5 on 9 February 2004.

[10] Decision of the Government Administration Council of the Central People's Government Concerning the Establishment of A Foreign Trade Arbitration Commission Within the China Council for the Promotion of International Trade, 1 STAT. AND REG. OF THE PRC 540506 (1987).

[11] Ge Liu and Alexander Lourie, *International Commercial Arbitration in China: History, New Developments, and Current Practice* 28 (3) Journal of Marshall Law Review 545 (1995).

[12] *State Council's Notice Concerning the Conversion of the Foreign Economic and Trade Arbitration Commission* (Feb. 26, 1980).

[13] *The State Council's Official Reply Concerning the Renaming of the Foreign Economic and Trade Arbitration Commission as the China International Economic and Trade Arbitration Commission and the Amendment of Its Arbitration Rules* (June 21, 1988).

In view of such changes, the CCPIT adopted Arbitration Provisions of the CIETAC (1988 Arbitration Provisions)[14] on 12 September 1988 and it came into force on 1 January 1989.[15] The 1988 Arbitration Provisions were amended twice in 1994 and 2014.

On the other hand, on the basis of substantial experience in international commercial arbitration gained for several decades, China has enacted a number of laws and regulations directly or indirectly relating to international commercial arbitration since 1979. Such laws include the Law of the PRC on Sino-Foreign Joint Equity Enterprises[16] adopted on 1 July 1979, Trial Civil Procedure Law[17] provisionally enacted on 8 March 1982 and Foreign Economic Contract Law of the PRC adopted on 21 March 1985 etc.

The Trial Civil Procedure Law defined that the Chinese courts have no jurisdiction over disputes where the parties agree to arbitrate the matter. For the purposes of this law, there is no distinction between original agreements to arbitrate and subsequent agreements after disputes arise. The Trial Civil Procedure Law was updated on 9 April 1991 by the enactment of the Civil Procedure Law of the PRC (1991 Civil Procedure Law). The new Civil Procedure Law was amended three times in 2007, 2012 and 2017. The 1991 Civil Procedure Law is composed of 4 Parts, 27 Chapters and 284 Articles, and the issues related to arbitration is provided in Chapter 26 Arbitration of Part IV Special Provisions on Foreign-related Civil Procedures.

The Foreign Economic Contract Law of the PRC provided that parties in a contractual dispute could, according to the arbitration clause or a subsequent written agreement, submit the dispute to arbitration proceedings either at a Chinese or non-Chinese arbitration organization. The Law was repealed on 15 March 1999 by the enactment of the Contract Law of the PRC[18] and the articles dealing with arbitration are now incorporated into the Contract Law.

The law comprehensively dealing with international commercial arbitration in China is the Arbitration Law of the PRC (1994 Arbitration Law). The Arbitration Law was adopted on 31 August 1994 and amended twice in 2009 and 2017. The 1994 Arbitration Law was adopted with the aim of conforming China's international commercial arbitration system to international standards.[19] The 1994 Arbitration Law consists of eight Chapters and eighty Articles and applicable to almost all arbitration cases both domestic and foreign.[20] However, Articles 65 to 73 of Chapter 7 Special Provisions on Foreign-Related Arbitration specifying the issues pertaining to foreign-related arbitration are very similar to arbitration articles in Chapter 26 of Civil Procedure Law. Other provisions of the 1994 Arbitration Law may also apply to arbitration matters involving foreigners.

In China, arbitration agreements are mainly dealt with by the 1994 Arbitration Law and the 1988 Arbitration Provisions. Other laws, including Civil Procedure Law, regulates only general relations of arbitration and civil procedure such as provisions denying jurisdictions of people's court in case there is a written arbitration agreement between the relevant parties. Therefore, the paper discusses the topic of arbitration agreement with a main emphasis on the 1994 Arbitration Law of the PRC and the 1988 Arbitration Provisions of the CIETAC.

[14] Arbitration Provisions of the China International Economic and Trade Arbitration Commission, Act of Sept. 12, 1988, 2 CHINA L. FOR FOREIGN Bus. REG. (CCH) 10-505, at 12,821.

[15] *Id.* art. 43, 110-505, at 12,853. The 1988 Rules remained in effect until the adoption of revised Arbitration Rules of CIETAC in 1994. Those rules became effective on 1 June 1994. It was subsequently amended and adopted on 4 November 2014, and came into effect on 1 January 2015.

[16] Law of the PRC on Sino-Foreign Joint Equity Enterprises, Act of 1 July 1979, as amended 4 April 1990.

[17] The Civil Procedure Law of the PRC (Provisional), Act of 8 March 1982. Although adopted on a preliminary basis, the Trial Civil Procedure Law remained in effect until the passage of the Civil Procedure Law of the PRC in 1991.

[18] The Contract Law of the PRC was repealed by the Civil Code of the PRC adopted on 29 May 2020 and came into force on 1 January 2021.

[19] Joao Ribeiro and Stephanie Teh. *The Time for a New Arbitration Law in China: Comparing the Arbitration Law in China with the UNCITRAL Model Law*, 34 Journal of International Arbitration 459, 481 (2017).

[20] The Arbitration Law does not apply to labor disputes and disputes arising from certain agricultural contracts.

In Russia, the history of arbitration is relatively long compared to the DPR Korea and China and arbitration has been utilized in this country to resolve disputes since as early as the fourteenth century.[21] However, arbitration tribunals that were established to settle disputes among traders in the Middle Ages were not as widespread as in other European states.[22]

The first legislative enactment on Russian arbitration existed in the Code of Tsar Aleksei of the 17th century.[23] It was only during the mid-19th century that general regulation of arbitration first appeared in Russia's 1857 Code of Laws, and it was subsequently revised by the Code of Civil Procedure of 1864 (1864 Code).[24]

Arbitration ideas were most consistently implemented in the Foreign Trade Arbitration Commission (FTAC) created legislatively in 1932 and placed under the National Chamber of Commerce.[25] The Commission dealt with about a hundred disputes in the period between 1932 and mid-1941, when this country entered World War II. In the post-war period, vigorous economic ties among socialist countries led, naturally enough, to a significant increase in the number of cases examined by the FTAC every year by the late 1980s, and the Commission was dealing with three hundred cases a year.[26] In this period, the FTAC mostly focused on disputes arising in the context of economic, scientific and technological cooperation among member countries of the Council for Mutual Economic Assistance (COMECON or SEV in Russian). It was related with the circumstances where the then USSR's trade was mainly carried out with the socialist countries, which were the member states of the COMECON according to the 1972 Moscow Convention entitled "On the Resolution by Arbitration of Civil Law Disputes Resulting from Relations of Economic, Scientific and Technical Cooperation". This Convention required the disputes arising between organisations from the contracting states in the course of economic and scientific-technical cooperation to be resolved in the Court of Arbitration at the Respondent's national Chamber of Commerce. For this reason, the jurisdiction of state courts in such cases were ousted regardless of whether or not the parties ever agreed to arbitrate – in other words, arbitration was compulsory.[27]

Although this was said to be repealed in the beginning of the 1990s in the wake of the fall of the Soviet Union and the dismantling of the COMECON, the International Commercial Arbitration Court (ICAC) at the Russian Federation Chamber of Commerce and Industry continues to invoke the Convention, to a considerable extent, in arbitral proceedings and awards.[28]

The FTAC of the USSR National Chamber of Commerce established in 1932 was renamed as Arbitration Court at the Chamber of Commerce and Industry of the USSR in 1987. The Arbitration Court was succeeded by the International Commercial Arbitration Court (ICAC) at the Chamber of Commerce and Industry of the Russian Federation on 7 July 1993 and on the same date, Law No. 5338-1 of the Russian Federation "On International Commercial Arbitration" (ICA Law) was adopted. The ICA Law was amended twice on 3 December 2008 and 29 December 2015. Another law governing domestic and international arbitration is Federal Law on Arbitration (Arbitral Proceedings) in the Russian Federation (Federal Arbitration Law) enacted 15 December 2015. Both the ICA Law and the Federal Arbitration Law contains identical provisions regarding arbitration agreements such as its definition, form, modification, effect etc.

[21] According to Mintz, monuments from as early as the fourteenth century evidence the arbitration of ancient disputes in Russia by third parties. P.M. Mintz, Treteiskaia Sdelka i Treteiskii Sud [Agreements to Arbitrate and Arbitration], ZHURNAL MINISTERSTVA IUSTITSII, 1917, Nos. 5-6, at 154, 189.

[22] Commercial Arbitration in Russia (Historical), mkas.tpprf.ru/en/lawstatus/historical_background, at 1.

[23] Mintz, *supra* note 21.

[24] Karen Halverson. *Resolving Economic Disputes in Russia's Market Economy*, 18 (1) Michigan Journal of International Law 77 (1996).

[25] Commercial Arbitration in Russia (Historical), mkas.tpprf.ru/en/lawstatus/historical_background, at 1.

[26] Commercial Arbitration in Russia (Historical), mkas.tpprf.ru/en/lawstatus/historical_background, at 2-3.

[27] A. Kotelnikov, *The Arbitration Agreement* In A Kotelnikov, S Kurochkin, and O Skvortsov, Arbitration in Russia (Alphen aan den Rijn: Wolters Kluwer, chapter 3, 2019)

[28] *Ibid*.

Although the history of arbitration laws of the DPR Korea, China and Russia are not so time-honoured and the arbitral procedures somewhat differ from country to country, provisions on arbitration agreements of these three countries share much in common, and therefore a detailed comparative analysis of the provisions on arbitration agreements would hopefully help the legal or natural persons of the three countries carrying out international commercial activities.

The agreement to arbitrate is the foundation of international arbitration. It rerecord the consent of the parties to submit to arbitration-a consent which is indispensable to any process of dispute resolution outside national courts.[29] Arbitration tribunal is endowed jurisdiction by a valid arbitration agreement, and only when the validity of an arbitration agreement is recognized can arbitral awards be implemented. If arbitration agreements are void, the parties must reach arbitration agreements again or have recourse to litigation to resolve their disputes.

Although provisions on arbitration agreements in the national arbitration laws of the DPR Korea, China and Russia are similar in large part as mentioned above, they are not without distinctive characters. Therefore, in case there is a dispute in commercial transactions among legal or natural persons of the three countries, the result of the assessment of the validity of an arbitral agreement will be different depending on the country in which the dispute is dealt with.

From this perspective, the provisions on arbitration agreements in the arbitration laws of the DPR Korea, China and Russia is directly related to commercial interests of the legal and natural persons of these three countries.

In the paper, the provisions on arbitration agreements specified in the national arbitration laws and regulations of the DPR Korea, China and Russia are classified according to certain criteria and comparatively analyzed.

1. Comparative Analysis of the Rules of Arbitration Laws Regarding Formal Requirements of Arbitration Agreements

International arbitration conventions[30] and the majority of national arbitration laws of individual states require arbitration agreements to be in written form. The scope of the written form, however, is defined relatively lenient with a view to respecting the parties' arbitration will.

In the DPR Korea, the typical arbitration law specifying formal requirements of an arbitration agreement is the DPRK External Economic Arbitration Law. But the KITAC Arbitration Regulation does not contain any provisions regarding the formal requirements of arbitration agreements. Article 13 (1) of the DPRK External Economic Arbitration Law expressly specifies that arbitration agreements should be in written form. According to this, unwritten arbitration agreements such as oral or other forms of agreements are generally not recognized as valid in this country.

Then what are the written forms of arbitration agreements and the scope of 'written' form in the DPR Korea? According to Article 12 (2) of the DPRK External Economic Arbitration Law, an arbitration agreement is reached by incorporating an arbitral clause in a contract or concluding separate arbitration agreements, i.e. there are two types of written form of arbitration agreements: a contract and a separate arbitration agreement. Arbitration agreement is reached at the time of concluding a contract in the former case, while in the latter case, arbitration agreements can be made after the conclusion of a contract or even after a dispute arise at any stage until the arbitration.

While Article 13 (1) of the DPRK External Economic Arbitration Law sets forth general requirement that an arbitration agreement need to be in written form, Article 13 (2) of the Law defines the specific range of the term "written form". Article 13(2) of the Law prescribes that "In case where the intention concerning arbitration is specified in a document signed by a party concerned or in correspondence, fax or e-mail exchanged between the parties concerned, and in case an arbitration agreement is made verbally, by action or other means or form but whose

[29] Nigel Blackby and Constantine Partasides, *Redfern and Hunter on International Arbitration* 85 (Oxford: Oxford University Press, 2014).

[30] Typical examples include the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards adopted on 10 June 1958 in New York (also called New York Convention).

content are put in a record or verified by evidence, an arbitration agreement shall be deemed to have been made." According to this article, the specific scope of the written form of arbitration agreement include (1) a document signed by the parties (a contract containing arbitration agreement or a separate document of arbitration agreement), (2) correspondence, fax or e-mail containing the parties' intent to have recourse to arbitration although not signed by the parties, and (3) a record or evidence from which the intent to apply for arbitration expressed verbally, by action or other means or form can be recognized.

In fact, after the adoption of the DPRK Economic Arbitration Law, the Government amended the Law several times to suit to the external economic situation of the country while adopting the requirements of the UNCITRAL Model Law on International Commercial Arbitration (2006 UNCITRAL Model Law) in line with the development of international commercial arbitration. As to the formal requirement of an arbitration agreement that it must be in written form, the DPRK Economic Arbitration Law mirrored the contents of Article 7(3)[31] of the 2006 UNCITRAL Model Law adding that in case an arbitration agreement is made verbally, by conduct or other means or form but whose content are "verified by evidence", an arbitration agreement is deemed to have been made. This means that when it is verified by the witness of a third person that an arbitration agreement is made verbally or by certain conducts, it is deemed to create an arbitration agreement even though there is no audio or visual record thereof. Thus, the scope of the "written form" of an arbitration agreement in the DPRK External Economic Arbitration Law is larger than the provisions of international conventions or other countries' national arbitration laws.

The DPRK External Economic Arbitration Law establishes exceptions to the rules requiring written form of an arbitration agreement. In other words, the form of an arbitration agreement does not necessarily need to be written, and in some circumstances, an arbitration agreement can be formed without written agreement. Such exceptions are specified in Article 14 of the DPRK External Economic Arbitration Law. This article envisages exceptional cases by stipulating that in cases where a party does not object to the suggestion of the other party for arbitration agreement, or a respondent does not object to the request of the claimant for arbitration and submits a response, arbitration agreement is deemed to have been made though a written agreement has not been made. Being similar to Article 7 (5) of the 2006 UNCITRAL Model Law[32], this article elaborates by specifying that "arbitration agreement is deemed to have been made though a written agreement has not been made", thus respecting the intention of the parties to the full in arbitration agreements.

In China, typical arbitration laws defining the formal requirements of an arbitration agreement include the 1994 Arbitration Law of the PRC and the 1988 Arbitration Provisions of the CIETAC. These laws also require arbitration agreements to be in written form. But the 1994 Arbitration Law provides general requirements that arbitration agreements should be in written form and the detailed scope of the valid form of arbitration agreements are specified in the 1988 Arbitration Provisions.

According to the 1994 Arbitration Law "an arbitration agreement shall include the arbitration clauses stipulated in a contract and any other written agreement for arbitration concluded before or after a dispute occurs."[33] This indicates that China also recognizes arbitration clauses in a contract and arbitration agreement made separately in written form as written form of arbitration agreements. But what is distinctive in Chinese arbitration law is that, unlike the DPR Korean

[31] Article 7(3) of 2006 UNCITRAL Model Law reads "An arbitration agreement is in writing if its content is recorded in any form, whether or not the arbitration agreement or contract has been concluded orally, by conduct, or by other means".

[32] Article 7(5) of 2006 UNCITRAL Model Law reads "Furthermore, an arbitration agreement is in writing if it is contained in an exchange of statements of claim and defence in which the existence of an agreement is alleged by one party and not denied by the other".

[33] Article16(1) of Chapter III of the Arbitration Law of the PRC.

arbitration law, it expressly states the point of time when a separate arbitration agreement after the conclusion of a contract as "before or after a dispute arises".

The 1988 Arbitration Provisions defines an arbitration agreement as referring to "an arbitration clause in a contract or any other form of a written agreement concluded between the parties providing for the settlement of disputes by arbitration"[34], which is reiterated in the counterpart article of the 1994 Arbitration Law. The 1988 Arbitration Provisions also defines the scope of the written form as formal requirement of an arbitration agreement and exceptional cases that can be deemed creating arbitration agreements even though there is no written agreement.

With regard to the scope of the "written form" as a formal requirement of an arbitration agreement, the 1988 Arbitration Provisions specifies that "an arbitration agreement is in writing if it is contained in the tangible form of a document such as a contract, letter, telegram, telex, fax, electronic data interchange, or email."[35] According to this article, there are two types of written form of arbitration agreements: (1) contracts and (2) other documents containing the intention to apply for arbitration such as a letter, telegram, fax, electronic data interchange, email etc. Such regulations in the 1988 Arbitration Provisions of China is distinguished from the provisions of the DPR Korean arbitration law, which extends the scope of the "written form" to records or evidence containing verbal or physical actions that can be viewed as creating arbitration agreements. The 1988 Arbitration Provisions then provides that "an arbitration agreement shall be deemed to exist where its existence is asserted by one party and not denied by the other during the exchange of the Request for Arbitration and the Statement of Defense."[36] This is distinguished from the relevant provision of the DPRK External Economic Arbitration Law specifying that in cases where a party does not object to the suggestion of the other party for arbitration agreement, or a respondent does not object to the request of the claimant for arbitration and submits a response, arbitration agreement is deemed to have been made.

The provision regarding the form of an arbitration agreement of the 1988 Arbitration Provisions are based on the Interpretation of the Supreme People's Court on Certain Issues relating to Application of the Arbitration Law of the People's Republic of China[37], released on 26 December 2005. Article 1 of the Interpretation specifies that "an arbitration agreement in 'other written format' as provided for in in Article 16 of the Arbitration Law includes any agreement requesting for arbitration in the form of a contract, letter or electronic text (including telegraph, telex, facsimile, electronic data interchange and e-mail)." As seen above, the scope of the "written form" of arbitration agreement in Chinese arbitration law is narrower than that of the DPR Korea. This is partly attributable to the fact that China has not adopted the 2006 UNCITRAL Model Law, a set of rules designed to assist States in reforming and modernizing their laws on arbitral procedure so as to take into account the particular features and needs of international commercial arbitration.[38]

In Russia, the typical arbitration laws providing formal requirements are the 1993 International Commercial Arbitration Law of Russian Federation (ICA Law) and the 2015 Federal Law on Arbitration (Arbitral Proceedings) in the Russian Federation (Federal Arbitration Law). The provisions on arbitration agreements of these two Laws are almost identical to each other and, in large part, similar to the provisions of the 2006 UNCITRAL Model Law.[39] This is expressed in that Article 7 of Section II Arbitration Agreement of the ICA Law and Article 7 (Definition, form and

[34] Article 5 (1) of Arbitration Provisions of the China International Economic and Trade Arbitration Commission.
[35] Article 5 (2) of Arbitration Provisions of the China International Economic and Trade Arbitration Commission.
[36] *Ibid*.
[37]赵秀文,《中国商事仲裁法原理与案例教程》[Xiuwen Zhao, Principles of Chinese Commercial Arbitration Law and Case Study] 118 (Law Publishing House, 2010), ISBN978-7-300-09310-9/D 1810.
[38] Annie X Li, *Challenges and Opportunities of Chinese International Arbitral Institutions and Courts in a New Era of Cross-border Dispute Resolution*, 38 (2) Boston University International Law Journal 358 (2020).
[39] Kotelnikov, *supra* note 27.

interpretation of arbitration agreement) of the Federal Arbitration Law are identical to Article 7 of the 2006 UNCITRAL Model Law.

According to Article 7 of the ICA Law and the Federal Law on Arbitration, the arbitration agreement must be in writing, which may be in the form of an arbitration clause in a contract or in the form of a separate agreement.[40] Such provisions of the Russian arbitration laws regarding arbitration agreements are identical to the relevant provisions of the DPR Korea and China, which recognizes a contract containing the arbitration agreement, and a separate document made before or after the rise of a dispute as a written form of arbitration agreements.

However, as to the scope of the "written form" of an arbitration agreement, Russian arbitration law specifies in more detail than the DPR Korean or Chinese provisions. Subject to the provisions of Russian arbitration laws regarding arbitration agreements, the documents exchanged by electronic means between the parties are recognized as written arbitration agreements. According to the relevant provisions of the ICA Law, if an arbitration agreement is concluded in a form that allows the recording of information contained in it or the access to such information for subsequent use, then an arbitration agreement is deemed concluded[41]. And if the information contained in an arbitration agreement is accessible for subsequent use and if the arbitration agreement has been concluded in compliance with the provisions of law applicable to the contracts concluded by means of the exchange of documents by using electronic means, an arbitration agreement is deemed concluded.[42] In this regard, the Federal Arbitration Law elaborated the ICA Law by specifying that if the arbitration agreement is made, among other things, by way of an exchange of letters, telegrams, telex, telefaxes or other documents, including electronic documents transmitted via communications lines, allowing one to reliably ascertain that the document originates from the other party, an arbitration agreement is deemed concluded.[43]

In addition, according to the two arbitration laws, the reference in a contract to a document containing an arbitration clause represents an arbitration agreement concluded in written form, provided that the specified reference is such as to make that clause part of the contract[44] and arbitration agreement may be concluded via inclusion in the rules of an organized bidding or clearing rules, which are registered in accordance with the legislation of the Russian Federation.[45] And if the charter of a legal entity created in the Russian Federation contains an arbitration

[40] Article 7 (1) and (2) of Russian Federation Law on International Commercial Arbitration.

[41] Article 3 of Russian Federation Law on International Commercial Arbitration states that "The provision in clause 2 of this article is deemed complied with, if an arbitration agreement is concluded in a form that allows the recording of information contained in it or the access to such information for subsequent use."

[42] Article 7 (4) of Russian Federation Law on International Commercial Arbitration states that "An arbitration agreement shall be deemed concluded in the written form of an electronic message, if the information contained in it is accessible for subsequent use and if the arbitration agreement has been concluded in compliance with the provisions of law applicable to the contracts concluded by means of the exchange of documents by using electronic means."

[43] Article 7 (3) of Russian Federation Law on International Commercial Arbitration states that "The provision of part 2 of this Article shall be deemed complied with, if the arbitration agreement is made, among other things, by way of an exchange of letters, telegrams, telex, telefaxes or other documents, including electronic documents transmitted via communications lines, allowing one to reliably ascertain that the document originates from the other party."

[44] Article 7 (6) of Russian Federation Law on International Commercial Arbitration states that "The reference in a contract to a document containing an arbitration clause represents an arbitration agreement concluded in written form, provided that the specified reference is such as to make that clause part of the contract."

[45] Article 7 (7) of Russian Federation Law on International Commercial Arbitration states that "An arbitration agreement may be concluded via inclusion in the rules of an organized bidding or clearing rules, which were registered in accordance with the legislation of the Russian Federation. Such an arbitration agreement is an arbitration agreement of the participants of organized bidding, the parties to an agreement concluded in the course of organized bidding in accordance with the rules of organized bidding, or of participants of clearing."

agreement, then it is regarded as an arbitration agreement between the relevant participants of the legal entity.[46]

On the other hand, Russian arbitration laws provide circumstances where an arbitration agreement can be deemed concluded even without written document, which are similar to the relevant provisions of the DPRK or Russian arbitration laws. According to the Russian arbitration laws, an arbitration agreement is deemed concluded in written form if it is concluded via an exchange of statements of claim and defence in which the existence of an agreement is alleged by one party and not denied by another.[47],[48]

Thus, the provisions on the formal requirements of arbitration agreements in arbitration laws of the DPR Korea, China and Russia are analogous, yet have subtle distinctions.

2. Comparative Analysis of the Rules of Arbitration Laws Regarding Substantial Requirements of Arbitration Agreements

While formal requirement of an arbitration agreement is related to the form of existence, the substantial requirement of arbitration agreement refers to the criteria or elements that are required for written arbitration agreements to be formed or that can be reflected in it. An arbitration agreement between the parties can become invalid unless what appears to be an arbitration agreement satisfies substantial requirements as well as formal requirements.

Substantial requirements of an arbitration agreement include the civil capacity of the relevant parties, expression of the genuine intention of the parties, the subject matter of an arbitration agreement, and conditions or elements related to the contents of an arbitration agreement.

2.1 Civil Capacity of the Parties

The civil capacity of the parties is one of the valid conditions of civil legal act. In the same vein, with regard to arbitration agreements, whether a party to an arbitration agreement has civil legal capacity or not is the critical condition that determines the validity of the arbitration agreement.

In general, civil capacity of the parties to an arbitration agreement is judged by applicable laws designated by private international law rules of the country where arbitration is sought. Such applicable laws can be the national law of the relevant party, the law of domicile, or *lex loci actus*.

[46] Article 7 (8) of Russian Federation Law on International Commercial Arbitration states that "An arbitration agreement for the referral to arbitration of all or part of the corporate disputes of participants of a legal entity created in the Russian Federation and the legal entity itself, for whose resolution apply the rules of resolving corporate disputes in accordance with the Federal Law "On Arbitration (Arbitral Proceedings) in the Russian Federation", may be concluded via inclusion in the charter of the legal entity. The charter containing such an arbitration agreement, and changes to the charter, providing for such an arbitration agreement and for changes to it, are approved by the highest governing body (the participants' meeting) of the legal entity, unanimously by all participants in such legal entity."

[47] Article 7 (5) of Russian Federation Law on International Commercial Arbitration specifies that "An arbitration agreement shall be deemed concluded in written form if it is concluded via an exchange of statements of claim and defence in which the existence of an agreement is alleged by one party and not denied by another.

[48] Article 7 (4) of Federal Law "On Arbitration (Arbitral Proceedings) in the Russian Federation."
An arbitration agreement shall also be deemed in writing if made by way of an exchange of procedural documents (including a statement of claim and a statement of defence), where one of the parties claims that the agreement exists, while the other does not object to it.

Each state's legal system endows citizens who reached a certain age with civil legal capacity and that age differs from country to country. But the civil laws of the DPR Korea, China and Russia defines 18 as the age at which a person has full legal capacity.[49],[50],[51]

The wordings of the relevant provisions of these three countries' arbitration laws are also very similar. Article 15 of the DPRK External Economic Arbitration Law defines the case when a party is incompetent at the time of making the agreement as one of the reasons for invalidation of arbitration agreements.[52] According to this, if both or one of the parties lack legal capacity at the time of making an arbitration agreement, that agreement is invalid. Article 17 of the Chinese Arbitration Law defines that an arbitration agreement is invalid if it is concluded by persons without or with limited capacity for civil acts.[53] And according to Article 34 of the ICA Law of Russia, if the party making the setting-aside application furnishes proof that a party to the arbitration agreement referred to in Article 7 is under some incapacity[54], the arbitration agreement can be set aside.

As illustrated, the relevant laws of the DPR Korea, China and Russia recognizes arbitration agreements made by the parties without legal capacity to act as invalid. Only Chinese arbitration law provides a bit more specific rules than those of the DPRK and Russia by stating that "an arbitration agreement concluded by persons without or with limited capacity for civil acts are invalid". However, it seems inaccurate to interpret relevant provisions of the DPRK or Russian arbitration laws as validating arbitration agreements concluded by persons with limited capacity for civil acts.

2.2 Expression of the Will of the Parties

In much the same way as the civil legal capacity to act, the true will of the parties is required for civil legal act to be valid.

In general, the civil legal act that is not based on the true will of the parties but on coercion, deceit, bribery or mistake is not valid. Since an arbitration agreement is also a sort of civil legal act, the voluntary expression of the parties' will is a premise that constitute a valid arbitration agreement, and an arbitration agreement that is not based on the true will of the parties is, of course, void.

According to Article 15 of the DPRK External Economic Arbitration Law, only the arbitration agreement made by coercion is deemed invalid[55]. According to this article, only the arbitration agreement made by coercion are defined as invalid, while the agreements made by deceit, bribery or mistake are not. This is distinguished from the provisions of the 2024 Civil Law of the DPR Korea defining deceit, coercion, and mistake as the circumstances that makes civil legal acts invalid.[56]

Article 17 of the Chinese Arbitration Law provides that if one party forces the other party to sign an arbitration agreement by means of duress, such arbitration agreement is invalid.[57] After all, Chinese Arbitration Law, like the DPRK arbitration law recognizes coercion as the only circumstance that makes an arbitration agreement invalid. This is also distinctive from the Chinese

[49] Article 20 of the Civil Law of the Democratic People's Republic of Korea adopted in 1990 originally defined that a person aged 17 acquires civil dispositive capacity. But the new Civil Law of the DPR Korea adopted on 6 February 2024 and came into force on 1 March modified the age to 18 in Article 27.

[50] Article 17 of the Civil Code of the People's Republic of China, adopted at the Third Session of the Thirteenth National People's Congress on 28 May 2020, and came into force on 1 January 2021 specifies that a natural person aged eighteen or above is an adult and Article 18 defines that an adult has full capacity for performing civil juristic acts and may independently perform civil juristic acts.

[51] Article 21 (1) of Part I of the Russian Civil Code adopted in 1994 states that the capability of a citizen arise in full volume with the citizen's coming of age, i.e., upon his reaching the age of 18 years.

[52] Article 15 (2) of the Law of the Democratic People's Republic of Korea on External Economic Arbitration.

[53] Article 17 (2) of the Arbitration Law of the People's Republic of China.

[54] Paragraph 2 (1) of Article 34 of the Russian Federation Law on International Commercial Arbitration.

[55] Article 15 (3) of the Law of the Democratic People's Republic of Korea on External Economic Arbitration.

[56] Articles 45 to 47 of the 2024 DPRK Civil Law.

[57] Article 17 (3) of the Arbitration Law of the People's Republic of China.

Civil Law providing fundamental mistake, deceit, threat etc as circumstances invalidating civil legal acts.[58]

Meanwhile, Russian arbitration laws do not directly deal with the expression of the will of the parties regarding arbitration agreements. Article 34 of the ICA Law indirectly regulates the will of the parties to arbitration agreements through other countries' laws by stating that if an arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made, the arbitral award can be set aside.[59]

However, in Russia two approaches coexist as to whether an arbitration agreement is a mere procedural issue or substantial one in international commercial arbitration. Some judges treat an arbitration agreement as a purely procedural agreement, therefore deeming it impossible to apply the rules of the Civil Code. According to this approach, arbitration agreements that do not comply with the dedicated requirements of the 2015 Federal Arbitration Law are invalid. Others believe that there are substantive legal elements in an agreement to arbitrate, and therefore apply the general Civil Code rules to its validity or invalidity. According to this, substantial aberration, deception, coercion, threats or duress specified in Articles 178 and 179 are circumstances precluding validity of an arbitration agreement.[60]

2.3 The Subject Matter of Arbitration Agreements

The subject matter of an arbitration agreement is the question of whether or not arbitration agreements are made within the scope of the dispute that could be resolved by arbitration. If arbitration agreements are made against disputes that cannot be resolved by arbitration, such arbitration agreements are not valid.

Article 15 of the DPRK's Law on External Economic Arbitration stipulates that an agreement on arbitration will not be effective if it is not within the scope of the jurisdiction of arbitration fixed by the law.[61] At the same time, according to Article 4 of the Law, the disputes that have foreign elements and have arisen in the course of external economic transaction, and the disputes which the competent state organ has decided to settle in accordance with the external arbitration procedures are settled by external economic arbitration.[62] This indicates that only the disputes that arose in the course of external economic activities are recognized as the subject matter of arbitration agreement in the DPR Korea, while family relations with foreign elements do not fall into the category of disputes that can be resolved by arbitration.

On the other hand, Article 10 of the KITAC Arbitration Regulation explicitly defines the disputes that may arise during external economic activities, thus specifying the categories of disputes that can be the subject matter of arbitration agreements. According to this, the disputes that can be the subject matter of arbitration agreements include (1) the disputes in which one party is a legal person or an individual of another country or an overseas compatriot, (2) the disputes in which one party is a foreign-invested business or a foreign-invested bank, (3) the disputes in which one party's operating place or the residence is in another country, (4) the disputes in which the subject matter of the disputes are situated in another country or the legal relations regarding disputes are established, modified or terminated in other country.

The foregoing indicates that the legal regulations related to the subject matter of arbitration agreements are fractionized in the DPR Korea.

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[58] Articles 147 to 151 of 2020 Chinese Civil Law.

[59] Paragraph 2 (1) of Article 34 of the Russian Federation Law on International Commercial Arbitration.

[60] Kotelnikov*, supra* note 27.

[61] Article 15 (1) of the Law of the Democratic People's Republic of Korea on External Economic Arbitration.

[62] Article 17 (1) of the Arbitration Law of the People's Republic of China.

Article 4 of the Law of the Democratic People's Republic of Korea on External Economic Arbitration reads: "The following disputes shall be settled by external economic arbitration: 1. Disputes that have foreign elements and have arisen in the course of external economic transaction in respect of which the parties concerned have agreed to refer to arbitration; and 2. Dispute which the State has decided to settle in accordance with the external economic arbitration procedures."

Article 17 of the Chinese Arbitration Law stipulates that an arbitration agreement is invalid if matters agreed upon for arbitration are beyond the scope of arbitration prescribed by law.[63] Articles 2 and 3 of this Law define the scope of the matters that can be agreed upon for arbitration by stating that contractual disputes and other disputes arising from property rights and interests between citizens, legal persons and other organizations of equal status in law may be submitted for arbitration and that disputes over marriage, adoption, guardianship, child maintenance and inheritance; and administrative disputes falling within the jurisdiction of the relevant administrative organs according to law cannot be submitted for arbitration.

Meanwhile, according to Article 3 of the 1988 Arbitration Provisions of China, the CIETAC has jurisdiction over economic, trade and other disputes of a contractual or non-contractual nature, based on an agreement of the parties. Such disputes include (a) international or foreign-related disputes; and (b) disputes related to the Hong Kong Special Administrative Region, the Macao Special Administrative Region and the Taiwan region. In this perspective, it can be said that the provisions of Chinese arbitration law related to the subject matter of arbitration agreement is more general than the relevant laws and regulations of the DPR Korea.

Article 1 (3) of the Russian ICA Law, stipulates that the parties may agree to refer to international commercial arbitration the disputes between the parties arising out of civil law relationships in the course of carrying out foreign trade and other types of international economic relations, if the place of business of at least one of the parties is abroad, or any place where a substantial part of the obligations out of the relationship of the parties is to be performed or the place with which the subject-matter of the dispute is most closely connected are located abroad, as well as disputes arisen in connection with making foreign investments in the territory of the Russian Federation or Russian investments abroad. It follows from this provision that there are two categories of disputes that can be resolved through arbitration: one category involves disputes in which one party is situated abroad, and the other involves disputes in which one party is a foreign-invested enterprise established in the Russian Federation.

This suggests that the disputes that arise with regard to family legal relations or in the course of domestic economic activities, are not within the scope of international commercial arbitration and therefore do not fall into the category of the subject matter of arbitration agreements in Russia either.

2.4 Contents of Arbitration Agreements

When referring to the contents of arbitration agreements, they mean several elements that the parties have to or may state in written arbitration agreements. If the parties fail to specify the contents that they are obliged to specify in a written arbitration agreement, the arbitration agreement is naturally null and void, but if they do not state the content that they may or may not state in the agreement, the validity of the arbitration agreement will not be affected.

In general, the intention to settle disputes by arbitration must be stated in a written arbitration agreement. No arbitration agreement can be established unless the intention to apply for arbitration is reflected. Since it is a duty of arbitration parties to ensure that the intention to settle disputes by arbitration must be stated in a written arbitration agreement, it is irrelevant whether or not it is regulated in the national laws and regulations relating to arbitration procedures.

If the parties have agreed to resolve disputes by arbitration or have agreed on certain issues related to arbitration, such as the place of arbitration, it is recognized that they have the intention to settle disputes by arbitration.

The DPRK External Economic Arbitration Law does not expressly specify that the intention of arbitration must be specified in the arbitration agreement. However, as seen above, if the content that can be considered as the intention to apply for arbitration exists in whatever form, it is recognized that there is an arbitration agreement. For example, if the place of arbitration is stated

[63] Article 17 (1) of the Arbitration Law of the People's Republic of China.

in an arbitration agreement, it is considered as expressing the intention to apply for arbitration even if an arbitration language is not agreed upon in the arbitration agreement.

The DPRK External Economic Arbitration Law stipulates that subject to the provisions of this Law, the parties concerned may decide arbitration procedures by agreement[64], the venue of arbitration may be decided by agreement between the parties concerned and in the absence of agreement between the parties concerned, the arbitral tribunal designates the venue in consideration of the convenience of the party concerned and overall conditions for the settlement of the case[65], and that the parties concerned may determine by agreement the language to be used in the proceedings and in the absence of agreement between the parties concerned, the arbitral tribunal determines the language.[66] The KITAC Arbitration Regulation similarly defines that the venue and the language of arbitration are determined by agreement of the parties.[67] This indicates that although the provisions of arbitration laws and regulations of the DPR Korea concerning arbitration agreements do not oblige the statement of the intention to apply for arbitration, they define other requirements of arbitration agreements on the basis of recognizing the intention to arbitrate as a legal duty.

Unlike the DPR Korea, China explicitly specifies the contents that the parties are obliged to state in their arbitration agreements. Article 16 of the 1994 Arbitration Law of the PRC stipulates that: “An arbitration agreement shall contain the following: 1. The expression of application for arbitration; 2. Matters for arbitration; 3. The arbitration commission chosen.” According to this, the parties concerned are under obligation to state the express intention to apply for arbitration, the dispute to be subjected for arbitration, and the arbitration commission to which they are going to submit their dispute in the arbitration clause of a contract or in a separate arbitration agreement. 1988 Arbitration Provisions of the CIETAC stipulates that the venue and the language of arbitration can be agreed upon by the parties concerned.[68]

Thus, China's arbitration-related laws and regulations on arbitration agreements clearly distinguish between what must be specified in written arbitration agreements, such as the intention to apply for arbitration, and what may be stated therein.

The ICA Law of the Russian Federation conforms to the requirements of the 2006 UNICTRAL Model Law in stipulating the content of written arbitration agreements.[69] According to the Law, the parties are free to agree on the procedures to be followed by the arbitral tribunal in conducting arbitration in accordance with the provisions of the ICA Law and the Federal Arbitration Law.[70] In addition, the parties can freely agree on the place of arbitration or procedures for selecting an arbitration place and, if such agreement is not reached, the arbitral tribunal decides the arbitration place in consideration of the convenience of the parties concerned, etc.[71] The parties can also freely agree on the language to be used in the arbitral procedures, and in the absence of an agreement, the arbitration tribunal must determine the language or languages to be used in the proceedings.[72] Such legal regulations of Russia concerning the content of arbitration agreements are identical to Articles 19, 20 and 22 of the 2006 UNICTRAL Model Law.

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[64] Article 34 of the Law of the Democratic People’s Republic of Korea on External Economic Arbitration.
[65] Article 35 of the Law of the Democratic People’s Republic of Korea on External Economic Arbitration.
[66] Article 37 of the Law of the Democratic People’s Republic of Korea on External Economic Arbitration.
[67] Articles 4 and 5 of the Arbitration Regulation of the Korea International Trade Arbitration Committee.
[68] Articles 7 and 81 of Arbitration Provisions of the China International Economic and Trade Arbitration Commission.
[69] Ekaterina Rusakova, Evgenia Frolova, Ulvi Ocaqli and Ekaterina Kupchina, *Possibilities Of Enforcement Procedure Of Foreign Arbitral Awards In Russian Federation And People’S Republic Of China*, Proceedings of ADVED 2019- 5th International Conference on Advances in Education and Social Sciences 288 (Istanbul, Turkey, 21-23 October 2019), ISBN: 978-605-82433-7-8 285.

[70] Article 19 (1) of the Russian Federation Law on International Commercial Arbitration.
[71] Ibid., Article 20 (1) of the Russian Federation Law on International Commercial Arbitration.
[72] Article 22 (1) of the Russian Federation Law on International Commercial Arbitration.

As the foregoing indicates, in much the same way as the DPRK arbitration law, Russian arbitration law also stipulates the contents that should be stated in arbitration agreements without establishing obligations to state the intention to apply for arbitration.

.CONCLUSION

In conclusion, the national arbitration laws of the DPR Korea, China and Russia governing arbitration agreements in international commercial arbitration have much in common, but differences do exist in their particulars.

In relation to the formal requirements of arbitration agreements, the arbitration laws of the DPRK, China and Russia similarly require arbitration agreements to be in written form, but there are subtle differences in relevant legal regulations. The scope of a written arbitration agreement is defined in a rather general manner in Chinese arbitration laws, while arbitration laws of the DPR Korea is somewhat specific in defining the scope of arbitration agreements. On the other hand, the Russian arbitration laws are more specific than those of the DPR Korea and China. In terms of civil dispositive capacity, which is one of the substantial requirements of an arbitration agreement, the arbitration laws of the DPR Korea and Russia provide more general rules while Chinese arbitration laws elaborates on this. As regards the free expression of the will of the parties, the DPR Korean and Chinese arbitration laws recognize coercion as a circumstance invalidating arbitration agreements, while Russian arbitration law is silent on the matter. In addition, while the DPR Korean and Russian arbitration laws and regulations deal with the subject matter of arbitration agreements in a relatively detailed way, the relevant laws and regulations of China define the issue in a rather rough manner. In connection with the content of arbitration agreements, the DPR Korean and Russian arbitration laws and regulations do not require the intention to apply for arbitration to be explicitly stated in arbitration agreements, but relevant laws and regulations of China mandatorily requires the arbitration intention to be stated in arbitration agreements. And in particular, Russian arbitration laws adopted the provisions of 2006 UNCITRAL Model Law with respect to the contents of arbitration agreements.

Such differences in the laws and regulations of the DPR Korea, China and Russia concerning arbitration agreements in international commercial arbitration are mainly attributable to the distinguishing socio-economic system, approaches to international commercial relations, and the specific conditions and circumstances of these three countries.

In order to further expand and develop international commercial relations among the legal persons and citizens of the three countries in keeping with the present situation in which the economic cooperation between these countries is ever expanding and more diversified, it is necessary to improve national legislations on arbitration, including provisions on arbitration agreements in a more practical way.

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