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Arbitration and Maritime Law in Korea – A Comprehensive Overview

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Overview of Korean Law on Arbitration

Korean Arbitration Law

The primary source of Korean arbitration law is the Korean Arbitration Act 1999 ("**Act**") which governs both domestic and international arbitration proceedings seated in Korea. The Act, as revised in November 2016, is largely based on the UNCITRAL Model Law on International Commercial Arbitration Model Law 1985 ("**Model Law**") with the latest revisions in line with the 2006 amendments of the Model Law. The main feature of the latest amendments includes:

- A broader definition of "arbitration" to cover the subject matter of dispute based on non-property rights capable of being resolved by the parties' agreement (Article 3).

- A more streamlined procedure for recognition and enforcement of domestic and foreign arbitral awards (Articles 37 to 39).

- Detailed provisions regarding interim measures, for example: (i) maintaining the *status quo* pending determination of dispute; (ii) preservation of assets (and providing a means of preserving assets); (iii) preservation of evidence; and (iv) taking actions to prevent imminent harm or prejudice to the arbitral proceedings (Article 18).

- Detailed provisions regarding recognition and enforcement of partial and interim arbitral awards by the Korean courts, while these are limited to the arbitration proceedings seated in Korea (Article 18-7 and Article 2(1)).

- A provision dealing with how the "written form" requirement could be deemed satisfied insofar as the parties' arbitration agreement is concerned (Article 8).

However, there are certain differences between the Model Law and the Act. Amongst other things, the Act has no provision equivalent to Chapter IV A, section 2 of the Model Law which addresses the parties' request for the granting of a provisional order so as not to frustrate the purpose of the interim measure requested. Whilst Article 18-7 of the Act allows the interim measures to be recognised and enforced by the Korean courts (subject to the conditions for granting and grounds for refusing interim measures), its application does not extend to arbitrators' provisional orders.

Moreover, under Article 34(4) of the Model Law, the court may suspend the setting aside proceedings "*in order to give the arbitral tribunal an opportunity to resume the arbitration proceedings or take other actions that may eliminate the grounds for setting aside the award*". However, the power to stay or suspend the setting aside proceedings is not available under the Act.

New York Convention

Korea is a signatory to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, which has been in force since 9 May 1973 ("**New York Convention**"). This is however subject to both "reciprocity" and "commercial" reservations, meaning that an arbitral award is only treated as a New York Convention award pursuant to the Act if it is rendered in a country that is also a party to the New York Convention and involves commercial transactions arising from the parties' commercial relationship.

Arbitral institutions

The only arbitral institution in Korea is the Korean Commercial Arbitration Board (KCAB) whose principal office is in Seoul.[1] The KCAB has adopted Domestic Arbitration Rules, International Arbitration Rules and Maritime Arbitration Rules. Notably, the KCAB International Rules apply to international arbitration proceedings commenced on or after 1 June 2016 and specific rules regarding joinder of parties and emergency arbitrator proceedings (Articles 21 and 32(4) were introduced.

The KCAB in March 2018 launched the Asia Pacific Maritime Arbitration Center ("**APMAC**") in Busan, the second largest city in Korea and the largest port city in Korea, to cater for and attract maritime cases in Korea and abroad. The KCAB, through the APMAC, has prepared the Maritime Arbitration Rules providing a dispute resolution procedure for disputes in shipping, shipbuilding, marine products, fisheries and related insurance matters.

In conjunction with an establishment of APMAC in Busan, as part of the KCAB, the institutional arbitration, the Korean maritime society has established the Seoul Maritime Arbitrators' Association (SMAA), non-institutional arbitration organization similar to Singapore Chamber of Maritime Arbitration (SCMA) and adopts its own maritime arbitration rules.

Substantive law

Under Article 29 of the Act, the parties may agree to the law applicable to the merits of the case and in the absence of the parties' agreement, an arbitral tribunal is required to apply the law of the state that it considers to have the closest connection to the subject matter of the dispute. An arbitral tribunal may not decide the merits of the case based on equity and/or good faith unless the parties expressly agree (Article 29(3)).

Appointment of arbitrators

There are no restrictions in the Act as to who may act as an arbitrator, nor are there specific eligibility requirements based on qualifications, experience, nationality, gender and religion. The parties may agree on the qualifications of arbitrators and the procedure for selection and appointment of arbitrator(s). The KCAB maintains a separate pool of domestic and international arbitrators from which the parties are free to choose.

The parties are free to agree on the number of arbitrators. Failing prior agreement of the parties, there is a default mechanism for the appointment of arbitrators under Article 11(2) of the Act which provides that *"the number of arbitrators shall be three"*. In case of a tribunal with three arbitrators, each party shall appoint one, and the party-appointed arbitrators shall appoint the third arbitrator within 30 days of their appointment, unless otherwise agreed by the parties. If the parties fail

to appoint the third arbitrator within 30 days of the request from one party, the third arbitrator shall be appointed by the court or the arbitration institution designated by the court pursuant to Article 12(3)(ii) of the Act.

If the parties have agreed to appoint a sole arbitrator but fail to do so within 30 days of request from one party, the arbitrator shall be appointed by the court or the arbitration institution designated by the court pursuant to Article 12(3)(i) of the Act.

In case of the international or maritime arbitration, the KCAB International or Maritime Arbitration Rules follows the procedures for selection of the arbitrator(s) contained in the Act. On the other hand, in case of the domestic arbitration, the selection procedures are different in that the KCAB Domestic Arbitration Rules require the parties to give priority on the list of candidate arbitrators which is provided by the KCAB.

Interim measures

Under Article 18 of the Act, the tribunal may grant, at the request of the party, interim measures including preservation of a party's property and evidence and maintaining the status quo pending determination of the dispute, to the extent not otherwise agreed by the parties. Prior to the November 2016 Act adopting the 2006 Model Law, an arbitral tribunal had power to grant interim measures but the parties were not able to enforce such measures under Korean law.

For these reasons, and in view of the interim or provisional remedies being readily available by the court in Korea,[2] arbitral interim measures in Korea had not been common in practice. For domestic and international arbitrations seated in Korea, Article 18-7 of the Act allows arbitral interim measures to be enforced through the Korean court. However, the Act does not address enforcement of interim measures ordered by tribunals being seated outside Korea.

For foreign interim measures rendered outside of Korea, their recognition and enforcement are subject to (i) the New York Convention (the place of arbitration is in the contracting state) or (ii) the Korean Code of Civil Procedure and the Korean Code of Civil Execution.

Where the party seeks recognition and enforcement of arbitral interim measures, the court may order that the applicant provide appropriate security if the arbitral tribunal did not already make such an order or where such an order is necessary to protect third parties' rights.

Awards

Article 32 of the Act requires an award to be in writing and signed by all of the tribunal members. The award should be made by a majority of the tribunal members with explanations for failing to achieve a unanimous decision under Article 30.

The International and Maritime Arbitration Rules do not expressly deal with dissenting opinions but there have been some instances of dissenting opinions being issued in arbitral awards. The KCAB International Rules provide that, failing a majority decision of the arbitrators, the preceding arbitrator (or chair of the tribunal) may make a final decision, whereas, under the KCAB Domestic Rules, the preceding arbitrator may make a decision on procedural issues if such power is agreed by the parties or given by the other arbitrators. This however does not apply to small value claims (less than KRW 100 million) for which the expedited procedure applies.

The Act does not specify a time limit in which to issue an award. The KCAB Domestic, International and Maritime Arbitration Rules provide that an award shall be made no later than 30 days for the domestic arbitration proceedings and 45 days for international or maritime arbitration proceedings after the closure of hearing or closing submissions with the possibility of extensions.

Mandatory provisions

In general, the parties are free to agree particular procedural rules, and arbitrators also have wide discretion to determine how the arbitration proceedings should be conducted. The procedural rules laid down in the Act are "default" rules in nature, applicable only in the absence of the parties' agreement. There are however certain mandatory provisions within the Act from which the parties may not deviate. For example, Article 19 of the Act requires that each party shall be treated fairly and impartially, and given a full opportunity to present its case. Article 13 of the Act also requires potential arbitrators to disclose all circumstances which are likely to give rise to justifiable doubts as to their impartiality or independence.

The Act is silent on which specific circumstances that will be regarded as giving rise to justifiable doubts as to independence and impartiality of an arbitrator. However, in relation to the domestic arbitration proceedings under the KCAB Rules, Clause 2 of the KCAB Code of Ethics provides useful guidance as to when arbitrator's impartiality and dependence may be questioned. The Korean Supreme Court has ruled that the parties cannot waive this requirement; and Article 7 of the Act empowers the Korean court to set aside domestic awards and to hear application challenging recognition or enforcement of such arbitral awards.

Virtual hearings

There is no mandatory law in Korea for an arbitration hearing to be conducted by way of "in-person" hearing only. With the virtual hearing format becoming more acceptable in the context of international arbitration since the COVID-19 outbreak, the KCAB has declared that virtual hearings in lieu of in-person hearings are permitted. It also offers guidance that could be used for virtual hearings and meetings, such as the Seoul Protocol on Video Conferencing in International Arbitration. So long as the parties to arbitration expressly agree to proceed with a virtual hearing, and the proceeding has been conducted in accordance with the arbitration rules to which the parties agree, an arbitral award will most likely be enforced in Korea.

Overview of Maritime Law in Korea

Korea is a civil law system country and most of the laws are codified as statutes. The most important source of law dealing with the primary maritime issues is Chapter V (Maritime Commerce) of the Korean Commercial Code. While Korea has not ratified most of the maritime conventions, Korea has by and large adopted the positions of the international conventions and enacted the same in its domestic laws as noted in more detail below.

Since maritime matters involve by nature cross-border and foreign elements, Korean substantive maritime laws may not exclusively be applied in Korea, which necessitates a consideration of which law and jurisdiction is applicable to the case in question. In this regard, the Private International Law of Korea provides general principles and provisions[3] under which the Korean court can exercise international jurisdiction (Article 2), as well as providing which law is applicable to

various matters including “maritime commerce” (at Chapter 9, Articles 60 through 62).

Arrest of ships

Korea has not adopted any of the Arrest Conventions (1952 or 1999). Korean law does not recognize *in rem* proceedings, either.

Under Korean law, there are two possible bases to arrest the vessel, (i) by obtaining a prejudgment attachment of a vessel from the court if the claim is asserted against the owner of the vessel; or (ii) by obtaining an arrest order based on mortgage or maritime lien (see below for maritime lien).

An arrest based on the prejudgment attachment (i) is to obtain security for the claims until the judgment is rendered on the merits and there is no restriction as to the nature/kind of the claims (unlike the Arrest Convention) based on which arrest can be made. On the other hand, an arrest based on a maritime lien (ii) is to enforce its rights and proceeds to the auction sale of the target vessel.

Under Korean law, an arrest cannot be executed if the target vessel is ready for sail (Article 744 of the Korean Commercial Code).

Shipowner’s Limitation of Liability

a. Applicable law

The matters relating to the global limitation of the shipowner’s liability shall be determined by the law of the port of registry of the vessel (Article 60, (iv) of the Private International Law). Thus, in case of the limitation of liability involving a vessel registered in a foreign country, the Korean court will apply the law of the port of registry of that vessel.

b. Korean law

Korea has enacted its domestic law of shipowner’s limitation of liability (the global limitation in contrast to the package/weight limitation in an individual carriage of goods by sea) based on the 1976 Limitation Convention, with some modification (Articles 769 through 775 of the Korean Commercial Code). Korea has ratified the International Convention on Civil Liability for Bunker Oil Pollution Damage (“**Bunker Convention**”) and the claims arising from the spillage of the bunker shall be subject to the limitation of liability under the said Commercial Code provisions (Article 45 of the Oil Pollution Damage Compensation Guarantee Act).

On the other hand, Korea has ratified the 1992 Civil Liability Convention (“**CLC**”), the 1992 IOPC Fund Convention, and the Supplementary Fund Convention. Thus, the claims arising from the oil pollution under 1992 CLC shall be subject to the 1992 CLC (and the related Fund Conventions). While the international conventions as ratified in accordance with the Korean Constitutional Law shall have the same effect as the domestic law (Article 6 of the Constitutional Law), Korea has enacted the domestic law “Oil Pollution Damage Compensation Guarantee Act” to implement the CLC, the IOPC Fund Convention and the Bunker Convention.

In order to invoke the global limitation of liability of the shipowner, the owner (which also includes the charterer, the salvor, the liability insurer who intend to invoke limitation) shall commence the limitation proceedings within 1 year (6 months, in case of the oil pollution under the CLC; Article 7(2) of the Oil Pollution Damage Compensation

Guarantee Act) from the receipt of the claim(s) in writing in excess of the limitation amount (Article 776(1) of the Korean Commercial Code). In Korea, limitation of the shipowner's liability cannot be pleaded as a defence in the legal proceedings.

Maritime liens

a. Applicable law

According to the Private International Law of Korea, matters relating to maritime lien claims (for example, claims that give rise to maritime lien and the priority among the maritime lien claims) shall be determined by the law of the port of registry of the vessel (Article 60 (i) and (ii)).

b. Korean law

Under Korean law, a maritime lien is a substantial security right based on which the maritime lien holder can proceed with the arrest of the vessel, the sale of the vessel by auction and the receipt of the claims in priority from the auction proceeds. Korea does not recognize *in rem* action.

Under Korea law, the following claims give rise to a maritime lien (Article 777(1) of the Korean Commercial Code):

1. Legal costs for the common interests of the creditors; taxes imposed on the vessel in connection with the voyage; pilotage, towage; preservation and inspection costs of the vessel at the last port of call;
2. Claims relating to the employment of crew and other employees of the vessel;
3. Salvage remuneration for the salvage of the vessel and the claims for the general average contribution;
4. Damage claims due to the collision or other maritime casualties; claims for the damage to the maritime facilities, port facilities or sea route; any claims for loss of lives or injury to the crew or passengers; and
5. Claims which are subject to limitation under the CLC (Article 51 of the Oil Pollution Damage Compensation Guarantee Act).

Carriage of goods by sea

a. Applicable law

The parties may agree, expressly or impliedly, to a governing law which may govern the matters relating to the carriage of goods by sea (Article 25(1) of the Private International Law). The governing law may not necessarily be one. The parties may agree different governing laws in respect of certain matter, say, one law for the formation of the contract while another law for the liability of the carrier (depecage of the governing law: Article 25(2) of the Private International Law). Korean courts ruled that the Paramount Clause in the bill of lading could be interpreted to be a parties' agreement as to the governing law in respect of the liability (including its exemption or limitation) of the carrier even if the bill of lading provides for another governing law (Supreme Court Judgment of 12 June 2014 in re 2012 Da 10658 Case).

If the parties do not agree on the governing law, the Korean court shall find the law of a country which has closest connection to the contract (Article 26(1) 1 of the Private International Law).

b. Korean law

Korea has not ratified any convention relating to the carriage of goods by sea such as the Hague Rules, the Hague-Visby Rules or the Hamburg Rules. However, Korea has enacted domestic law on the carriage of goods by sea (Korean Commercial Code Articles 791 through 814) by adopting the provisions of the Hague Visby Rules.

The features of the Korean law for the carriage of goods by sea are as follows:

- Korean law covers the period from the receipt of the cargo to the delivery of the cargo;
- the carrier's liability is based on negligence (no strict liability) but the burden to disprove negligence lies with the carrier;
- similar exemption catalogue as the Hague–Visby Rules is available under Korean law;
- limitation of liability based on the number of the packages and/or the weight (which is almost identical to the Hague-Visby Rules) is also available;
- the lessening of the liability, limitation, or exemption in favour of the carrier shall not be valid;
- employees and agents of the carrier (but not an independent contractor unless expressly agreed in the relevant contract/bill of lading) may invoke the exemption/limitation of the carrier; and
- shorter time bar of one year for both the shipper/consignee's claims against the carrier and the carrier's claims against the shipper/consignee.

Carriage of passengers by sea

a. Applicable law

See the section on the carriage of goods by sea above.

b. Korean law

Korea has not ratified Athens Convention on the carriage of passengers by sea. In the Korean Commercial Code, there are provisions relating to the carriage of passengers by sea (Articles 817 through 826), which provide for the obligations of the carrier, termination of the contract for the carriage of passengers, etc.

In respect of the global limitation of the liability of passenger ships, the Korean Commercial Code provides for limitation of the liability of the shipowner of the passenger ships in line with the provisions of 1996 Protocol to the 1976 Limitation Convention (Article 770(1)(i) of the Korean Commercial Code).

Charterparties

a. Applicable law

See the section on the carriage of goods by sea above.

b. Korean law

The Korean Commercial Code contains the provisions relating to the voyage charterparties, time charterparties and bareboat charterparties (Articles 827 to 851). The Korean Commercial Code provides for the definition of a particular charterparty, relationship with a third party and

the time bar. Since charterparties are subject to party autonomy, the provisions of the Korean Commercial Code relating to the charterparties (except the relationship with a third party) are in principle complementary. However, it is noted that under Korean law the time bar for claims arising from the charterparties is 2 years, subject to extension by agreement (Articles 840, 846 and 851).

General Average

a. Applicable law

According to the Private International Law of Korea, matters relating to general average shall be determined by the law of the port of registry of the vessel (Article 60(v)).

b. Korean law

The Korean Commercial Code provides for some provisions relating to the general average (Articles 865 to 875). However, in practice, the provisions of the Antwerp Rules may apply according to the agreement of the parties. In this regard, it is noteworthy that the time bar for the claims (including the recourse or subrogation claims) arising from the general average is one year from the conclusion of the average adjustment (Article 875).

Collision

a. Applicable law

According to the Private International Law of Korea, matters relating to the collision shall be determined by the law of the place of the collision if the collision occurs at the territorial sea. If the collision occurs at an open sea, then the governing law of the collision shall be the law of the port of registry of the opponent vessel (Article 61).

b. Korean law

Korea has not ratified the 1910 Collision Convention. However, the provisions in the Korean Commercial Code relating to the collision are enacted in line with the 1910 Collision Convention, namely, split of liability according to the respective proportions of negligence in case of the damage to the vessel and/or to the cargo on board, while joint and several liability in case of the personal injury or loss of life. The time bar for the collision claims is 2 years.

Salvage

a. Applicable law

According to the Private International Law of Korea, matters relating to the salvage remuneration shall be determined by the law of the place of the salvage if the salvage is carried out at the territorial sea. If the salvage is carried out at an open sea, then the governing law of the salvage remuneration shall be the law of the port of registry of the salved vessel (Article 62).

b. Korean law

Korea has not ratified the 1983 Salvage Convention. However, the provisions of the Korean Commercial Code relating to salvage are enacted in line with the 1983 Salvage Convention.

Oil pollution

As noted above, Korea has ratified international conventions relating to oil pollution, such as the 1992 Civil Liability Convention, the 1992 Fund Convention and the Supplementary Fund Convention and the Bunker Convention.

Marine Insurance

a. Applicable law

See the section on the carriage of goods by sea above.

b. Korean law

The Korean Commercial Code has provisions relating to marine insurance (Articles 693 to 718), which are not in line with the UK Marine Insurance Act 1906. However, in practice, the parties use the internationally recognized forms (such as ICC (A), (B),(C) or ICC Hulls) including English law as governing law.

Enforceability of Foreign Awards in Korea

Application

A party wishing to enforce an arbitral award may apply to the Korean court for recognition and enforcement of the arbitration award under Article 37(3) of the Act. The party must submit an application together with a copy of the arbitral award and, if the award is issued in non-Korean language, a Korean translation has to be filed along with the original award. There is no requirement for a translated copy to be certified and authenticated. The applicant must also submit a power of attorney if legal counsel is appointed, together with a payment receipt for process service and filing fees.

Competent court

There is no separate court in Korea with sole and exclusive jurisdiction over the issue of enforcement of foreign awards.[4] An application for recognition and enforcement of both domestic and foreign arbitral awards is required to be filed pursuant to Article 7(4) of the Act. This may be a court designated by the arbitration agreement, or a court that has jurisdiction over:

- the place of arbitration;
- the place where a respondent's property is located;
- the respondent's domicile or place of business;
- the respondent's place of abode if neither the domicile nor place of business can be found; or
- the respondent's last known domicile or place of business.

There is no need to identify the place of the respondent's properties or assets unless the application is made based on the location of the respondent's assets.

Timeframe

Generally, it takes about 3 to 6 months to obtain the court's decision without a formal hearing (i.e. summary proceedings) and 6 -12 months to obtain the court's judgment with a formal hearing(s). However, the court's decision enforcing arbitral awards will likely take a period of 6 months or longer since the court will likely hold a hearing(s).

Enforceability of New York Convention foreign awards

Under Article 39 of the Act, a foreign arbitral award made in a New York Convention state will be recognised and enforced in accordance with the New York Convention upon the application to the competent court. It may not be refused unless there is proof (a) of incapacity or invalid arbitration agreement; (b) of a lack of proper notice or opportunity to defend; (c) that the award is beyond the scope of the submission to arbitration; (d) of a defect with the arbitral authority or procedure; (e) that the award not binding or has been set aside; (f) that the award is in conflict with the good morals and other forms of social order of Korea (Article 39 and Article 36 of the Act; Article V(1) of the New York Convention).

In practice, the grounds for refusing recognition and enforcement of a New York Convention award are very narrow and limited. Korean courts are 'arbitration friendly' and have a pro-arbitration attitude towards enforcing arbitral awards and they have rarely refused enforcement. In 2018, the Korean Supreme Court held that procedural irregularity or unfairness in the arbitral proceedings ought to be established to the extent that it is intolerable. This is a very high threshold to meet, whereby the applicant is required to prove beyond a simple violation of the parties' agreed procedure or applicable arbitration law (Supreme Court Judgment of 13 December 2018 in re No. 2016 Da49931 Case).

The Supreme Court in re No. 2018 Da240387 rendered on 13 December 2018 also confirmed that Article 36(2)2(b) of the Act (the moral and social order ground for refusal) should not be interpreted to include a case where arbitrator's finding is erroneous on fact and/or law. The enforcement of a foreign arbitral award may not be refused solely on the basis that the foreign arbitral award is unlawful. In the case of *Majestic Woodchips v Donghae Pulp Corporation* (Supreme Court Judgment of 28 May 2009 in re No. 2006Da20290 Case), the Supreme Court also held that recognition and enforcement of an arbitral award can be refused on the basis of fraud only if:

- there is clear evidence that a party seeking enforcement of an arbitral award committed fraud in the arbitral proceedings;
- the counter-party was not aware of the fraud and did not have an opportunity to raise the issue of fraud during the arbitral proceedings; and
- a causal connection exists between the fraud and the outcome of the arbitral proceedings.

Non-New York Convention foreign awards

In relation to foreign arbitral awards from the states that are not party to the New York Convention, Article 39 of the Act provides that these awards will be considered in the same manner as foreign court judgments, pursuant to Article 217 of the Code of Civil Procedure and Articles 26(1) and 27 of the Code of Civil Execution. Under those provisions, a Korean court will recognise and enforce a foreign award not subject to the New York Convention if:

- the award is final and conclusive;
- the jurisdiction of the arbitral tribunal is consistent with Korean law and treaties to which Korea is a party;
- the losing party received adequate notice of the arbitration and sufficient time to defend its case;
- the award is not in conflict with the good morals or other public policy of Korea; and
- the country in which the arbitral award was issued provides reciprocity to Korean arbitral awards.

Post-enforcement actions

Once a final decision of the court recognising and enforcing an award has been obtained, it may be enforced against the defendant's assets by means of compulsory execution (Article 28 of the Code Civil Execution). For compulsory execution by the court bailiff, a writ of execution must be obtained from the court that rendered the recognition and enforcement decision. The plaintiff can obtain the writ of execution by making an application.

Institutional vs ad hoc Arbitration – Korean perspectives

Institutional and ad hoc arbitration are types of arbitration for administering the dispute resolution process based on the terms of agreement and applicable law. In essence, there is no different treatment in Korea in terms of their status, enforcement or recognition of the award. Generally, arbitration parties often favour institutional arbitrations. This is also a general perception prevailing in Korea, at least for profoundly contentious and high value matters. As with the leading international arbitration practice and institutions such as ICC, LCIA, SIAC, Korean arbitration law and arbitral institutions have also developed to assist arbitration parties comprehensively from beginning to end, as well as catering for contingencies that might arise, even if the parties fail or refuse to cooperate.

It is also common practice in Korea to incorporate arbitration institution's rules into a contract. The contracting parties are well aware of the benefits of (i) avoiding the time and expense of drafting a suitable ad hoc clause; and (ii) relying on the availability of pre-established rules and procedures which ensure the arbitration proceedings begin in a timely manner.

That said, ad hoc arbitration proceedings have the potential to be more flexible, quicker and cheaper than institutional proceedings, provided that the parties are willing to mutually agree upon a set of rules and approach the arbitration with cooperation. Ad hoc arbitration could also be more suitable to a specialized area of law, especially maritime law disputes.

Further, the absence of administrative fees or certain procedural elements alone provides an excellent incentive to use the ad hoc procedure. Users of ad hoc arbitration also value the procedural flexibility it offers, which they feel enhances party autonomy when compared with institutional arbitration. Ad hoc arbitration is also favoured in certain sectors, e.g. the shipping and commodities sectors, or by contracting parties who are sophisticated users of arbitration.

In practice however, achieving the parties' consensus on how the arbitration proceedings should be conducted may be difficult, particularly where contested claims involve high value and a complex commercial relationship.

Status of SCMA Awards in Korea

Singapore is a party to the New York Convention; and a SCMA award will be treated as a New York Convention award under the Act as if it was rendered in Korea. As such, the SCMA award will be enforced in accordance with Article 39 of the Act.

Further, considering that there are a number of cases where LMAA awards were successfully recognized and enforced by the Korean court, SCMA awards would also likely be treated as such.

[1] http://www.kcabinternational.or.kr/.

[2] Under Korean law and practice, interim preservation measures are readily available by the Korean court. Thus, we do not think that interim measures in the Act may be used in Korea since the interim measures shall need the Korean court's assistance in order for them recognized and enforced in Korea while the provisional remedies (with the same effect as the interim measures in arbitration procedures) shall be readily available in Korea.

[3] An Amendment Bill is pending at the Parliament to amend and include the detailed provisions regarding the international jurisdiction.

[4] A draft bill is now pending at the Parliament, which establishes "Maritime and International Commercial Court." If the special court dealing with Maritime and International Commercial matter is established, then the court will have jurisdiction over the recognition and enforcement of foreign arbitral awards.

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