COUNTRY COMPARATIVE GUIDES 2023

The Legal 500 Country Comparative Guides

South Korea

INTERNATIONAL ARBITRATION

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This country-specific Q&A provides an overview of international arbitration laws and regulations applicable in South Korea.

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SOUTH KOREA
INTERNATIONAL ARBITRATION

1. What legislation applies to arbitration in your country? Are there any mandatory laws?

The Korean Arbitration Act ("**Arbitration Act**") applies to all domestic and international arbitral proceedings seated in Korea. Particularly, Article 9 (Arbitration Agreement and Substantive Claim before Court); Article 10 (Arbitration Agreement and Interim Measures by Court); Article 37 (Recognition or Enforcement of Arbitral Awards); and Article 39 (Foreign Arbitral Awards) (Article 2(1) of the Act) apply to arbitral proceedings seated outside Korea.

The Act was first passed in 1966 and was later amended in 1999 to incorporate the provisions of the UNCITRAL Model Law ("**Model Law**"). The Act was last amended in May 2016 to incorporate certain key features of the Model Law. While the Arbitration Act does not expressly lay down mandatory provisions, it does state that parties to an arbitration agreement may agree on arbitral proceedings to the extent their agreement is not "contrary to the mandatory provisions of this Act" (Article 20, Arbitration Act). Further, there is a general consensus that an arbitrator has an obligation to disclose circumstances likely to give rise to justifiable doubts as to impartiality or independence (Article 13(1), Arbitration Act) and to treat the parties equally (Article 19, Arbitration Act).

2. Is your country a signatory to the New York Convention? Are there any reservations to the general obligations of the Convention?

Korea is a signatory to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards ("**New York Convention**"). The New York Convention came into effect in Korea on 9 May 1973.

Korea has made reciprocity and commercial reservations to the New York Convention. Korea will apply the New Work Convention to the recognition and enforcement of awards only if such award is made in a country that is a party to the New York Convention. It will apply the New York Convention only to differences arising out of legal relationships, whether contractual or not, which are considered commercial under Korean law.

3. What other arbitration-related treaties and conventions is your country a party to?

Korea has been party to the Convention on the Settlement of Investment Disputes Between States and Nationals of Other States ("**ICSID Convention**") since 23 March 1967. Korea has also entered into multiple free trade and investment agreements which contain arbitration provisions, and as of September 2023 is party to 83 bilateral investment treaties that are in force and an additional 6 bilateral investment treaties that have been signed but are not currently in force.

4. Is the law governing international arbitration in your country based on the UNCITRAL Model Law? Are there significant differences between the two?

The Arbitration Act (as last amended in May 2016) is modeled on the Model Law. However, there are notable differences between the Arbitration Act and the Model Law. For instance: (i) the Arbitration Act does not include Article 34(4) of the Model Law which states that a court may suspend a set-aside action at the request of a party; (ii) it does not adopt the provisions for preliminary orders stipulated under Article 17C of the Model Law; (iii) only interim measures issued in arbitrations seated in Korea may be enforced by Korean courts (Article 2(1), Arbitration Act); and (iv) the Arbitration Act stipulates grounds and procedures to challenge the arbitral tribunal's appointment of an expert (Article 27(3), Arbitration Act).

5. Are there any impending plans to reform

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the arbitration laws in your country?

As of September 2023, there are no plans to amend or reform the Arbitration Act.

6. What arbitral institutions (if any) exist in your country? When were their rules last amended? Are any amendments being considered?

The Korean Commercial Arbitration Board ("**KCAB**") founded in 1966 is the sole arbitral institution in Korea statutorily authorized to settle disputes under the Arbitration Act. On 20 April 2018, KCAB International was established as an independent division of KCAB to administer international arbitration and cross-border commercial disputes.

The KCAB Domestic Arbitration Rules ("**Domestic Arbitration Rules**") apply to domestic matters and KCAB International Arbitration Rules ("**International Arbitration Rules**") apply to international proceedings. The International Arbitration Rules were first adopted in 2007 and amended in 2011 and in 2016. The 2016 International Arbitration Rules (the "Rules") apply to all proceedings which commenced on or after 1 June 2016.

KCAB International set up a Revision Committee in September 2022 to evaluate and update the Rules.

7. Is there a specialist arbitration court in your country?

Korea does not have a specialist arbitration court. Article 7 of the Arbitration Act specifies which court has jurisdiction over proceedings ancillary to arbitration or enforcement proceedings.

8. What are the validity requirements for an arbitration agreement under the laws of your country?

The Arbitration Act defines the term arbitration agreement as "an agreement between the parties to settle, by arbitration, all or some disputes which have already occurred or might occur in the future with regard to defined legal relationships, whether contractual or not" (Article 3(2), Arbitration Act). According to a ruling by the Supreme Court of Korea in 2007, an arbitration agreement need not stipulate the arbitral institution, governing law, or seat for the agreement to be valid.

The Arbitration Act requires that an arbitration agreement must either be in writing (Article 8(2), Arbitration Act) or be deemed to have been made in writing (Articles 8(3), Arbitration Act). An arbitration agreement is deemed to have been made in writing where (i) the terms of the arbitration agreement have been recorded, regardless of how the agreement was made (including by oral means); (ii) the terms of the arbitration agreement have been communicated by electronic means (e.g., by telex, facsimile, electronic mail) and the terms can be verified; or (iii) no opposing party disputes the allegations made in a request for arbitration or an answer that an arbitration agreement exists; or (iv) a contract refers to a document containing an arbitration clause which forms part of the contract. These requirements are consistent with Option I under Article 7 of the 2006 Model Law.

9. Are arbitration clauses considered separable from the main contract?

The Arbitration Act recognizes the principle of separability of arbitration agreements. The Act states that "an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other clauses of the contract" (Article 17(1), Arbitration Act).

10. Do the courts of your country apply a validation principle under which an arbitration agreement should be considered valid and enforceable if it would be so considered under at least one of the national laws potentially applicable to it?

There have not been any known cases where the Korean courts have had to address this issue.

11. Is there anything particular to note in your jurisdiction with regard to multi-party or multi-contract arbitration?

The Arbitration Act does not have any provisions regarding multi-party or multi-contract arbitrations. The Rules provide for joinder of additional parties where (i) all parties including the additional party have agreed in writing to the joinder; or (ii) the additional party is also a party to the arbitration agreement and the additional party has agreed in writing to the joinder (Article 21, Rules). The Rules also provide for submission of claims arising out of multiple contracts in a single request for arbitration where (i) all the contracts provide for

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arbitration under the Rules; (ii) the multiple arbitration agreements are not incompatible; and (iii) the claims arise out of the same transaction or series of transactions (Article 22, Rules). A KCAB arbitral tribunal may consolidate claims made in a separate pending arbitral proceeding if that proceeding is conducted under the Rules between the same parties (Article 23, Rules).

12. In what instances can third parties or non-signatories be bound by an arbitration agreement? Are there any recent court decisions on these issues?

The Arbitration Act is silent on the circumstances that bind third parties or non-signatories to an arbitration agreement.

A third party which becomes a successor to a contract may be bound by the contract's arbitration provision (Seoul Western District Court Judgment 2001GaHap6107 dated 5 July 2002). The Supreme Court held that "although in principle an agreement on jurisdiction is a legal act which does not bind any third party other than the parties to the agreement or their respective successors, as a matter of substantive law, an agreement to change the jurisdiction modifies the terms of exercising a right and the substantive interest attached thereto, and as such, with respect to a nominative claim regarding which the parties may freely agree on the terms of the legal relationship, the successor to the claim has also become the successor to the modified legal relationship, and therefore the successor is bound by the agreement on jurisdiction" (Korean Supreme Court Decision 2005Ma902 dated 2 March 2006). While this decision is about a jurisdiction agreement binding the parties to the jurisdiction of a specific court, Korean courts are likely to apply the same approach to arbitration agreements. While interpreting the Japanese Arbitration Act and the Article 2 of the New York Convention, the Supreme Court of Korea stated that even if there is a lack of contractual privity between party in relation to an arbitration agreement, if the non-signatory is entitled to rely on provisions of the wider agreement (the holder of bill of landing in this case), then they are also bound by the arbitration agreement (Korean Supreme Court Judgment 2009Da66723 dated 15 July 2010).

13. Are any types of dispute considered non-arbitrable? Has there been any evolution in this regard in recent years?

The 2016 amendment to the Arbitration Act broadened the definition of the term "arbitration" from a procedure to resolve "any dispute in private laws" to a procedure to resolve "a dispute over a property right or a dispute over a non-property right that the parties can resolve through a reconciliation" (Article 3(1), Arbitration Act). The legal community is divided on whether the elimination of the "private laws" restriction in the definition of arbitration should be interpreted to allow antitrust, environmental, and intellectual property disputes to be encompassed within the definition of "arbitration". That said, if a dispute is over a property right, such dispute is arbitrable even if it involves issues of antitrust, environment or intellectual property.

14. Are there any recent court decisions in your country concerning the choice of law applicable to an arbitration agreement where no such law has been specified by the Parties?

The Supreme Court of Korea held that where parties to an arbitration agreement did not explicitly agree to the governing law, the law of the place of arbitration – i.e. *lex arbitri* – becomes the governing law for determining the existence or validity of an arbitration agreement (Korean Supreme Court Judgment 88DaKa23735 dated 13 February 1990).

In another case, the Supreme Court of Korea held that where the parties agreed under their arbitration agreement that all disputes shall be resolved pursuant to the rules of London Court of International Arbitration, such agreement shall be regarded as an agreement among the parties that the applicable law be English law (Korean Supreme Court Judgment 89DaKa20252 dated 10 April 1990). In a recent case for enforcement of an arbitral award, the Supreme Court of Korea confirmed that the law of the country where the award was made shall be applied when determining the existence and validity of an arbitration agreement, which is in line with Article 5(1)(a) of the New York Convention (Korean Supreme Court Judgment 2017Da225084 dated 26 July 2018).

15. How is the law applicable to the substance determined? Is there a specific set of choice of law rules in your country?

Under the Arbitration Act, if the parties to an arbitration agreement have not designated the substantive law that should be applied to their dispute, the arbitral tribunal applies the law of the state which the arbitral tribunal considers to have the closest connection with the subject matter of the dispute (Article 29, Arbitration Act).

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16. In your country, are there any restrictions in the appointment of arbitrators?

The Arbitration Act states that "No person shall be precluded by reason of his/her nationality from acting as an arbitrator, unless otherwise agreed by the parties" (Article 12, Arbitration Act). Arbitrators need not be licensed to practice law in Korea to be appointed as arbitrators. Also, Korea's judicial regulations prohibit sitting Korean judges from engaging in any profit-making activities, which includes serving as arbitrators.

17. Are there any default requirements as to the selection of a tribunal?

Default requirements are found in Articles 11 and 12 of the Arbitration Act. In the absence of party agreement, the default number of arbitrators is three (Article 11, Arbitration Act). The default rule for the selection of arbitrators in the absence of an agreement between the parties is provided in Article 12 of the Arbitration Act. However, where the parties have agreed on a particular set of arbitration rules that stipulates the number of arbitrators, such rules will be considered to make a final decision on the number of arbitrators.

18. Can the local courts intervene in the selection of arbitrators? If so, how?

Local courts may intervene in the selection and appointment of arbitrators at the request by either party when the parties fail to reach an agreement under Article 12 of the Arbitration Act.

19. Can the appointment of an arbitrator be challenged? What are the grounds for such challenge? What is the procedure for such challenge?

The Arbitration Act has adopted the procedure prescribed in the Model Law. The appointment of an arbitrator may be challenged where (i) there is any circumstance that gives rise to justifiable doubts as to the arbitrator's impartiality or independence; or where (ii) the arbitrator does not possess qualifications agreed by the parties (Article 13, Arbitration Act).

Parties are free to agree on a procedure for challenging the appointment of an arbitrator. In the absence of an agreement, a party wishing to challenge an appointment must submit to the arbitral tribunal a written statement of objection within 15 days after becoming aware of the constitution or any disqualifying circumstances (Article 14(2), Arbitration Act).

If the arbitral tribunal rejects the challenge, the challenging party may, within 30 days after receiving notice of the decision, request a court to review the challenge and make a final decision (Article 14(3), Arbitration Act).

20. Have there been any recent developments concerning the duty of independence and impartiality of the arbitrators

In 2016, KCAB adopted a Code of Ethics for Arbitrators, which requires an arbitrator to "remain impartial and independent throughout the arbitral proceedings" and sets out circumstances that may question impartiality and independence (such as having significant financial interest in a party or having been associated with a party or its affiliate in a professional capacity in the past 3 years).

The Code of Ethics for arbitrators in Article 3 lays down the duty of disclosure stating that "A prospective arbitrator shall disclose all facts or circumstances that may give rise to any doubt as to his impartiality or independence in the eyes of the parties."

21. What happens in the case of a truncated tribunal? Is the tribunal able to continue with the proceedings?

The Arbitration Act does not expressly deal with truncated tribunals. If an arbitrator's mandate is terminated, a substitute arbitrator is appointed in accordance with the procedure that was applied in appointing the arbitrator being replaced (Article 16). However, where the appointment of an arbitrator is being challenged before a court, the tribunal may continue with the arbitral proceedings and make an award even when the court's decision is pending (Article 14(3), Arbitration Act).

The Supreme Court of Korea has discussed the validity of an award rendered by a truncated tribunal. In the case, an arbitrator in a three-member tribunal did not attend the last day of the hearing as he passed away on the previous night. The parties agreed to proceed with the hearing and close the proceedings. The truncated tribunal later rendered an award without replacing the deceased arbitrator. The Supreme Court set aside the award and held that the award rendered by the truncated tribunal was in violation of the Arbitration Act

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and the arbitration agreement because the parties consent to close the proceedings did not extend to the truncated tribunal rendering the award (Korean Supreme Court Judgment 91Da17146 dated 14 April 1992). Under the Rules, which came into effective after the above judgment, if an arbitral tribunal is truncated after closure of the arbitral proceedings, the KCAB Secretariat may, after consulting with the parties and the remaining arbitrators, direct the truncated tribunal to complete the arbitration (Article 15(5), Rules). Since then there have not been any reports of cases that deal with awards rendered by truncated arbitral tribunals.

22. Are arbitrators immune from liability?

The Arbitration Act is silent on whether arbitrators are immune from liability. The Rules provide that arbitrators appointed under the Rules "shall not be liable for any act or omission in connection with an arbitration conducted under the Rules, unless such act or omission is shown to constitute willful misconduct or recklessness" (Article 56, Rules).

23. Is the principle of competence-competence recognized in your country?

The principle of competence-competence is recognized under the Arbitration Act. The Arbitration Act states, "The arbitral tribunal may rule on its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement" (Article 17(1), Arbitration Act). This understanding of the principle is similar to the one under the Model Law. If the arbitral tribunal rules on jurisdiction as a preliminary issue, a party may appeal the ruling to the competent court to review the issue within 30 days of receiving notice of the arbitral tribunal's decision (Article 17(6), Arbitration Act). While the appeal is pending, the tribunal may continue to engage in the arbitral proceedings and issue an award (Article 17(7), Arbitration Act).

If the arbitral tribunal rules on its own jurisdiction as part of the final award, a party may challenge the award by initiating a set-aside action on jurisdictional grounds (Article 36(2), Arbitration Act).

24. What is the approach of local courts towards a party commencing litigation in apparent breach of an arbitration agreement?

If a party commences an action in a Korean court in breach of an arbitration agreement, and the defendant in the action raises a valid objection, the court is required under the Arbitration Act to dismiss the action (Article 9(1), Arbitration Act). Such objection must be raised no later than the defendant's submission of its statement on the merits of the dispute (Article 9(2), Arbitration Act).

There is no Korean court precedent on whether anti-suit injunction is allowed. There has also not been any case where a court has made an order to compel arbitration.

25. What happens when a respondent fails to participate in the arbitration? Can the local courts compel participation?

If a respondent fails to submit its statement of defense in the arbitral proceeding, the arbitral tribunal is empowered to continue the arbitral proceedings without deeming the failure as an admission (Article 26(2), Arbitration Act). If a respondent fails to appear at a hearing or fails to produce documents as required, the arbitral tribunal may continue the proceedings and issue the award based on the evidence before it (Article 26(3) of the Arbitration Act). There is no provision in the Act empowering courts to compel a respondent to participate in arbitration.

26. Can third parties voluntarily join arbitration proceedings? If all parties agree to the intervention, is the tribunal bound by this agreement? If all parties do not agree to the intervention, can the tribunal allow for it?

The Arbitration Act is silent as to whether third parties can voluntarily join arbitration proceedings. For arbitrations conducted under the Rules, Article 21.1 provides that an arbitral tribunal may allow the joinder if (i) all parties and the third party agree in writing to the joinder, or (ii) the third party is a party to the same arbitration agreement with the parties and has agreed in writing to the joinder. Even if all the parties agree to the joinder application, Article 21.3 provides that the tribunal may refuse joinder for reasonable grounds such as delay in proceedings. The arbitral tribunal can consider a joinder application even if one of the parties opposes the joinder application, only if the third party is a signatory to the arbitration agreement and agrees to be joined in the arbitration.

27. What interim measures are available?

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Will local courts issue interim measures pending the constitution of the tribunal?

As is allowed under the UNCITRAL Model Law, parties may seek from the arbitral tribunal under the Arbitration Act (i) measures to maintain or restore the status quo until the arbitral tribunal renders its award on the merits; (ii) measures to prevent a present or imminent danger or impact on the arbitral proceeding, or prohibition of measures which may result in such danger or impact; (iii) measures to preserve assets subject to the arbitration; and (iv) measures to preserve evidence (Article 18, Arbitration Act). The party applying for interim measure must prove that (i) the magnitude of the irreparable harm expected from the arbitral tribunal's denial of the application will considerably outweigh the harm the other party would sustain as a result of granting the application; and (ii) it is reasonably possible that the party requesting the interim relief will prevail on the merits (Article 18-2, Arbitration Act). Once the arbitral tribunal has granted the interim measure, the parties may petition a court to recognize the measure and may enforce a writ of execution of the interim measure by petitioning a court to authorize the execution (Article 18-7, Arbitration Act).

Also, before the commencement of or during an arbitral proceeding, either party to the arbitration agreement may request a court for interim relief (Article 10, Arbitration Act).

28. Are anti-suit and/or anti-arbitration injunctions available and enforceable in your country?

While Article 18(2) of the Arbitration Act allows a tribunal to grant interim measure to prevent current or imminent harm to the arbitral proceedings themselves, whether a tribunal is empowered to issue an anti-suit injunction on such basis, and whether such injunctions would be enforced, have not been tested in practice.

Article 10 of the Arbitration Act allows a party to an arbitration agreement to request a court for interim relief. But, it is unclear if the interim relief includes anti-suit or anti-arbitration injunction. The Korean Supreme Court has ruled that courts may intervene only in matters enumerated in the Act, and specifically declared that applications for preliminary injunction to stay arbitration on grounds of nonexistence or invalidity of arbitration agreement would not be allowed (Korean Supreme Court Decision 2017Ma6087 dated 2 February 2018).

29. Are there particular rules governing evidentiary matters in arbitration? Will the local courts in your jurisdiction play any role in the obtaining of evidence? Can local courts compel witnesses to participate in arbitration proceedings?

Arbitral tribunals have the power to determine admissibility, relevance, and weight of any evidence under the Arbitration Act (Article 20(2), Arbitration Act). Unless otherwise agreed by the parties, arbitral tribunals may also: (i) appoint an expert witness; (ii) require parties to provide information, documents, or other evidence to the expert; and (iii) require the expert to participate in a hearing (Article 27, Arbitration Act).

Arbitral tribunals can also seek assistance of a court in the taking of evidence either on its own initiative or upon a party's request by sending a written request to examine evidence. In response to such requests the court may order witnesses and custodians of documents to appear before the arbitral tribunal or submit evidence to the arbitral tribunal (Articles 28(2) and 28(5), Arbitration Act). If a court examines evidence pursuant to the request of an arbitral tribunal, the court may permit the arbitrators or the parties to attend the examination, and the court must provide the arbitral tribunal with certified records of the examination after such examination (Articles 28(3) and 28(4), Arbitration Act).

30. What ethical codes and other professional standards, if any, apply to counsel and arbitrators conducting proceedings in your country?

There is no special code of ethics that applies to arbitrators taking part in non-KCAB arbitral proceedings/ad-hoc arbitrations. Arbitrators in proceedings administered under the Rules must abide by KCAB's Code of Ethics for Arbitrators. Counsels that are members of the Korean Bar Association are subject to the ethical rules as required under the Attorneys-At-Law Act, and registered foreign attorneys in Korea are subject to ethical rules as required under the Foreign Legal Consultant Act. Attorneys licensed to practice in foreign jurisdictions are subject to the respective ethical rules of such jurisdictions.

31. In your country, are there any rules with respect to the confidentiality of arbitration proceedings?

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The Arbitration Act does not expressly require confidentiality in arbitral proceedings although, in practice, arbitral proceedings in Korea are administered in confidentiality.

In arbitral proceedings conducted under the Rules: (i) arbitral proceedings and records thereof should be closed to the public; (ii) facts relating to the arbitration should not be disclosed without the parties' consent or unless required by law; and (iii) the KCAB Secretariat may publish an award only after redacting the names, places, dates and any other identifying information of the parties or the dispute, only if the parties do not explicitly object to such disclosure within the time limit determined by the Secretariat. (Article 57, Rules).

32. How are the costs of arbitration proceedings estimated and allocated?

Arbitral tribunals have the power to allocate costs of arbitration incurred in connection with the arbitral proceedings absent agreement between the parties (Article 34-2, Arbitration Act). The Arbitration Act does not stipulate how costs should be allocated. In practice, costs usually follow the event. This is the practice followed by Korean courts in civil cases.

For proceedings conducted under the Rules, arbitration costs during the initiation and duration of the proceedings are borne jointly and severally by both parties (Article 50(2), Rules). But after the conclusion of the arbitration, in principle the costs are borne by the losing party, unless the arbitral tribunal determines otherwise (Article 52(1), Rules). Legal costs and other necessary expenses incurred in connection with arbitral proceedings are allocated by the arbitral tribunal as it deems appropriate, unless otherwise agreed by the parties (Article 53, Rules). The provisions regarding cost mentioned in Chapter 7 of the Rules need to be read with Appendix 1 (Regulations on Filing Fees and administrative fees), and Appendix 2 (Regulations on Arbitrator's fees and expenses) to estimate the cost of the arbitration proceedings.

33. Can pre- and post-award interest be included on the principal claim and costs incurred?

Absent any agreement between the parties, the arbitral tribunal may award interest "if it finds appropriate in making an arbitral award, considering all circumstances of the relevant arbitration case" (Article 34-3, Arbitration Act).

Where the dispute is governed by Korean law, either party may seek pre-award and post- award interests at the statutory rate of 5% per annum for general civil claims (Article 379, Civil Code) and 6% per annum for claims arising out of commercial activities (Article 54, Commercial Code).

For Korean domestic litigation, Article 3(1) of the Act on Special Cases Concerning Expedition of Legal Proceedings provides for post-judgment interest at the rate 15% per annum. Whether the 15% rate is applicable to post-award interest in arbitral proceedings is subject to debate.

34. What legal requirements are there in your country for the recognition and enforcement of an award? Is there a requirement that the award be reasoned, i.e. substantiated and motivated?

A party seeking recognition and enforcement of an arbitral award must file an application with a copy of the arbitral award and a Korean translation of the same (Article 37(3), Arbitration Act). With respect to foreign arbitral awards subject to the New York Convention, courts recognize and enforce such awards in accordance with the New York Convention (Article 39(1), Arbitration Act).

As for foreign arbitral awards which are not subject to the New York Convention, courts apply Article 217 of the Code of Civil Procedure and Articles 26(1) and 27 of the Code of Civil Execution in recognition and enforcement of such award (Article 39(2), Arbitration Act). However, there has not been any reported court case that dealt with the recognition and enforcement of an arbitral award not subject to the New York Convention.

Under the Arbitration Act, an arbitral award is required to state the reasons on which it is based unless it has been agreed by the parties that the tribunal need not state its reasons (Article 32(2), Arbitration Act). Based on this provision, the Supreme Court held that the lack of reasons in an arbitral award for the decision made by an arbitral tribunal can be a ground to set aside an arbitral award. However, wrong or insufficient reason is considered as lack of reasons (Korean Supreme Court Judgment 2007Da73918 dated 24 June 2010).

35. What is the estimated timeframe for the recognition and enforcement of an award? May a party bring a motion for the recognition and enforcement of an award

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on an ex parte basis?

The actual time span for the recognition and enforcement of an award varies greatly, depending on issues raised and the extent to which they are contested. In routine cases that do not involve complex points of discussion, first instance courts take a few months to render a decision on the application for recognition and enforcement of an arbitral award.

A party may not initiate an action for the recognition and enforcement of an award on an ex parte basis because the Arbitration Act mandates a hearing for such cases (Article 37(4), Arbitration Act).

36. Does the arbitration law of your country provide a different standard of review for recognition and enforcement of a foreign award compared with a domestic award?

Absent any of the grounds for refusal of recognition or enforcement, a court must recognize an arbitral award regardless of whether the award is foreign or domestic (Article 37, Arbitration Act). Foreign arbitral awards subject to the New York Convention must be recognized and enforced in accordance with the New York Convention, meaning that recognition or enforcement may not be refused unless there is proof of (a) incapacity or invalid arbitration agreement; (b) lack of proper notice or opportunity to defend; (c) award being beyond the scope of the submission to arbitration; (d) defect with arbitral authority or procedure; (e) the award not being binding or being set aside (Article 39, Arbitration Act; Article V(1), New York Convention). Recognition and enforcement may also be refused if the subject matter of the arbitration is not capable of being settled by arbitration under the laws of Korea or if the recognition or enforcement of the award would be contrary to Korea's public policy (Article V(2), New York Convention).

The grounds to refuse recognition and enforcement of domestic arbitral awards are quite similar to those under the New York Convention.

37. Does the law impose limits on the available remedies? Are some remedies not enforceable by the local courts

The Arbitration Act is silent on limitations of available remedies. There have been different views on whether an arbitral award ordering punitive damages may be recognized and enforced in Korea because there was a court precedent partially denying enforcement a US court judgment ordering punitive damages (Seoul District Court Eastern Division Court Judgment 93gahap19069, 10 February 1995). But there is no known case that has dealt with the enforcement of an arbitral award ordering punitive damages.

In 2014, the Civil Procedure Act was amended to include Article 217-2 to limit the scope of recognition to an appropriate extent with respect to final judgments of foreign courts such as judgment ordering payment of damages exceeding compensation for damages, such as punitive damages (Supreme Court Decision 2015Da207747, 28 January 2018).

In March 2022, in a case where a party sought to enforce in Korea an award of treble damages by a Hawaiian court, the Supreme Court found in favor of the requesting party. The Supreme Court reasoned that the various amendments made to domestic laws since 2011 permit exemplary damages, and that the treble damages awarded by the Hawaiian court is not contrary to fundamental principles of Korean law (Supreme Court Decision 2018Da231550, 11 March 2022).

38. Can arbitration awards be appealed or challenged in local courts? What are the grounds and procedure?

An arbitral award may be appealed or challenged in local courts only by filing a lawsuit for setting aside the arbitral award within 3 months from the receipt of the arbitral award and before any decision of a Korean court recognizing or enforcing the award becomes final and conclusive (Articles 36(3) and 36(4), Arbitration Act). Grounds for setting aside an award include: (i) invalidity of the arbitration agreement; (ii) absence of proper notice of arbitrator appointment or arbitral proceedings; (iii) the subject-matter of the dispute not being capable of settlement by arbitration under the law of the Republic of Korea; and (iv) the award being in conflict with the good morals and other forms of social order of the Republic of Korea (Article 36(2), Arbitration Act).

39. Can the parties waive any rights of appeal or challenge to an award by agreement before the dispute arises (such as in the arbitration clause)?

The Korean Arbitration Act does not provide for waiver of any rights of appeal or challenge to an award by agreement in advance of dispute and no Korean court has issued any published decision on this issue to date.

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40. In what instances can third parties or non-signatories be bound by an award? To what extent might a third party challenge the recognition of an award?

In principle, only parties to an arbitration agreement are bound by the arbitral award (Article 35, Arbitration Act). The Arbitration Act is silent as to what circumstances might bind third parties or non-signatories to an arbitral award. However, a third party which becomes a successor to a contract may also be bound by the contract's arbitration provision and ultimately its outcome (Seoul Western District Court Judgment 2001GaHap6107 dated 5 July 2002). It has been settled by the Supreme Court that "although in principle an agreement on jurisdiction is a legal act which does not bind any third party other than the parties to the agreement or their respective successors, as a matter of substantive law, an agreement to change the jurisdiction modifies the terms of exercising a right and the substantive interest attached thereto, and as such, with respect to a nominative claim regarding which the parties may freely agree on the terms of the legal relationship, the successor to the claim has also become the successor to the modified legal relationship, and therefore the successor is bound by the agreement on jurisdiction" (Korean Supreme Court Decision 2005Ma902 dated 2 March 2006).

41. Have there been any recent court decisions in your jurisdiction considering third party funding in connection with arbitration proceedings?

There has not been any Korean court decision considering third party funding in arbitration. Although third party funding is not prohibited per se, Article 34 of the Attorneys-at-law Act provides that any person who is not an attorney may not operate law office by employing an attorney or receive a share of profits obtained from services which may only be provided by attorneys. Relatedly, Article 6 of the Trust Act renders null and void any trust "the main purpose of which is to have the trustee to proceed with litigation. But in 2019, the Korean Supreme Court gave a decision in which it stated that payments made to an attorney by a third party would be included within the litigation cost of the proceeding, if the payment from the third party can be regarded as being paid by the parties themselves (Korean Supreme Court Decision 2019Ma6990 dated 24 April 2020).

42. Is emergency arbitrator relief available in your country? Are decisions made by emergency arbitrators readily enforceable?

The Arbitration Act does not expressly provide for interim relief by emergency arbitrators. However, emergency arbitral tribunals often grant relief in Korea under various arbitration rules. For proceedings conducted under the Rules, a party may, in accordance with Article 32(4) of the Rules, apply for "urgent conservatory and interim measures" before the constitution of an arbitral tribunal. An application for interim measures by an emergency arbitrator must be made at the same time as or after filing the request for arbitration (Appendix 3, Article 1, Rules), and the KCAB Secretariat must endeavor to appoint an emergency arbitrator within 2 business days after receiving the application (Appendix 3, Article 2(3), Rules). The emergency arbitrator must establish a procedural timetable within 2 business days of the appointment and issue its decision on an application for emergency measure within 15 days from the appointment (Appendix 3, Article 3). However, the decision of the emergency arbitrator will cease to be effective if (i) no arbitral tribunal is constituted within 3 months of the decision granting the emergency measures; or (ii) the arbitral proceeding is terminated (Appendix 3, Article 3(6), Rules).

The issue of whether decisions by emergency arbitrators would be readily enforceable has not been specifically addressed by either the Arbitration Act or the Korean courts. While an interim measure issued by an arbitral tribunal is enforceable (Article 18-7, Arbitration Act), it is unclear whether an emergency arbitrator's decision qualifies as an interim measure by an arbitral tribunal. That said, the Arbitration Act provides for recognition and enforcement of interim measures rendered by arbitral tribunals, and the Rules provide that decisions made by emergency arbitrators "[shall] be deemed to be conservatory and interim measures granted by the Arbitral Tribunal at the time of constitution of the Arbitral Tribunal" (Appendix 3, Article 3(5)). It should be noted that the provisions on the recognition and enforcement of interim measures apply only to domestic arbitration.

43. Are there arbitral laws or arbitration institutional rules in your country providing for simplified or expedited procedures for claims under a certain value? Are they often used?

The Rules provide for the Expedited Procedure in Articles 43~49. A party in a KCAB arbitration may apply for the

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Expedited Procedure where (i) the claim amount does not exceed KRW 500,000,000; or (ii) the parties agree to be subject to the Expedited Procedure (Article 43, Rules). The arbitral tribunal is to issue its award within 6 months from the date the arbitral tribunal was constituted (Article 48(1), Rules). According to KCAB's Annual Report 2019 (subsequent KCAB Annual Reports have not reported the number of arbitrations initiated under expedited procedures), there have been 35 Expedited Procedure applications in international arbitration cases in 2019.

44. Is diversity in the choice of arbitrators and counsel (e.g. gender, age, origin) actively promoted in your country? If so, how?

Firms and arbitration practitioners have taken steps to promote diversity in the arbitration field. South Korea is also a signatory to the Equal Representation in Arbitration Pledge and frequently hosts events where the participants are encouraged to discuss the importance of diversity in international arbitration. In November 2021, the Women's Interest Committee, an independent division of the KCAB, was established within the KCAB International.

45. Have there been any recent court decisions in your country considering the setting aside of an award that has been enforced in another jurisdiction or vice versa?

No recent published court decision in Korea has addressed the setting aside of an award that has been enforced in another jurisdiction or vice versa.

46. Have there been any recent court decisions in your country considering the issue of corruption? What standard do local courts apply for proving of corruption? Which party bears the burden of proving corruption?

Corruption is an issue that is frequently raised in Korea. In 2016, the Improper Solicitation and Graft Act was introduced for the purpose of "ensur[ing] that public servants, etc. perform their duties in a fair manner and to secure public confidence in public institutions, by prohibiting any improper solicitation made to public servants, etc., and by prohibiting public servants, etc. from receiving money, goods, etc." (Article 2 of the Improper Solicitation and Graft Act). Burden lies with the prosecution to prove criminal violation and with relevant government agencies to impose administrative measures associated with corruption. While the standard of proof is not established under either the Improper Solicitation and Graft Act or the Criminal Procedure Act, it appears that the prosecution will have to prove their case beyond reasonable doubt.

47. What measures, if any, have arbitral institutions in your country taken in response to the COVID-19 pandemic?

KCAB issued a joint statement with 12 other arbitral institutions on 16 April 2020 to provide effective responses to the COVID-19 pandemic. KCAB also issued the Seoul Protocol on Video Conference in International Arbitration on 18 March 2020, the purpose of which is to "serve as a guide to best practices for planning, testing and conducting video conferences in international arbitration."

48. Have arbitral institutions in your country implemented reforms towards greater use of technology and a more cost-effective conduct of arbitrations? Have there been any recent developments regarding virtual hearings?

The Seoul International Dispute Resolution Center is a multi-purpose hearing center for arbitration hearings, business meetings and conferences, equipped with state-of-the-art facilities and equipment for virtual hearings. It was consolidated with the KCAB in 2018 and offers "V-Hearing" services and a variety of video-conferencing tools. The KCAB actively promotes the Seoul Protocol on Video Conferencing in International Arbitration, which was introduced at the 7th Asia Pacific ADR Conference in November 2018. The protocol is often referred to in virtual hearings as a guide to best practice for planning, testing and conducting video conferences in international arbitration.

Lex arbitri may be relevant for interpreting an arbitral tribunal's authority to hold a virtual hearing. The Arbitration Act, while providing a right to an "oral hearing", does not state whether the oral hearing must take place in the form of a physical hearing or a virtual hearing. The Civil Procedure Act too does not specify the form of the hearing. Article 134 of the Civil Procedure Act merely states that "[t]he parties shall conduct pleadings in the court in regard to the litigation".

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49. Have there been any recent developments in your jurisdiction with regard to disputes on climate change and/or human rights?

South Korea has made important strides in the field of climate change and human rights in recent years. In 2016, the government adopted the Basic Plan for Climate Change Response and the Road Map to Achieve National Greenhouse Gas Reduction Goals in preparation for domestic implementation of the Paris Agreement.

There have been important developments on the human rights front too. In November 2018, the Supreme Court ruled that conscientious objection was a "justifiable ground" for failing to join military service, and in December 2019 the government enacted amendments to the Military Service Act that introduced alternative services as ordered by the court. In April 2020, the Constitutional Court ruled against criminalization of abortion and the relevant Criminal Code provisions were repealed as of January 1, 2021. Recently, a Korean Court also prevented the national health services from denying the additional of a same sex partner as a dependent to the healthcare plan of their partner.

50. Do the courts in your jurisdiction consider international economic sanctions as part of their international public policy? Have there been any recent decisions in your country considering the impact of sanctions on international arbitration proceedings?

There have not been any cases where the Korean courts have considered whether international economic sanctions form a part of Korea's international public policy. Nor have there been any decisions that consider the impact of sanctions on international arbitration proceedings.

51. Has your country implemented any rules or regulations regarding the use of artificial intelligence, generative artificial intelligence or large language models in the context of international arbitration?

Neither the Arbitration Act nor the Rules have implemented rules or regulations regarding the use of artificial intelligence, generative artificial intelligence or large language models in the context of international arbitration.

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