International
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Practical cross-border insights into international arbitration work

# International Arbitration 2023

## 20th Edition

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# Korea



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## 1 Arbitration Agreements

### 1.1 What, if any, are the legal requirements of an arbitration agreement under the laws of your jurisdiction?

The "in-writing" requirement: under Article 8 of the Arbitration Act of the Republic of Korea ("KAA"), a valid and enforceable arbitration agreement must be in writing.

An arbitration agreement is deemed to be in writing when (i) it is contained in a document signed by the parties, (ii) it is contained in an exchange of emails, telegrams, facsimiles or any other means of telecommunication between the parties, and (iii) when the existence of an arbitration agreement is asserted by one party and the other party does not deny it.

In our view, the recently amended KAA adopts a relaxed approach in terms of the "in-writing" requirement.

### 1.2 What other elements ought to be incorporated in an arbitration agreement?

Other than the "in writing" requirement as mentioned in question 1.1 above, there is no other particular requirement for an arbitration agreement under the KAA.

### 1.3 What has been the approach of the national courts to the enforcement of arbitration agreements?

The decisions of Korean courts in arbitration-related matters have consistently reflected a pro-arbitration stance and a neutral attitude towards foreign parties. In general, Korean courts rarely refuse enforcement of foreign arbitral awards and usually dismiss unmeritorious challenges to arbitral awards, unless grounds for denying enforcement can be established with clear and convincing evidence.

In the authors' experience, Korean courts meet or exceed international standards for neutrality and predictability, and foreign parties from any other jurisdiction can have confidence that they will be treated fairly and equitably.

## 2 Governing Legislation

### 2.1 What legislation governs the enforcement of arbitration proceedings in your jurisdiction?

The KAA governs the enforcement of arbitration proceedings seated in Korea (Article 2(1) of the KAA).

### 2.2 Does the same arbitration law govern both domestic and international arbitration proceedings? If not, how do they differ?

The KAA is applicable to both domestic and international arbitrations, as long as the arbitration proceedings are seated in Korea (Article 2(1) of the KAA).

### 2.3 Is the law governing international arbitration based on the UNCITRAL Model Law? Are there significant differences between the two?

Yes. The KAA was amended to adopt the UNCITRAL Model Law in 1999, and extensive further amendments took place again to reflect the key features of the 2006 UNCITRAL Model Law in 2016.

### 2.4 To what extent are there mandatory rules governing international arbitration proceedings sited in your jurisdiction?

The parties' autonomy is respected and protected in Korea. The parties are allowed to freely agree on procedural matters in order to reflect particular needs as long as they are not contrary to the mandatory rules of the KAA (Article 20(1) of the KAA). Most of the provisions of the KAA are understood as non-mandatory, but the following are considered mandatory provisions in general:

- claims before a court shall be dismissed when they are in breach of an arbitration agreement (Article 9);
- an arbitrator's duty to disclose (Article 13);
- equal treatment of parties and due process (Article 19); and
- arbitral awards can be set aside via a lawsuit (Article 36).

## 3 Jurisdiction

**3.1 Are there any subject matters that may not be referred to arbitration under the governing law of your jurisdiction? What is the general approach used in determining whether or not a dispute is "arbitrable"?**

Article 3 of the KAA defines "arbitration" as a procedure to resolve disputes relating to (i) property rights, or (ii) non-property rights that the parties can resolve through a settlement. In general, matters that are not capable of being settled by agreement between the parties, such as matters of criminal law, family law and administrative law, are considered non-arbitrable. However, ambiguity also exists for certain matters such as intellectual property, insolvency, and antitrust, which remain unclear under Korean law. The arbitrability of these matters should be decided on a case-by-case basis.

**3.2 Is an arbitral tribunal permitted to rule on the question of its own jurisdiction?**

Yes, the competence-competence principle is also recognised under the KAA. 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) of the KAA).

**3.3 What is the approach of the national courts in your jurisdiction towards a party who commences court proceedings in apparent breach of an arbitration agreement?**

Article 9(1) of the KAA provides that Korean courts will dismiss an action subject to an arbitration agreement if a party raises a defence based on the arbitration agreement, except in cases where the arbitration agreement's substantive invalidity is an issue – that is, where under the applicable governing law, the arbitration agreement is null and void, becomes inoperative, or is incapable of being performed. Such jurisdictional defence must be raised before the first hearing on the merits to have an effect (Article 9(2) of the KAA).

**3.4 Under what circumstances can a national court address the issue of the jurisdiction and competence of an arbitral tribunal? What is the standard of review in respect of a tribunal's decision as to its own jurisdiction?**

There are two occasions in which a national court can address the issue of the jurisdiction and competence of an arbitral tribunal.

- First, court intervention can occur during the course of the arbitration proceeding if the court decides on the jurisdictional issues and a party files an application against such decision under Article 17 of the KAA.
- Second, a national court can address the issue of the jurisdiction and competence of an arbitral tribunal during (after the issuance of the award) the enforcement process – either via enforcement and/or set-aside proceeding.

However, in this regard, it should be noted that, as mentioned above, the Korean courts have consistently taken a pro-arbitration stance.

**3.5 Under what, if any, circumstances does the national law of your jurisdiction allow an arbitral tribunal to assume jurisdiction over individuals or entities which are not themselves party to an agreement to arbitrate?**

In principle, non-parties to an arbitration agreement are not privity to the arbitration agreement. However, a non-party could be bound by an arbitration agreement if it is the successor of a party to the arbitration agreement.

**3.6 What laws or rules prescribe limitation periods for the commencement of arbitrations in your jurisdiction and what is the typical length of such periods? Do the national courts of your jurisdiction consider such rules procedural or substantive, i.e., what choice of law rules govern the application of limitation periods?**

There are no limitation periods for the commencement of arbitrations in Korea under the KAA. However, a respondent may raise a substantive argument that the statute of limitation of a claim has lapsed and, therefore, the claim should be dismissed. Under Article 64 of the Korean Commercial Code, commercial claims are subject to a five-year limitation period.

**3.7 What is the effect in your jurisdiction of pending insolvency proceedings affecting one or more of the parties to ongoing arbitration proceedings?**

There is no provision stipulating the effect of pending insolvency proceedings in the KAA or Debtor Rehabilitation and Bankruptcy Act of Korea. However, it is understood that arbitration proceedings should be suspended upon the commencement of insolvency proceedings for either of the parties until the trustee takes over the case.

## 4 Choice of Law Rules

**4.1 How is the law applicable to the substance of a dispute determined?**

The arbitral tribunal shall apply the law agreed upon by the parties. If there is no agreement between the parties on the applicable law, the arbitral tribunal shall apply the law of the state that it considers to have the closest connection with the subject matter of the dispute (Article 29 of the KAA).

**4.2 In what circumstances will mandatory laws (of the seat or of another jurisdiction) prevail over the law chosen by the parties?**

Regarding the procedure of an arbitration seated in Korea, mandatory laws of the KAA shall prevail (Article 20(1) of the KAA).

**4.3 What choice of law rules govern the formation, validity, and legality of arbitration agreements?**

The KAA is silent on this issue. However, in light of Article 5 of the New York Convention on the Recognition and Enforcement

of Foreign Arbitral Awards ("New York Convention"), the law agreed by the parties should be applied to govern the formation, validity, and legality of arbitration agreements. In the absence of such law, the prevailing view is that the law of the jurisdiction in which the arbitration is seated should be applied.

## 5 Selection of Arbitral Tribunal

### 5.1 Are there any limits to the parties' autonomy to select arbitrators?

The KAA places no restrictions on the parties' autonomy with regard to the selection of arbitrators.

### 5.2 If the parties' chosen method for selecting arbitrators fails, is there a default procedure?

If the parties fail to reach an agreement on the selection of arbitrators, the KAA stipulates a default procedure for selecting arbitrators.

- In the absence of the parties' agreement on the number of arbitrators, such number shall be three (Article 11 of the KAA).
- In the absence of the parties' agreement on the procedure for appointing arbitrators, arbitrators shall be appointed by the methods set out under Article 12(3) of the KAA.
  - **Sole arbitrator**: If the parties fail to agree on the appointment of an arbitrator within 30 days of receipt of a party's request to do so, the court, or the arbitration institution designated by the court, appoints the arbitrator upon request of a party.
  - **Three arbitrators**: Each party appoints one arbitrator, and these two arbitrators appoint the third arbitrator by agreement. If a party fails to appoint an arbitrator within 30 days of receipt of the other party's request to do so, or if the two arbitrators appointed by the parties fail to appoint the third arbitrator within 30 days of their appointment, the court or arbitration institution designated by the court appoints the arbitrator upon request of a party.
- In some cases, Korean courts will intervene in the selection of arbitrators even when the parties reached an agreement on the selection of arbitrators (explained in question 5.3).

### 5.3 Can a court intervene in the selection of arbitrators? If so, how?

Yes, Korean courts can intervene in the selection of arbitrators in certain scenarios. Specifically, as mentioned above, the court can intervene in the selection of arbitrators where there is no method chosen by the parties (Article 12(3) of the KAA).

Furthermore, despite an agreement between the parties on the method of selecting arbitrators, the court or the arbitration institution designated by the court can appoint an arbitrator upon the other parties' request when:

(i) a party fails to appoint an arbitrator according to the chosen method;
(ii) the parties or two arbitrators fail to appoint an arbitrator according to the chosen method; or
(iii) the third party, including an institution entrusted to appoint an arbitrator, fails to make such appointment (Article 12(4) of the KAA).

The decision under Articles 12(3) or (4) of the KAA rendered by the court or the arbitration institution designated by the court cannot be appealed (Article 12(5) of the KAA).

### 5.4 What are the requirements (if any) imposed by law or issued by arbitration institutions within your jurisdiction as to arbitrator independence, neutrality and/or impartiality and for disclosure of potential conflicts of interest for arbitrators?

The KAA imposes disclosure obligations on arbitrators as follows: on being asked to serve as an arbitrator, a candidate must disclose any circumstances that are likely to give rise to reasonable doubts about his impartiality or independence to the parties (Article 13 of the KAA); and reasonable doubt about the impartiality and independence of an arbitrator can be grounds to challenge the arbitral award (Article 36 of the KAA).

These disclosure obligations are deemed continuous, thus requiring the arbitrator to disclose any such circumstance that may arise at any stage during the arbitration.

## 6 Procedural Rules

### 6.1 Are there laws or rules governing the procedure of arbitration in your jurisdiction? If so, do those laws or rules apply to all arbitral proceedings sited in your jurisdiction?

Yes. The KAA governs the arbitration procedure for all arbitrations seated in Korea, including both domestic and international arbitrations.

### 6.2 In arbitration proceedings conducted in your jurisdiction, are there any particular procedural steps that are required by law?

No. As mentioned above, the KAA allows the parties to decide on the arbitration procedure, as long as the agreement is in accordance with the mandatory provisions of the KAA.

### 6.3 Are there any particular rules that govern the conduct of counsel from your jurisdiction in arbitral proceedings sited in your jurisdiction? If so: (i) do those same rules also govern the conduct of counsel from your jurisdiction in arbitral proceedings sited elsewhere; and (ii) do those same rules also govern the conduct of counsel from countries other than your jurisdiction in arbitral proceedings sited in your jurisdiction?

Although there are no particular rules in the KAA that govern the conduct of counsel, counsels in arbitration are bound by the ethical rules of their respective jurisdictions in which they are licensed to practise. Korea-qualified lawyers are subject to the standards of the Korean Bar, and registered foreign attorneys in Korea are subject to the requirements under the Foreign Legal Consultant Act.

### 6.4 What powers and duties does the national law of your jurisdiction impose upon arbitrators?

The KAA provides a broad array of powers to the arbitrators; for example:

- **Power to conduct arbitration**: The arbitral tribunal may, subject to the provisions of the KAA, conduct the arbitration in such manner it considers appropriate unless otherwise agreed by the parties (e.g., appointing an appraiser (Article 27 of the KAA), requesting a local court to assist in the examination of evidence (Article 28 of the KAA)).

In such cases, the power conferred upon the arbitral tribunal shall include the power to determine the admissibility, relevance, and weight of any evidence (Article 20(2) of the KAA).

- **Power to order interim relief**: The arbitral tribunal may order interim relief that it considers necessary upon a party's request unless otherwise agreed by the parties (explained in section 7).
- **Power to decide on the costs and delay interest**: The arbitral tribunal has the discretion in allocating the costs of arbitration between the parties and ordering delay interest that the tribunal deems appropriate unless otherwise agreed by the parties (Articles 34-2 and 34-3 of the KAA; see also section 13).

**6.5 Are there rules restricting the appearance of lawyers from other jurisdictions in legal matters in your jurisdiction and, if so, is it clear that such restrictions do not apply to arbitration proceedings sited in your jurisdiction?**

In international arbitration cases, representation by a lawyer from another jurisdiction is allowed (Article 24(3) of the Foreign Legal Consultant Act). However, a lawyer from another jurisdiction should not provide services with regard to the statutes of the Republic of Korea.

**6.6 To what extent are there laws or rules in your jurisdiction providing for arbitrator immunity?**

There are no provisions under the KAA that provide for the immunity of arbitrators.

**6.7 Do the national courts have jurisdiction to deal with procedural issues arising during an arbitration?**

In general, a national court's intervention is not allowed unless explicitly permitted by the KAA (Article 6 of the KAA). However, as mentioned in our response to question 3.4 above, the court can review the arbitral tribunal's jurisdiction or competence under Article 17 of the KAA.

## 7 Preliminary Relief and Interim Measures

**7.1 Is an arbitral tribunal in your jurisdiction permitted to award preliminary or interim relief? If so, what types of relief? Must an arbitral tribunal seek the assistance of a court to do so?**

Arbitral tribunals are permitted to award interim relief *as considered necessary* (no longer being restricted to the subject matter of the dispute), at the request of a party, unless the parties have agreed otherwise (Article 18(1) of the KAA).

Article 18(2) of the KAA provides that an arbitral tribunal can order interim relief to

(i) maintain or restore the *status quo* pending the determination of the dispute;
(ii) prevent or forbid a present or imminent danger to the arbitral proceeding;
(iii) preserve assets subject to the execution of an arbitral award; or
(iv) preserve evidence that might be relevant and material to the resolution of the dispute.

**7.2 Is a court entitled to grant preliminary or interim relief in proceedings subject to arbitration? In what circumstances? Can a party's request to a court for relief have any effect on the jurisdiction of the arbitration tribunal?**

Under Article 10 of the KAA, parties can request a court to grant protective interim relief before or during the arbitral proceedings. Since there is no exclusivity for courts or arbitral tribunals with respect to interim relief, even if the seat of arbitration is outside Korea, Korean courts have jurisdiction to order interim relief when the subject matter of a provisional attachment or preliminary injunction is in Korea.

**7.3 In practice, what is the approach of the national courts to requests for interim relief by parties to arbitration agreements?**

The existence of an arbitration agreement does not obstruct Korean courts from issuing interim relief relating to cases that are subject to an arbitration agreement.

**7.4 Under what circumstances will a national court of your jurisdiction issue an anti-suit injunction in aid of an arbitration?**

The KAA does not provide for the possibility of issuance of an anti-suit injunction, unlike the UNCITRAL Model Law. Theoretically, it may be possible for a party to apply for an anti-suit injunction since the Korean Civil Execution Act does not limit the types of injunctions. In practice, however, there have been no such cases. Since the Korean courts dismiss cases bound by an arbitration agreement, there may not be a legitimate reason to file an anti-suit injunction separately.

**7.5 Does the law of your jurisdiction allow for the national court and/or arbitral tribunal to order security for costs?**

An arbitral tribunal may order a party requesting an interim relief to provide security (Article 18-4 of the KAA). If the arbitral tribunal did not order such security and there is a risk that such interim relief may harm the rights of a third party, the court deciding on an application for the recognition and enforcement of the interim relief may order the requesting party to provide security (Article 18-7(3) of the KAA).

**7.6 What is the approach of national courts to the enforcement of preliminary relief and interim measures ordered by arbitral tribunals in your jurisdiction and in other jurisdictions?**

The recently amended KAA provides that the tribunal's interim measures can be enforced through recognition and enforcement of the Korean courts (Article 18-7 of the KAA), stating the limited grounds upon which Korean courts may deny such recognition or enforcement (Article 18-8).

However, the KAA does not address the enforcement of interim relief ordered by tribunals seated outside of Korea. Commentators note that such interim relief should be recognised and enforced under the New York Convention if the seat of arbitration is a signatory thereto.

## 8 Evidentiary Matters

### 8.1 What rules of evidence (if any) apply to arbitral proceedings in your jurisdiction?

The parties are free to agree on the arbitral proceedings, including any rules of evidence (Article 20(1) of the KAA). For example, parties are free to apply the International Bar Association ("IBA") Rules on the Taking of Evidence in International Arbitration. In the absence of such agreement, the arbitral tribunal may conduct arbitration as it considers appropriate and has powers to determine the admissibility, relevance and weight of any evidence (Article 20(2) of the KAA).

### 8.2 What powers does an arbitral tribunal have to order disclosure/discovery and to require the attendance of witnesses?

The KAA is silent on this issue. Under the KAA, the arbitral tribunal does not possess the power to directly order disclosure/discovery and to require the attendance of a witness. Rather, Article 28 of the KAA provides that arbitral tribunals can request the Korean courts' assistance, either *ex officio* or upon a party's request, with regard to the taking of evidence (see also question 8.3).

### 8.3 Under what circumstances, if any, can a national court assist arbitral proceedings by ordering disclosure/discovery or requiring the attendance of witnesses?

Under Article 28(1) of the KAA, arbitral tribunals may, *ex officio* or at the request of the parties, request a court to examine evidence or may request a court to cooperate in examining evidence. Upon such request, the court can order a witness or a holder of a document to appear before the arbitral tribunal or submit necessary documents to the tribunal (Article 28(5) of the KAA). The arbitral tribunal shall pay the relevant costs to the court (Article 28(6) of the KAA), meaning that, in practice, the parties bear the costs.

### 8.4 What, if any, laws, regulations or professional rules apply to the production of written and/or oral witness testimony? For example, must witnesses be sworn in before the tribunal and is cross-examination allowed?

No laws or regulations exist that apply to the production of witness testimony in an arbitration seated in Korea.

### 8.5 What is the scope of the privilege rules under the law of your jurisdiction? For example, do all communications with outside counsel and/or in-house counsel attract privilege? In what circumstances is privilege deemed to have been waived?

Korean law does not explicitly provide "attorney-client privilege" and there are no cases in which a court has admitted such privilege. Yet, under the related provisions of the Attorney-At-Law Act, the Korean Civil Procedure Act, and the Criminal Act, attorneys (not the client) may reject the disclosure of documents that were exchanged in correspondence with their clients, on the grounds of confidentiality and secrecy in their professional duties. In practice, however, claims for "attorney-client privilege" are widely accepted in international arbitration cases.

## 9 Making an Award

### 9.1 What, if any, are the legal requirements of an arbitral award? For example, is there any requirement under the law of your jurisdiction that the award contains reasons or that the arbitrators sign every page?

Article 32 of the KAA stipulates that an arbitral award:

- shall be made in writing;
- shall be signed by all arbitrators;
- states the reasons, unless otherwise agreed; and
- states date and the seat of arbitration.

### 9.2 What powers (if any) do arbitral tribunals have to clarify, correct or amend an arbitral award?

The arbitral tribunal may make a correction, interpretation or additional award, either upon the request of a party or on its own initiative (Article 34 of the KAA).

## 10 Challenge of an Award

### 10.1 On what bases, if any, are parties entitled to challenge an arbitral award made in your jurisdiction?

Article 36 of the KAA provides that an award can be challenged by filing a lawsuit to set aside the award to Korean courts (Article 36(1) of the KAA) within three months of receiving an authentic copy of the award (Article 36(3) of the KAA) and before the confirmation of the recognition or enforcement decision of the award from the Korean courts (Article 36(4) of the KAA).

Article 36(2) sets out the following grounds upon which the court can set aside an arbitral award:

(i) A party challenging the award proves one of the following grounds:
   a. a party to an arbitration agreement was under some incapacity under the law applicable to him/her, or the said agreement is not valid;
   b. the party challenging the arbitral award was not given proper notice of the appointment of arbitrators or of the arbitral proceeding or was otherwise unable to present his or her case;
   c. the award goes beyond the scope of the dispute or arbitration agreement; or
   d. the composition of the arbitral tribunal or arbitral proceedings was not in accordance with the agreement of the parties unless such agreement was in conflict with any mandatory provision of the KAA.

(ii) The court finds *sua sponte* one of the following grounds:
   a. the subject matter of the dispute is not arbitrable under Korean law; or
   b. the arbitral award conflicts with the good morals and other forms of social order of Korea.

### 10.2 Can parties agree to exclude any basis of challenge against an arbitral award that would otherwise apply as a matter of law?

There is no law or court precedent regarding the issue. Scholars are of the view that an agreement to exclude the statutory basis of challenging an award, if made in advance of an award, is unenforceable. Meanwhile, an agreement to limit or exclude rights of appeal is clearly valid and enforceable if such agreement is made *after* the award.

**10.3 Can parties agree to expand the scope of appeal of an arbitral award beyond the grounds available in relevant national laws?**

No law or court precedent exists regarding this issue. However, considering the mandatory nature of the KAA provisions regulating set-aside actions (Article 36 of the KAA), the parties' agreement to create new grounds for the challenge of an arbitral award may not be enforceable.

**10.4 What is the procedure for appealing an arbitral award in your jurisdiction?**

There is no appeal procedure against arbitral awards. Once an arbitration award is made, it shall be final and binding. The only way to challenge the arbitral award is to set it aside (Article 35 of the KAA).

## 11 Enforcement of an Award

**11.1 Has your jurisdiction signed and/or ratified the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards? Has it entered any reservations? What is the relevant national legislation?**

Yes. Korea is a signatory of the New York Convention.

Article 39 of the KAA stipulates that recognition and enforcement of foreign arbitral awards subject to the New York Convention shall proceed pursuant to the Convention.

In determining whether foreign arbitral awards are subject to the New York Convention or not, Korea made both reciprocity and commercial reservations by virtue of paragraph 3 of Article 1 of the New York Convention.

**11.2 Has your jurisdiction signed and/or ratified any regional Conventions concerning the recognition and enforcement of arbitral awards?**

No, it has not.

**11.3 What is the approach of the national courts in your jurisdiction towards the recognition and enforcement of arbitration awards in practice? What steps are parties required to take?**

The applicable court precedents in Korea show that the Korean courts have been very supportive of recognising and enforcing arbitration awards. Korea is a pro-arbitration state.

In order to get a foreign award recognised or enforced, a party should apply for recognition or enforcement of the arbitral award. The claimant is required to supply (i) a copy or authentic copy of an original arbitration award, along with (ii) its Korean translation if the award is written in a foreign language (Article 37(3) of the KAA).

**11.4 What is the effect of an arbitration award in terms of *res judicata* in your jurisdiction? Does the fact that certain issues have been finally determined by an arbitral tribunal preclude those issues from being re-heard in a national court and, if so, in what circumstances?**

Under Article 35 of the KAA, an arbitral award has the same effect as a final and conclusive court judgment. It is presumed that an arbitral award also has the effect of *res judicata*, which is one of the effects of a final and conclusive court judgment.

Under Korean laws, the scope of *res judicata* is limited to the judicial decision on the subject matter of dispute and the effect of issue preclusion is not part of the effect of *res judicata*.

**11.5 What is the standard for refusing enforcement of an arbitral award on the grounds of public policy?**

In assessing the public policy challenge, the assessment must take into account not only the domestic perception of public policy but also the stability of international commercial transactions. Therefore, the violation of mandatory provisions of Korean law is not itself sufficient for refusing enforcement of an arbitral award on the grounds of public policy. Korean courts adopt the concept of "international public policy". In practice, there has been no single case in which public policy-based challenges have succeeded.

## 12 Confidentiality

**12.1 Are arbitral proceedings sited in your jurisdiction confidential? In what circumstances, if any, are proceedings not protected by confidentiality? What, if any, law governs confidentiality?**

No. The KAA does not impose any confidentiality obligations. In practice, if parties wish to keep their arbitration confidential, the parties should adopt confidentiality provisions in their contract or reach an agreement to that effect.

**12.2 Can information disclosed in arbitral proceedings be referred to and/or relied on in subsequent proceedings?**

There are no specific provisions regulating this issue.

## 13 Remedies / Interests / Costs

**13.1 Are there limits on the types of remedies (including damages) that are available in arbitration (e.g., punitive damages)?**

There is no limit on the types of remedies available under the KAA. However, Korean courts may set aside or refuse enforcement of relief that violates Korea's public policy.

For instance, Korea does not recognise punitive damage. In cases where an arbitral award ordered compensation including punitive damages, district courts have refused recognition of the damage amount exceeding the amount that would have been accepted in Korea.

**13.2 What, if any, interest is available, and how is the rate of interest determined?**

The arbitral tribunal has the authority to order either party to pay past due interest in making an arbitral award, considering all circumstances of the relevant arbitration case, unless otherwise agreed by the parties (Article 34-3 of the KAA). The statutory interest rate under the Korean Commercial Code is 6% *per annum*, and the same under the Korean Civil Code is 5% *per annum*.

**13.3 Are parties entitled to recover fees and/or costs and, if so, on what basis? What is the general practice with regard to shifting fees and costs between the parties?**

The arbitral tribunal has the power to decide on the allocation of costs incurred in the proceedings (Article 34-2 of the KAA). Under Korean laws, in principle, the costs should follow the event.

**13.4 Is an award subject to tax? If so, in what circumstances and on what basis?**

A winning party's economic benefit (principal and interest) is subject to taxation. This can be classified as income tax under the Korean Income Tax Act.

**13.5 Are there any restrictions on third parties, including lawyers, funding claims under the law of your jurisdiction? Are contingency fees legal under the law of your jurisdiction? Are there any "professional" funders active in the market, either for litigation or arbitration?**

There have been no restrictions on prohibiting third-party funding in Korea, although neither are there any clear legislative grounds that allow it.

As the concept of third-party funding is only just emerging in Korea, there are no professional funders active in the market for either litigation or arbitration.

Instead, contingency fees (also known as "success fees") for lawyers are allowed, unless they are unfairly excessive.

## 14 Investor State Arbitrations

**14.1 Has your jurisdiction signed and ratified the Washington Convention on the Settlement of Investment Disputes Between States and Nationals of Other States (1965) (otherwise known as "ICSID")?**

Yes. Korea signed the ICSID Convention on April 18, 1966, and ratified the same on February 21, 1967.

**14.2 How many Bilateral Investment Treaties ("BITs") or other multi-party investment treaties (such as the Energy Charter Treaty) is your jurisdiction party to?**

As of February 2023, Korea has signed 99 BITs of which 84 are currently in effect.

As of April 2023, Korea is a party to 21 effectuated free trade agreements ("FTAs").

**14.3 Does your jurisdiction have any noteworthy language that it uses in its investment treaties (for example, in relation to "most favoured nation" or exhaustion of local remedies provisions)? If so, what is the intended significance of that language?**

There is no specific noteworthy language beyond the generally accepted use of the general principles.

**14.4 What is the approach of the national courts in your jurisdiction towards the defence of state immunity regarding jurisdiction and execution?**

On jurisdictional immunity, the Korean Supreme Court recognises restrictive immunity where Korean courts may exercise jurisdiction over foreign states as long as their acts constitute "private law acts" unless the subject matter concerns their sovereign acts.

In this regard, the Korean Supreme Court has held, in the context of an employment dispute with the United States as the defendant, that Korean courts may exercise jurisdiction with regard to private law acts committed by a foreign state in Korea.

In terms of enforcement of arbitral awards, however, state immunity is not a ground for challenging arbitral awards under the KAA.

## 15 General

**15.1 Are there noteworthy trends or current issues affecting the use of arbitration in your jurisdiction (such as pending or proposed legislation)? Are there any trends regarding the types of dispute commonly being referred to arbitration?**

The KAA continues to be updated (most recently in 2020).

The Korean Act on Private International Law has seen a major positive overhaul in 2022, contributing to how receptive Korea is to international dispute resolution.

The consultation process relating to the introduction of "attorney-client privilege" under Korean law is in progress.

**15.2 What, if any, recent steps have institutions in your jurisdiction taken to address current issues in arbitration (such as time and costs)?**

In 2018, the Korean Commercial Arbitration Board ("KCAB") launched KCAB International to exclusively administrate and serve international arbitration cases. KCAB aims to boost Seoul as an arbitration hub in Korea.

**15.3 What is the approach of the national courts in your jurisdiction towards the conduct of remote or virtual arbitration hearings as an effective substitute to in-person arbitration hearings? How (if at all) has that approach evolved since the onset of the COVID-19 pandemic?**

There have been no decisions made by the Korean courts with regard to the conduct of remote or virtual arbitration hearings.

However, a noteworthy trend during the COVID-19 pandemic was the rise of virtual hearings in international arbitration. Korea is one of the most developed countries globally in terms of IT infrastructure. Virtual hearings operate very smoothly in Korea and are becoming the "new normal" in the era of the pandemic.

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