SOUTH KOREA

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1. KEY CONSIDERATIONS IN DECIDING WHETHER TO ARBITRATE IN SOUTH KOREA

1.1 Advantages

Korea is strongly pro-arbitration.

Modern arbitration law

The arbitration law in Korea is codified in the Arbitration Act (Act No. 16918 of 4 February 2020) (Korean Arbitration Act or KAA), which was enacted in 1966. Korea has been periodically amending the KAA to align it with best international practices, including by adopting the UNCITRAL Model Law on International Commercial Arbitration (Model Law) in 1999 and further amending the KAA in 2016 and most recently in 2020.

Korea has also taken a legislative step to establish and promote the "arbitral ecosystem" in Korea, by enacting the Korean Arbitration Industry Promotion Act in 2016.

This year marks the 50th anniversary since Korea's accession to the New York Convention in 1973.

Consistent track record of enforcement of foreign arbitral awards

Korea very rarely refuses enforcement of foreign arbitral awards.

In particular, a Korean court has refused enforcement of foreign arbitral awards on public policy grounds in only a handful of cases. For example, in Suwon District Court Judgment 2012Gadan104395, the court refused to enforce a consent award for the value of the taxes that the award debtor had deducted to pay the tax authorities because enforcement would lead to double payment by the award debtor.

In general, Korean courts are quick to dismiss unmeritorious challenges to arbitral awards, unless grounds for denying enforcement can be established with clear and convincing evidence (see, for example, Korean Supreme Court Judgment 2016Da18753 and Korean Supreme Court Judgment 2016Da49931).

Future developments on the horizon

Korea continues its upward trajectory towards becoming a leading arbitration hub in Asia.

Whilst there is a wide consensus that, in practice, Korea protects the confidential nature of attorney-client communication by enforcement of an attorney's obligation to keep such communications confidential, there is a juridical distinction in that Korea does not explicitly recognize a common law concept of attorney-client privilege. To clarify the rules of protection of privileged communication, Korea has recently been taking steps to codify attorney-client privilege. A bill seeking to amend the Korean Attorney-at-Law Act is currently undergoing review by the Legislation and Judiciary Committee.

Furthermore, Korea has undertaken a major overhaul of its private international law, with an amendment of the Act on Private International Law that came into effect in July 2022. The Act, among other things, added 35 new provisions (a significant overhaul of a prior statute that had a single provision) that together establish a comprehensive set of guiding principles for determining whether a Korean court has jurisdiction over matters that involve international elements.

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1.2 Disadvantages and common pitfalls

Parties considering arbitrating in Korea should be aware of the following features of the Korean legal landscape:

- First, Korean law does not impose any confidentiality obligations by default to arbitrations seated in Korea. Therefore, parties that want their arbitration proceedings to be confidential must adopt confidentiality provisions in their contract. Moreover, in the context of set aside proceedings before Korean courts, parties seeking to maintain confidentiality of the arbitral award and record should consider making an application under Article 163 of the Korean Civil Procedure Act, which allows the court to limit public access to any part of an arbitral award that is entered into Korea's public record.
- Second, Korea does not recognize a general right to discovery. This may be a factor when choosing Korea as the arbitral seat if the scope of document disclosure is likely to be a highly contentious issue between the parties.
- Third, unlike jurisdictions such as Singapore and Hong Kong, Korea has yet to take a firm view on the legal status of third-party funding (see Section 14 below) and of emergency arbitrations (see Section 11.5 below).
- Finally, foreign counsel not qualified in Korea have no rights of audience before the Korean courts. Thus, foreign parties seeking court assistance in connection with an arbitral proceeding, or taking steps to commence set aside or enforcement proceedings in Korea, will require the assistance of local counsel. Furthermore, all court proceedings and judgments are in Korean. Thus, all English-language arbitral record or evidence, in their relevant parts, will likely require translation.

1.3 Other distinctive features

The Korean judiciary has a reputation for excellence, owing mostly to Korea's stringent bar regime — traditionally, national bar examinations had an average passing rate of less than 3%, and those who passed underwent a rigorous two-year training program. This regime was replaced by a U.S.-style law school system.

Korean courts are also known for their speed. A survey conducted by the World Bank Group and published in Doing Business consistently ranked Korea among the highest performers for ease of enforcing contracts through the courts (see Doing Business 2020 (surveying the ease of enforcing contracts of 224 world economies, and giving Korea a score of 81.4, second only to Singapore with a score of 84.5)).

2. PRINCIPAL LAWS AND INSTITUTIONS RELATING TO INTERNATIONAL ARBITRATION IN SOUTH KOREA

2.1. Legal framework

The KAA applies to and governs arbitrations seated in Korea.

For international arbitrations (see Section 2.2 below), the applicable foreign arbitration law applies, and the recognition and enforcement of any resulting awards are governed by the New York Convention.

There is no special court that hears arbitration matters or has exclusive jurisdiction over them.

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2.2. What qualifies as international arbitration?

Korea distinguishes arbitrations seated in Korea (Korean Arbitration) and arbitrations seated outside Korea (Foreign Arbitration or international arbitration). See KAA, Article 2 (providing that the KAA applies to cases in which Korea is the seat of arbitration), Article 39 (defining foreign arbitral awards as those subject to the New York Convention); see also New York Convention, Article I(1) (providing that it applies to such foreign arbitral awards seated in a place other than where enforcement is sought).

In this way, although the KAA is based on the Model Law, Korea chose to define "international arbitration" in a way that is much simpler compared to the analysis required under Article 1(3) of the Model Law.

2.3 Main local international arbitration institutions

The Korean Commercial Arbitration Board Incorporated Association (KCAB), together with its international division, KCAB International, is the only local arbitral institution that is statutorily empowered under the KAA to conduct commercial arbitrations. See KAA, Article 40-41; see also Addenda No. 6083 to the KAA dated 31 December 1999.

3. ARBITRATION AGREEMENTS

Korea's approach to arbitration agreements matches international practice and seeks to balance its pro-arbitration attitude with other policy concerns.

3.1 Requirements as to content and form

Under Article 8 of the KAA (which is based on Option I under Article 7 of the Model Law), arbitration agreements must be in writing to be valid. This requirement is deemed satisfied by any of the following:

- where the terms of an arbitration agreement have been recorded, whether or not such agreement was made orally, by conduct, or by any other means;
- where the parties' intentions communicated by telegram, telex, facsimile, electronic mail, or any other means contain an arbitration agreement, except where the terms of such arbitration agreement cannot be verified; or
- where either party asserts that an application or a written answer exchanged between the parties contain an arbitration agreement, and the other party does not deny the assertion.

Under the same Article, an arbitration agreement is deemed to exist also where a contract cites a document that contains an arbitration clause, and the arbitration clause constitutes a part of the contract.

3.2 Validity of arbitration agreements

Arbitration agreements, being creatures of contract, must meet the requirements of substantive validity, as with any other contract.

Indeed, Article 9 of the KAA provides that Korean courts will dismiss an action subject to an arbitration agreement except in cases where the arbitration agreement's substantive invalidity is in issue — that is, where under the applicable

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governing law (see Section 3.4 below for a discussion on the governing law), the arbitration agreement:

- is null and void (for example, if the arbitration agreement was entered into based on fraud or duress (Korean Civil Act or KCA, Article 110), or if the arbitration agreement is contrary to the good morals and other forms of social order of Korea (KCA, Article 103));
- becomes inoperative (for example, if the arbitration agreement named a specific person to act as arbitrator, and the person later refuses to act as the arbitrator; see Korean Supreme Court Judgment 96Da280 dated 12 April 1996) ; or
- is incapable of being performed (for example, because the parties agreed on arbitration administered by an entity that does not and is not empowered to administer arbitrations; see Seoul High Court Judgment 80Na535 dated 26 June 1980).

The KAA also provides in Article 36, *inter alia*, that arbitral awards will be set aside if a party furnishes proof that a party was incapable of entering into an arbitration agreement (for example, because the party was a minor acting without the consent of their legal representative (KCA, Article 5)).

3.3 Special formalities

There are no special formalities for the formation of arbitration agreements in Korea.

3.4. Governing law

The Korean courts will give primacy to the parties' choice of law for the law governing the arbitration agreement. Absent an express choice of law, the Korean Supreme Court looks to the parties' implied choice of law. For example, in a case where the parties (i) chose California law as the law governing the underlying contract and (ii) chose Los Molinos, California as the seat of arbitration, the court held that the parties impliedly chose California law to govern the arbitration agreement. The same court also held that when there is no express or implied choice of governing law of the arbitration agreement, the law of the seat of arbitration will apply. See Korean Supreme Court Judgment 2017Da225084 dated 26 July 2018.

4. ARBITRABILITY

Though the KAA does not directly address arbitrability, Article 3 defines "arbitration" as a procedure to settle a dispute that the parties can resolve. Matters that are not solely between the parties are thus generally not arbitrable.

The law on arbitrability is evolving, especially for issues related to the following: intellectual property, bankruptcy, and competition law, as well as commercial matters that affect non-parties.

4.1 Applicable restrictions

Matters relating to constitutional, criminal, administrative, or family law are generally not arbitrable.

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5. ENFORCING ARBITRATION AGREEMENTS

5.1 Stay of proceedings

The KAA does not empower the courts to stay an arbitral proceeding through an injunction.

On the other hand, if a party against which court proceedings are brought believes that the court lacks jurisdiction because the suit concerns a matter that is subject to an arbitration agreement, the party has until it submits the first statement on the substance of the dispute to raise the objection and to seek the dismissal of the court proceeding. See KAA, Article 9. Facing such an objection, the court has discretion to stay the court proceedings even if the parties are disputing the validity of the arbitration agreement in the arbitral proceeding. Such an objection in the court does not impede the arbitral tribunal's competence to decide that it has jurisdiction to hear the dispute. See KAA Article 9(3).

5.2 Anti-suit injunctions

Parties may seek an injunction to restrain a party from commencing or continuing legal proceedings abroad in breach of an arbitration agreement if:

- there is a valid arbitration agreement; and
- the Korean court has jurisdiction to intervene.

Practically, parties bringing an anti-suit injunction should also consider seeking an order for the party against whom the injunction is sought to pay financial penalties if it does not comply with the injunction. Such penalties are necessary to ensure compliance with the injunction because Korean civil law does not empower the judiciary to hold non-compliant parties in contempt of court.

6. ARBITRAL TRIBUNAL

Under the KAA, matters concerning the arbitral tribunal are mostly guided by the source of the tribunal's authority: party autonomy.

6.1 Restrictions on the parties' freedom to choose arbitrators

Korea does not impose any restrictions on the parties' freedom to choose arbitrators.

6.2 Requirement of arbitrator independence and impartiality

Article 13 of the KAA provides that circumstances giving rise to justifiable doubts as to an arbitrator's impartiality or independence is a ground to challenge the arbitrator's appointment, and that a prospective arbitrator must disclose such circumstances without delay when approached about a possible appointment.

6.3 Mandatory rules applicable to the appointment process

There are no mandatory rules applicable to the appointment process.

6.4 Appointment mechanism in the absence of party agreement or applicable institutional rules

Article 12(3) of the KAA sets out the default appointment mechanism:

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- 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 the 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 fail to appoint the third arbitrator within 30 days of their appointment, the court, or the arbitration institution designated by the court, appoints the arbitrator upon request of a party.

6.5 Mandatory rules applicable to the replacement process

Article 16 of the KAA provides that a replacement arbitrator must be appointed according to the procedures applicable to the appointment of the arbitrator being replaced.

6.6 Mandatory disclosure obligations

The Korean Supreme Court has held that the disclosure requirement discussed in Section 6.2 above is a mandatory provision. See Korean Supreme Court Judgment 2004Da47901 dated 29 April 2005.

Parties that have become aware of circumstances giving rise to justifiable doubts as to an arbitrator's impartiality or independence are advised to challenge the arbitrator's appointment in a timely fashion, through a procedure for such challenges under the relevant arbitration law or an appeal process in the relevant courts. A party that has not exhausted such procedures would be precluded from raising such an objection as a basis for setting aside the resulting award.

6.7 Grounds for challenge

Under Article 13 of the KAA, an arbitrator may be challenged on the following grounds:

- there are circumstances giving rise to justifiable doubts about the arbitrator's independence or impartiality; or
- the arbitrator does not possess the qualifications agreed by the parties.

6.8 Mandatory rules governing the challenge of arbitrators

There are no mandatory rules governing the challenge of arbitrators.

The KAA instead provides in Article 14(1) that the parties can agree on a procedure for challenging an arbitrator, and sets out a challenge mechanism in the absence of party agreement or applicable institutional rules in Article 14(2)-(3); parties must first raise a challenge before the arbitral tribunal, and then before the court.

Parties contemplating challenging an arbitrator should also note that a challenge must be brought within the time agreed by the parties or provided under Article 14 of the KAA. See Korean Supreme Court Judgment 2005Da47901 dated 29 April 2005.

6.9 Removal

Under Article 15(1) of the KAA, the mandate of an arbitrator is terminated either when the arbitrator withdraws from their office, or the parties agree on the termination in circumstances where:

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- the arbitrator becomes *de jure* or *de facto* unable to perform their duties; or
- the arbitrator fails to timely perform their duties without good cause.

If the parties disagree whether an arbitrator should be terminated, they can request the court to decide the matter under Article 15(2) of the KAA. Under Article 15(3), such decision is final and not subject to appeal.

6.10 Liability and immunity of arbitrators

The KAA is silent on the issue of liability and immunity of arbitrators. Arbitrators may thus be held liable for any breach of contract or illegal actions, but some commentators have expressed the view that liability may arise only in limited circumstances, such as when the arbitrator has acted in bad faith.

However, Article 56 of the KCAB International Arbitration Rules (2016) limits the scope of liability of arbitrators.

7. ASSISTANCE BY THE STATE COURTS

In the specific circumstances contemplated under the KAA, Korean courts are empowered to assist the parties and the tribunal to ensure the fairness of the arbitral procedure.

7.1 Interim measures

Overview of interim measures

Interim measures are available from courts as well as arbitral tribunals.

Regardless of the seat of arbitration, under Article 10 of the KAA parties can request a court to grant protective interim measures before or during the arbitral proceedings. Specifically, provided the subject matter of a preliminary attachment or preliminary injunction is in Korea, Korean courts have jurisdiction to grant interim measures even though the seat of arbitration is outside Korea.

Parties can apply for interim measures before local courts before and after the arbitral tribunal has been constituted. Courts will grant interim relief if the applicant demonstrates both:

- the existence of a "right to be preserved"; and
- the "necessity of preservation" (such as an imminent risk of irreparable harm to the right to be preserved).

Under Article 18 of the KAA, arbitral tribunals are also empowered to grant various interim measures as requested by the parties and deemed necessary by the tribunal, unless otherwise agreed by the parties.

Article 18(2) provides that an arbitral tribunal can order interim relief for the parties to perform any of the following:

- to maintain or restore the *status quo* pending the determination of the dispute;
- to prevent current or imminent harm, or prejudice to the arbitral proceeding itself, or to not take actions that might cause such harm or prejudice;
- to provide a way to preserve assets subject to the execution of an eventual award; or
- to preserve evidence that might be relevant and material to the resolution of the dispute.

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Under Article 18-7 of the KAA, parties may file a petition seeking the recognition and enforcement of such interim measures.

Finally, under Article 18-4 of the KAA, arbitral tribunals may order the party requesting the interim measure to provide security. Similarly, under Article 18-7, the court dealing with an application for the recognition and enforcement of an interim measure may also order security.

Relevance of availability of emergency arbitrator mechanism

The emergency arbitrator mechanism is provided for in Appendix 3 of the KCAB's International Arbitration Rules (2016). The same is not covered in the KAA.

7.2 Taking of evidence

The KAA assists arbitrations seated in Korea with the taking of evidence by empowering tribunals through Article 28(1) to request the Korean courts' assistance, either *ex officio* or upon a party's request.

Under Article 28(2), the arbitral tribunal may specify the assistance it is requesting in writing, and upon receiving such request, the court is empowered under Article 28(5) to order persons to appear before the arbitral tribunal or to submit necessary documents.

If the court is taking the evidence itself, under Article 28(3) the arbitrators or parties may participate in the court's taking of evidence, with the permission of the presiding judge. Under Article 28(4) however, the court, after the taking of evidence, must promptly send the arbitral tribunal its records of the taking of evidence.

Finally, under Article 28(6), the costs incurred in the taking of evidence are borne by the requesting tribunal, meaning that in practice, the parties bear the costs.

7.3 Appointment or challenge of arbitrators

While Korean courts do provide assistance with the appointment and challenge of arbitrators in the absence of party agreement under the KAA, they only do so as a last resort. See Sections 6.4 and 6.8 above.

7.4 Other available assistance

Other assistance available from Korean courts includes:

- reviewing an arbitral tribunal's decision on its own jurisdiction under Article 17 of the KAA;
- assistance with the challenge of a tribunal-appointed expert under Article 27(3) of the KAA;
- safekeeping of the original copy of an arbitral award upon the request of the parties under Article 32(4) of the KAA; and
- assistance with the termination and replacement of arbitrators (see Sections 6.5 and 6.9 above).

8. GENERAL PROCEDURAL (MINIMUM) REQUIREMENTS

Under Korean law, there is no specific minimum procedural requirement, such as a requirement to hold a hearing in-person or at all.

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However, Article 19 of the KAA enshrines the two fundamental procedural safeguards: that parties must be treated equally, and that each party must be given a full opportunity to present its case. The Korean courts have consistently upheld this safeguard. See, for example, Seoul High Court Judgment 2013Na13506 dated 17 January 2014; Seoul High Court Judgment 2020Na2020386 dated 1 December 2020; Seoul High Court Judgment 2021Na2020680 dated 17 February 2022.

9. CONFIDENTIALITY

Korean law does not impose any confidentiality obligations to arbitrations seated in Korea and leaves the matter to be agreed upon by the parties. However, it is pertinent to highlight that Article 57 of KCAB's International Arbitration Rules (2016) and Article 12 of its Domestic Arbitration Rules (2016) both provide that arbitral proceedings and the records thereof must be kept confidential.

In practice, arbitrations are regarded as a confidential process in Korea, and parties uphold confidentiality obligations in respect of the arbitration proceedings, whether it be through the confidentiality requirement under the applicable arbitration rules or by agreement between parties.

All Korean court proceedings are open to the public. Thus, a party seeking to set aside or enforce an award (that had remained confidential throughout the arbitration proceedings) should consider taking steps to apply to limit public access to the arbitral records pursuant to Article 163 of the Korean Civil Procedure Act.

10. AWARDS

10.1 Requirements as to content and form

Article 32 of the KAA provides that the arbitral award:

- must be made in writing;
- must be signed by all arbitrators (but if less than a majority of arbitrators in a Tribunal of three or more arbitrators cannot sign, it suffices for the majority of arbitrators to sign and state the reasons for the others' absence);
- must state the reasons on which it is based, unless otherwise agreed; and
- must state its date and the seat of arbitration.

10.2 Time limit

Korean law does not impose a time limit for rendering an award.

10.3 Remedies

The KAA does not restrict the discretion of an arbitral tribunal to fashion a remedy as it sees fit, or the parties' autonomy to agree on how that discretion should be exercised, except for Article 29(3) which provides that the tribunal can decide *ex aequo et bono* only with the parties' express authorization.

That said, if the tribunal-ordered relief violates Korea's public policy, that may be a ground for setting aside or refusing enforcement of the arbitral award.

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11. POST-AWARD PROCEEDINGS

11.1 Interpretation and correction of awards

The interpretation and correction of awards is governed by Article 34 of the KAA, which allows the parties to request one of the following within 30 days of receiving the authentic copy of the arbitral award:

- to correct any computational, clerical or typographical errors, or any similar error;
- to interpret a part or specific point in the award, if the parties agree; or
- to make an additional award as to claims presented but omitted from the award, unless otherwise agreed by the parties.

11.2 Challenge of an award

Under Article 36 of the KAA, a party seeking to set aside an arbitral award must do so within three months from receiving an authentic copy of the award, or an authentic copy of a correction or interpretation or an additional award, whichever is later, and the party must furnish proof of one of the following grounds:

- that a party was under some incapacity or that the arbitration agreement is not valid;
- that the party seeking to set the award aside was not given proper notice about the appointment of the arbitrator(s) or of the arbitral proceedings, or was otherwise unable to present its case;
- that the arbitral award goes beyond the scope of the dispute or arbitration agreement; or
- that the composition of the arbitral tribunal or the arbitral procedure:
  - did not accord with the parties' agreement, which was not in conflict with the mandatory provisions of the KAA; or
  - if there was no such agreement, the composition of the tribunal or the arbitral procedure did not accord with the KAA.

Further, under the same Article, the court may find *sua sponte* either that:

- the subject matter of the dispute is not arbitrable under Korean law; or that
- the arbitral award conflicts with the good morals and other forms of social order of Korea.

11.3 Recognition and enforcement proceedings

Under Article 38 of the KAA, arbitral awards rendered in Korea are recognized and enforced by default, unless a party opposing such recognition and enforcement furnishes proof of one of the following:

- that one of the grounds for setting aside an award under Article 36 exists;
- that the arbitral award has no binding power over a party; or
- that the arbitral award has been set aside by a court.

Under Article 7 of the KAA, the competent court for enforcement will be the one that:

- is designated by the parties' arbitration agreement or has jurisdiction over the place of arbitration;
- has jurisdiction over the place where a respondent's property is located; or
- has jurisdiction over a respondent's domicile or place of business.

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Under Article 35 of the KAA, an arbitral award is equivalent in effect to a final and conclusive judgment, which can be enforced for ten years from the date on which the judgment becomes conclusive, under the Korean Civil Act. Therefore, the right to enforce an arbitral award is also subject to a limitation period of ten years.

11.4 Cost of enforcement

As with general civil litigation, the losing party bears the costs in principle, although the court has discretion to make exceptions when appropriate and attorneys' fees are recoverable only up to the statutory limit. See Korean Civil Procedure Act, Chapter III, Section 1.

11.5 Enforcement of orders of emergency arbitrators

Although the KCAB International Rules of Arbitration (2016) has adopted a procedure for emergency arbitration in its Appendix 3, the procedure has not yet been codified in the KAA.

In practice, emergency measures have become commonplace in arbitrations in Korea. But there is a dearth of relevant case law (particularly on whether the courts would enforce an emergency arbitral order) because in practice such orders are likely complied with voluntarily or lead to an amicable settlement of the dispute.

12. ENFORCEMENT OF FOREIGN AWARDS

12.1 Process for enforcing New York Convention awards

Korea has been a party to the New York Convention since 9 May 1973. Korea has a reciprocity reservation and a commercial reservation, pursuant to Article 1(3) of the New York Convention.

Under Article 39(1) of the KAA, the enforcement of New York Convention awards is governed by the New York Convention.

The competent court for enforcement is governed by Article 7 of the KAA and is same as in domestic enforcement proceedings. See Section 11.3 above.

12.2 Grounds for resisting enforcement of New York Convention awards

Article 39 of the KAA provides that the grounds for refusing enforcement are as set out in the New York Convention.

While these grounds closely mirror the grounds for refusing the enforcement of domestic arbitral awards, the standard the Korean courts apply in evaluating whether an arbitral award violates Korea's public policy is higher for foreign awards than for domestic awards. See Korean Supreme Court Judgment 2006Da20290 dated 28 May 2009.

12.3 Enforcing Non-Convention awards

Under Article 39(2) of the KAA, the enforcement of non-convention awards is governed by the Korean Civil Procedure Act and the Korean Civil Execution Act, on substantially the same parameters as the enforcement of foreign judgments. Those parameters are as follows:

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- the international jurisdiction of the arbitral tribunal is recognized under the principle of international jurisdiction pursuant to statutes or treaties of Korea;
- the respondent was properly served, allowing it sufficient time to defend, or the respondent participated in the proceeding even without proper service;
- the recognition of the final award does not undermine the public policy or other forms of social order of Korea; and
- a reciprocal guarantee of recognition exists.

13. PROFESSIONAL AND ETHICAL RULES

13.1 Applicable to counsel

Counsel in arbitration are bound by the ethical rules of their respective jurisdictions in which they are licensed to practice. 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.

13.2 Applicable to arbitrators

While the KAA does not impose any professional or ethical standard on arbitrators, KCAB has issued a Code of Ethics for Arbitrators in 2016 that apply to arbitrations administered under the KCAB Rules.

14. THIRD-PARTY FUNDING

14.1 Applicable regulatory requirements

The common law doctrines of maintenance and champerty do not exist in South Korea, and there are currently no specific restrictions, court precedents, or legislative frameworks that govern third-party funding, despite the growing interest and practice of third-party funding in Korea. Therefore, those looking to use third-party funding should consult local Korean counsel as to whether certain provisions of Korean law, which do not expressly deal with but may raise issues related to third-party funding, might apply.

Although cases like the Korean Supreme Court Judgment 2019Ma6990 dated 24 April 2020 (holding that attorneys' fees may be paid by a third party rather than the losing party) arguably suggest that the Korean courts would not invalidate a third-party funding arrangement, Korea has not yet taken a definitive view on third-party funding.

That said, it is understood that third-party funding has been used by Korean parties in connection with proceedings commenced outside of Korea.

14.2 Overview of the third-party funding market in Korea

In line with global trends, the interest in third-party funding in Korea has grown in recent years.

But because there currently is no direct regulation or prohibition of third-party funding in Korea, third-party funding agreements involving any nexus to Korea should be structured carefully with the assistance of local counsel. See Section 14.1 above.

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15. TRENDS AND RECENT DEVELOPMENTS

Korea has seen the following trends and developments recently:

- The KAA continues to the updated (most recently in 2020) to ensure it reflects best international practices.
- 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.
- Korean courts continue to expand their willingness to enforce foreign awards (see, for example, Korean Supreme Court Judgment 2016Da49931 dated 13 December 2018, rejecting a challenge to the enforcement of an arbitral award based on alleged violations of procedural rights; Korean Supreme Court Judgment 2016Da18753 dated 29 November 2018, rejecting a challenge to the enforcement of an arbitral award based on public policy grounds).
- The Korean courts also continue to act in support of the arbitral process (see, for example, Korean Supreme Court Judgment 2017Ma6087 dated 2 February 2018, refusing to grant an injunction against commencing a valid arbitration).

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Tony DongWook Kang is a Korea-licensed partner heading the International Arbitration and Litigation Practice Group at BKL. Tony has particular expertise in pre/post M&A litigations, commercial and financial litigations, criminal litigations, and corporate control disputes. Before joining BKL in 2006, he served as a judge for 12 years in the Korean judiciary in various posts starting from the Seoul Criminal District Court and the Seoul Civil District Court to the Seoul High Court of Appeals. Since he started working with BKL, he has successfully represented clients from many different countries as well as those from Korea for resolving their dispute cases.

Tony received his LL.B. from Seoul National University (1991; magna cum laude) and his LL.M. from Harvard Law School (2002). He is fluent in English and frequently serves as an arbitrator for domestic and international arbitrations. He has been named as leading lawyer for Chambers and Partners Asia-Pacific: South Korea - Dispute Resolution: litigation for seven years in a row since the 2016 edition, and has been named one of Asia's Top 15 Litigators by Asian Legal Business for two years in a row since 2021.

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Since he began his practice in Korea in 2020, he was listed as a "next generation partner" in The Legal 500 Asia-Pacific: South Korea – International Arbitration 2022 and 2023, and was recognized as "Asia 40 under 40 2021" and "Asia Super 50 Dispute Lawyers 2022" by Asian Legal Business. In Singapore, Brandon was featured as a "rising star" in The Legal 500 Asia-Pacific: Singapore – International Arbitration 2020, which describes him as "highly rated". In the previous editions, clients described him as "outstanding" and note that "his work product is immaculate" (2018).



Hangil Lee

Hangil Lee is a Korea-licensed partner of the International Arbitration & Litigation Practice Group at BKL, who is also qualified to practice in the state of New York. She mainly represents domestic and foreign clients as well as governments. Hangil's practice focuses on international civil litigation and arbitration, disputes involving financial institutions, corporate, civil and criminal lawsuits, post M&A and investment disputes, financial matters, construction, and energy disputes with international elements.

Since joining BKL in 2013, Hangil has acted as counsel at all stages of international arbitrations under the major arbitration rules including ICC, SIAC, HKIAC, and KCAB, as well as in *ad hoc* arbitrations. She has also represented clients, including the Korean government, in investor-state disputes (ISD). Hangil has advised and acted as counsel in various arbitral procedures, such as interim measures prior to commencing arbitration, enforcement procedures following the arbitral award, set-aside applications, and litigations in foreign courts. She recently won the "Arbitration Rising Star" award at 2022 Women in Business Law Awards by Euromoney Legal Media Group and was recognized as "Asia 40 under 40 2022" by Asian Legal Business.



In Hyuk Hwang

In Hyuk Hwang is a U.S.-licensed (Washington D.C.) associate of the International Arbitration & Litigation Practice Group at BKL. He earned a B.A. degree in Psychology from Hope College in 2015 before graduating summa cum laude from Handong International Law School and earning an LL.M. degree from Regent University School of Law in 2020.

In Hyuk regularly coaches his alma mater's teams competing in the Willem C. Vis International Commercial Arbitration Moot, in which he himself competed. In Hyuk participated in the YSIAC Writing Competition 2021 held by the Singapore International Arbitration Centre, and became the first Korean national to win the competition.

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