Legal 500
Country Comparative Guides 2024

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?

In South Korea, arbitration is primarily governed by the Arbitration Act (or "**Act**"), which was first enacted in 1966 and later revised to adopt the 1985 UNCITRAL Model Law on International Commercial Arbitration. Further amendments were made in 2016 to incorporate key provisions from the 2006 Model Law amendments.

Certain provisions of the Arbitration Act may apply even if the arbitration is seated outside Korea or if the seat is undetermined (Article 2(1)). For instance, Article 9 requires courts to dismiss cases if an anti-suit defense is raised due to an arbitration agreement. Article 10 allows courts to issue interim measures before or during arbitration, regardless of where the arbitration is seated. Additionally, arbitral awards from outside Korea are enforceable under the New York Convention or domestic civil enforcement laws.

Some parts of the Arbitration Act are considered mandatory, such as the requirement to appoint impartial and independent arbitrators (Article 13) and the principle of equal treatment for all parties (Article 19). Beyond these, procedural aspects are generally left for the parties to agree upon.

In terms of substantive law, some mandatory laws may apply even if they conflict with the parties' agreements. While Korean laws do not always label specific provisions as mandatory, statutes aimed at upholding public morals and social order are likely to be considered mandatory. Korean law also emphasizes good faith and fairness, giving arbitral tribunals the discretion to invalidate contractual terms that breach these principles, although such invalidations are rare in practice.

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

Yes, Korea is a signatory to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards ("**New York Convention**").

Korea made two reservations: first, it will apply the New York Convention only to the recognition and enforcement of arbitral awards made within the territory of another contracting state, and that it will apply the 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 ratified the Convention on the Settlement of Investment Disputes between States and Nationals of Other States ("**ICSID Convention**"), providing a legal framework for initiating investor-state dispute settlement (ISDS) proceedings for foreign investments in Korea or Korean investments abroad.

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

Yes, the Arbitration Act of Korea is based on the UNCITRAL Model Law, but there are several notable differences between the two. For instance, the 2016 Amendments to the Act do not explicitly provide for *ex parte* interim measures, as contemplated in Articles 17B and 17C of the Model Law. Additionally, unlike Article 34(4) of the Model Law, the Act does not expressly grant courts the authority to suspend setting-aside proceedings at the request of a party. Furthermore, under the Arbitration Act, Korean courts have the authority to review an arbitral tribunal's determination of its jurisdiction. If the court confirms the tribunal's jurisdiction, the current tribunal must proceed with the arbitration proceedings.

5. Are there any impending plans to reform the arbitration laws in your country?

As of October 2024, there are no imminent plans to reform the Arbitration Act in Korea. However, there have been ongoing developments and recent updates in the field of arbitration in Korea, including revisions to the arbitration rules of the Korean Commercial Arbitration Board ("**KCAB**") to align more closely with international best practices.

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

KCAB is the only officially recognized arbitral institution in South Korea. Additionally, in February 2018, Korea established the Seoul Maritime Arbitrators Association (SMAA) to promote and facilitate maritime arbitration in the country.

The KCAB International Arbitration Rules ("**KCAB Rules**" or "**Rules**") were first adopted in 2007 and were most recently amended in 2016. The amended Rules have been applicable to international arbitration proceedings initiated on or after June 1, 2016. In September 2022, KCAB International, the international division of KCAB, initiated a review of the Rules. Subsequently, a public hearing to discuss proposed amendments was held in November 2023, with the revised Rules expected to be announced soon.

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

Korea does not have a dedicated specialist arbitration court, although ongoing discussions among practitioners highlight the potential need for one. Instead, certain Korean courts have established specialized subdivisions that handle international or cross-border cases, including court proceedings related to arbitration.

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

The Arbitration Act defines an arbitration agreement as "an agreement between the parties to settle, by arbitration, all or some disputes which have already occurred or may occur in the future with regard to defined legal relationships, whether contractual or not" (Article 3(2)). The Supreme Court has held that an arbitration agreement remains valid even if it does not specify the arbitral institution, governing law, or seat.

The Act requires arbitration agreements to be in writing or deemed to have been made in writing. This includes agreements recorded through oral statements, conduct, or electronic communications such as telegrams, emails, or other verifiable means. Furthermore, the absence of a dispute over an arbitration agreement referenced in a brief or submission can also constitute a valid arbitration agreement. This approach aligns with the relaxed standards of Option 1 of Article 7 of the 2006 UNCITRAL Model Law, providing a flexible yet reliable framework for arbitration agreements in Korea.

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

Yes, arbitration clauses are considered separable from the main contract in Korea (Article 17(1) of the 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 is no explicit mention of Korean courts applying a "validation principle" in the exact manner described in the query. However, Korean courts adopt a clear pro-arbitration stance and uphold principles that support the validity and enforceability of arbitration agreements. In doing so, they often refer to the law chosen by the parties or the law of the seat of arbitration to ensure the agreement's effectiveness and alignment with international arbitration practice.

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

The Arbitration Act does not specifically address multi-party or multi-contract arbitrations. However, the KCAB Rules provide guidance for such scenarios. Under Article 21 of the Rules, the arbitral tribunal may permit the joinder of additional parties if either (i) all parties and the additional party agree in writing to the joinder, or (ii) the additional party is a party to the same arbitration agreement and has agreed in writing to the joinder.

For claims arising out of multiple contracts, Article 22 of the Rules allows the KCAB Secretariat to accept a single request for arbitration if it is satisfied that (i) all the contracts provide for arbitration under the Rules, (ii) the arbitration agreements across the contracts are compatible, and (iii) the claims arise from the same transaction or series of related transactions.

Additionally, Article 23 of the Rules permits the arbitral tribunal to consolidate claims from separate arbitrations upon the request of a party, provided that (i) the arbitrations are conducted under the same Rules, (ii) the

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disputes involve the same parties, and (iii) no arbitrator has already been appointed in any such separate proceedings. These provisions reflect KCAB's effort to accommodate the complexities of multi-party and multi-contract disputes within arbitration.

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?

Under Korean law, third parties, such as successors (heirs, assignees, or trustees), may be bound by an arbitration agreement as part of their succession to a contract containing such an agreement. For example, in a lower court case, an assignee of a claim from a construction company was held bound by the arbitration agreement in the construction contract when pursuing a claim for payment (Seoul Western District Court Judgment 2001GaHap6107, 5 July 2002).

Korean courts seem to take a case-by-case approach, considering factors such as succession to contracts or claims, and the ability to rely on other provisions of an agreement containing an arbitration clause. For instance, the holder of a bill of lading was found to be bound by an arbitration agreement within the overarching contractual framework (Supreme Court Judgment 2009Da66723, 15 July 2010; Seoul Central District Court Decision 2019BiHap30195, 28 April 2020). These rulings reflect the Korean courts' flexible but principle-driven approach to binding non-signatories to arbitration agreements when appropriate.

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

Article 3(1) of the Arbitration Act, which was amended in 2016, broadened the scope of arbitrable disputes from "any dispute in private laws" to "dispute over (i) property rights or (ii) non-property rights that can be resolved through a reconciliation." However, it is generally understood that certain matters of public policy or those involving third-party rights may not be arbitrable. These include criminal matters, matters of family law (e.g., divorce, child custody), bankruptcy proceedings, and matters involving administrative or regulatory oversight.

Nevertheless, if the subject matter involves rights or interests that the parties are legally entitled to dispose of (i.e., disposable rights or legal interests) and they have mutually agreed to arbitrate, the matter would generally be considered arbitrable unless prohibited by applicable mandatory law.

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?

If no governing law is specified, the law of the country where the arbitral award was made will apply (Supreme Court Decision 2017Da225084, July 26, 2018), which is in line with Article V(1)(a) of the New York Convention. This approach establishes a two-tiered framework for determining the validity of arbitration agreements.

However, when it comes to the issue of whether the parties specifically agreed on the choice of law, the Seoul High Court held that such agreement can be made either explicitly or implicitly such that if the parties fail to specify the governing law for the arbitration agreement but have designated the governing law for the main contract, it is presumed, unless proven otherwise, that the main contract's governing law also applies to the arbitration agreement (Seoul High Court Decision 2016Na2040321, 4 April 2017).

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

Parties are free to agree on the substantive law governing the merits of their dispute (Article 29(1), Arbitration Act). However, in the absence of such an agreement, the arbitral tribunal must apply the law of the country most closely connected to the subject matter of the dispute (Article 29(2), Arbitration Act). Additionally, the Act requires the arbitral tribunal to decide in accordance with the terms of the contract and to consider applicable commercial customs relevant to the transaction.

Under the KCAB Rules, if the parties fail to agree on the governing law (Article 29(1), Rules), the arbitral tribunal shall apply the substantive laws or rules of law it deems appropriate. This flexibility aligns with the "closest connection" test, enabling tribunals to identify and apply the most appropriate law in the absence of party agreement.

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

There are no specific legal requirements regarding the

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qualifications or characteristics of arbitrators. Arbitrators are not required to be qualified lawyers or Korean nationals (Article 12(1), Arbitration Act). This allows parties significant flexibility in selecting arbitrators and agreeing on appointment procedures. However, appointments may be challenged if there are justifiable doubts about their impartiality or independence or if they lack the qualifications agreed upon by the parties. Also, sitting Korean judges (and other public servants) are prohibited from serving as arbitrators if doing so is deemed a profit-making activity.

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

In the absence of an agreement between the parties, the default number of arbitrators is three (Article 11, Arbitration Act). However, if the parties agree to follow specific arbitration rules, such as the KCAB Rules, those rules may provide different defaults. For example, under the KCAB Rules, the default is to appoint a sole arbitrator.

If the parties fail to agree on the appointment procedure, the Korean Arbitration Act sets out default rules (Article 12(3)). For a sole arbitrator, if the parties cannot agree on the appointment, the court (or an institution designated by the court) will appoint the arbitrator upon a party's request. For a three-member tribunal, if a party fails to appoint an arbitrator within 30 days or the two arbitrators cannot agree on the third arbitrator within 30 days, the court (or an institution designated by the court) will make the appointment upon a party's request.

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

Yes, the default rules mentioned above apply not only when the parties fail to agree on an appointment procedure but also when one party does not comply with the agreed-upon procedure. Additionally, local courts may rule on an application from a party challenging the appointment of an arbitrator if the challenge is rejected by the arbitral tribunal or not consented to by the other party (Article 14(3), Arbitration Act).

Furthermore, local courts have the authority, upon a party's request, to determine whether an arbitrator's mandate should be terminated in cases where the arbitrator is unable to perform his/her duties due to legal or factual impediments or unjustifiably delays the performance of his/her duties without valid cause (Article 15(2), 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?

Yes, under Article 13 of the Arbitration Act, an arbitrator may be challenged if: (i) circumstances exist that give rise to justifiable doubts about the arbitrator's impartiality or independence, or (ii) the arbitrator lacks the qualifications agreed upon by the parties.

Parties are free to agree on the procedure for challenging an arbitrator. In the absence of such an agreement, a party challenging an arbitrator must submit a written statement setting out the grounds for the challenge to the arbitral tribunal within 15 days of the tribunal's constitution or becoming aware of the grounds for the challenge (Article 14, Arbitration Act). If the tribunal rejects the challenge, the challenging party may request the court to decide on the matter within 30 days of receiving notice of the tribunal's decision (Article 14(3), Arbitration Act).

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

The Arbitration Act mandates potential arbitrators to disclose any circumstances that may give rise to justifiable doubts about their impartiality or independence. This obligation is continuous and cannot be waived by the parties, as it is deemed a mandatory provision.

To align with this legal requirement and the provisions of the Rules of Ethics for International Arbitrators, the KCAB Code of Ethics for Arbitrator was enacted in 2016 to ensure the impartiality and independence of arbitral tribunals and provide comprehensive guidance on disclosure obligations.

The Code emphasizes that arbitrators must conduct proceedings in a fair and even-handed manner to both parties and should not be influenced by factors other than the merits of the case. It further requires prospective arbitrators to disclose all facts or circumstances that may give rise to any doubt as to his impartiality or independence in the eyes of the parties. These include (i) past or present relationships with parties, representatives, co-arbitrators, or primary witnesses, (ii) substantial relationships of this nature with any of the abovementioned individuals, (iii) any prior knowledge

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regarding the dispute, and (iv) any professional or other commitments that might affect their ability to perform their duties effectively.

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

The Arbitration Act does not explicitly address procedures for dealing with a truncated tribunal. However, Article 16 provides that if an arbitrator's mandate terminates, a substitute arbitrator must be appointed using the same procedure as for the original arbitrator's appointment. On the other hand, when a challenge to an arbitrator is pending, the arbitral tribunal may continue with the proceedings or render an award (Article 14(3), Arbitration Act).

In a 1992 decision, the Supreme Court held that even if the parties agreed to conclude the proceedings in the absence of one of the three arbitrators, such agreement did not extend to authorizing a truncated tribunal to render the award (Supreme Court Judgment, 91Da17146, 14 April 1992). To address this issue, the KCAB Rules were later amended. Under the current rules, after the closure of proceedings, if an arbitrator has died, resigned, or been removed, the Secretariat may, after consulting with the remaining arbitrators and the parties, decide that the remaining arbitrators will complete the arbitration without appointing a replacement (Article 15(5), Rules).

22. Are arbitrators immune from liability?

While there is no explicit statutory immunity for arbitrators in South Korea, there is a general tendency toward limiting their liability. For instance, the KCAB Rules provide that the arbitrators and the secretariat shall not be liable for any act or omission in connection with an arbitration conducted under the Rules, unless such an act or omission is shown to constitute willful misconduct or recklessness (Article 56). This approach reflects a practical stance on arbitrator immunity, emphasizing protection against liability except in cases of egregious behavior. Nevertheless, the absence of explicit statutory immunity or definitive court rulings leaves room for theoretical liability for arbitrators.

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

Yes, the principle of competence-competence is recognized under Article 17(1) of the Arbitration Act, which states that an arbitral tribunal has the authority to rule on its own jurisdiction, including objections to the existence or validity of the arbitration agreement. The tribunal may address jurisdictional challenges either as a preliminary matter or as part of the final award on the merits. However, while the tribunal has the power to determine its own jurisdiction, its decision is subject to judicial review by the courts (Articles 17(6) and 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 initiates court proceedings in breach of an arbitration agreement, and the defendant raises a valid objection, the court is required to dismiss the case (Article 9(1), Arbitration Act). The objection must be raised no later than the first substantive argument on the merits before the court, as a delayed objection may be deemed implicit consent to the court proceedings.

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

If a respondent fails to participate in or submit a statement of defense during arbitral proceedings, the arbitral tribunal is authorized to proceed without treating the failure as an admission (Article 26(2), Arbitration Act). Similarly, if either party fails to appear at a hearing or to produce documents as required, the arbitral tribunal may continue the proceedings and render an award based on the available evidence (Article 26(3), Arbitration Act). However, the Arbitration Act does not grant courts the authority 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 does not address the voluntary joinder of third parties. However, under the KCAB Rules, an arbitral tribunal may permit the joinder of additional parties in the following circumstances: (i) all parties and the additional party have agreed in writing to the joinder, or (ii) the additional party is a signatory to the same arbitration agreement as the parties and has agreed in

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writing to the joinder (Article 21(1), Rules). Even with unanimous agreement among the parties, the arbitral tribunal retains discretion and may refuse the joinder if there are reasonable grounds, such as potential delays to the arbitration proceedings (Article 21(3), Rules). Conversely, the tribunal may consider a joinder application even if one of the parties objects, provided the third party is a signatory to the same arbitration agreement.

27. What interim measures are available? Will local courts issue interim measures pending the constitution of the tribunal?

The 2016 amendments to the Arbitration Act expanded the scope of interim measures that can be sought from an arbitral tribunal. These include: (i) measures to maintain or restore the status quo until the arbitral tribunal renders its award on the merits; (ii) measures to prevent or address present or imminent harm to the arbitral proceedings, including prohibiting actions that could cause such harm;(iii) measures to preserve assets that may be required for the enforcement of an arbitral award; and (iv) measures to preserve evidence that is relevant and material to resolving the dispute (Article 18(2), Arbitration Act).

The Arbitration Act further provides that an arbitral tribunal's decision on interim measures is enforceable upon court approval (Article 10).

When the arbitral tribunal has not yet been constituted, local courts in Korea can issue interim measures to safeguard the parties' interests until the tribunal is formed. Moreover, any party to an arbitration agreement may request interim relief from a competent court, either before the commencement of arbitration or at any time during the proceedings (Article 10, Arbitration Act). Such interim measures may include: (i) provisional attachment to secure monetary claims by preventing the obligor from disposing of assets; or (ii) provisional injunctions to prevent actions that might harm property or other rights of the obligee, or to prohibit specific actions by the obligor in urgent situations.

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

The Arbitration Act does not explicitly address the availability of anti-suit injunctions. However, such injunctions may be interpreted as falling within the scope of interim measures under Article 18(2) of the Arbitration Act, which allows an arbitral tribunal to order measures to prevent present or imminent harm to the arbitral proceedings. These anti-suit injunctions may be issued by arbitral tribunals for arbitrations seated in Korea, but they are not applicable to arbitrations seated abroad.

Interim measures from courts are also available under Article 10 of the Arbitration Act. However, considering the limited role of Korean courts under the Act, it is generally understood that anti-suit or anti-arbitration injunctions do not fall within the scope of court-ordered interim measures. In this context, the Supreme Court has ruled that "it is not permissible to directly request a provisional injunction from the court to suspend arbitration proceedings on the grounds of their illegality" (Supreme Court Decision 96Ma149, 11 June 1996).

Additionally, the Court later held that a lawsuit seeking confirmation of the illegality of arbitration proceedings is inadmissible under the Arbitration Act (Supreme Court Decision 2003Da5634, 25 June 2004). This position has been upheld in decisions following the 2016 amendments to the Arbitration Act. In a case involving a request for an injunction to stay arbitration proceedings (Supreme Court Decision 2017Ma6087, 2 February 2018), the Supreme Court reaffirmed that "an injunction to stay arbitration proceedings is not permitted, and Article 10 of the Arbitration Act cannot serve as a basis for such an application."

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?

Under the Arbitration Act, arbitral tribunals have the authority to determine the admissibility, relevance, and weight of evidence (Article 20(2), Arbitration Act). In the absence of an agreement between the parties to the contrary, arbitral tribunals may also: (i) appoint an expert to provide an opinion on specific issues; (ii) require parties to provide the expert with necessary information, documents, or other evidence; and (iii) summon the expert to participate in a hearing to respond to questions from the parties (Article 27, Arbitration Act).

In practice, the IBA Rules on the Taking of Evidence in International Arbitration, while not binding, are also widely used as additional guidance on evidentiary matters and are frequently referenced by arbitral tribunals to ensure procedural fairness and efficiency.

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Arbitral tribunals may seek the assistance of a court in evidence-taking either on their own initiative or upon a party's request. Such requests must be made in writing and can include instructions specifying the evidence to be examined. Upon receiving such a request, the court may: (i) conduct the requested evidence-taking itself and send certified records (e.g., witness examination transcripts or inspection reports) to the arbitral tribunal promptly after completion; or (ii) order witnesses or custodians of documents to appear before the arbitral tribunal or to submit relevant evidence directly to the arbitral tribunal (28(4), and 28(5), Arbitration Act).

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

International standards, such as the IBA Guidelines on Conflicts of Interest in International Arbitration, are widely referenced and applied in arbitration proceedings, particularly in international cases. Additionally, the KCAB Code of Ethics for Arbitrators governs all arbitrators participating in arbitrations conducted under the KCAB Rules.

Furthermore, the Attorney-At-Law Act and the ethical rules established by the Korean Bar Association apply to all attorneys in Korea, including those serving as counsel or arbitrators in arbitration proceedings. For foreign attorneys acting as counsel or arbitrators in Korea, the Foreign Legal Consultant Act and the ethical rules of their home jurisdiction may also be applicable.

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

While the Arbitration Act does not explicitly address the confidentiality of arbitration proceedings, parties typically uphold confidentiality obligations either under the confidentiality provisions of the applicable arbitration rules or by mutual agreement.

For KCAB arbitrations, proceedings and their records are private and not open to the public. Arbitrators, the Secretariat, and parties are prohibited from disclosing case-related information unless consented to by the parties, required by law, or necessary for court proceedings. However, the Secretariat may publish redacted arbitral awards unless the parties explicitly object within a specified timeframe (Article 57, KCAB Rules). Additionally, the Attorney-At-Law Act imposes confidentiality obligations on Korean lawyers acting as counsel or arbitrators.

Arbitral tribunals in Korea may also issue interim measures or procedural orders to safeguard the confidentiality of information or documents disclosed or submitted during the arbitration.

32. How are the costs of arbitration proceedings estimated and allocated? Can pre- and post-award interest be included on the principal claim and costs incurred?

The costs of arbitration generally fall into two categories: (i) arbitration costs, which include filing fees, administrative fees, and arbitrators' fees and expenses, and (ii) party costs, comprising legal fees, expert fees, and other expenses incurred by each party.

In KCAB arbitrations, administrative fees are determined based on the claimed amount, ranging from a minimum of KRW 50,000 to a maximum of KRW 150 million. Arbitrators' fees are similarly calculated within a specified range based on the claimed amount. Parties are jointly and severally liable for arbitration costs, and the Secretariat typically requests an advance on costs to be shared equally by the parties. After the arbitration concludes, costs are generally borne by the losing party unless the arbitral tribunal decides otherwise (Article 52(1), KCAB Rules). The tribunal has the discretion to apportion costs in any manner it deems appropriate, considering the specific circumstances of the case. Any unused advance on costs is refunded to the paying parties.

Consistent with the KCAB Rules, the Arbitration Act grants arbitral tribunals wide discretion in allocating costs. Unless the parties agree otherwise, the tribunal may determine the allocation of costs incurred during the proceedings, taking into account all relevant circumstances of the case (Article 34-2, Arbitration Act).

In the absence of an agreement between the parties, the arbitral tribunal may award interest for delay when rendering an arbitral award, taking into account all circumstances of the arbitration case (Article 34-3, Arbitration Act). Accordingly, pre-award and post-award interest are commonly claimed and granted by arbitral tribunals.

If the arbitration is governed by Korean law (or seated in Korea), a party may claim pre- and post-award interest at the statutory rates of 5% per annum under the Korean Civil Code for non-commercial claims or 6% per annum

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under the Korean Commercial Code for commercial claims. For domestic court litigation, the Act on Special Cases Concerning Expedition of Legal Proceedings provides a post-judgment interest rate of 12% per annum. However, the application of this rate to arbitrations is not universally recognized.

33. 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?

Domestic arbitral awards are recognized and enforced by default unless set aside or vacated by a court. Foreign arbitral awards under the New York Convention are recognized and enforced in accordance with the Convention (Article 39(1), Arbitration Act). For foreign awards not covered by the Convention, courts apply the Civil Procedure Act and the Civil Execution Act (Article 39(2), Arbitration Act). Notably, a court's recognition or enforcement of an arbitral award may be issued as a decision rather than a formal judgment

Common grounds for denying recognition and enforcement include (i) invalid arbitration agreement, (ii) improper notification, (iii) a party's inability to present their case, (iv) the award exceeding its scope, or (v) violations of agreed procedural rules. Enforcement may also be denied if the award is not final or binding, the subject matter is non-arbitrable under Korean laws, or it violates public policy.

Arbitral awards must include reasoning unless otherwise agreed by the parties or in the case of a consent award (Article 32(2), Arbitration Act). The Supreme Court has ruled that a "lack of reasoning" sufficient to set aside an award arises only where (i) the award provides no reasoning at all, (ii) the reasoning is too unclear, making it impossible to determine the factual or legal basis for the award, or (iii) the reasoning is contradictory. Detailed explanations of the underlying legal relationship are not required; it is sufficient if the reasoning explains how the arbitrators reached their decision (Supreme Court Judgment 2007Da73918, 24 June 2010).

34. 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 on an ex parte basis?

The timeframe for recognizing and enforcing an arbitral award in Korea generally ranges from 6 to 12 months, depending on factors such as case complexity, court schedules, and whether objections or challenges are raised. Simpler cases with minimal resistance may be resolved more quickly.

A party may not seek recognition and enforcement of an award on an *ex parte* basis, as Article 37(4) of the Arbitration Act requires the court to set a hearing date and notify the parties when such an application is filed.

35. 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?

Under the Arbitration Act, the standard of review for recognizing and enforcing domestic arbitral awards is closely aligned with that for foreign awards under the New York Convention. Both domestic and foreign awards must be recognized unless specific grounds for refusal apply (Article 37(1), Arbitration Act). Grounds for refusal, such as invalid arbitration agreements, lack of proper notice, procedural irregularities, exceeding the scope of arbitration, or public policy violations, are comparable in both cases. However, for domestic awards, a public policy violation is specifically defined as being "in conflict with the good morals and other forms of social order of the Republic of Korea" (Article 36(2)(ii)(b), Arbitration Act).

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

The Arbitration Act does not impose restrictions on the types of remedies or relief that an arbitral tribunal may grant. As a result, both monetary awards (e.g., damages, interest) and non-monetary awards (e.g., specific performance, declaratory relief) are generally available and enforceable in Korea, provided they do not violate Korean public policy or legal standards.

However, certain remedies, such as punitive damages, which are not traditionally recognized under Korean law, may face enforcement challenges. Korean courts assess such awards to determine if they conflict with public policy. For instance, in a recent case, the Supreme Court upheld treble damages awarded by a Hawaii court, finding them consistent with Korean legal principles and not contrary to public policy (Supreme Court Decision 2018Da231550, 11 March 2022). This indicates a growing openness of Korean courts to enforcing exemplary damages, particularly where corresponding Korean laws provide for similar remedies.

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While injunctive relief granted in arbitral awards is enforceable in Korea, enforcement requires careful scrutiny to ensure alignment with procedural rules and local practices. The scope of enforceable injunctions in Korea is generally narrower than in common law jurisdictions. For example, anti-suit injunctions, which are commonly granted and enforced in the United States, may not be enforceable in Korea, as they appear to conflict with the procedural principles and judicial sovereignty of Korea.

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

Arbitration awards can only be challenged by filing a lawsuit to set aside the award(Article 35(1), Arbitration Act).

A party challenging an arbitral award shall apply for setting aside an award within three months upon the receipt of the award (or after receipt of correction, addendum or interpretation of the award, and before a court's decision to recognize or enforce the award becomes final and conclusive (Articles 36(3) and 36(4), Arbitration Act).

Under Article 36 of the Arbitration Act, which is modeled on Article 34 of the UNCITRAL Model Law, a court in Korea may set aside an arbitral award only under specific circumstances. These include situations where the arbitration agreement is invalid or one party lacked legal capacity, the party challenging the award was not properly notified about the arbitration or was unable to present their case, or the award addresses issues outside the scope of the arbitration agreement. Additionally, an award may be set aside if the arbitral proceedings or tribunal failed to comply with the parties' agreement or mandatory legal provisions, if the dispute is not arbitrable under Korean law, or if enforcement of the award would violate public morals or social order in Korea.

38. 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)?

Parties may, in principle, agree to waive or limit their rights to appeal or challenge an arbitral award, including through provisions in an arbitration clause agreed upon prior to a dispute. However, the enforceability of such waivers depends on the circumstances. Under Korean law, certain fundamental rights—especially those related to due process, arbitrability, and public policy—cannot be waived in advance. Any agreement to waive the right to challenge an award that violates these principles would likely be considered invalid and unenforceable.

39. 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?

Arbitration awards are typically binding only on the parties to the arbitration agreement and proceedings, reflecting the consensual nature of arbitration. However, in certain circumstances, third parties may also be bound by an arbitration agreement and the resulting award. For instance, a parent company or corporate shareholder may be held liable if the corporate veil is pierced. Similarly, third parties that become successors to a contract, assignees of a claim, or surviving entities following a merger may also be bound by the award (Seoul Western District Court Judgment 2001GaHap6107, 5 July 2002).

The ability of third parties to challenge the recognition of an award depends on whether they qualify as "successors-in-interest" through mechanisms such as mergers, inheritance, or assignment. In such rare cases, third parties may challenge the award if they are bound by it.

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

Third-party funding in arbitration is a relatively new and developing concept in Korea. Discussions around its legality often involve Article 34 of the Attorneys-at-Law Act and Article 6 of the Trust Act. The Attorneys-at-Law Act does not appear to prohibit third-party funding, provided the funder is not deemed to be offering legal services or sharing fees with lawyers. Similarly, the Trust Act does not preclude standard litigation funding structures where the party retains ownership of the arbitration claim and does not entrust or assign it to the funder.

Additionally, the Supreme Court has ruled that if circumstances suggest attorneys' fees paid by a third party can be regarded as having been paid on behalf of the disputing party, such fees may be recoverable in a costs judgment (Supreme Court Decision 2019Ma6990, 24 April 2020). This ruling could signal a growing acceptance and broader applicability of third-party funding in arbitration.

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

The Arbitration Act does not expressly address interim relief by emergency arbitrators. However, such relief is granted in Korea under various arbitration rules. Under the KCAB Rules, parties may apply for "urgent conservatory and interim measures" before the constitution of the arbitral tribunal, a mechanism introduced in the 2016 revision.

The enforceability of emergency arbitrators' decisions remains unclear under Korean law. While interim measures issued by an arbitral tribunal are enforceable under Article 18-7 of the Arbitration Act, it is uncertain whether emergency arbitrators qualify as an "arbitral tribunal" under the Act. The KCAB Rules provide that decisions by emergency arbitrators are deemed interim measures granted by the arbitral tribunal upon its constitution (Appendix 3, Article 3(5)). However, the statutory definition of "arbitral tribunal" may not extend to emergency arbitrators, leaving their enforceability by Korean courts unresolved.

Despite this uncertainty, such interim measures are likely to have a *de facto* binding effect on the parties, as non-compliance may be viewed unfavorably by the arbitral tribunal once constituted.

42. 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?

Yes, the KCAB Rules provide for expedited procedures under Chapter 6. These procedures apply when: (a) the claim amount does not exceed KRW 500,000,000 (or approximately USD 350,000); or (b) the parties agree to use expedited procedures (Article 43, KCAB Rules). The arbitral tribunal is to render an award within six months of its constitution. Expedited procedures are popular due to their lower cost and shorter timeline, accounting for 54.9% of all international arbitration applications in 2023, according to KCAB statistics.

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

Yes, diversity in arbitration is actively promoted in Korea. KCAB International is a signatory to the Equal Representation in Arbitration Pledge, aimed at increasing the appointment of women as arbitrators. In 2021, the KCAB Women's Interest Committee was established to provide a forum for discussing topics such as enhancing diversity within the arbitration community. Additionally, KCAB Next was launched to support and engage younger members of the arbitration community in Korea.

44. 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, there have been no notable court decisions considering the setting aside of an award that has been enforced in another jurisdiction or vice versa.

45. 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?

Korean courts generally apply a high standard of proof for corruption allegations, particularly in cases involving criminal liability, requiring proof beyond a reasonable doubt. The burden of proof lies with the prosecution to establish corruption.

In international arbitration cases involving corruption allegations, tribunals often require "clear and convincing evidence," a standard higher than a mere preponderance of evidence. The burden of proof typically falls on the party alleging corruption, despite the recognized challenges in substantiating such claims.

In Korea, courts have issued several decisions under the Improper Solicitation and Graft Act (commonly known as the Kim Young-ran Act), which prohibits public officials (including journalists and school teachers) from accepting gifts exceeding specified monetary limits. Additionally, the Criminal Code provides a general framework for prohibiting bribery and corruption involving both public officials and private individuals. Korea has also adopted the Act on Combating Bribery of Foreign Public Officials in International Business Transactions (FBPA), modeled on the U.S. Foreign Corrupt Practices Act (FCPA), to address corruption in cross-border business transactions.

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

KCAB International issued a Joint Statement on Arbitration and COVID-19 alongside 12 other arbitral institutions worldwide. The statement expressed a collective commitment to supporting international arbitration's role in providing stability and predictability, ensuring that pending cases proceed without undue delay and parties have their disputes resolved efficiently. Additionally, KCAB has actively promoted the Seoul Protocol on Video Conference in International Arbitration ("**Seoul Protocol**"), which serves as a practical guide for planning, testing, and conducting virtual hearings in international arbitration.

47. 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?

In 2017, the Arbitration Industry Promotion Act was introduced, establishing a foundation for the systematic promotion of arbitration under the Ministry of Justice. The Act and its Enforcement Decree authorize the Minister of Justice to promote projects aimed at developing and operating online dispute resolution systems utilizing information and communications technologies, including computers and videoconferencing tools (Article 4.3, Arbitration Industry Promotion Act).

Additionally, an amendment to the Civil Procedure Rules implemented on 1 June 2020, allows preliminary hearings to be conducted remotely via videoconference. In line with these advancements, KCAB is reportedly revising its domestic and international arbitration rules to reflect international best practices and integrate new technological developments in arbitration, with the revised rules anticipated in 2024 or early 2025.

Arbitration bodies in Korea, particularly KCAB, have proactively adapted to the challenges brought by COVID-19 by embracing technological innovations to enhance efficiency and cost-effectiveness in arbitration. Initiatives like the Seoul Protocol on Video Conference in International Arbitration and legal amendments supporting remote hearings underscore Korea's commitment to advancing and modernizing its arbitration practices.

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

There have been significant developments in Korea regarding disputes on climate change and human rights, with more expected in the coming years. In August 2024, the Constitutional Court of Korea ruled that the nation's current climate measures are inadequate to protect citizens' rights, particularly those of younger generations (Constitutional Court Decision 2020HunMa389, 29 August 2024). This landmark decision, the first of its kind in Asia on climate litigation, is anticipated to drive substantial changes in Korean politics and policy discussions concerning climate targets.

In April 2019, the Constitutional Court also ruled that provisions criminalizing abortion and physician-assisted abortion were unconstitutional as they excessively restricted women's right to self-determination. While acknowledging the importance of protecting fetal life, the Court found that a blanket ban on abortion disproportionately infringes on women's health, equality, and other fundamental rights (2017HunBa127).

More recently, in July 2024, the Supreme Court of Korea held that the National Health Insurance Service's revocation of dependent status for a same-sex partner was both procedurally and substantively unlawful, violating the constitutional principle of equality. The Court determined that denying dependent status to same-sex partners without reasonable justification constitutes discrimination based on sexual orientation (Supreme Court Judgment 2023Du36800, 18 July 2024).

49. 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?

While there is no explicit precedent of Korean courts directly addressing international economic sanctions as part of international public policy in arbitration contexts, Korea's active engagement in international sanctions and the courts' evolving interpretation of public policy suggest that compliance with sanctions could influence arbitration-related decisions.

In a recent case, the Seoul Central District Court held that a Korean bank could refuse an Iranian bank's deposit return request due to the latter's designation as a

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Specially Designated Nationals. The court justified this decision on principles of good faith and equity, citing the significant operational risks posed by potential U.S. sanctions (2023GaHap87561, 29 August 2024). Additionally, international economic sanctions are often debated as a force majeure event excusing non-performance without fault, but outcomes depend on the specific facts and force majeure or liability provisions agreed upon in each case.

50. 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?

Korea is actively developing its AI regulatory framework, with various bills and guidelines being introduced or considered. At the same time, there is a focus on balancing innovation with protection of individual rights and ensuring trustworthiness of AI systems. This broader regulatory framework being developed could potentially impact arbitration practices in the future, but as of now, there are no direct regulations on AI use in this context.

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