

# REPUBLIC OF KOREA

CHAPTER PREPARED BY

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## FOR FURTHER INFORMATION

[GAP TABLE OF CONTENTS](#) | [GAP TRAFFIC LIGHTS FOR ALL JURISDICTIONS](#) | [FULL GAP ONLINE](#)

EN [DELOS MODEL CLAUSES](#)  
ES [DELOS CLÁUSULAS MODELO](#)  
FR [DELOS CLAUSES TYPES](#)  
PT [DELOS CLÁUSULAS MODELO](#)

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## JURISDICTION INDICATIVE TRAFFIC LIGHTS

- |  |   |
|--|---|
| 1. Law                                       | ● |
| a. Framework                                 | ● |
| b. Adherence to international treaties       | ● |
| c. Limited court intervention                | ● |
| d. Arbitrator immunity from civil liability  | ● |
| 2. Judiciary                                 | ● |
| 3. Legal expertise                           | ● |
| 4. Rights of representation                  | ● |
| 5. Accessibility and safety                  | ● |
| 6. Ethics                                    | ● |
| Evolution of above compared to previous year | ● |
| 7. Tech friendliness                         | ● |
| 8. Compatibility with the Delos Rules        | ● |

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There have not been any material changes requiring an update to this chapter (including the traffic lights) since the date of the latest version. Nonetheless, please note that this chapter does not constitute legal advice and its authors, the contributing law firm and Delos Dispute Resolution decline any and all responsibility.

## IN-HOUSE AND CORPORATE COUNSEL SUMMARY

Korea is among several arbitration-friendly jurisdictions in Asia. Korea also has a very reliable and expeditious judicial system. The most popular arbitration institution in Korea, the Korea Commercial Arbitration Board (KCAB), is very well-established, maintains a consistent caseload of 400-plus cases, and is experienced in handling international arbitration cases. Accordingly, Korea is a good option to consider as seat of arbitration for international arbitration.

Key places of arbitration in the jurisdiction	Seoul.
Civil law / Common law environment? (if mixed or other, specify)	Civil law, with influences from common law.
Confidentiality of arbitrations?	Korean arbitration law does not provide for confidentiality. However, the arbitration rules of the KCAB provide for confidentiality obligations of the arbitrators, parties, counsel and KCAB staff members.
Requirement to retain (local) counsel?	Retention of counsel is common but not required. For domestic arbitrations, parties can handle arbitrations without retaining counsel but if counsel is to be retained, only local counsel is allowed to be retained. For international arbitrations, that local counsel requirement does not apply, and foreign counsel may be retained.
Ability to present party employee witness testimony?	Parties can submit witness testimonies of their employees.
Ability to hold meetings and/or hearings outside of the seat and/or remotely?	Unless parties agree otherwise, meetings and/or hearings can be held outside of the seat. Although hearings are frequently held remotely, it has not been established if hearings can be held remotely when either party objects.
Availability of interest as a remedy?	Interest is generally regarded as a matter of the applicable substantive law. Korean arbitration law specifically provides that the tribunal has the power to award interest and to determine the applicable interest rate. In domestic arbitration cases, a very high interest rate (now at 12% per annum) which is typical in Korean litigation is frequently awarded.
Ability to claim for reasonable costs incurred for the arbitration?	Unless parties agree otherwise, the tribunal has discretion to allocate costs incurred in the arbitration between parties.
Restrictions regarding contingency fee arrangements and/or third-party funding?	Contingency fee agreements are commonly used in Korea (except in criminal cases). Third-party funding is neither prohibited nor expressly allowed, and is being used by Korean parties involved in international arbitrations outside of Korea.
Party to the New York Convention?	Yes, since 1973, with the reciprocity and commercial disputes reservations applying.

Party to the ICSID Convention?	Yes, since 1967.
Compatibility with the Delos Rules?	Compatible.
Default time-limitation period for civil actions (including contractual)?	Five (5) years for business matters and ten (10) years for personal (non-business) matters. Shorter periods apply for certain categories of claims.
Other key points to note	Korea is a Member State since 1973.
<a href="#">World Bank, Enforcing Contracts: Doing Business</a> score for 2020, if available?	Korea ranks 2 <sup>nd</sup> with a score of 84.1 in 2020.
<a href="#">World Justice Project, Rule of Law Index: Civil Justice</a> score for 2020, if available?	Korea ranks 13 <sup>th</sup> with a score of 0.76 in 2020.

## ARBITRATION PRACTITIONER SUMMARY

Korea adopted the UNCITRAL Model Law of 1985 (“Model Law”) with the amendment of its arbitration law in 1999. Korea also adopted the interim measures introduced in the 2006 Amendments to the Model Law with the amendment of the arbitration law in 2016. Korean arbitration law largely follows the Model Law.

Most international arbitration cases seated in Korea proceed the same way as arbitration cases are handled in other leading arbitration jurisdictions. It is generally easy and expeditious to enforce arbitration awards in Korea, and in terms of enforcement, there is no distinction between arbitration awards seated in Korea and those seated outside of Korea. Korean courts are generally arbitration-friendly. Korea ratified the New York Convention (“NYC”) with the reciprocity reservation and the commercial dispute reservation.

Date of arbitration law?	Legislated in 1966 and last revised in 2016.
UNCITRAL Model Law? If so, any key changes thereto? 2006 version?	The Korean arbitration law is based on the 1985 UNCITRAL Model Law as well as the 2006 Amendments to the Model Law. However preliminary orders under Articles 17 B and 17 C of the 2006 Amendments to the Model Law have not been introduced to the Korean arbitration law.
Availability of specialised courts or judges at the key seat(s) in the jurisdiction for handling arbitration-related matters?	The most common seat is Seoul. Korea does not have specialist arbitration-related courts or judges, but within the Seoul Central District Court, a specific division is designated to handle arbitration-related cases.
Availability of <i>ex parte</i> pre-arbitration interim measures?	Courts can grant <i>ex parte</i> pre-arbitration interim measures even when there is an arbitration agreement. <i>Ex parte</i> interim measures can also be granted by courts before or after an arbitration begins.
Courts’ attitude towards the competence-competence principle?	If a lawsuit is filed with the court before an arbitration proceeding commences, the court will review the validity of the arbitration clause if a defense is raised based on the arbitration clause. It is possible to commence an arbitration when a lawsuit has been filed. The court will decide on its own as to whether to dismiss the lawsuit or stay the lawsuit until the tribunal makes a decision in the arbitration. If an arbitration is already pending when a lawsuit is filed with the court, the court will usually wait until the tribunal makes a decision on the jurisdiction of the tribunal including the validity of the arbitration clause. The tribunal may rule on its own jurisdiction even if a lawsuit is filed after an arbitration proceeding commences. If the tribunal rules on jurisdiction as a preliminary question, any party can seek the court’s review, including the cases where the tribunal denies jurisdiction.
May an arbitral tribunal render a ruling on jurisdiction (or other issues) with reasons to follow in a subsequent award?	Yes.
Grounds for annulment of awards additional to those based on the criteria for the recognition and	The Korean arbitration law does not provide for any additional grounds for annulment of awards other than the grounds for

enforcement of awards under the New York Convention?	annulment based on the criteria for the recognition and enforcement of awards under the New York Convention.
Do annulment proceedings typically suspend enforcement proceedings?	It is not always the case. The court hearing the enforcement proceedings decides on a case by case basis.
Courts' attitude towards the recognition and enforcement of foreign awards annulled at the seat of the arbitration?	Korea does not have an established position on this issue.
If an arbitral tribunal were to order a hearing to be conducted remotely (in whole or in part) despite a party's objection, would such an order affect the recognition or enforceability of an ensuing award in the jurisdiction?	Korean arbitration law provides that oral hearings shall be held unless otherwise agreed by parties. It has not yet been decided yet if oral hearings include hearings conducted remotely. If a hearing is conducted remotely in compliance with the applicable arbitration rules, it will not adversely affect the recognition or enforceability in Korea. KCAB does not have a rule for holding hearings remotely when either of parties objects.
Key points to note in relation to arbitration with and enforcement of awards against public bodies at the jurisdiction?	No special rules apply to arbitration with or enforcement of awards against public bodies, apart from issues generally do with sovereign immunity. Korea adopts the doctrine of restrictive immunity, and sovereign immunity is not granted to the activities of public bodies unless the activities belong to sovereign activities or closely related thereto so that enforcement thereon is likely to constitute undue interference with the public bodies' sovereign activities.
Is the validity of blockchain-based evidence recognised?	The Tribunal has discretion on the admissibility of evidence, and will decide on admissibility of blockchain-based evidence.
Where an arbitration agreement and/or award is recorded on a blockchain, is it recognised as valid?	Korea does not have an established position on this.
Would a court consider a blockchain arbitration agreement and/or award as originals for the purposes of recognition and enforcement?	Again, Korea does not have an established position on this.
Other key points to note?	<ul style="list-style-type: none"> <li>• A split (or optional or unilateral) arbitration agreement is not regarded as a valid arbitration agreement if contested by one of the parties.</li> <li>• Korean courts have never issued anti-arbitration injunctions, and it is likely that Korean courts will not be bound by anti-suit injunctions issued by tribunals, either seated in Korea or outside of Korea.</li> </ul>

## JURISDICTION DETAILED ANALYSIS

### 1. The legal framework of the jurisdiction

#### 1.1 Is the arbitration law based on the UNCITRAL Model Law? 1985 or 2006 version? What key modifications if any have been made to it?

Yes, the arbitration law in Korea, the Arbitration Act (the “**Act**”) is based on the Model law, largely adopting the 2006 version, but with the following modifications:

- Article 1 (Purpose) – The Act provides for the purpose of the Act as “to ensure the appropriate, fair and prompt settlement of “disputes in private law.” Since Article 1 refers to “disputes in private law,” it is unclear whether the Act applies to “disputes in public law.”
- Article 17 (Ruling of Tribunal on Jurisdiction) – When the tribunal makes a ruling on jurisdiction as a preliminary question, the party who objects to the ruling can file an application with the court to have the jurisdiction of the tribunal reviewed. The court can review both positive and negative jurisdictional rulings.
- Article 18 (Interim Measures) – The Act has not incorporated preliminary orders under the 2006 Amendments to the Model Law
- Article 34-2 (Allocation of Arbitration Costs) – The Act specifically provides that unless otherwise agreed between the parties, the tribunal can decide on the allocation of the costs incurred in the arbitration proceeding considering all the circumstances.
- Article 34-3 (Interest) – The Act specifically provides that unless otherwise agreed between the parties, the tribunal can order payment of interest taking into account all the circumstances.
- Article 35 (Effect of Arbitral Awards) – The Act provides that an award has the same effect between the parties as the final and conclusive judgment of the court.

#### 1.2 When was the arbitration law last revised?

The Act was last revised on 29 May 2016 and came into force on 30 November 2016.

### 2. The arbitration agreement

#### 2.1 How do the courts in the jurisdiction determine the law governing the arbitration agreement?

Both the Act and Korean international private law are silent on the law applicable to the arbitration agreement. However, in light of Article V, Paragraph 1, Item (a) of the New York Convention, parties may agree on the law applicable to the arbitration agreement.

In instances where there is no agreement between the parties on the law applicable to the arbitration agreement, there are only a few Supreme court cases, addressing the issue of how to determine the law applicable to the arbitration agreement. However, these cases do not resolve the issue clearly as they involved the same seat of arbitration and substantive governing law.

#### 2.2 In the absence of an express designation of a ‘seat’ in the arbitration agreement, how do the courts deal with references therein to a ‘venue’ or ‘place’ of arbitration?

Reference to a venue or place in an arbitration agreement, if not expressly designated as a seat, is most likely be treated as a seat of arbitration.

#### 2.3 Is the arbitration agreement considered to be independent from the rest of the contract in which it is set forth?

Yes.

## 2.4 What are the formal requirements (if any) for an enforceable arbitration agreement?

The Act adopted Option I of Article 7 of the 2006 Amendments to the Model Law.

## 2.5 To what extent, if at all, can a third party to the contract containing the arbitration agreement be bound by said arbitration agreement?

In principle, no third party to a contract is bound by the arbitration agreement in the contract. In very exceptional cases where a party's corporate veil is pierced, a third party, is treated as the same entity as the party to the arbitration agreement and can be bound by the arbitration agreement in the contract, (but this is not strictly a case of a third party being bound by an arbitration agreement). However, Korean courts have yet to rule on whether the Group of Companies doctrine applies in Korea.

Another instance is when a contract is assigned, in which case the arbitration agreement in the contract will be binding on the assignee in the absence of a provision stating otherwise in the contract. In addition, if a party to an arbitration agreement becomes insolvent, the administrator succeeds that party, and is bound by the arbitration agreement, if allowed by the insolvency court. If a third party becomes a party to a contract with the application of agency, estoppel and/or third party beneficiaries, as a result thereof, that third party can be bound by the arbitration agreement in the contract.

## 2.6 Are there restrictions to arbitrability?

Under the Act, for a dispute to be arbitrable, it must be a private law dispute. However, with the amendment of the Act in 2016, it is unclear whether this requirement still exists as it would appear the amendment has broadened the definition of disputes are arbitrable.<sup>1</sup> Public law disputes are likely to be denied arbitrability.

- Article 1 (Purpose) – The Act provides for the purpose of the Act as “to ensure the appropriate, fair and prompt settlement of “disputes in private law.” Because of the requirement of “disputes in private law, there are discussions as to whether the Act applies to “disputes in public law,” but the discussions have not led to an established position on this issue.
- Article 3 (Definitions) – The Act has a definition of “arbitration” as “a procedure to resolve disputes by an award of an arbitrator rather than judgment of a court, over property rights (literal translation will be property rights but closer to rights to seek monetary payment in meaning) or disputes based on non-property rights (or non-monetary rights) that the parties can resolve through settlement. This definition of arbitration is regarded as broader than the restriction in Article 1, but the question remains whether this definition is qualified by the purpose in Article 1. These discussions are mainly academic, and rarely become an issue in practice.

### 2.6.1 Do these restrictions relate to specific domains (such as anti-trust, employment law etc.)?

Korea does not have any restrictions relating to specific domains, except as discussed in 2.6 above in respect of Articles 1 and 3 of the Act. In particular, Korea does not have any restrictions in the areas of consumer disputes or labor disputes.

The existence of insolvency proceedings does not render a dispute non-arbitrable. Rather, the administrator succeeds the relevant party (debtor). But the insolvency court ultimately decides whether to respect the arbitration agreement between the administrator and the creditor.

### 2.6.2 Do these restrictions relate to specific persons (i.e., State entities, consumers etc.)?

Korea does not have any restrictions relating to specific persons.

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<sup>1</sup> Articles 1 and 3 of the Act.

### 3. Intervention of domestic courts

#### 3.1 Will the courts stay litigation if there is a valid arbitration agreement covering the dispute?

If Korean courts find that a valid arbitration agreement exists, the courts will ordinarily “dismiss” the lawsuit rather than staying the litigation, irrespective of whether the seat of the arbitration is within or outside of the jurisdiction. However, Korean courts are generally reluctant to issue a judgment on jurisdiction only, and to dismiss a lawsuit at the beginning stage of litigation. Because of this tendency, Korean courts on many occasions hear the case including merits before issuing a judgment. The judgment so issued will address the validity of the arbitration agreement together with the merits. The tribunal has discretion whether to proceed with the arbitration while the litigation is pending, or to await the outcome of the litigation.

#### 3.2 How do courts treat injunctions by arbitrators enjoining parties to refrain from initiating, halt or withdraw litigation proceedings?

Korea does not have a tradition of anti-suit injunctions. It is highly unlikely that Korean courts will respect such injunctions, and Korean courts are likely to proceed regardless of anti-suit injunctions.

#### 3.3 On what ground(s) can the courts intervene in arbitrations seated outside of the jurisdiction? (Relates to the anti-suit injunction but not only)

Korean courts will not issue anti-suit injunctions restraining proceedings brought in breach of arbitration clauses. See 3.2 above. Korean courts may grant interim measures in order to support arbitrations seated in or outside of Korea (such as freezing orders or orders to secure evidence).

### 4. The conduct of proceeding

#### 4.1 Can parties retain outside counsel or be self-represented?

It is the parties’ choice whether to retain outside counsel or to be self-represented. Retention of outside counsel is not mandatory although it is quite rare for a party to be self-represented in international arbitrations seated in Korea.

#### 4.2 How strictly do courts control arbitrators' independence and impartiality? For example: does an arbitrator's failure to disclose suffice for the court to accept a challenge or do courts require that the undisclosed circumstances justify this outcome?

There are not many cases where Korean courts have examined arbitrators’ independence and impartiality. It is however likely that the failure to disclose in itself will not be sufficient to justify a challenge to an arbitrator. There should at least be the likelihood that the failure to disclose would have affected the outcome or the award (although the failure to disclose will be considered in assessing such likelihood).

In one recent case,<sup>2</sup> one of the parties failed to nominate its arbitrator within the prescribed period, but informally requested the arbitration institution to appoint the arbitrator whom the party had in mind, but in the name of the institution. This fact was later revealed during the arbitration. During the enforcement/set aside proceedings (also known as cancellation) this issue was raised, and the Korean court held that this fact alone is not sufficient to set aside the award. This judgment appears to be in line with the position that failure to disclose is not in itself sufficient to challenge an arbitrator.

#### 4.3 On what grounds do courts intervene to assist in the Constitution of the arbitral tribunal (in case of *ad hoc* arbitration)?

If the parties agreed on the procedure to constitute the tribunal, including the designation of an appointing authority who will appoint a member(s) of the tribunal, that agreement will be respected. Only if there is no such agreed procedure, and the parties fail to agree on such a procedure or an arbitrator, or if a party who

<sup>2</sup> Seoul Central District Court Order Case No. 2018KaGhi244 rendered on 5 September 2019.



is to appoint an arbitrator fails to do so, a party can seek the court's assistance in constituting the tribunal. In the case of a three (3)-member tribunal, if the third arbitrator is to be agreed between the two arbitrators but they fail to agree on the third arbitrator, either party can seek the court's assistance for the appointment of the third arbitrator.<sup>3</sup> The court can seek a recommendation from the KCAB on arbitrator candidates, especially in international arbitrations.<sup>4</sup>

**4.4 Do courts have the power to issue interim measures in connection with arbitrations? If so, are they willing to consider *ex parte* requests?**

It is not incompatible with an arbitration agreement for a court to grant, before or during arbitral proceedings, a provisional or conservatory measure of protection relating to the subject-matter of the arbitration.

Korean courts can and are willing to grant *ex parte* requests especially for orders freezing assets.<sup>5</sup>

**4.5 Other than arbitrators' duty to be independent and impartial, does the law regulate the conduct of the arbitration?**

The Act provides for equal treatment of the parties in the arbitral proceedings, and the right to be given a full opportunity to present his or her case.<sup>6</sup>

**4.5.1 Does it provide for the confidentiality of arbitration proceedings?**

The Act does not provide for the confidentiality of arbitration proceedings. Unless the arbitration is an institutional arbitration whose rules provide for confidentiality, the parties to the arbitration need to enter into a separate confidentiality agreement, if they want confidentiality.

**4.5.2 Does it regulate the length of arbitration proceedings?**

The Act does not have an express provision on the duration of arbitration proceedings.

**4.5.3 Does it regulate the place where hearings and/or meetings may be held, and can hearings and/or meetings be held remotely, even if a party objects?**

The parties are free to agree on the place of arbitration. In the absence of such agreement, the place of arbitration shall be determined by the arbitral tribunal which shall take into account all the circumstances of the case. Although many hearings and meetings are being held remotely, with the consent of the parties, it has not been established whether hearings and/or meetings can be held remotely even if a party objects.

The tribunal may, unless otherwise agreed by the parties, meet at any place it considers appropriate for an oral hearing, for consultation among the members of the tribunal, or for inspection of site, property or documents.<sup>7</sup>

**4.5.4 Does it allow for arbitrators to issue interim measures?**

Unless otherwise agreed by the parties, the tribunal may, at the request of a party, order such provisional or conservatory measures of protection as the tribunal may consider necessary. With the amendment of the Act in 2016, the provisions on interim measures in the 2006 Amendments to the Model Law have been incorporated.

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<sup>3</sup> Article 12, Paragraph 4 of the Act.

<sup>4</sup> *Ibid.*

<sup>5</sup> Article 10 of the Act.

<sup>6</sup> Article 19 of the Act.

<sup>7</sup> Article 21 of the Act.

With the exception of interim measures for preservation of evidence, the following two conditions must be met in order to grant interim measures:<sup>8</sup>

- (i) Harm not adequately reparable by an award of damages is likely to result if the measure is not ordered, and such harm substantially outweighs the harm that is likely to result to the party against whom the measure is directed if the measure is granted; and
- (ii) There is a reasonable possibility that the requesting party will succeed on the merits of the claim. The determination on this possibility shall not affect the discretion of the arbitral tribunal in making any subsequent determination.

The above is identical to the conditions in Article 17A, Para 1 of the 2006 Amendments to the Model Law.

Since preliminary orders under the 2006 Amendments to the Model Law have not been incorporated into the 2016 amendment to the Act, no *ex parte* interim measures can be granted by the tribunal.

**4.5.5 Does it regulate the arbitrators' right to admit/exclude evidence? For example, are there any restrictions to the presentation of testimony by a party employee?**

The tribunal has the authority to determine the admissibility of evidence (including the authenticity and/or genuineness of evidence), to take evidence and to assess the credibility of such evidence.<sup>9</sup> Party employees are also treated as witnesses.

There are no such restrictions.

**4.5.6 Does it make it mandatory to hold a hearing?**

Subject to agreement by the parties, the tribunal can decide whether to hold oral hearings or whether the proceedings shall be conducted only on the basis of documents and other materials.<sup>10</sup> Unless the parties have agreed that no oral hearings shall be held, the arbitral tribunal shall hold such hearings at an appropriate stage of the proceedings if requested by a party.

**4.5.7 Does it prescribe principles governing the awarding of interest?**

The Act grants the tribunal the power to award interest taking into account all relevant circumstances, unless otherwise agreed by the parties.<sup>11</sup> If the substantive law of the arbitration is Korean law, the relevant interest rate is six (6) percent per annum for commercial contracts and five (5) percent per annum for non-commercial contracts.<sup>12</sup> When neither of the parties to a contract is a business person, that contract is regarded as non-commercial or civil. For example, a loan contract between two friends who are not business persons is a non-commercial contract. For domestic arbitrations, a very high interest rate (currently 12 percent per annum<sup>13</sup>) which is typical in Korean litigation, is frequently awarded. But it is extremely rare for such high interest rates to be awarded in international arbitrations.

**4.5.8 Does it prescribe principles governing the allocation of arbitration costs?**

Under the Act, the tribunal can allocate the costs of the arbitration between the parties unless the parties agree otherwise.<sup>14</sup> The decision on costs is included in an award. Arbitration costs include necessary costs incurred by the parties for the proper pursuit of their claim or defence. The tribunal has discretion in the

<sup>8</sup> Article 18-2, Para 1 of the Act

<sup>9</sup> Article 20 of the Act.

<sup>10</sup> Article 25 of the Act.

<sup>11</sup> Article 34-3 of the Act

<sup>12</sup> Article 379 of the Civil Code; Article 54 of the Commercial Code.

<sup>13</sup> Article 75 of the Supreme Court Rules on Civil Enforcement; Article 130, Paragraph 6 and Article 138, Paragraph 3 of the Civil Enforcement Code.

<sup>14</sup> Article 34-2 of the Act.

allocation but usually takes into account the circumstances of the case, especially the outcome of the proceedings. Where considered to be appropriate, the tribunal may also take into account the conduct of the parties. The tribunal also has discretion to award a party's costs (e.g. attorneys' fees).

#### **4.6 Liability**

##### **4.6.1 Do arbitrators benefit from immunity to civil liability?**

Arbitrators are not completely exempt from liability. Under Korean law, they could be held liable for breach of contract like any other service provider. The KCAB arbitration rules exempt arbitrators from liability unless the breach is intentional or grossly negligent. If the arbitration is *ad hoc*, although the default position is for the arbitrators to be held liable for any breach (intentional, by gross negligence, or by simple negligence), it is likely that arbitrators will be held liable only for intentional acts or gross negligence, as provided in the KCAB rules.

##### **4.6.2 Are there any concerns arising from potential criminal liability for any of the participants in an arbitration proceeding?**

There are no serious concerns on this issue. Korea has a set of rules involving potential criminal liability for any of the participants in litigation, and those rules are likely to apply to arbitrations by analogy. Those rules are, however, extremely restrictive, and unlikely to give rise to concerns in most cases. For example, collusion between the parties and the tribunal may constitute a criminal offence.

#### **5. The award**

##### **5.1 Can parties waive the requirement for an award to provide reasons?**

It is possible for parties to waive that requirement by their agreement.

It is frequently seen that parties agree to omit reasons in an award when the award is to be issued after settlement is reached between the parties.

##### **5.2 Can parties waive the right to seek the annulment of the award? If yes, under what conditions?**

There is no statutory provision or court precedents on this issue in Korea. The scholarly view is that this right cannot be waived before the award is issued, in light of the fact that the right of appeal from a court judgment cannot be waived before a judgment is issued.

##### **5.3 What atypical mandatory requirements apply to the rendering of a valid award rendered at a seat in the jurisdiction?**

There are no atypical mandatory requirements that apply to the rendering of a valid award in Korea. One issue to be noted is the split (or optional or unilateral) arbitration clause where either party or both parties to a contract have the right to select between litigation and arbitration. The Korean Supreme Court (the highest court in Korea) has decided multiple cases which held that such split arbitration clauses are null and void if contested by either party. However, multi-tier dispute resolution clauses such as med-arb or arb-med-arb clauses or arbitration clauses requiring a dispute resolution board process in advance are considered valid.

##### **5.4 Is it possible to appeal an award (as opposed to seeking its annulment)? If yes, what are the grounds for appeal?**

No appeal is possible from an award.

##### **5.5 What procedures exist for the recognition and enforcement of awards, what time-limits apply and is there a distinction to be made between local and foreign awards?**

For recognition and enforcement of awards, there is no specific time limits applicable.

The legal regimes applicable for enforcement between Korean awards and foreign awards are different. For Korean awards, the process is provided for in the Act. For foreign awards, if the awards are from signatories of the New York Convention, the New York Convention governs. If the awards are not from signatories of the New York Convention, the provisions on enforcement of foreign judgments in the Korean Civil Procedure Code and the Civil Enforcement Code apply.<sup>15</sup> In substance, however, the procedure and requirements under the Act and the Korean Civil Procedure Code and the Civil Enforcement Code are not much different.

**5.6 Does the introduction of annulment or appeal proceedings automatically suspend the exercise of the right to enforce an award?**

No. The procedure for recognition and/or enforcement of awards will normally proceed even if annulment proceedings have commenced. Not infrequently, Korean courts consolidate (i) the proceeding for recognition and/or enforcement of awards and (ii) the annulment proceeding.

**5.7 When a foreign award has been annulled at its seat, does such annulment preclude the award from being enforced in the jurisdiction?**

In Korea, there are no court cases which have decided this issue. It is likely that Korean courts will not be strictly bound by an annulment judgment/decision outside of Korea, but they will take the annulment judgment/decision into account.

**5.8 Are foreign awards readily enforceable in practice?**

In Korea, foreign (non-Korean) awards are readily and promptly enforceable in practice. Korea is a member state of the New York Convention. Foreign arbitral awards are enforced unless there are grounds for refusal under the New York Convention. In reviewing the grounds for refusal, Korean courts take a pro-arbitration position. The threshold for violations of public policy is high, requiring that the relevant public policy be international or transnational public policy. Awards are hardly set aside for violation of public policy.

With the amendment of the Act in 2016, Korea simplified the enforcement process in Korea, and this is expected to expedite the enforcement process for not only Korean awards but also foreign awards.

**6. Funding arrangements**

**6.1 Are there laws or regulations relating to, or restrictions to, the use of contingency or alternative fee arrangements or third-party funding at the jurisdiction? If so, what is the practical and/or legal impact of such laws, regulations or restrictions?**

No. Contingency fee arrangements are only prohibited in criminal proceedings.<sup>16</sup>

Korea allows the use of contingency or alternative fee arrangements. Partial contingency arrangements such as payment of a retainer at the beginning of an arbitration with a success bonus arrangement is common in Korea.

Korean law does not expressly prohibit nor expressly allow third-party funding. There is a lack of interest in the use of third-party funding in Korea since contingency agreements are widely used. Furthermore, it is believed that there is no third-party funding business officially operating in Korea, and Korea does not have any regime regulating third-party funding. However, Korean companies who become parties to international arbitration sometimes consider third-party funding when the legal fee arrangements are not on a contingency basis. When needed, such Korean companies use third-party funders outside of Korea, which is not regulated by Korean authorities.

<sup>15</sup> Article 217 of the Civil Procedure Code; Article 26 of the Civil Enforcement Code.

<sup>16</sup> Supreme Court Judgment Case No. 2015Da200111 rendered on 23 July 2015.

## **7. Arbitration and technology**

### **7.1 Is the validity of blockchain-based evidence recognised?**

The Tribunal has discretion on the admissibility of evidence, and will decide on admissibility of blockchain-based evidence.

### **7.2 Where an arbitration agreement and/or award is recorded on a blockchain, is it recognised as valid?**

Korea does not have an established position on this.

### **7.3 Would a court consider a blockchain-based arbitration agreement and/or award as originals for the purposes of recognition and enforcement?**

Korea does not have an established position on this.

### **7.4 Would a court consider an award that has been electronically signed (by inserting the image of a signature) or more securely digitally signed (by using encrypted electronic keys authenticated by a third-party certificate) as an original for the purposes of recognition and enforcement?**

There is no basis to regard an award which has been electronically signed by inserting the image of a signature as an original for the purposes of recognition and enforcement. However, for an award which has been electronically signed by using encrypted electronic keys authenticated by the Korean government, the award will be regarded as original. This will not be the case if the encrypted electronic keys are authenticated by a third party other than the Korean government.

## **8. Is there likely to be any significant reform of the arbitration law in the near future?**

No, Korea does not have any immediate plan to significantly reform the arbitration law.

## **9. Compatibility of the Delos Rules with local arbitration law**

Korean arbitration law is compatible with the Delos Rules

## **10. Further reading**

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## ARBITRATION INFRASTRUCTURE AT THE JURISDICTION

Leading national, regional and international arbitral institutions based out of the jurisdiction, <i>i.e.</i> with offices and a case team?	Korean Commercial Arbitration Board International, commonly referred to as the <a href="#">KCAB</a> .
Main arbitration hearing facilities for in-person hearings?	Seoul IDRC hearing facilities which are located in the same building with KCAB
Main reprographics facilities in reasonable proximity to the above main arbitration providers with offices in the jurisdiction?	Many but difficult to name one or two
Leading local providers of court reporting services, and regional or international providers with offices in the jurisdiction?	No local providers for English or other non-Korean languages.
Leading local interpreters for simultaneous interpretation between English and the local language, if it is not English?	Many but difficult to name a few
Other leading arbitral bodies with offices in the jurisdiction?	The ICC, SIAC, HKIAC and ICDR have offices in Korea.