

GUIDE TO ARBITRATION PLACES (GAP)

**REPUBLIC OF KOREA**

CHAPTER PREPARED BY

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JURISDICTION INDICATIVE TRAFFIC LIGHTS

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| 1. Law                                       | ● |
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| 3. Legal expertise                           | ● |
| 4. Rights of representation                  | ● |
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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

South Korea (“Korea”) has a well-established and efficient judicial system. Moreover, Korea is among several arbitration-friendly jurisdictions in Asia. The Korean government adopted a law promoting arbitration in Korea in the hope of making Seoul a new Asian hub for international arbitration. The Korean courts are also very supportive of arbitration when dealing with cases involving arbitration. The Korean Commercial Arbitration Board (“KCAB”), the main arbitral institution in Korea, has a consistent caseload of 400-plus cases, and is experienced in administering international arbitrations. Accordingly, Korea is a good option to consider as a seat of arbitration for international arbitrations.

Key places of arbitration in the jurisdiction?	Seoul.
Civil law/common law environment? (if mixed or other, specify)	Civil law.
Confidentiality of arbitrations?	The Korean Arbitration Act (the “KAA”) does not provide for confidentiality. However, the arbitration rules of the KCAB provide for confidentiality obligations of arbitrators, parties, counsel, and KCAB staff members.
Requirement to retain (local) counsel?	Retaining counsel for arbitrations is common but not required. For domestic arbitrations, parties can participate in arbitration proceedings without retaining counsel, but if counsel is to be retained, only local counsel is allowed to appear. For international arbitrations, parties are not required to engage local counsel and may retain foreign counsel.
Ability to present party employee witness testimony?	Parties can submit witness statements 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 the seat of arbitration. Due to COVID-19, hearings were frequently held remotely. However, it has not been established if hearings can be held remotely when either party objects.
Availability of interest as a remedy?	The KAA specifically provides that an arbitral tribunal has the power to award interest and to determine the applicable interest rate.
Ability to claim for reasonable costs incurred for the arbitration?	The KAA provides that unless the parties agree otherwise, the arbitral tribunal has discretion to determine the allocation of the costs of the arbitration.
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 expressly prohibited nor expressly permitted in Korea, and there is currently no legislation proposed to clarify this issue.
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 (commercial) matters and ten (10) years for general civil (non-commercial) matters. Shorter periods apply for certain categories of claims.
Other key points to note?	The KAA was first enacted in 1966, and completely revised in 1999 to adopt the 1985 United Nations Commission on International Trade Law Model Law (“UNCITRAL Model Law”). Later, in 2016, further amendments were made to the KAA, in order to incorporate the 2006 amendments to the UNCITRAL Model Law.
<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 2023, if available?	Korea ranks 13 <sup>th</sup> with a score of 0.75 in 2023.

## ARBITRATION PRACTITIONER SUMMARY

Korea adopted the UNCITRAL Model Law of 1985 by amending the Korean Arbitration Act (“KAA”) in 1999. In 2016, the KAA was amended to be in line with the 2006 Amendments to the UNCITRAL Model Law including interim measures.

Most international arbitrations seated in Korea proceed in the same way as international arbitrations seated 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 awards rendered in arbitrations seated in Korea and those seated outside of Korea. Korean courts are generally arbitration friendly. Korea ratified the New York Convention 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?	The KAA 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 in the KAA. Also, Article 34(4) of the UNCITRAL Model Law, which allows a court to suspend its set-aside proceedings at the request of a party, is included in the KAA.
Availability of specialised courts or judges at the key seat(s) in the jurisdiction for handling arbitration-related matters?	Korea does not have specialised arbitration-related courts or judges.
Availability of <i>ex parte</i> pre-arbitration interim measures?	Pursuant to Article 10 of the KAA, a party to an arbitration agreement can apply to the Korean courts for an <i>ex parte</i> pre-arbitration interim measure 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?	Korea recognizes the competence-competence principle. Article 17(1) of the KAA states that an arbitral tribunal may rule on its own jurisdiction and also on a party’s objection to the existence or validity of the arbitration agreement. However, Article 17(6) of the KAA provides that upon a party’s request, the Korean courts have the power to review an arbitral tribunal’s decision on its jurisdiction whether positive (accepting jurisdiction) or negative (denying jurisdiction). The Korean court’s review of an arbitral tribunal’s decision on jurisdiction cannot be appealed. The Korean courts generally take an arbitration friendly approach in reviewing an arbitral tribunal’s decision on 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 KAA does not provide for any additional grounds for annulment of awards other than the grounds for annulment based

enforcement of awards under the New York Convention?	on the criteria for the recognition and enforcement of awards under the New York Convention.
Do annulment proceedings typically suspend enforcement proceedings?	The KAA does not have a provision suspending enforcement proceedings due to pending annulment proceedings. The court hearing the enforcement application may decide to stay the proceedings on a case-by-case basis.
Courts' attitude towards the recognition and enforcement of foreign awards annulled at the seat of the arbitration?	To date, there has been no Korean court decision 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?	There is no established position on this issue in Korea. Neither the KAA nor the KCAB has a rule for holding hearings remotely when a party objects, and the Korean courts have yet to settle this issue.
Key points to note in relation to arbitration with and enforcement of awards against public bodies at the jurisdiction?	Apart from sovereign immunity, no special rules apply to arbitration with respect to the enforcement of awards against public bodies. Korea adopts the doctrine of restrictive immunity, and sovereign immunity is not granted to the activities of public bodies unless the activities fall within the scope of sovereign functions, or are closely related thereto so that enforcement will likely constitute undue interference with the public bodies' sovereign functions.
Is the validity of blockchain-based evidence recognised?	An arbitral tribunal has discretion on the admissibility of evidence, and will decide on the admissibility of blockchain-based evidence.
Where an arbitration agreement and/or award is recorded on a blockchain, is it recognised as valid?	Korean courts or laws do not have an established position on this issue.
Would a court consider a blockchain arbitration agreement and/or award as originals for the purposes of recognition and enforcement?	Korean courts or laws do not have an established position on this issue.
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>• The Korean Supreme Court explicitly dismissed an application for an anti-arbitration injunction (Supreme Court Decision rendered on 2 February 2018, Case no. 2017Ma6087). It is likely that Korean courts will not be bound by anti-suit injunctions issued by tribunals or foreign courts, whether 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? If yes, what key modifications if any have been made to it? If no, what form does the arbitration law take?

Yes. the arbitration law in Korea, the Korean Arbitration Act is based on the UNCITRAL Model Law, largely adopting the 2006 version, but with the following modifications:

- [Article 17 \(Ruling of Tribunal on Jurisdiction\)](#) – Where an arbitral tribunal rules on its jurisdiction or scope of authority at the preliminary stage, either party may file an application to a Korean court to review the arbitral tribunal's decision within 30 days from receipt of such decision.
- [Article 18 \(Interim Measures\)](#) – The KAA does not provide for ex parte preliminary orders (which do not exist in Korea). Furthermore, only interim measures issued in arbitrations seated in Korea can be enforced by Korean courts.
- [Article 27 \(Expert\)](#) – The parties can challenge the appointment of an expert by an arbitral tribunal.
- [Article 34\(2\) \(Allocation of Arbitration Costs\)](#) – The KAA specifically provides that unless otherwise agreed between the parties, an arbitral tribunal can decide on the allocation of costs considering all the circumstances.
- [Article 34\(3\) \(Interest\)](#) – The KAA specifically provides that unless otherwise agreed between the parties, an arbitral tribunal can order payment of interest taking into account all the circumstances.
- [Article 35 \(Effect of Arbitral Awards\)](#) – The KAA provides that an award has the same effect between the parties as a final and conclusive judgment of a court.
- The KAA does not incorporate Article 34(4) of the UNCITRAL Model Law, which allows a court to suspend its set-aside proceedings at the request of a party to give an arbitral tribunal an opportunity to resume the arbitration or to eliminate grounds for set-aside.

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

The KAA 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 KAA and Korean Private International 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.

There are only a few Supreme Court cases that involve the determination of the law applicable to the arbitration agreement. However, these cases are of limited value since in all these cases, the governing law of the main contract and the seat of arbitration were identical.

#### 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 to be treated as a seat of arbitration.

If there is no reference to a venue or place of arbitration in an arbitration agreement, Article 21(2) of the KAA may apply, which provides that when there is no agreement between the parties on the seat of arbitration, an arbitral tribunal shall decide the seat having regard to all circumstances of the case, including the convenience of the parties.

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

Yes. Article 17(1) of the KAA provides that an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other clauses of the contract. Furthermore, the invalidity of any of the other clauses in the contract will not affect the validity of the arbitration clause. In essence, the KAA adopts the principle of separability.

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

Article 8 of the KAA, in line with Article 7 of the UNCITRAL Model Law, requires an arbitration agreement to be in writing either as an arbitration clause included in a contract or as a submission agreement.

An arbitration agreement is considered to be "in writing" when:

- the terms and conditions of an arbitration agreement have been recorded, regardless of whether such agreement was made orally, by conduct, or by any other means;
- an arbitration agreement is evidenced by electronic communication; or
- an arbitration agreement is contained in an exchange of statements of claim and defence in which the existence of an agreement is alleged by one party and not denied by the other.

### **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, a third party who is a non-signatory to the arbitration agreement is not bound by the arbitration agreement, and thus an arbitral tribunal would not have jurisdiction over the third party. The KAA does not address whether an arbitral tribunal may exercise jurisdiction over a third party that is a non-signatory to the arbitration agreement.

However, a third party may be bound to an arbitration agreement as a successor, heir or assignee to a contracting party. There is one lower court decision<sup>1</sup> where the court held that the assignee of receivables under a contract containing an arbitration clause should be bound by the arbitration agreement, and that a debtor may raise a defence in a court proceeding that the same should be dismissed due to the existence of an arbitration agreement.

Furthermore, third parties may be bound to an arbitration agreement by their subsequent consent – whether by affirmative consent in writing at the request of a party or by failure to object to the jurisdiction of an arbitral tribunal. These rules apply equally to foreign third parties.

In addition, there are no court decisions on whether the "group of companies" or "piercing of the corporate veil" doctrines can be used to exercise jurisdiction over non-signatories.

### **2.6 Are there restrictions to arbitrability?**

There is no specific provision in the KAA providing for restrictions to arbitrability. Article 3 of the KAA, which was amended in 2016, now defines arbitration as “a procedure to resolve disputes relating to (i) property rights or (ii) non-property rights that the parties can resolve through a settlement.” Accordingly, as is the case in many other jurisdictions, matters of criminal law, family law (not related to the property) and administrative law, which cannot be resolved by parties’ settlement, are not arbitrable in Korea. With the amendment of the KAA in 2016, commentators are of the view that disputes that arise in the public law sector are arbitrable as long as the nature of the dispute allows the parties to settle the dispute.

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<sup>1</sup> Seoul Western District Court Judgment 2001GaHap6107 dated 5 July 2002

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

The restrictions in 2.6 do not relate to specific domains.

In relation to arbitrations involving antitrust, commentators are of the view that a claim for damages caused by a violation of antitrust law under Korean private law.

While disputes regarding the validity of IP rights are not arbitrable (as these would fall within the exclusive jurisdiction of national courts), commentators opine that disputes regarding the infringement of IP rights or disputes regarding any contract related to IP rights are arbitrable.

No specific provision in the KAA provides for special protection for consumers in consumer arbitrations and employees in employment law arbitrations.

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

There are no restrictions relating to specific persons in the KAA.

## **3. Intervention of domestic courts**

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

Korean courts generally respect the parties' agreement to arbitrate. Pursuant to Article 9 of the KAA, if one party brings an action in court against another party even though there is a valid arbitration agreement between the parties, the other party can raise a defence based on the existence of the arbitration agreement. The court is then required to dismiss (rather than stay) the lawsuit unless the court finds that the arbitration agreement is null and void, inoperative or incapable of being performed.

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

To date, there has been no Korean court decision addressing whether an anti-suit injunction issued by an arbitral tribunal seated in Korea is allowed under Korean law, or whether such anti-suit injunction issued by an arbitral tribunal can be enforced by a Korean court.

However, many commentators are of the view that an arbitral tribunal may issue an anti-suit injunction as an interim measure, considering that the amended Article 18(2) of the KAA provides that an arbitral tribunal may order a party to "take action that would prevent current or imminent harm or prejudice to the arbitral proceeding itself, or prohibiting action that may cause such harm or prejudice."

As for the enforcement of an anti-suit injunction issued by an arbitral tribunal, Article 18(7) of the KAA provides for the Korean courts' recognition and enforcement of interim measures issued by an arbitral tribunal. However, Article 18(7) would only apply to anti-suit injunctions issued by arbitral tribunals seated in Korea, and it is not clear how anti-suit injunctions issued by arbitral tribunals seated outside of Korea would be enforced.

By contrast, as a civil law jurisdiction, it is generally understood that Korean courts cannot issue anti-suit injunctions or anti-arbitration injunctions. In fact, the Korean Supreme Court once ruled that parties may not apply to a court to suspend an arbitral proceeding by means of an injunction, arguing that the arbitration agreement was absent, invalid, invalid, or impossible to implement.<sup>2</sup>

### **3.3 On what ground(s) can the courts intervene in arbitrations seated outside of the jurisdiction?**

As discussed above, Korean courts cannot issue anti-suit injunctions to restrain foreign court proceedings brought in breach of an arbitration agreement. However, Korean courts may grant interim measures to

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<sup>2</sup> Supreme Court Decision No. 2017Ma6087 dated 2 February 2018.



support arbitrations seated in or outside of Korea (such as freezing orders or orders to secure evidence). Article 10 of the KAA provides that a party to an arbitration agreement may file a request with the Korean court for interim relief either before the commencement of or during arbitral proceedings. This provision applies to arbitrations seated in Korea or outside of Korea or even in instances when the seat of arbitration has not been determined (see Article 2 of the KAA).

#### **4. The conduct of the proceedings**

##### **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. Retaining outside counsel is not mandatory, but it is quite rare for a party to be self-represented in an international arbitration 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 an arbitrator's independence and impartiality or reviewed a party's challenge of an arbitrator.

However, Article 13 of the KAA provides that an arbitrator shall disclose without delay any circumstances likely to give rise to justifiable doubts as to his or her impartiality or independence to the parties, and failure to do so will be a ground to challenge an arbitrator. The Korean Supreme Court has ruled that Article 13 of the KAA is a mandatory provision which cannot be waived.<sup>3</sup>

##### **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 for the constitution of the arbitral tribunal, including the designation of an appointing authority who will appoint member(s) of an arbitral tribunal, then the arbitral tribunal should be constituted pursuant to that procedure. Only if the parties fail to agree on such a procedure or the nomination of a sole or presiding arbitrator, or if a party who is to appoint an arbitrator fails to do so, can a party seek the court's assistance in constituting the tribunal.

In the absence of an appointment procedure agreed upon by the parties, Article 12(3) of the KAA will apply. In the case of a sole arbitrator, if the parties fail to reach an agreement within 30 days from the request of a party, the court or an arbitral institution designated by the court shall appoint an arbitrator at the request of a party. In case of a three (3)-member tribunal, each party appoints one arbitrator each, and the two party-appointed arbitrators shall appoint a presiding arbitrator. When the two party-appointed arbitrators fail to appoint a presiding arbitrator within 30 days from their appointments, the court or an arbitral institution designated by the court shall appoint the presiding arbitrator.

When there is an agreed appointment procedure between the parties, but (i) one party fails to appoint an arbitrator according to the agreed procedure, or (ii) both parties or the party-appointed arbitrators fail to appoint an arbitrator according to the agreed procedure, or (iii) an institution or any other party entrusted to appoint an arbitrator fails to do, Article 12(4) of the KAA will apply and a court or an arbitral institution designated by the court will appoint an arbitrator. The Korean courts usually seek a recommendation from the KCAB on suitable arbitrator candidates, especially in an international arbitration.

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<sup>3</sup> Korean Supreme Court Judgment Case No. 2004Da47901

**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?**

Under Article 10 of the KAA, Korean courts can issue an interim measure upon a party's request made before or during the arbitral proceedings. Although Article 10 is silent on the type of interim measures that Korean courts can grant, it is generally accepted that Korean courts can issue a conservatory measure to preserve the status quo or protect the subject matter of the arbitration. Article 10 of the KAA is applicable regardless of whether the arbitration is seated in or outside Korea.

Korean courts can and are willing to grant *ex parte* requests especially for orders freezing assets which are the subject matter in the arbitration.

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

Article 19 of the KAA provides for equal treatment of the parties in the arbitral proceedings, and the right to be given a full opportunity to present one's case.

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

The KAA does not contain any provisions relating to the confidentiality of arbitral proceedings. In addition, there is no Korean Supreme Court decision addressing this issue. Thus, unless the parties agree otherwise – for instance, by entering into a separate confidentiality agreement or by adopting institutional rules which provide for the confidentiality of arbitral proceedings – arbitrations seated in Korea are not confidential. Despite the absence of a specific provision in the KAA, arbitral proceedings in Korea have generally been treated in strict confidence. The KCAB International Arbitration Rules have a provision on confidentiality (Article 75).

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

The KAA does not have an express provision on the length or duration of arbitration proceedings.

The KCAB International Arbitration Rules provide that an arbitral tribunal shall make its award within 45 days from the date final submissions are made, or the hearings are closed, whichever is later, but this time limit can be extended if necessary (Article 38).

**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?**

Pursuant to Article 21(1) and (2) of the KAA, the parties are free to agree on the place of arbitration, and in the absence of such agreement, the place of arbitration shall be determined by the arbitral tribunal after taking into account all the circumstances of the case.

Although many hearings and meetings have been held remotely (especially during the pandemic) with the consent of the parties, it has not been established whether hearings and/or meetings can be held remotely when a party objects to it.

An arbitral 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 (Article 21(3) of the KAA).

**4.5.4 Does it allow for arbitrator to issue interim measures? In the affirmative, under what conditions?**

According to Article 18 of the KAA, an arbitral tribunal can, at the request of a party, order any interim measures that it considers necessary, and those interim measures are enforceable.

Article 18(2) of the amended KAA adopted all of the interim measures available under the Model Law except for preliminary orders. Furthermore, pursuant to Article 18(7) of the KAA, a party can request courts to recognise and enforce an interim measure issued by an arbitral tribunal seated in Korea.

In order to grant an interim measure, the following two conditions must be met (Article 18(2) of the KAA):

- (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 an arbitral tribunal in making any subsequent determination.

With regard to interim measures for the preservation of evidence, these requirements shall apply only to the extent an arbitral tribunal considers appropriate.

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 KAA, no *ex parte* interim measures can be granted by an arbitral 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?**

Article 20(2) of the KAA provides that an arbitral 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. There are no restrictions to the presentation of testimony by a party employee, and party employees can be treated as witnesses.

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

Article 25 of the KAA provides that subject to agreement by the parties, an arbitral tribunal can decide whether to hold oral hearings or whether the proceedings shall be conducted only on the basis of documents and other materials. Unless the parties have agreed that no oral hearings shall be held, an arbitral tribunal shall hold an oral hearing at an appropriate stage of the proceedings upon a party's request.

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

Pursuant to Article 34(3) of the KAA, the arbitral tribunal may order either party to pay pre- and/or post-award interest after considering all the circumstances of the arbitration and if deemed appropriate – unless the parties have agreed otherwise.

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>4</sup>

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

Article 34(2) of the KAA provides that unless the parties have agreed otherwise, an arbitral tribunal has explicit authority to allocate arbitration costs between the parties, taking into consideration all pertinent circumstances of the case. The "loser pays" rule generally applies to arbitrations in Korea, but an arbitral tribunal has discretion to decide otherwise in light of relevant factors. The decision on allocation of arbitration costs is included in the final award. Arbitration costs include necessary costs incurred by the parties for the proper pursuit of their claim or defence including attorney's fees.

<sup>4</sup> Article 379 of the Korean Civil Code; Article 54 of the Korean Commercial Code.

## 4.6 Liability

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

The KAA does not have a provision explicitly exempting arbitrators from liability. However, the KCAB International Arbitration Rules has a provision (Article 56) exempting arbitrators from liability for any act or omission in connection with an arbitration conducted under the rules, unless the act or omission is intentional or grossly negligent.

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

Participants in arbitration proceedings may be criminally liable only when they commit a crime as defined under Korean criminal law during the arbitration proceeding. For instance, if a party falsifies evidence and submits such fraudulent evidence during arbitration proceeding and as a result obtains a monetary award, then that party may be punished for forgery and fraud.

## 5. The award

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

Under Article 32(2) of the KAA, parties can agree to waive the requirement for an award to provide reasons.

Parties frequently agree to omit reasons in an award when the award is issued after the parties reach a settlement (i.e. consent award).

### 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 an award is issued since 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.

However, it should be noted that the Korean Supreme Court has decided in multiple cases that split arbitration clauses (also known as optional or unilateral clauses), which give either party or both parties to a contract have the right to select between litigation and arbitration, 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 prior to arbitration are considered valid.

### 5.4 Is it possible to appeal an award (as opposed to seeking its annulment)?

It is not possible to appeal 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?

Article 37 of the KAA provides for procedures for recognition and enforcement of both domestic and foreign arbitral awards. However, no specific time limits apply to the recognition and enforcement of awards under the KAA.

The legal regimes applicable to the enforcement of a Korean award (domestic award) and a foreign award are different. The requirements for the recognition and enforcement of a Korean award are provided for in Article 38 of the KAA. For a foreign award, Article 39 of the KAA provides that if the award was rendered in a

New York Convention jurisdiction, the New York Convention applies. If the award was rendered in a non-New York Convention jurisdiction, the provisions on the enforcement of a foreign judgment under the Korean Civil Procedure Act and the Civil Enforcement Act apply.<sup>5</sup>

While the grounds for enforcing a domestic award and a foreign award subject to the New York Convention are identical, the requirements for enforcing a foreign award which is not subject to the New York Convention are as follows: (i) the award is final and conclusive, (ii) the arbitral tribunal has jurisdiction under the relevant Korean laws and treaties to which Korea is a party, (iii) the losing party duly received the adequate notice of the arbitration and sufficient time to defend; (iv) the award is not in violation of Korean public policy, and (v) there is reciprocity between Korea and the country where the award was issued.

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

No. The annulment proceedings would not automatically suspend the enforcement proceedings. Korean courts have discretion to stay the enforcement proceedings and await the result of the annulment proceedings, or to proceed with the enforcement proceedings despite the pending annulment proceedings.

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

No Korean court has ruled on this issue yet.

However, it is unlikely that Korean courts will ignore the annulment judgment/decision made by a court at the seat of arbitration and enforce an annulled award, especially if it is subject to the New York Convention.

By contrast, Article 38 of the KAA clearly states that if a domestic award is set aside by the court, then the enforcement of such award should be denied.

**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 signatory to the New York Convention. Foreign arbitral awards are enforced unless there are grounds for refusal under the New York Convention. Korean courts tend to take a strict approach when reviewing the grounds for refusal of enforcement, which is also in line with the Korean courts' pro-arbitration approach. For instance, the threshold for violations of public policy is high, requiring that the relevant public policy be international or transnational. Accordingly, foreign awards are rarely set aside in Korea for violations 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 both domestic awards and 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?**

First of all, contingent fees (more commonly known as "success fees") are a widespread practice in Korea especially for commercial litigation and arbitration. In 2015, the Korean Supreme Court ruled that contingent fee arrangements for criminal cases were void as a matter of public policy. However, contingent fee arrangements are still frequently used for civil litigation and commercial arbitrations.

Partial contingency arrangements, such as the payment of a retainer at the beginning of an arbitration with a success fee arrangement, are common in Korea.

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<sup>5</sup> Article 217 of the Civil Procedure Act; Article 26 of the Civil Execution Act.

As for third-party funding, there are no laws explicitly prohibiting or allowing third-party funding for arbitration. Whether and to what extent third-party funding is permitted in Korea is therefore unclear.

## **7. Arbitration and technology**

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

An arbitral tribunal has discretion on the admissibility of evidence, and will decide on the 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 issue.

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

Korea does not have an established position on this issue.

### **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?**

To date, there has been no court decision on this issue, and Korea does not have an established position on this issue.

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

No, Korea does not have any immediate plans to significantly reform the KAA which was revised in 2016.

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

The KAA 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?	The leading arbitral institution in Korea is Korean Commercial Arbitration Board International, commonly referred to as KCAB INTERNATIONAL. KCAB INTERNATIONAL 43F Trade Tower, 511 Yeongdong-daero, Gangnam-gu, Seoul 06164 Korea
Main arbitration hearing facilities for in-person hearings?	The main arbitration hearing facility is Seoul IDRC which is located in the same building as KCAB INTERNATIONAL.
Main reprographics facilities in reasonable proximity to the above main arbitration hearing facilities?	Many reprographics facilities are located in Gangnam area. The one we mainly use is Kinko's (Main Service   킨코스코리아(주) (kinkos.co.kr))
Leading local providers of court reporting services, and regional or international providers with offices in the jurisdiction?	There is no local provider for court reporting services which can transcribe in foreign languages such as English. Leading regional and international court reporting services do not have offices in Korea.
Leading local interpreters for simultaneous interpretation between English and the local language, if it is not English?	There are many qualified interpreters actively involved in international arbitrations.
Other leading arbitral bodies with offices in the jurisdiction?	The ICC, SIAC and HKIAC have offices in Korea.