The Legal 500 & The In-House Lawyer
Comparative Legal Guide
South Korea: International Arbitration (4th edition)

This country-specific Q&A provides an overview of the legal framework and key issues surrounding international arbitration law in South Korea.

This Q&A is part of the global guide to International Arbitration.

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1. **What legislation applies to arbitration in your country? Are**

there any mandatory laws?

Korea's Arbitration Act (the "Act") applies to all domestic and international arbitral proceedings seated in Korea. For arbitral proceedings seated outside of Korea, the following provisions of the Act apply: Article 9 (Arbitration Agreement and Substantive Claim before Court); Article 10 (Arbitration Agreement and Interim Measures by Court); Article 37 (Recognition or Enforcement of Arbitral Awards); and Article 39 (Foreign Arbitral Awards) (Article 2(1) of the Act).
The Act was first enacted in 1966, and was remodeled after the UNCITRAL Model Law (the "Model Law") in 1999. The Act was last amended on 29 May 2016 to incorporate the key features of the Model Law as amended in 2006.

The Act does not state which provisions are mandatory, but stipulates that parties to an arbitration agreement may agree on arbitral proceedings to the extent their agreement is not "contrary to the mandatory provisions of this Act" (Article 20 of the Act). Provisions that are considered to be mandatory include arbitrator's obligation to disclose circumstances likely to give rise to justifiable doubts as to impartiality or independence (Article 13(1) of the Act) and equal treatment of parties (Article 19 of the Act).

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

Korea is a signatory to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the "New York Convention"). The New York Convention entered into force in Korea on 9 May 1973.

Korea has made reciprocity and commercial reservations to the New York Convention. Korea does not recognize (i) arbitral awards made in a country that is not a party to the New York Convention, and (ii) disputes which are not considered "commercial" under Korean law.

3. **What other arbitration-related treaties and conventions is your country a party to?**

In addition to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards which was ratified on 8 February 1973, Korea is a party to the Convention on the Settlement of Investment Disputes between States and Nationals of Other States which entered into force on 23 March 1967.

Korea has entered into multiple free trade agreements which contain arbitration provisions, and executed bilateral investment treaties with more than 100 countries as of October 2019.

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

Korea's Arbitration Act (the "Act") is modeled after the UNCITRAL Model Law on International Commercial Arbitration as amended in 2006 (the "Model Law"). However, there are notable differences between the two. Notable differences are: (i) the Act omits Article 34(4) of the Model which states that at the request of a party a court may suspend a set-aside action; (ii) the Act allows a party to challenge the arbitral tribunal's ruling on its own jurisdiction to a competent Korean court within 30 days (Article 17); and (iii) the Act allows a party to challenge the arbitral tribunal's appointment of an expert (Article 27(3)).

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

The Arbitration Act (the "Act") currently in force was amended in May 2016 and took effect on 30 November 2016. There are no announced plans to amend the Act as of September, 2019.

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

The Korean Commercial Arbitration Board (the "KCAB") is currently the sole arbitral institution recognized and endorsed by the Korean government in accordance with Article 40 of the Arbitration Act. It was founded in 1966. On April 2018 KCAB International was established as an independent division of the KCAB for the administration of international arbitration and cross-border commercial disputes.

There are KCAB Domestic Arbitration Rules which apply to domestic matters and KCAB International Arbitration Rules which apply to international proceedings. The International Arbitration Rules were adopted in 2007 and amended in 2011 and 2016. The 2016 Rules apply to all proceedings which have commenced on or after 1 June 2016. There is no announced plan to amend the Rules.

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

Korea's Arbitration Act (the "Act") defines arbitration agreement as "agreement between the parties to settle, by arbitration, all or some disputes which have already occurred or might occur in the future with regard to defined legal relationships, whether contractual or not" (Article 3(2) of the Act). According to a 2007 ruling by the Korean Supreme Court, it is not required that an arbitration agreement stipulate the arbitral institution, governing law, or seat for the agreement to be valid.

The Act requires that an arbitration agreement must either be in writing (Article 8(2) of the Act) or be deemed to have been made in writing (Articles 8(3), 8(4) of the Act). An arbitration agreement is deemed to have been made in writing where (i) the terms of the arbitration agreement have been recorded, regardless of how the agreement was made (including by oral means); (ii) the terms of the arbitration agreement have been

communicated by electronics means (e.g., telegram, telex, facsimile, electronic mail) and the terms are verifiable; (iii) no opposing party disputes allegations in a request for arbitration or answer that an arbitration agreement exists; or (iv) a contract refers to a document containing an arbitration clause which forms part of the contract. These requirements are consistent with Option I under Article 7 of the UNCITRAL Model Law on International Commercial Arbitration, as amended in 2006.

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

The principle of separability of arbitration agreement is recognized by the Korean Arbitration Act (the "Act"). The Act states that "an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other clauses of the contract" (Article 17(1)).

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

The KCAB International Arbitration Rules (the "Rules") provide for joinder of additional parties where (i) all parties including the additional party have all agreed in writing to the joinder; or (ii) the additional party is also a party to the arbitration agreement and the additional party has agreed in writing to the joinder (Article 21 of the Rules). The Rules also provide for submission of claims arising out of multiple contracts within a single request for arbitration where (i) all of the contracts provide for arbitration under the Rules; (ii) the multiple arbitration agreements are not incompatible; and (iii) the claims arise out of the same transaction or series of transactions (Article 22 of the Rules). A KCAB arbitral tribunal may consolidate claims made in a separate pending arbitral proceeding if that proceeding is conducted under the Rules between the same parties (Article 23).

10. In what instances can third parties or non-signatories be bound by an arbitration agreement?

Korea's Arbitration Act (the "Act") is silent as to what circumstances might bind third parties or non-signatories to an arbitration agreement. In proceedings conducted under the KCAB International Arbitration Rules (the "Rules"), a third party may join the arbitration and be voluntarily bound if there is an agreement in writing by all parties to the joinder (Article 21 of the Rules).

A third party which becomes a successor to a contract may also be bound by the contract's arbitration provision (Seoul Western District Court 2001GaHap6107, 5 July 2002). It has been settled by the Supreme Court that "although in principle an agreement on jurisdiction is a legal act which does not bind any third party other than the parties to the agreement or their respective successors, as a matter of substantive law, an agreement to change the jurisdiction modifies the terms of exercising a right and the substantive interest attached thereto, and as such, with respect to a nominative claim regarding which the parties may freely agree on the terms of the legal relationship, the successor to the claim has also become the successor to the modified legal relationship, and therefore the successor is bound by the agreement on jurisdiction" (Supreme Court 2005Ma902, 2 March 2006).

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

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

The 2016 amendment to the Arbitration Act (the "Act") broadened the definition of the term "arbitration" from a procedure to resolve "any dispute in private laws" to a procedure to resolve "a dispute over a property right or a dispute over a non-property right, which can be settled by compromise between parties" (Article 3(1) of the Act). There still remains a difference of opinions regarding whether the elimination of the

"private laws" restriction in the definition of arbitration should be interpreted to encompass antitrust, environmental, and intellectual property disputes.

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

Default requirements are found in Articles 11 and 12 of the Arbitration Act (the "Act"). In the absence of party agreement, the default number of arbitrators is three (Article 11).
In case where (i) a party fails to appoint an arbitrator, or (ii) the parties, the arbitrators, or the institution with appointing authority fails to appoint an arbitrator, arbitrators are appointed by the court or an arbitration agency designated by the court upon party request (Article 12(4)).

In case where the parties cannot reach an agreement on the arbitrators or the appointment procedure: (i) a sole arbitrator is appointed by the court or an arbitration agency designated by the court upon either party's request; and (ii) a third arbitrator is appointed by arbitrators each appointed by a party, failing which the court or an arbitration agency designated by the court appoints the third arbitrator (Article 12(3)).

14. Can the appointment of an arbitrator be challenged? What are the grounds for such challenge? What is the procedure for such challenge?

The appointment of an arbitrator may be challenged where (i) there is any circumstance likely to give rise to justifiable doubts as to the arbitrator's impartiality or independence; or (ii) the arbitrator does not possess qualifications agreed to by the parties (Article 13 of the Arbitration Act (the "Act")).

Parties are free to agree on a procedure for challenging the appointment of an arbitrator. In the absence of an agreement, a party wishing to challenge an appointment must submit to the arbitral tribunal a written statement of objection

within 15 days after becoming aware of the constitution or any disqualifying circumstances (Article 14(2) of the Act).

If the arbitral tribunal rejects the challenge, the challenging party may, within 30 days after receiving notice of the decision, request a court to review the challenge and make a final decision (Article 14(3)).

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

If an arbitrator's mandate is terminated, a substitute arbitrator is appointed in accordance with the procedure that was applied in appointing the arbitrator being replaced (Article 16 of the Arbitration Act (the "Act")). The Act does not speak to any truncated tribunal. However, while an appointment of an arbitrator is being challenged before a court, the tribunal may continue with the arbitral proceedings to make an award even during pendency of the court's review (Article 14(3) of the Act).

In arbitral proceedings conducted under the KCAB International Arbitration Rules (the "Rules"), a reconstituted arbitral tribunal must decide, after consultation with the parties, whether and to what extent to repeat a proceeding after an arbitrator has been replaced (Article 15(4) of the Rules). If the arbitral tribunal is truncated after closure of the arbitral proceedings, the KCAB Secretariat may, after consulting with the parties and the remaining arbitrators, direct the truncated tribunal to complete the arbitration (Article 15(5) of the Rules).

16. Are arbitrators immune from liability?

The Arbitration Act (the "Act") is silent on whether arbitrators are immune from liability. The KCAB International Arbitration Rules (the "Rules") provide that arbitrators appointed under the Rules "shall not be liable for any act or omission in connection with an arbitration conducted under the Rules, unless such act or omission is shown to constitute willful misconduct or recklessness" (Article 56 of the Rules).

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

The principle of competence-competence is adopted in the Arbitration Act (the "Act"). The Act states, "The arbitral tribunal may rule on its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement" (Article 17(1) of the Act). If the arbitral tribunal rules on jurisdiction as a preliminary issue, a party may appeal the ruling to the competent court to review the issue within 30 days of receiving notice of the arbitral tribunal's decision (Article 17(6) of the Act). The court's decision on jurisdiction is unappealable (Article 17(8) of the Act). If the arbitral tribunal rules on its own jurisdiction as part of the final award, a party may challenge the award by initiating a set-aside action on jurisdictional grounds (Article 36(2) of the Act).

18. What is the approach of local courts towards a party commencing litigation in apparent breach of an arbitration agreement?

If a party commences an action in a Korean court in breach of an arbitration agreement, and the defendant in the action raises a valid objection, the court is required under the Arbitration Act (the "Act") to dismiss the action (Article 9(1) of the Act). Such objection must be raised no later than the defendant's submission of its statement on the merits of the dispute (Article 9(2) of the Act).

Although Korean jurisprudence has increasingly favored arbitration in line with the spirit of the Act, courts' approaches to an apparent breach of arbitration agreement have varied in practice. While most courts would hear jurisdictional challenges as a preliminary matter, some courts have reserved ruling on jurisdiction and proceeded to hear on the merits.

19. **How are arbitral proceedings commenced in your country? Are there any key provisions under the arbitration laws relating to limitation periods or time bars of which the parties should be aware?**

Arbitral proceedings are deemed to have commenced on the date the respondent receives a request for arbitration, which should state the parties, the subject matter of the dispute, and details of the arbitration agreement (Article 22 of the Arbitration Act).

Arbitral proceedings administered under the KCAB International Arbitration Rules (the "Rules") are deemed to have commenced on the date the Secretariat receives a request for arbitration (Article 8(2) of the Rules). A request for arbitration submitted under the Rules must contain, inter alia, (i) the name, address, and description of all parties and respective representative; (ii) a statement describing the nature and circumstances of the dispute; (iii) a statement of the relief being sought; (iv) a statement regarding the place and language of the arbitration and applicable laws; (v) (where applicable) name and address of the party-nominated arbitrator; and (vi) the arbitration agreement (Article 8(3) of the Rules).
There is no provision in the Act or the Rules relating to limitation periods or time bars for commencing an arbitration. For claims subject to Korean law, the applicable limitations, prescription and tolling periods are found in various statutes including, for example: Articles 162 through 165 of the Civil Code for breaches of various contractual obligations; Article 766 of the Civil Code for "unlawful acts"; and Article 64 of the Commercial Code for "commercial activities" as defined under Korean law.

20. **In what circumstances is it possible for a state or state entity to invoke state immunity in connection with the commencement of arbitration proceedings?**

The principle of state immunity is recognized under Korean jurisprudence, but with increasing provisos to its applicability. In the context of private acts of a state, the Supreme Court has ruled in an banc decision that Korean courts may exercise jurisdiction over a foreign state in relation to acts which took place within the territory

of Korea, absent special circumstances where the exercise of jurisdiction might unreasonably interfere with the sovereign acts of the foreign state (Supreme Court Decision 97Da39216, 17 December 1998). There is no precedential authority that allows a state to invoke state immunity in connection with the commencement of arbitration proceedings.

21. Can local courts order third parties to participate in arbitration proceedings in your country?

There is no provision in the Arbitration Act empowering courts to compel third parties to participate in arbitration, and it has been established that courts may intervene only in matters empowered by the Arbitration Act.

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

Parties may seek from the arbitral tribunal under the Arbitration Act (the "Act") (i) measures to maintain or restore the status quo until the arbitral tribunal renders its award on the merits; (ii) measures to prevent a present or imminent danger or impact on the arbitral proceeding, or prohibition of measures which may result in such danger or impact; (iii) measures to preserve assets subject to the arbitration; and (iv) measures to preserve evidence (Article 18 of the Act). The party applying for interim measure must prove that (i) the magnitude of the irreparable harm expected from the arbitral tribunal's denial of the application will considerably outweigh the harm the other party would sustain as a result of granting the application; and (ii) it is reasonably possible that the party requesting the interim relief will prevail on the merits (Article 18-2 of the Act). Once the arbitral tribunal has granted the interim measure, the parties may petition a court to recognize the measure and may enforce a writ of execution of the interim measure by petitioning a court to authorize the execution (Article 18-7 of the Act).

Prior to the commencement of an arbitral proceeding or during such proceeding, either

party to the arbitration agreement may request a court for interim relief (Article 10 of the Act).

23. 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?

Arbitral tribunals have the power to determine admissibility, relevance, and weight of any evidence under the Arbitration Act (the "Act") (Article 20 of the Act; see also Article 26(4) of the KCAB International Arbitration Rules (the "Rules")). Unless otherwise agreed by the parties, Arbitral tribunals may also: (i) appoint an expert witness; (ii) require parties to provide information, documents, or other evidence to the expert; and (iii) require the expert to participate in a hearing (Article 27 of the Act). In an arbitral proceeding administered under the Rules, the arbitral tribunal may order either party to (i) produce documents, exhibits, or other evidence; (ii) make any real property or object under the party's control available for inspection; and (iii) deliver a summary of evidence the party intends to submit (Article 26 of the Rules).

Arbitral tribunals can also seek assistance of a court in the taking of evidence either on its own initiative or upon party request by sending a written request to examine evidence, in response to which the court may order witnesses and custodians of documents to appear before the arbitral tribunal or submit evidence to the arbitral tribunal (Articles 28(2) and 28(5) of the Act). If a court examines evidence pursuant to the request of an arbitral tribunal, the court may permit the arbitrators or the parties to attend the examination, and the court must provide the arbitral tribunal with certified records of the examination after such examination (Articles 28(3) and 28(4) of the Act).

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

country?

Members of the Korean Bar are subject to the ethical rules as required under the Attorneys-At-Law Act, and registered foreign attorneys in Korea are subject to ethical rules as required under the Foreign Legal Consultant Act. Attorneys licensed to practice in foreign jurisdictions are subject to the respective ethical rules of such jurisdictions.

Arbitrators in proceedings administered under the KCAB International Arbitration Rules must abide by the KCAB's Code of Ethics for Arbitrators effective 1 June 2016. Counsel and arbitrators conducting arbitral proceedings in Korea are also expected to comply with ethical codes applicable in their respective states where they are licensed. Arbitrators are free to observe the IBA Rules of Ethics for International Arbitrators and its Guidelines on Conflicts of Interest in International Arbitration.

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

The Arbitration Act (the "Act") does not expressly require confidentiality in arbitral proceedings. In practice however, arbitral proceedings in Korea are administered in strict confidentiality, and courts recognize confidentiality as a paramount importance in arbitration. In 2013, Seoul Administrative Court dismissed an appeal by a civic group of lawyers seeking to vacate the Ministry of Foreign Affairs rejection of the group's request for disclosure of the Notice of Arbitration filed in LSF-KEB Holdings SCA and others v. Republic of Korea (ICSID Case No. ARB/12/37) (Seoul Administrative Court 2013GuHap50999, 27 September 2013). The court ruled "in principle, arbitral proceedings are confidential, and parties owe the duty to maintain confidentiality with regard to information relating to the arbitration unless the parties have agreed to disclose" and held than arbitration "cannot be deemed a public proceeding like court trials, and there is no evidence to suggest that disclosure of such information has become customary international practice" (Id.).

In arbitral proceedings conducted under the KCAB International Arbitration Rules (the "Rules"): (i) arbitral proceedings and records thereof should be closed to the public; (ii) facts relating to the arbitration should not be disclosed without the parties' consent or

unless required by law; and (iii) the Secretariat may publish an award only after redacting the names, places, dates and any other identifying information of the parties or the dispute (Article 57 of the Rules).

26. How are the costs of arbitration proceedings estimated and allocated?

Arbitral tribunals have the power to allocate costs of arbitration incurred in connection with the arbitral proceedings absent agreement between the parties (Article 34-2 of the Arbitration Act). The Arbitration Act does not stipulate how costs should be allocated. In practice, costs usually follow the event.

For proceedings conducted under the KCAB International Arbitration Rules (the "Rules"), arbitration costs are in principle borne by the losing party, unless the arbitral tribunal determines otherwise (Article 52(1) of the Rules). Legal costs and other necessary expenses incurred in connection with arbitral proceedings are allocated by the arbitral tribunal as it deems appropriate, unless otherwise agreed by the parties (Article 53 of the Rules).

27. Can pre- and post-award interest be included on the principal claim and costs incurred?

Absent any agreement between the parties, the arbitral tribunal may award interest "if it finds appropriate in making an arbitral award, considering all circumstances of the relevant arbitration case" (Article 34-3 of the Arbitration Act).

Where the dispute is governed by Korean law, parties may agree on an interest rate which does not exceed 24% pursuant the Interest Limitation Act and related regulations. Either party may seek pre-award and post-award interests. If there is no agreement on any interest rate, either party may seek pre-award and post-award interest at the statutory rate of 5% per annum for general civil claims (Article 379 of the Civil Code) and 6% per annum for claims arising out of commercial activities

(Article 54 of the Commercial Code).

For Korean litigation, Article 3(1) the Act on Special Cases Concerning Expedition of Legal Proceedings provides for post-judgment interest at the rate 15% per annum. Whether the 15% rate is applicable to post-award interest in arbitral proceedings is subject to debate.

28. 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?

A party seeking recognition and enforcement of an arbitral award must file an application with a duly authenticated copy of the arbitral award and a Korean translation of the same (Article 37(3) of the Arbitration Act). While the Arbitration Act does not expressly stipulate a time limitation on an action for recognition and enforcement, an arbitral award has the same effect as a final judgment of a court (Article 35), and a 10-year limitation period applies to the recognition and enforcement of court judgments under Article 165 of the Civil Code.

With respect to foreign arbitral awards subject to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the “New York Convention”), courts recognize and enforce such award in accordance with the New York Convention. As for foreign arbitral awards which are not subject to the New York Convention, courts apply Article 217 of the Code of Civil Procedure and Articles 26(1) and 27 of the Code of Civil Execution in recognition and enforcement of such award.

Courts recognize a final and unappealable foreign judgment or judgment having the same effect if (i) the foreign court’s jurisdiction is proper under the principles of international jurisdiction in Korea; (ii) the defendant was served a written complaint and notice of hearing or order sufficiently in advance, or the defendant responded in the lawsuit; (iii) recognition of the judgment will not undermine sound morals or public policy of Korea; and (iv) there is a mutual guarantee that the state in which the foreign

judgment was made will also recognize judgments of Korean courts, or the respective requirements for recognition of foreign judgment under the laws of Korea and the foreign state are “not far off balance and have no actual difference … in important points” (Article 217 of the Code of Civil Procedure).

An arbitral award has the same effect as a final and conclusive court judgment (Article 35 of the Act). Enforcement of a foreign arbitral award requires an enforcement judgment of the court (Article 26(1) of the Code of Civil Execution). If the requirements for recognition under Article 217 of the Code of Civil Procedure are satisfied, a court must issue its enforcement judgment without considering the merits of the judgment or award (Article 27 of the Code of Civil Execution).

29. 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 actual time span for the recognition and enforcement of an award varies greatly, depending on issues raised and the extent to which they are contested. According to an article published by the Judicial Policy Research Institute established under the Supreme Court, it takes an average of 494 days for courts to recognize and enforce an arbitral award.

A party may not initiate an action for the recognition and enforcement of an award on an ex parte basis. An action for recognition and enforcement of a foreign arbitral award before a district court proceeds in the same manner as other actions filed before such court and the judgment can be appealed to the appellate court and the Supreme Court.

30. 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?

Absent any of the grounds for refusal of recognition or enforcement, a court must recognize an arbitral award regardless of whether the award is foreign or domestic

(Article 37 of the Arbitration Act).

Foreign arbitral awards subject to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the "New York Convention") must be recognized and enforced in accordance with the New York Convention, meaning that recognition or enforcement may not be refused unless there is proof of (a) incapacity or invalid arbitration agreement; (b) lack of proper notice or opportunity to defend; (c) award beyond the scope of the submission to arbitration; (d) defect with arbitral authority or procedure; (e) the award not binding or set aside (Article 39 of the Arbitration Act; Article V(1) of the New York Convention). Recognition and enforcement may also be refused if the subject matter of the arbitration is not capable of settlement by arbitration under the laws of Korea or if the recognition or enforcement of the award would be contrary to Korea's public policy (Article V(2) of the New York Convention).

As for foreign arbitral awards which are not subject to the New York Convention, courts apply Article 217 of the Code of Civil Procedure and Articles 26(1) and 27 of the Code of Civil Execution in recognition and enforcement of such award. Courts recognize a final award equivalent to unappealable foreign judgment if (i) the foreign court's jurisdiction is proper under the principles of international jurisdiction in Korea; (ii) the defendant was served a written complaint and notice of hearing or order sufficiently in advance, or the defendant responded in the lawsuit; and (iii) recognition of the judgment will not undermine sound morals or public policy of Korea (Article 217 of the Code of Civil Procedure).

These grounds are closely mirrored in the grounds for refusal of recognition or enforcement of domestic awards, which are (i) incapacity or invalid arbitration agreement; (ii) lack of proper notice or opportunity to defend; (iii) award exceeding terms or scope of the submission to arbitration; (iv) procedural defect; (v) the award not being binding or setting aside or suspension of the award; (vi) non-arbitrability under Korean law; and (vii) conflict with good morals and public policy of Korea (Article 38 of the Arbitration Act).

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

The Arbitration Act does not speak to any limit on available remedies. However, courts are prohibited from recognizing a final judgment or award granting damages which would considerably contravene the basic order under the laws of Korea or treaties to

which Korea is a party (Article 217-2 of the Code of Civil Procedure). In this regard, the Supreme Court has explained that Article 217-2 of the Code of Civil Procedure was introduced to "limit the scope of recognition to an appropriate extent with respect to final judgments of foreign courts such as judgment ordering payment of damages exceeding compensation for damages, such as punitive damages" (Supreme Court 2015Da207747, 28 January 2018).

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

An arbitral award has the same effect on the parties as a final and conclusive judgment of a court but without a right of appeal (Articles 35 of the Arbitration Act (the "Act")). The Act states that a court must recognize an arbitral award unless any of the following grounds exists: (i) incapacity of a party to the arbitration agreement or lack of validity of the arbitration agreement (Article 36(2)1(a) of the Act); (ii) lack of proper notice of the appointment of arbitrators or of the arbitral proceeding, or the other party was otherwise unable to present its case (Article 36(2)1(b) of the Act); (iii) the award concerns a dispute which is not contemplated by or not falling within the terms of the submission to arbitration, or contains decisions on matters beyond the scope of the submission to arbitration (Article 36(2)1(c) of the Act); (iv) the constitution of the arbitral tribunal or the arbitral proceedings were not in accordance with the agreement of the parties or the Act (Article 36(2)1(d) of the Act); (v) the subject matter of the dispute cannot be settled by arbitration under Korean law (Article 36(2)2(a) of the Act); and (v) the arbitral award is in conflict with the good morals and other forms of social order of the Republic of Korea (Article 36(2)2(b) of the Act).

A protest against an arbitral award may be made only by filing a lawsuit for setting aside the arbitral award within 3 months from the receipt of the arbitral award and before any decision of a Korean court recognizing or enforcing the award becomes final and conclusive (Articles 36(3) and 36(4) of the Arbitration Act). Grounds for setting aside an award include: (i) invalidity of the arbitration agreement; (ii) absence of proper notice of arbitrator appointment or arbitral proceedings; (iii) the subject-matter of the dispute not being capable of settlement by arbitration under the law of the Republic of Korea; and (iv) the award being in conflict with the good morals and other

forms of social order of the Republic of Korea (Article 36(2) of the Act).

33. 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)?

The Arbitration Act does not provide for waiver of any rights of appeal or challenge to an award by agreement in advance of dispute, and no Korean court has issued any published decision on this issue to date.

34. To what extent might a state or state entity successfully raise a defence of state or sovereign immunity at the enforcement stage?

There is no statute or court law regarding whether a state or state entity may invoke state immunity in connection with the enforcement of arbitral award. In the context of a civil action, however, the Supreme Court of Korea has held that a Korean court may exercise jurisdiction over a foreign state in relation to the commercial acts of the state, which took place in the territory of Korea, absent special circumstances such as that the court's exercise of jurisdiction may unreasonably interfere with the sovereign acts of the foreign state as the acts amount to or are closely related to an exercise of sovereign authority (Supreme Court 97Da39216, 17 December 1998).

35. 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?

In principle, only parties to an arbitration agreement are bound by the arbitral award (Article 35 of the Arbitration Act (the "Act")). The Act is silent as to what circumstances might bind third parties or non-signatories to an arbitral award. However, a third party

which becomes a successor to a contract may also be bound by the contract's arbitration provision and ultimately its outcome (See Seoul Western District Court 2001GaHap6107, 5 July 2002). It has been settled by the Supreme Court that "although in principle an agreement on jurisdiction is a legal act which does not bind any third party other than the parties to the agreement or their respective successors, as a matter of substantive law, an agreement to change the jurisdiction modifies the terms of exercising a right and the substantive interest attached thereto, and as such, with respect to a nominative claim regarding which the parties may freely agree on the terms of the legal relationship, the successor to the claim has also become the successor to the modified legal relationship, and therefore the successor is bound by the agreement on jurisdiction" (Supreme Court 2005Ma902, 2 March 2006).

36. Have courts in your jurisdiction considered third party funding in connection with arbitration proceedings recently?

There is no statute or regulation prohibiting third party funding in arbitration, or any court ruling regarding the issue. It is difficult to anticipate how courts may react to third party funding. On the one hand, Korean courts may take a conservative approach on the basis of (i) the Trust Act, which would under Article 6 render as null and void any trust "the main purpose of which is to have the trustee to proceed with litigation."; (ii) the prohibitions under Article 34 of the Attorneys-At-Law Act that any person who is not an attorney may not operate law office by employing an attorney or receive a share of profits obtained from services which may only be provided by attorneys; and (iii) the Interest Limitation Act and the regulations capping the maximum interest rate on a loan at 24%. On the other hand, Korean judges may recognize that third-party funding is increasingly used widely in jurisdictions which also bar fee-sharing and partnership between an attorney and a non-attorney.

37. Is emergency arbitrator relief available in your country? Is this frequently used?

The Arbitration Act does not provide for conservatory or interim relief by emergency arbitrators. However, for proceedings conducted under the KCAB International

Arbitration Rules (the “Rules”), a party may, in accordance with Article 32(4) of the Rules, apply for “urgent conservatory and interim measures” before the constitution of an arbitral tribunal. An application for interim measures by an emergency arbitrator must be made at the same time as or after filing the request for arbitration (Appendix 3, Article 1), and the KCAB Secretariat must endeavor to appoint an emergency arbitrator within 2 business days after receiving the application (Appendix 3, Article 2(3)). The emergency arbitrator must establish a procedural timetable within 2 business days of the appointment and issue its decision on an application for emergency measure within 15 days from the appointment (Appendix 3, Article 3). However, the decision of the emergency arbitrator will cease to be effective if (i) no arbitral tribunal is constituted within 3 months of the decision granting the emergency measures; or (ii) the arbitral proceeding is terminated (Appendix 3, Article 3). There is no known statistical data on the frequency of the use of the emergency procedure.

38. 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?

The KCAB International Arbitration Rules (the “Rules”) provide for the Expedited Procedure in Articles 43~49, and the Expedited Procedure is widely used in KCAB arbitration. According to the KCAB’s Annual Report, 178 cases adopted the Expedited Procedure in 2017. A party in a KCAB arbitration may apply for the Expedited Procedure where (i) the claim amount does not exceed KRW 500,000,000; or (ii) the parties agree to be subject to the Expedited Procedure (Article 43 of the KCAB Rules). The arbitral tribunal is to issue its award within 6 months from the date the arbitral tribunal was constituted (Article 48 of the Rules).

39. Have measures been taken by arbitral institutions in your country to promote transparency in arbitration?

The KCAB has taken measures to increase transparency with regard to arbitration costs and appointment of arbitrators. On 1 January 2018, the KCAB published its Practice

Note on the Appointment of Arbitrator and the Practice Note on Arbitration Costs.

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

Firms and arbitration practitioners have taken steps to promote diversity in the arbitration field. South Korea is a signatory to the Equal Representation in Arbitration Pledge. In the recent years, firms have organized “Women in Arbitration” panel discussions and networking events in Seoul.

41. **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 recent published court decision in Korea has addressed the setting aside of an award that has been enforced in another jurisdiction or vice versa.

42. **Is corruption an issue that is regularly raised in your jurisdiction? What standard do local courts apply for proving of corruption?**

43. **Have there been any recent court decisions in your country considering the definition and application of “public policy” in the context of enforcing or setting aside an arbitral award?**

In 2018, the Supreme Court issued a ruling on the application of public policy in an action for setting aside of the arbitral award (Supreme Court 2018Da240387, 13 December 2018). The court confirmed that the ground provided for under Article

26(2)2(b), that "the award is in conflict with the good morals and other forms of social order of the Republic of Korea", does not encompass any and all cases where the substance of the arbitral award is unreasonable because the arbitrator's factual finding is erroneous or legal determination violates laws and regulations. Rather, the determination for setting aside should center on whether enforcing the award would result in violating the good morals and social order of Korea.

In that case, the relief sought was that the appellant be ordered to instruct a particular bank to pay the appellees KRW 4.9 billion and interest thereon. The relief granted, however, stated that the arbitral tribunal "confirms" that the appellant owed the duty to effect payment of the principal and interest by instructing the bank. The arbitral award was challenged on the ground that, contrary to the principle of public policy, the award violated the principle of disposition provided for under Article 203 of the Code of Civil Procedure that "A court shall not render any judgment on matters which have not been claimed by the parties." However, the Supreme Court held that the award did not breach the principle of disposition because (i) unlike civil judges who must strictly apply the principle of disposition in issuing judgment, arbitral tribunals are allowed more flexibility to consider equitable resolution; and (ii) the award does not impose on the appellant any additional obligation to make payment using any other asset than the asset requested in the relief sought. Even if the award did breach the principle of disposition, the Supreme Court held that such breach would not be deemed a violation of the public policy of Korea.

44. **Have there been any recent court decisions in your country considering the judgment of the Court of Justice of the European Union in Slovak Republic v Achmea BV (Case C-284/16) with respect to intra-European Union bilateral investment treaties or the Energy Charter Treaty? Are there any pending decisions?**

No recent pending or published court decision in Korea has considered the judgment of the Court of Justice of the European Union in *Slovak Republic v Achmea BV* (Case C-284/16).

45. **Have there are been any recent decisions in your country considering the General Court of the European Union's decision Micula & ors (Joined Cases T-624/15, T-694/15 and T-694.15), ECLI:EU:T:2019:423, dated 18 June 2019? Are there any pending decisions?**

No recent pending or published court decision in Korea has considered the decision of the General Court of the European Union in *Micula & ors*, ECLI:EU:T:2019:423, dated 18 June 2019.