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Recent changes to the Korean Arbitration Act and its Comparison with Singapore: Korea's Potential to Become an Arbitration Hub

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International arbitration as a dispute resolution mechanism in Asia is growing in popularity. Singapore has long been acknowledged as a regional arbitration center but Korea is now facing an increased demand as an arbitration center as well. As Singapore competes with Hong Kong and other international arbitration centers, and as Korea tries to become an alternative to Singapore, both Singapore and Korea have updated their arbitral laws and arbitration rules to reflect the current international arbitration trends. This paper examines the recent changes in the arbitration laws of Singapore and Korea, with an emphasis on recent changes in Korean arbitration laws that are designed to increase Korea's popularity as a regional arbitration center. Though Korea's reputation as an arbitration center is increasing, it is still not viewed as a major arbitration service provider. It is against this backdrop that Korea's international arbitration laws

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and rules will be viewed, with suggested changes to increase Korea's reputation as not only a regional hub but a center of international arbitration.

Key Words : International Arbitration, Arbitration, Arbitration Act, Dispute Resolution, Arbitral Regimes, ICC, SAIC, KCAB, UNCITRAL Model Law

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Ⅰ. Introduction

It is interesting to note that disputes arising from international trade between the parties where nationality, language and legal systems are different, appears to be resolved more by the use of arbitration rather than litigation. This is because such disputes can proceed in a faster and more informal way by the arbitrators having expertise in the respective area of the dispute in question. Also, the award rendered by arbitrators can be properly executed among countries that have joined the New York Convention.

In the past five years, arbitration in Asia has increased dramatically. This can be seen as a natural outcome of increased trade and commerce. The rapid economic growth in Asia including countries such as China, Korea, Japan, Singapore, Vietnam, Malaysia, Indonesia, Thailand and Hong Kong has fueled the increasing use of commercial arbitration. It has been pointed out in numerous articles that rapid economic growth of the Asian region, regardless of the economic crisis of the 1990s, has led to an increase in international arbitration as well.[1)]

1) Veronica L Taylor and Michael Pryles, The Cultures of Dispute Resolution in Asia, Dispute Resolution in Asia, 3rd edition, (2006) p 19. See also, Bryan , Hopkins, "A Comparison of Recent

It should be noted that the increase in the number of International Chamber of Commerce(ICC) arbitration cases in relation to Asian countries from 2010 to 2014 is reflective of the economic growth of the region. When we review the statistics of ICC arbitration cases from 2010 to 2014 where Korea, Japan, China, Hong Kong and Singaporean entities are involved as parties to the arbitration, 160 new cases had been filed with the ICC in 2014 compared to 116 new cases in 2010. This is almost a 37% increase in the number of ICC arbitration cases.[2] In the meantime, a total of 791 new cases had been filed in 2014 with the ICC compared to 793 new cases in 2010.[3] In 2010, almost 15 % of to the total ICC arbitration cases came from above countries in the Asia-Pacific region. By 2014 however, over 20% of total ICC arbitration cases came from the Asia-Pacific countries . It is evident therefore that along with the economic expansion in Asian countries during the 2000s, 2010s, there came a greatly increased use of domestic and international arbitration.

As a preferred dispute resolution mechanism in Asia, arbitration is expected to dramatically increase even further as the outcome of increased cross border transactions, trade and business commerce and expansion.[4] In this context, a number of arbitration centers throughout Asia have emerged as popular seats of arbitration, namely Singapore, Hong Kong and Korea.[5] It appears rather common for companies in Asia to agree to arbitration even if they have not provided for arbitration in their contracts. In fact, Taylor and Pryles point out that arbitration seems to be the default choice in most international transactions in Asia and though empirical studies on choice of arbitral rules, place of venue and law in Asian arbitrations may not yet exist- "..we have anecdotal evidence that businesses in Indonesia, for example, routinely prefer (or are advised by their lawyers to choose) arbitration in Singapore."[6]

Changes in the Arbitral Laws and Regulations of Hong Kong, Singapore and Korea: With the Focus On Korea's Current Reputation as a Regional Arbitration Center", KLRI Journal of Law and Legislation, Vol. 3, No. 1, 2013 at page 283

2) Kapyou Kim, "The Status and Prospect of Korean International Arbitration in Comparison with Foreign Countries", Arbitration Journal, Vol.345, 2016 spring and summer edition at page 55

3) Cf. http://iccwbo.org/Products-and-Services/Arbitration-and-ADR/Arbitration/Introduction-to-ICC-Arbitration/Statistics/

4) Asian-Counsel, Vol. 8 Issue 10 (2010)

5) See Kim Kit Ow, Introduction to the ICC and Statistical Overview of ICC Arbitration in Asia, ICC-KCC International Arbitration Symposium, April 25, 2012

6) Veronica L Taylor and Michael Pryles, supra note 1 at page 16. See also, Bryan Hopkins, supra note 1.

Korea is also gaining in popularity as an international arbitration hub as its economy, like other Asian countries, has continued to grow.[7] Though the number of arbitration cases in Korea has increased over the last few years, Korea, for whatever reason, is still not yet viewed as a top seat of international arbitration. In this regard, Korea has established a pro-arbitration institutional framework with accompanying arbitral laws, rules and court decisions to promote itself to be a hub of international arbitration.

This paper will concentrate on the recent pro-arbitration changes to the Korean Arbitration Act and the international rules of the Korean Commercial Arbitration Board (KCAB), with a comparison to Singapore's arbitration laws with focus on Korea's ambitious move to be a regional arbitration hub and the attractive points of Seoul as a seat of arbitration.

Ⅱ. Analysis of Recent Arbitration Friendly Changes of the Korean Arbitration Act and the International Rules of the KCAB

1. Recent Arbitration Friendly Change of Korean Arbitration Act

(1) Introduction

Recently Korea has revised its Arbitration Act (revised Arbitration Act), with the amendment taking effect on November 30, 2016.[8] The revised Arbitration Act applies to all arbitrations seated in Korea. Significantly, the revised Arbitration Act also coincides with the new International Arbitration Rules and new Code of Ethics for Arbitrators adopted by the KCAB effective June 1, 2016. Along with the new KCAB Rules and the Code of Ethics, the revised Arbitration Act further modernizes the legal framework for arbitration in Korea and fosters an even more arbitration-friendly environment. These changes come at a time when other arbitration venues or seats in Asia are also modernizing or updating their arbitral laws in line with international norms in order to compete on the international stage and points to the fact that Korea

7) Korea Economic Report, Vol 27 No 1, Jan/Feb 2012, p30.
8) The Lawyer, June 27, 2016, p 53

is expecting to become a top international hub of arbitration.

The revised Arbitration Act closely follows the 2006 UNCITRAL Model Law on International Commercial Arbitration, even more faithfully than the previous Arbitration Act had followed the 1985 UNCITRAL Model Law. Several of the most significant and important changes in the revised Arbitration Act are highlighted below.[9] It should be noted that the revised Arbitration Act has been the topic of a number of articles which discuss jurisdictions that have revised or are contemplating revising their arbitration laws in light of international competition.[10]

2. Alleviation of the "writing requirement" for Arbitration Agreements

The revised Arbitration Act adopts Option I of Article 7 of the 2006 UNCITRAL Model Law. Therefore, the revised Arbitration Act recognizes that there is an arbitration agreement even though there is no formal arbitration agreement if both parties' intention to refer the case to arbitration can be identified through email, etc. Similar to the previous Arbitration Act, the revised Arbitration Act provides that an arbitration agreement need not be in writing, as long as it is possible to confirm later through written records that there was an arbitration agreement between the parties. This revision to Arbitration Act is reflection of recent trend to alleviate the writing requirement for the arbitration agreement. Further, the language of the revised Arbitration Act more closely follows the language of the 2006 Model Law than did the previous Arbitration Act with respect to the 1985 Model Law. It is anticipated the new wording will be more familiar and more clear, therefore, to non-Korean parties and international counsel.[11]

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9) Andrew White, Yulchon LLC, "Revision of Korean Arbitration Act", Lexology June 29, 2016

10) Jalal El Ahdab, "Revising the Korean Arbitration Act From A Civil Law Jurisdiction Perspective: The Example of the French Arbitration Reform, Journal of Arbitration Studies, Vol 24., No.3. 2014. See page 127 where the author points out that France updated its arbitration laws in 2011 to not only simplify the arbitration process but also in response to international competition of arbitral centers such as Singapore.

11) Andrew White, supra note 9

(3) Interim Measures by a Tribunal

The interim measures are temporary measures such as injunction and attachment to be rendered by an arbitral tribunal to maintain the status quo. 2006 UNICITRAL Model Law has specified the definition, requirement and procedure in detail. The revised Arbitration Act also adopts the 2006 UNCITRAL Model Law regime on interim measures, including the section on enforceability. The interim measures rendered by the arbitral tribunal will be enforceable through the court going forward. As with the Option I writing requirement noted above, the language of the revised Arbitration Act on interim measures also follows the 2006 Model Law. In fact, Korea is now one of the few countries that closely adheres to the Model Law's enforcement regime for interim measures so that it can be actively used in arbitration practice. But there are two notable differences between the revised Arbitration Act and the Model Law's interim measures regime: (i) only interim measures issued in arbitrations seated in Korea may be enforced by Korean courts; and (ii) provision for preliminary orders (which do not exist within the Korean legal system) is not part of the revised Arbitration Act.[12] Many countries such as Hong Kong, Austria, Germany, France, Switzerland and United Kingdom etc. have also adopted the interim measures in arbitration proceedings.

(4) Cooperation by the Court in respect to the Taking of Evidence

Before the revised Arbitration Act, an arbitral tribunal could either take evidence on its own, or alternatively, the tribunal could (ex officio or upon application of the parties) entrust the court with the taking of evidence.[13] The revised Arbitration Act, however, has broadened the alternatives slightly. That is, under the revised Arbitration Act, the court may also be more involved to cooperate with the tribunal in taking evidence. The court may provide cooperation to the tribunal by ordering witnesses to appear before the tribunal or document holders to submit requested documents to the tribunal. This important amendment in the revised Arbitration Act allows a means of interim relief to the parties and the tribunal that was previously unavailable.[14]

12) Id.
13) Id.
14) Id.

(5) Simplification of Recognition and Enforcement of Arbitral Awards

It was usually inconvenient for the parties to arbitration that the arbitral award which has the same effect of final judgment should have another hearing in order to enforce the award. The process of recognition and enforcement of arbitral awards under the revised Arbitration Act will now be carried out through issuance of an order, providing greater assurance to parties and their counsel that enforcement proceedings will be concluded in an expeditious manner. The previous Arbitration Act had provided for recognition and enforcement of arbitral awards through entry of a judgment. While it is anticipated that the new process will be simpler and much more efficient under the revised Arbitration Act, the court will still have to formally hear all parties before issuing an enforcement order.

In contrast to the process of issuing an order to recognize and enforce an arbitral award, however, the revised Arbitration Act still provides that awards may only be set aside by a judgment. This distinction reflects the perspective that a court should not easily set aside an award, and it must even more carefully review the reasons for such an action beforehand.[15)]

(6) Implications of the Revised Arbitration Act

In consideration of arbitration friendly factors such as the geographical location of Korea (which is situated near powerful economies such as China, Russia and Japan), and the fact it is active in international trade through numerous Free Trade Agreements etc., there is a great potential that Korea will become one of the dominant arbitration hubs as Korea revises its Arbitration Act and it will promote itself as an alternative arbitration hub. It is envisioned that the revisions made to the Korean Arbitration Act will help establish Korea as a major seat of arbitration among a growing number of countries that seek to distinguish themselves in the field of international arbitration. In fact, these revisions - especially together with significant strengthening of the structural arbitration regime by KCAB and courts in Korea - will significantly strengthen Korea's role as an international arbitration hub.[16)]

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15) Id.
16) Id.

2. Recent Changes of the International Arbitration Rules of KCAB

(1) Introduction

The 2016 revised International Arbitration Rules (2016 Rules) of KCAB introduce changes that are more in line with other major international arbitration rules. The 2016 Rules apply to KCAB arbitration proceedings commenced after 1 June 2016.

Following recent amendments to the Korean Arbitration Act[17], the KCAB has now introduced its 2016 Rules. The 2016 Rules signify a further shift towards an adaption of the KCAB Rules to well respected and leading international arbitration rules - - in this case, the changes introduced are similar to provisions of the International Chamber of Commerce (ICC), Singapore International Arbitration Centre(SIAC), and London Court of International Arbitration(LCIA) Arbitration Rules. The 2016 Rules will allow the KCAB to not only increase the efficiency of its international arbitration proceedings but fairness as well.[18]

The 2016 Rules have made four significant changes. These are:

- Provisions that allows for more efficient case management, including consolidation of related arbitrations and joinder of additional parties, as well as an increase in the claim amount for the expedited arbitration from KRW 200,000,000 to KRW 500,000,000.
- Introduction of the emergency arbitrator proceedings.[19]
- Measures to increase fairness in appointing arbitrators, including the requirement for arbitrators to sign and submit statements showing their acceptance, impartiality and independence, and the changes in the parties' choice of arbitrators from appointment to nomination.
- Provisions defining conservatory and interim measures.[20]

17) James K Lee, White & Case, "KCAB issues revised international arbitration rules". Lexology, June 15, 2016

18) Id.

19) KCAB International Arbitration Rules 2016, Appendix 3

20) See James K Lee, supra note 18

(2) Overview of Some of the Key Changes

1) Efficiency in Case Management

The 2016 Rules include new provisions that can increase the efficiency of KCAB proceedings. The changes follow similar provisions in other major international arbitration rules[21]. For example:

- Article 21 allows joinder of additional parties if all parties and the additional party agree in writing or the additional party if all claims are made under the same arbitration agreement.[22] SIAC, LCIA, ICC and Hong Kong International Arbitration Centre (HKIAC) all allow joinder in their arbitration rules.
- Article 23 allows consolidation of claims between the same parties. With the exception of SIAC (which is likely to be updated very shortly), all the other major international arbitration rules provide similar provisions.
- Article 43 broadens the scope of application of expedited procedures by increasing the claim amount for the expedited arbitration from KRW 200,000,000 to KRW 500,000,000.
- Article 28 requires parties to submit translations of the submitted documents when requested by the Secretariat of the Arbitration Tribunal. The SIAC, LCIA, and HKIAC rules each include similar provisions. Additionally, Article 4 allows documents to be submitted by electronic means such as e-mail. LCIA made a similar change in its 2014 rules.

2) Emergency Procedures

Emergency procedures are necessary to obtain emergent measures or interim measures before the arbitral tribunal is constituted. Emergency procedures have in the past usually been adopted or used in international arbitration by countries other than Korea primarily because it was not easy to secure interim measures due to the cost

21) Id.

22) KCAB International Arbitration Rules 2016, Article 21

and difficulty to access the foreign courts. One of the most important changes in the 2016 Rules covers emergency arbitrator proceedings. The SIAC, LCIA, and ICC have rules which all include similar provisions allowing appointment of emergency arbitrators. Appendix 3 of the 2016 Rules specifies its application as well as the appointment and the power of emergency arbitrators.

Additionally, it is also important to note that the emergency arbitrator procedure that allows a party seeking conservatory and interim measures to apply for an appointment of an emergency arbitrator is separate and distinct from the conservatory and interim measures that the Arbitral Tribunal may order. Article 3 (7) of the Appendix 3 specifies that the power of the emergency arbitrator is to be terminated upon constitution of the Arbitral Tribunal, as it covers interim relief prior to the constitution of the arbitral tribunal.[23)]

3) Appointment of Arbitrators

The 2016 Rules include provisions that increase objectivity and fairness in the appointment of arbitrators in the KCAB arbitrations.[24)]

- Article 10(2) requires that an arbitrator who accepts an appointment or nomination to sign and submit a Statement of Acceptance and a Statement of Impartiality and Independence. The LCIA, ICC and HKIAC rules have similar requirements.
- The 2016 Rules change the parties' choice of arbitrators from appointment to nomination (Article 12). Other major international arbitration rules, such as the SIAC and LCIA rules, also use nomination as a method for controlling inappropriate appointments.

4) Definitions of Conservatory and Interim Measures

Article 32 of the 2016 Rules sets forth the conservatory and interim measures the Arbitral Tribunal may provide (following similar changes introduced in the Korean Arbitration Act)[25)]. The measures are:

23) See James K Lee, supra note 18
24) Id.
25) Id.

- (a) To maintain or restore the status quo pending determination of the dispute;
- (b) To take action that would prevent, or refrain from taking action that is likely to cause, current or imminent harm or prejudice to the arbitration proceedings themselves;
- (c) To provide a means of preserving assets out of which a subsequent award may be satisfied; or
- (d) To preserve evidence that may be relevant and material to the resolution of the dispute.

(3) Expected Impact of 2016 Rules

It is expected that the new provisions set forth in the 2016 Rules that allow for consolidation of related arbitrations and joinder of additional parties, as well as the appointment of an emergency arbitrator, will increase efficiency and flexibility of KCAB proceedings and hence put the KCAB proceedings in line with other major international arbitral rules such as the ICC, SIAC and LCIA.[26]

Ⅲ. Analysis of Singapore's Arbitration Laws and Rules of the Singapore International Arbitration Center

Singapore's laws governing commercial arbitration are divided into domestic and international regimes.[27] The international regime, governed by Singapore's International Arbitration Act ("IAA") which was enacted in 1999 primarily tracks or follows the UNCITRAL Model Law on Commercial Arbitration.[28] This has been the subject of several amendments in 2010, 2012 and 2016.

Singapore, desiring to become a world class international arbitration center and to better reflect the needs or the arbitral community adopted the UNCITRAL Model Law

26) Id.

27) See Chan Leng Sun, "Arbitration Laws of Singapore", Singapore Arbitration Centre, December 2009. It is pointed out that Singapore decided to keep the regimes separate so the courts may in fact be more closely involved and keep a greater degree of supervision over domestic arbitrations than in other jurisdictions.

28) Id.

on International Commercial Arbitration (the Model Law)[29]. Though the international regime was harmonized with the domestic regime pursuant to changes in Singapore's Arbitration Act in 2002, the two regimes are for all intent and purpose still separate. This allows the Singaporean courts to have more review over domestic arbitration[30] .

Singapore's Arbitration Act or the IAA is considered a statute that incorporates both the Model Law and the New York Convention.[31] However, Chapter VIII of the Model Law is excluded from the IAA as Singapore's IAA specifically adopted the New York convention on the enforcement of arbitral awards[32].

The IAA automatically applies if the arbitration is international in nature such as:

(a) If at least one of the parties to an arbitration agreement at the time of the conclusion of the agreement, has its place of business in any state other than Singapore, or
(b) If one of the following places is situated outside the state in which the parties have their places of business:
    (i) The place of arbitration if determined in, or pursuant to, the arbitration agreement,
    (ii) Any place when a substantial part of the obligation of the commercial relationship is to be performed or the place with which subject matter of the dispute is most closely connected, or
(c) If the parties have expressly agreed that the subject matter of the arbitration agreement relates to more than one country.[33]

Though the IAA applies if the arbitration is international as defined in section 5(2) of the IAA, the parties may agree to opt out. However, whether or not the parties opt out, the Model Law still applies.[34]

Singapore's International Arbitration Act based in part on the Model Law, follows the

29) Id.
30) Id. See also Bryan Hopkins, supra note 1, p 285
31) Id.
32) See Singapore IAA, Section 19
33) See Singapore IAA, Section 5 (2)
34) Section 15 of the Singapore IAA was amended in 2011 to provide rules of arbitration shall apply to the extent such rules do not conflict with the mandatory provisions of the IAA.

Model Law for staying legal proceedings.[35] It also follows the Model Law in allowing a court to set aside the final arbitral award on grounds set forth in Article 34 of the Model Law which includes such grounds as incapacity, the fact the tribunal acted outside of its jurisdiction or that the award was contrary to public policy.[36] The IAA has also added the additional grounds for fraud or breach of natural justice.[37]

Though Singapore's International Arbitration Act closely follows the Model Law, Singapore continues to amend it to promote Singapore as a main international arbitration center in Asia. It continues to reflect the needs of the international arbitral community or the current trends of the arbitral community that it serves. Amended in 2010 and more recently in 2012, the IAA now allows interim injunctions in aid of foreign arbitral proceeding.[38] The 2012 amendments primarily cover or update the writing requirements to conform with Hong Kong's Arbitration Ordinance as well as allowing review of negative jurisdictional rulings. This was important as it rectifies the inconsistent treatment of negative and positive jurisdiction. It also clarifies the status of orders made by emergency arbitration.[39] Those amendments were enacted after taking into consideration the needs of the international business community.

Seeking to promote itself as an international arbitration center, Singapore not only based its International Arbitration Act on the UNCITRAL Model Law; it also gives premier status to the Singapore International Arbitration Centre ("SIAC") as the "paramount body overseeing arbitration in Singapore."[40] The Chairman of the SIAC is

35) See Chan Leng Sun, supra note 27

36) Id.

37) Singapore International Arbitration Act, Section 24. Note that Article 34 of the UNCITRAL Model Law does not include fraud or a breach of justice as reasons to set aside an arbitral award. Article 34 of the Model Law covers six reasons why a court can set aside an award which are: (i) a party to the arbitration award was under some incapacity; (ii) the party making the application was not given proper notice of the appointment of arbitration;(iii) the award deals with a dispute not falling within the terms of the submission to arbitration; (iv) the composition of the arbitral award was not in accordance with the agreement between the parties; (v) the court finds the subject matter of the dispute is not capable of settlement by arbitration under the laws of the State; or (vi) the court finds the award is in conflict of the public policy of the State.

38) Herbert Smith, Dispute Resolution and Governing Law Clauses in China-related Commercial Contracts, Fourth Edition (September 2011) p 18.

39) Darius Chan, "Singapore's International Arbitration Act 2012 v Hong Kong's Arbitration Ordinance",2011,Kluwerarbitrationblog.com/blog/2012/04/05/Singapores-International-Arbitration-Act 2012 v -Hong-Kong-Arbitration-Ordinance-2011/

40) Review of Arbitration Laws, Law Reform and Revision Division, Attorney-General's Chambers, LRRD No.3/2001, p. viii.

the default appointing authority, if parties are unable to agree on the appointment of arbitrators.[41]

Established in 1991, the SIAC provided the following services:

(i) The appointment of arbitrators under the International Arbitration Act and Arbitration Act;
(ii) The appointment of arbitrators under SIAC and UNCITRAL Rules;
(iii) Administration and management of cases under the SIAC and UNCITRAL Rules; and
(iv) The authentication of arbitral awards in Singapore[42].

Thus, the IAA has conferred upon the SIAC the mandate of authenticating arbitral awards made in Singapore for the purpose of enforcement under the New York convention.[43]

The SIAC is seen by many practitioners as one of Asia's most efficient and effective arbitral institutions.[44] In efforts to enhance its reputation and promote itself, the SIAC has amended its rules as of July 1, 2010(SIAC Rules), April 9, 2012 and most recently August 1, 2016 to reflect not only the current trends in international arbitration but to address the ever changing needs of the arbitral community.[45] To demonstrate a commitment to arbitration, the amended SIAC Rules promote a less costly and more efficient arbitral proceeding with such additional features as expedited procedures, emergency arbitrators, removal of Memorandum of Issues; but also early dismissal of claims, joinder of additional parties as well as changes to the arbitrator appointment process.[46]

41) Id.
42) See BC Yoon et al, An introduction to the Arbitration Rules of Singapore International Arbitration Center, International Arbitration and Dispute Resolution: Korea Perspective, Kim & Chang (2012)
43) Id. at 134
44) Id.
45) See also Hsfnotes.com/arbitration/2016/07/13/Singapore-international-arbitration-centre-arb.
46) BC Yoon, supra note 42

1. Expedited Procedures

To address ongoing cost concerns of the arbitral community and its clients, the SIAC added the use of expedited procedures.[47] Therefore, a party may apply for arbitral proceedings to be conducted in accordance with the expedited procedures as set forth in Section 5 of the SIAC Rules(2010) if the disputed amount does not exceed $ 5million, or if the parties agree to use the expedited procedure; or in cases of exceptional urgency.[48] This was amended most recently in 2016 to provide that the disputed amount should not exceed SGD 6,000,000.[49]

One of the main advantages using the expedited procedure is the shortened time period that the award must be made within six months from the date when the tribunal is constituted.[50] See Rule 5.2(d) of the SIAC Rules (4th edition, 1 July 2010). Rule 5.2 of the SIAC Rules covers the processes involved with expedited procedure. Rule 5.2 provides:

> *When a party has applied to the centre under Rule 5.1, and when the Chairman determines, after considering the views of the parties, that the arbitral proceedings shall be conducted in accordance with the Expedited Procedures, the following procedure shall apply:*
>
> a. The Registrar may shorten any time limits under these Rules;
> b. The case shall be referred to a sole arbitrator , unless the Chairman determines otherwise;
> c. Unless the parties agree that the dispute shall be decided on the basis of documentary evidence only, the Tribunal shall hold a hearing for the examination of all witnesses and expert witnesses as well as for any argument;
> d. The award shall be made within six months from the date when the Tribunal is constituted unless, in exceptional circumstances, the Registrar extends the time; and

47) Id. See also Rule 5 of the Arbitration Rules of the Singapore International Arbitration Centre (4th Edition, 1 July 2010).
48) Id.
49) Hsfnotes.com/arbitration/2016/07/13/Singapore-international-arbitration-centre-arb
50) Supra note 44 at page 136

e. The Tribunal shall state the reasons upon which the award is based in summary form, unless the parties have agreed that no reasons are to be given.[51)]

2. Emergency Arbitrators

Like expedited procedures, the 2010 amended rules of the SIAC provided for emergency arbitrators. The parties requesting emergency relief must make an application for emergency relief prior to the constitution of the tribunal. The requesting party must also notify all parties in writing of the nature of the relief sought and reasons why such emergency interim relief is necessary.[52)] If the SIAC accepts such petition for emergency relief, the Chairman of the SIAC shall appoint an emergency arbitrator within one business day and the arbitrator shall have two days to establish a schedule for consideration of the application.[53)]

Though the addition of an emergency arbitrator in the amended 2010 SIAC Rules reflects the need for speed, it has not been a popular tool. Until recently, it has only been utilized in a small number of cases. Perhaps parties have used Schedule I of the SIAC Rules sparingly because of the restrictions placed on the emergency arbitrator. It should be noted that once a tribunal is constituted or established, the emergency arbitrator does not have any further power and the tribunal may reconsider or modify or vacate the emergency arbitrator's interim award.[54)] However, the 2012 amendments added much needed clarification with regard to the enforceability of the emergency arbitrators' awards by defining such awards as enforceable by the courts in Singapore including the High Court. This of course has increased the desirability of Singapore as

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51) See Rule 5.2, SIAC Rules

52) Schedule 1, SIAC Rules (4th Edition, 1 July 2010)

53) See Schedule 1 (5), SIAC Rules (4th Edition, 1 July 2010). Schedule 1(5) provides: *The emergency Arbitrator shall, as soon as possible, but in any event, within two business days of appointment, establish a schedule for consideration of the application for emergency relief. Such schedule shall provide a reasonable opportunity to all parties to be heard, but may provide for proceedings by telephone conference or on written submissions as alternatives to a formal hearing. The Emergency Arbitrator shall have powers vested in the Tribunal pursuant to these Rules, including authority to rule on his own jurisdiction, and shall resolve any disputes over the applicability of this Schedule 1.*

54) See BC Yoon, et al, supra note 44 p 136.See also Bryan Hopkins, supra note 1, p 289

a seat of arbitration as the enforceability of awards is no longer in doubt. The fact that the 2012 amendments really provided clarification needed to show that effective emergency relief is available to parties in arbitration has helped increase the popularity of such tool. Emergency arbitration procedures have been used in a variety of cases including preservation of assets and inspection of property.

In this regard, additional changes were made in the 2016 amendments covering the existing Arbitrator regime:

1. An Emergency Arbitrator is now appointed within one calendar day of receipt by the Register of an application for emergency relief and payment of the relevant fees;
2. Any challenger to an Emergency Arbitrator must be made within 2 days of the appointment; and
3. The Emergency Arbitrator must make an award within 14 days of his or her appointment[55)]

3. Removal of Memorandum of Issue

Another significant change in the 2010 SIAC Rules was the removal of the requirement for the Memorandum of Issue.[56)] The Memorandum of Issue, mirrored the terms of reference under the ICC arbitration rules.

Prior to the 2010 amendment, SIAC rules required the tribunal to draft a Memorandum of Issue setting forth the issues that were to be decided in the arbitration. Obviously it is expected SIAC arbitral proceedings will be shortened that "the removal of this requirement demonstrates SIAC's commitment to cost effective, speedy arbitration proceeding"[57)]In essence, it is considered by the arbitral community that removal of the requirement of the Memorandum of Issues demonstrated Singapore's commitment to efficient and cost-effective proceedings.

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55) Supra note 49

56) BC Yoon, Supra note 42 at page 138

57) See Rachel Foxton, Growing in Popularity, Asian – Counsel Special Report-Dispute Resolution, Vol. 8 Issue 10, 2012, 54.

4. Fee Structure

SIACS's rule regarding the arbitrator's fee also reflects the modern trend of capping the fee in accordance with the disputed amount.[58] This offers a stable fee structure which allows the parties to accurately project the fees and costs for arbitration under SIAC Rules. Not only does SIAC cap the arbitration fees but the fees stated in the SIAC Rule are the maximum a party must pay and in many cases, a refund of the required deposit is mad e.[59] Parties may use the SIAC website in calculating estimated fees. In response to SIAC's capping the fee, other arbitration seats in Asia, such as Hong Kong have lowered or decreased fees. Whether this helps compete with Singapore remains to be seen.

5. Evaluation of Singapore as a Regional Arbitration Center

Becoming well known in Asia as an arbitration center, Singapore has aggressively moved to increase its position as one of the leading international arbitration center in Asia. Such increased steps as well as improvements to the SIAC Rules have resulted in reasonable success. Some scholars point out that the "internationalization" of the SIAC has set the stage for its expansion and success.[60] Internationalization was obviously a major goal of Singapore and the SIAC.[61] Singapore, by strengthening its arbitral rules has laid the groundwork for continued success as an arbitral center.

The number of cases handled by SIAC has increased by almost 15 percent from 2012 to 2015 with a total number of new filings up from 235 to 271 cases.[62] Not only has SIAC's popularity as an international arbitration center increased but the demand has expanded the scope of arbitration too. SAIC, not only handles typical commercial disputes but a broad range of cases from shipping and maritime disputes to construction, engineering and

58) Id.

59) Id.

60) See Seungwha Chang, Interview- Michael Pryles, Asian Dispute Review, Vol. 1 Issue 1 (April 2012) in which Michael Pryles states that the reasons behind the success of the SIAC is ".the internationalization of SIAC through the appointment of an international panel of arbitrators and a diverse and international staff. A second secret was to train our case administration officers to ensure that our product, case administration, is up to leading world standard. The third is to be responsive to market needs and to listen to our customers."

61) Chan Leng Sun, supra note 29

62) Cf. http://www.siac.org.sg/2014-11-03-13-33-43/facts-figures/statistic/64-why-siac

international trade issues. Its handling of maritime disputes has improved its competition with other maritime arbitration centers around the world. Besides commercial disputes, Singapore has also seen growth in investment treaty disputes as well.

The recent changes in Singapore's arbitration laws and rules reflect Singapore's decision to become the pre-eminent international arbitration hub in Asia. Due to the 2010 and 2012 changes in the IAA, Singapore has seen an increase in international arbitration, evidenced by the marked increase in cases. The changes in the arbitral laws of 2012 and the 2012 and 2016 arbitral rules of SIAC shows a concerted effort on the part of Singapore to continue its dominance as an international arbitration center. As Singapore's courts continue to develop a strong body of arbitration-related case law, and as Singapore continues to update its arbitral laws and rules reflecting the trends of the international arbitral community, it continues to increase its reputation as the preferred arbitration venue in Asia.[63]

Ⅳ. Analysis

The KCAB has maintained on average 300 new cases per year since 2010 and has recorded 413 new cases in 2015 compared to 271 new cases of SIAC in 2015. In addition, the accumulated number of cases filed with the ICC from 2004 to 2014 where Korean entities were the party to the arbitration is 350, which ranks Korea as one of the top countries using ICC arbitration in Asia- similar in size to China though excluding Hong Kong. Compared to China and Japan, whose economies are much greater than Korea, actually Korea ranks as the top country in Asia using ICC arbitration.[64] It is apparent from a close review and analysis of the changes to the International Rules of the KCAB as well as changes to the Korean Arbitration Act itself, that Korea is poised to become a major hub of international arbitration in Asia. International arbitration is increasing in Korea, which reflects not only Korea's dramatic expansion in cross border transactions but an awareness of foreign parties as to the modernization of the Arbitration Act and the KCAB's International Rules.[65] As Koreans

63) Chan Leng Sun, supra note 29
64) See Kapyou Kim, supra note 2
65) Chapter VI, Article 36, Amended Arbitration Act

are generally non-litigious in nature (though it appears to be changing) and prefer to resolve potential disputes in private or a more private forum than the courts, both domestic and international arbitrations are increasing.

Until recently, most if not all Korean medium and small size companies have usually given in to the demands of international contracting parties to utilize arbitral regimes or arbitral seats outside of Korea. One of the problems was that the Korean companies failed to emphasize Korea in general and the KCAB in particular as a legitimate seat or center for the resolution of international disputes. Foreign companies, favoring the ICC in Paris or LCIA in London or American Arbitration Association(AAA) in New York or even the SIAC in Singapore usually persuaded Korean companies to arbitrate in Paris, London, New York, or Singapore. This was due in part because of a perceived lack of interest or efforts to maintain the seat of arbitration in Korea.

In order to position itself as an arbitration hub, the Arbitration Act has been recently amended and the KCAB has taken steps to address past complaints of foreign parties and to reflect the needs of the arbitral community. Therefore, the KCAB has updated its international rules to reflect the modern international arbitration trends. It also has aggressively recruited qualified arbitrators, both foreign and domestic, including bi-lingual arbitrators, to raise the standards of service it provides to a standard similar to that of the ICC, LCIA, AAA, or SIAC. It has taken steps to attract highly qualified and internationally recognized arbitrators from around Asia and elsewhere as well as improve its services, conference capabilities and training activities. It has begun a vigorous and well planned promotion campaign, hosting international conferences and seminars as well as providing training and educational activities for lawyers, arbitrators and law students.[66] It has hired additional staff and has also started a vigorous outreach program. Besides the foregoing, it has also amended its rules to reflect best practices and has committed itself to providing a high quality of service, including the establishment of an International Arbitration Committee as required by Article 1 of the KCAB International Arbitration Rules (Sep 1, 2011). Obviously, the steps taken by the KCAB has met with success as the KCAB has become a very competitive arbitration center and is experiencing substantial growth. The number of new arbitration cases registered with the KCAB in 2015 was 413, an increase of over 8 percent from the previous year.[67]

66) 2011 Annual Report, The Korean Commercial Arbitration Board

On the basis of the above mentioned steps taken by the KCAB, it is not surprising that Korea(primarily Seoul) is not only becoming more popular as an arbitration center it is arguably emerging as an alternative to other great arbitration centers in Asia. In fact, in recognition of Seoul's status as a world class arbitration center, the SIAC signed a MOU with the Seoul International Dispute Resolution Center (Seoul IDRC) in 2012. The MOU, which took effect in 2013, enables the SIAC to be a partner institution with the Seoul IDRC and allows the SIAC to offer local access to SIAC users in Korea.[68]

It is evident that Korea and Singapore have updated their relevant arbitration laws and rules to reflect the current trends in international arbitration and to increase their popularity as arbitral hubs. These countries have addressed international arbitral concerns including expedited procedures, arbitral awards and UNCITRAL Model Law concerns. However, it appears that Korea will become one of most favored arbitration hubs if it continues to promote itself as a logical alternative to other Asian arbitration centers. In fact, Korea's emergence as an international arbitration center in the last few years has been noted by scholars and arbitrators alike.[69]

Ⅴ. Attractive Points of Seoul as a Seat of Arbitration

In order to become an arbitration hub or center, a jurisdiction must have major processes and factors such as a stable legal system, arbitration friendly legal environment, neutral and reliable courts, convenient facilities, readily available arbitration related services, competent arbitrators and staff members as well as excellent transportation services to provide convenient access to the arbitration facilities.[70] Korea has become a very arbitration friendly jurisdiction as it has joined New York Convention in 1973 and adopted the 2006 UNICITRAL Model Law in recent changes to the Korean Arbitration Act and the international rules of the KCAB. In addition, Korean

67) Id. At 10. The report further states that such increase reflects the fact that arbitration is the preferred method of dispute resolution in Korea.

68) See SIAC's homepage at www.siac.org.sg

69) See Seungwha Chang, supra note 29. In the interview with Michael Pryles, Pryles points out that the increase in Korean parties to international arbitration, the reforms promulgated by the KCAB, the increased arbitration expertise of Korean law firms and the integrity and competence of the Korean judicial system all have contributed to Korea's rise as "a star in arbitration in Asia." See also Bryan Hopkins, supra note 1, p 308.

70) See Kapyou Kim, supra note 2

courts render decisions concerning arbitral awards and related issues that are consistently fair as the Korean Supreme Court strongly supports enforcement of arbitral awards properly rendered by arbitration institutions.[71)]

Even though Korea has a civil law legal system, over the years it has also introduced in its legal system parts of common law theory. In Korea, there are also many arbitration lawyers, professors and experts who have been educated in the US or England common law system in addition to the European civil law system. Obviously, Korea is geographically well positioned to handle arbitration cases arising from or in connection with Japan, China and other Asian countries, or American and European companies' transactions with Asian based companies.

It should be noted that the KCAB was established in 1966 and has a wealth of experience. Besides the experience of the KCAB, the city of Seoul has established state of the art international arbitration facilities equipped with high tech conference systems and user friendly facilities that provides a state of the art experience. As Korea is one of the Asian countries which have adopted the most pro-arbitration laws and rules and also has many domestic and international lawyers, professors and experts who are well educated to practice or to be an arbitrator under civil law and common law, Seoul is well positioned to deal with matters arising from or in connection with China, Japan and other Asian countries. And of course matters arising from American and European companies' transactions with Asian companies as well. It is only a matter of time before Seoul becomes a very attractive place as an international seat of arbitration.

Ⅵ. Conclusion

Due to Asia's growing importance in international trade, international commercial arbitration is becoming more and more popular across the region. Korea has emerged as a major arbitration hub in Asia beyond Hong Kong and Singapore.

In response to the demands of international commerce, Korea has changed its arbitration laws and rules to adapt to the increasing demand for dispute resolution mechanisms by international companies. Korea's recent steps taken to update its rules as

71) BC Yoon, "Strong Points of Seoul as a Seat of Arbitration," Arbitration Journal, Spring and Summer edition of 2016

well as to increase its service and reputation as a reliable provider of international dispute resolution services promises to elevate Korea as an acknowledged regional leader in the business of dispute resolution, especially as a provider of arbitration services.

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